HB 768

Department of Legislative Services

Maryland General Assembly
2004 Session

FISCAL AND POLICY NOTE

House Bill 768 (Delegate Bobo, *et al.*)
Ways and Means

Income Tax Credit for Preservation and Conservation Easements - Transferability

This bill allows an individual who has earned a Preservation and Conservation Easement tax credit to transfer the tax credit to another taxpayer if the individual: (1) has not claimed any portion of the credit; (2) transfers the entire amount of the credit; and (3) notifies either the Maryland Environmental Trust (MET) or Maryland Agricultural Land Preservation Foundation (MALPF) within 30 days of the transfer.

The bill takes effect July 1, 2004 and applies to tax years 2004 and beyond.

Fiscal Summary

State Effect: Based on the number of individuals that donated or sold easements and potentially earned credits, revenues could decrease by approximately $398,000 in FY 2005. To the extent that future donation and purchase activity is higher than anticipated, then revenue losses could be significantly higher than estimated. Potential revenue losses could also be higher if the participant's rate is higher than estimated for prior purchases and donations.

Local Effect: Based on the assumptions above, if half of the credits were sold to taxpayers who claimed the credit against the corporate income tax, local revenues would decline by approximately $14,000 in FY 2005.

Small Business Effect: Meaningful.

Analysis

Current Law: Chapter 676 of 2001 established the Preservation and Conservation Easement tax credit. The amount of the credit allowed is the amount by which the fair market value of the property before the conveyance of the easement exceeds the fair market value of the property after the conveyance of the easement. The fair market value of the property before and after the conveyance of the easement is substantiated by an appraisal prepared by a certified real estate appraiser. The amount of the credit is reduced by the amount of any payment received for the easement. The amount of the credit allowed for any taxable year may not exceed the lesser of: (1) the State income tax liability; or (2) $5,000. Any unused credit may be carried forward for up to 15 years, but may not exceed the lesser of the State tax or $5,000 in any taxable year. The credit may not be claimed for a required dedication of open space for the purpose of fulfilling density requirements to obtain a subdivision or building permit. The credit may not be transferred.

Background: The purpose of the Maryland Agricultural Land Preservation Program, established in 1977 and administered by MALPF, is to preserve wood and agricultural land in order to provide sources of agricultural products within the State; control the urban expansion which is encroaching upon the wood and agricultural land of the State; curb the spread of urban blight and deterioration; and protect agricultural land and woodland as open space land. Through July 2003, the program has preserved 228,854 acres. Funding for the program has typically come from the agricultural transfer tax imposed on all transfers of title in agricultural land taken out of production, a portion of the State transfer tax, Greenprint funds, and federal funds. Since the inception of the program through fiscal 2003, 1,673 properties have sold easements to MALPF.

MET, which was established by the General Assembly in 1967, is a statewide local land trust governed by a citizen board of trustees. MET works with over 40 private nonprofit land trusts. These land trusts can hold conservation easements independently or jointly with MET. In addition, some of these land trusts acquire and manage land. Through July 2003, the program has preserved 78,146 acres. Land is preserved either by outright donations or purchases of easements. MET does not typically purchase easements, but acts as a conduit for the Rural Legacy Program and the Transportation Enhancement Program within the State Highway Administration.

State Revenues: **Exhibit 1** lists the amount of credits claimed since the inception of the tax credit. For tax year 2002, $2,234 per tax return was claimed, or approximately 45% of the maximum that could be claimed.

Exhibit 1

Tax Credit for Preservation and Conservation Easements
Credits Claimed in Tax Year 2001 and 2002

Tax Year	Tax Returns	Amount	Average
2001	151	$189,620	$1,256
2002	172	384,285	2,234

Exhibit 2 lists the number and amount of acres donated or sold via MET in tax years 2001 through 2003.

Exhibit 2

MET Easement Purchases and Donations
Tax Years 2001 through 2003

Tax Year	Donations: Properties	Acres	Purchases: Properties	Acres
2001	31	2,940	33	5,540
2002	52	4,029	48	8,639
2003	39	2,987	6	1,147

Exhibit 3 lists the number of individuals who sold easements to MALPF in fiscal 2003. Of the 122 properties that sold easements to MALPF in fiscal 2003, MALPF estimates that 119 properties offered a discount and are eligible for the tax credit. The average discount per property was $106,192.

Exhibit 3

MALPF Easement Purchases
Fiscal 2003

Properties	Acres	Acquisition Cost	Estimated Discount
122	**15,316**	**$33,685,193**	**$12,955,452**

The actual cost of the bill, which cannot be reliably estimated at this time, depends on amount of easement purchases made by MALPF and through MET in a fiscal year, the amount of purchase-price discount each year, the number of easements donated by individuals in a tax year, and the number of individuals who qualify for the credit and have not claimed it but who would sell it to someone who would claim the credit.

However, *for illustrative purposes only*, revenues could decline by approximately $398,000 in fiscal 2005. This estimate is based on the following facts and assumptions:

- in tax year 2002, the average credit claimed was $2,234 per return;
- in 2003, 39 individuals donated easements to MET;
- all of these individuals would sell the credit if unable to claim the entire amount of the credit;
- MET advises that easement purchases conducted via MET are at market cost and are not typically eligible for the existing tax credit; and
- 85 taxpayers who sold easements at a discount to MAPLF prior to fiscal 2004 and qualify for the tax credit but do not claim the credit because it is not financially profitable to do so sell the credit to someone who claims the entire amount in tax year 2004.

Legislative Services advises that due to the limited history of the existing tax credit and inability to identify how many individuals who qualify for the tax credit but have not claimed it already, it is difficult to determine the potential revenue loss from making the tax credit transferable. Revenue losses will be greater to the extent that: (1) there is a large possible number of farms that are eligible to claim the credit but have not done so; and (2) authorizing the credit to be transferable increases the both the number of taxpayers claiming the credit and average amount claimed per taxpayer.

Small Business Effect: Many farmers are small businesses. These small businesses who transfer the tax credit and receive compensation above and beyond what can be earned from claiming the tax credit will benefit from this bill.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): Comptroller's Office, Maryland Agricultural Land Preservation Foundation, Maryland Environmental Trust, Department of Legislative Services

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mh/mdr

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