

PLEASE NOTE: Legislative Information **cannot** perform research, provide legal advice, or interpret Maine law. For legal assistance, please contact a qualified attorney.

An Act To Provide Maine Land Conservation Tax Incentives

Be it enacted by the People of the State of Maine as follows:

Sec. 1. 36 MRSA §5219-BB is enacted to read:

§ 5219-BB. Credit for conservation or qualified conservation contribution

1. Credit. A taxpayer who has qualified for and claimed on the taxpayer's federal income tax return, under Section 170 of the Code, a charitable deduction for a gift of land for conservation or for a qualified conservation contribution donated after January 1, 2007 on a qualified real property interest located in this State may claim a credit against the tax imposed by this Part for the applicable tax year in an amount equal to 25% of the total amount of the federal deduction attributable to the gift of land for conservation or to the qualified real property interest located in this State subject to the caps provided in subsection 6.

2. Carry-forward. If the amount of the credit under this section exceeds the taxpayer's tax liability under this Part for the taxable year or if it exceeds the maximum credit that may be used in any particular taxable year as provided in subsection 6, the excess credit may be carried forward to succeeding taxable years until all the credit is claimed.

3. Transferability. In addition to the carry-forward of unused credit under subsection 2, unused credit may be transferred, devised or distributed, with or without consideration. Written notification of the transfer, devise or distribution must be provided to and approved by the assessor with the unused credit maintaining all its original attributes in the hands of the recipient.

4. Limitation. In the hands of the original donor of a qualified conservation contribution of a qualified real property interest or of a gift of land for conservation and of any subsequent transferee, devisee or distributee, the credit allowed by this section that may be used to offset income tax liability in any one taxable year is limited to an amount that, when combined with all other state income tax credits of the taxpayer, does not exceed the taxpayer's total state income tax liability for the taxable year.

5. Qualified appraisal. The fair market value of a qualified donation made pursuant to this section must be substantiated by a qualified appraisal prepared by a qualified appraiser as defined under applicable federal law and regulations applicable to charitable contributions.

6. Maximum credit. The credit provided for in this section may not exceed \$500,000 for a return filed under chapter 817 or 819 or \$250,000 for other returns filed under this Part.

7. Donative intent. In addition to the donative intent required by Section 170 of the Code, a credit is not allowed for any noncash charitable contribution in the claimed amount of \$100,000 or more unless the donor has a donative intent that meets the following standards.

A. The donor must be motivated by detached and disinterested generosity benefiting a charitable purpose rather than expected economic benefit.

B. A noncash charitable contribution by a donor given to comply with any state or federal environmental or other regulatory requirement, for the purpose of obtaining road, water or sewer services or in conjunction with obtaining a grant or a subdivision, building, zoning, environmental, mitigation or similar permit or approval from any government is deemed not to have the requisite donative intent absent extraordinary circumstances.

C. A contribution of an otherwise qualified conservation contribution as defined in Section 170(h) of the Code is deemed not to have the requisite donative intent if the underlying property is used for or associated with the playing of golf or is planned to be so used or associated.

The assessor shall examine the substance rather than merely the form of the contribution and related and surrounding transactions and may use the step transaction, economic reality, quid pro quo, personal benefit and other judicially developed doctrines in determining whether the requisite donative intent is present.

SUMMARY

This bill provides a transferable income tax credit for voluntary contributions of land for conservation and for conservation easements that qualify as charitable donations under the federal income tax. The credit is equal to 25% of the value of the donation up to \$500,000 for corporate donors and \$250,000 for other donors.