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**DIVISION OF REVENUE**

**TECHNICAL INFORMATION MEMORANDUM 2001 - 01**

**DATE: July 23, 2001**

**SUBJECT: NO SALE OF LAND CONSERVATION CREDITS**

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**AUTHORITY:** This regulation is published, after public notice and comment, pursuant to authority given the Department of Finance in sections 1805 and 1815 of Chapter 18 of Title 30 of the Delaware Code.

**REGULATION:**

Chapter 18 of Title 30 of the Delaware Code was enacted by the General Assembly in 1999. It contained the Delaware Land and Historic Resources Protection Incentives Act ("Land Incentives Act"). The Act is designed to induce private landowners to protect and conserve open space, natural resources, and biodiverse habitats by providing tax credits for the preservation or conservation of land in perpetuity. The Act did not permit the sale, transfer or assignment of the tax credits by the private landowner.

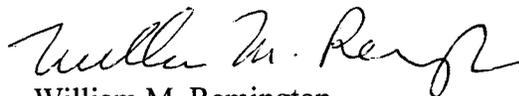
In 2000, the General Assembly amended Chapter 18 by designating the existing Land Incentives Act as subchapter I and adding a new subchapter II containing the Historic Preservation Tax Credit Act. This Act is designed to promote community revitalization and restoration through the rehabilitation of historic property by providing tax credits for expenditures made to rehabilitate any certified historic property. Unlike the Land Incentives credit, this credit may be transferred, sold or assigned.

The first sentence of section 1813 (d) says "Any person eligible for credits under this **Chapter** may transfer, sell or assign any or all unused credits" Section 1814 (a) says "Any person eligible for credit under this **subchapter** may transfer, sell or assign any unused credits." The word "**subchapter**" is also used in subsection (c) of section 1814.

An ambiguity arises because the word "**Chapter**" is used in section 1813 and the word "**subchapter**" is used in section 1814. May the credits provided by the Land Incentives Act which is contained in the same "Chapter" be transferred, sold or assigned or is the ability to transfer, sell or assign credits limited to the Historic Preservation Tax Credits?

It is the Division of Revenue's interpretation that only the Historic Preservation Tax Credits may be transferred, sold or assigned and the Land Incentives credits may not be.

The synopsis to the amendment to Chapter 18 creating the second subchapter contains no mention of Land Incentives Act and speaks of the ability to transfer credits only in the context of the Historic Preservation credits. The synopsis describes the ability to transfer credits (particularly to banks) as a funding mechanism to raise the necessary capital to make the required rehabilitation expenditures. This purpose would appear to have no application to the Land Incentives credits since the taxpayers already own the land and owners are not required to make expenditures to qualify for those credits. If the legislature had intended to make the Land Incentives credits transferable we believe that the insertion of such an unusual right would have been clearly expressed as an amendment to the Land Incentives Act itself. Finally, reading the two credit acts together (particularly section 1 of House Bill No. 1 which changes all reference to "Chapter" in the Land Incentives Act to "subchapter") we can discern no basis to believe the legislature intended to make the Land Incentive credits transferable. Therefore, the Division rules that credits earned under the Land Incentives Act are not transferable.



William M. Remington  
Director of Revenue