

# PUBLICATION

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## Spotlight on Georgia: Peach State Will Ring in the New Year with Significant Changes to its Conservation Tax Credit Program

December 14, 2012

Taxpayers only have two weeks to qualify for the Georgia conservation tax credit before significant changes to the Georgia Conservation Tax Credit Program (GCTCP) take effect on January 1, 2013. The changes to the GCTCP include amendments to the statute creating the GCTCP, revised regulations from the Department of Revenue (DOR) and Department of Natural Resources (DNR), and a new policy from the State Properties Commission (SPC) outlining the process for its review of appraisals.

### Summary of Significant Changes

**Conservation Purposes:** Effective beginning January 1, 2013:

- The donated property must be accepted by an eligible recipient for use in a manner consistent with at least two, instead of just one, eligible conservation purposes.
- The eligible conservation purposes are redefined as:
  - Water quality protection for wetlands, rivers, streams or lakes;
  - Protection of wildlife habitat consistent with state wildlife conservation policies;
  - Protection of outdoor recreation consistent with state outdoor recreation policies;
  - Protection of prime agricultural or forestry lands; and
  - Protection of cultural sites, heritage corridors, or archeological and historic resources.

The revised DNR regulations include more specific definitions of the eligible conservation purposes, including specific requirements for each purpose.

**Required Restrictions on Use of Donated Property:** Effective beginning January 1, 2013, the donated property must be subject to certain restrictions, which must usually be included in a recorded deed or other instrument.

- The following actions must be prohibited:
  - Any subdivision, if the donated property is less than 500 acres;
  - More than one subdivision, if the donated property is 500 acres or more;
  - Timber and agricultural activities on the donated property, unless done in accordance with best management practices published by the State Forestry Commission or the Soil and Water Conservation Commission, as the case may be;
  - Mining on the donated property;
  - Planting on the donated property of non-native invasive species listed in Category 1, Category 1 Alert, or Category 2 of the "List of Non-Native Invasive Plants in Georgia" developed by the Georgia Exotic Pest Council; an
  - New construction on the donated property:
    - of structures, roads, impoundments, ditches, dumping, or any other activity that would harm the protected conservation values of the donation;
    - within 150 feet of any perennial or intermittent stream; and

- that causes more than one percent of the property's total surface area to be covered by impervious surfaces.
- The donated property must include a buffer of at least 100 feet on each side of any perennial streams on the donated property, and a buffer of at least 50 feet on each side of any intermittent streams on the donated property, to ensure the maintenance of at least 75 percent tree canopy evenly distributed after harvest.

**New Certification and Appraisal Requirements:** New certification and appraisal requirements take effect beginning January 1, 2013. Responsibility for review of the appraisal of the donated property will be moved from the DNR to the SPC. In addition, a non-refundable application fee will be charged for applications for a certification of a donation. But the donor can still submit a pre-certification application to the DNR before beginning the formal certification process to receive a preliminary determination as to whether the proposed donation will be a qualified donation.

Under the new procedures, a donor cannot submit an application to the DNR for certification of a donation until the donor first:

- Pays a \$5,000 non-refundable application fee to the DNR, unless the property is being donated to the State of Georgia for a purpose other than qualifying the state for a federal or state grant, in which case, the application fee is one percent of the total value of the donation;
- Submits a full narrative appraisal to the DNR (which will forward it to the SPC for review) that includes:
  - A certification page, as established by the Uniform Standards of Professional Appraisal Practice, signed by the appraiser; an
  - An affidavit signed by the appraiser which includes a statement specifying:
    - The value of the unencumbered property, the total value of the qualified donation in gross, and an accompanying statement identifying the methods used to determine such values;
    - Whether a subdivision analysis was used in the appraisal;
    - Whether the landowner or related persons own any other property, the value of which is increased as a result of the donation; and
    - That the appraiser is certified pursuant to Chapter 39A of Title 43 of the Official Code of Georgia; and
- Completes the conveyance of the donated property and has recorded the deed or other instrument assuring that donated property is subject to the required restrictions.

Once the SPC receives the appraisal, the SPC will have a qualified review appraiser review the donor's appraisal and report the results to the SPC. A blind copy of the review comments will be sent to the landowner so that the landowner's appraiser can revise the appraisal if necessary. At the conclusion of its review of the appraisal, and, if necessary, the revised appraisal, the SPC will send a letter to the DNR either approving the original or revised appraised value or approving a separate amount for the maximum tax credit that the donor can receive.

The SPC is required by law to report any appraisal that includes a substantial misstatement of value (which means that the claimed value of the donated property is 150 percent or more than the value determined by the SPC), to the Georgia Real Estate Appraisers Board for investigation and disciplinary action. The minimum penalty for a substantial misstatement of value is also increased from \$1,000 to \$10,000.

The DNR will proceed with the certification process once all of these steps are met. The final decisions of the SPC and of the DNR can be appealed in accordance with the Georgia Administrative Procedure Act.

**Choice Between Charitable Deduction and Conservation Tax Credit:** The new law provides that no conservation tax credit is allowed with respect to any amount deducted by the taxpayer as a charitable contribution. If a taxpayer claims a federal charitable deduction for a donation and receives a conservation tax credit for the same donation, the taxpayer must add the amount of the federal deduction to the taxpayer's income for purposes of computing the taxpayer's Georgia income taxes.

**Other Significant Changes:** The following are some other significant changes to the GCTCP, which are each effective as of January 1, 2013, unless a different effective date is specified:

- The maximum tax credit allowed in the aggregate to partners of a partnership that makes a donation is reduced from \$1 million to \$500,000.
- The new law imposes new limits on a donor's ability to make a series of donations from a single tract of property, such as separate annual donations of conservation easements covering different parts of a single tract. Previously, only one qualified donation was permitted with respect to any real property that was within the same tax parcel of record within the year prior to the donation. This look back period has been increased to five years prior to the donation. Subsequent donations from the tax parcel are still allowed by owners who are not related to any prior eligible donors of any portion of the tax parcel during the look back period, however.
- The new law provides that conservation tax credits for donations in taxable years beginning on or after January 1, 2013, can only be sold once, so a buyer or transferee of a tax credit cannot resell or transfer the tax credit.
- Effective beginning January 1, 2014, charitable organizations receiving qualified donations must also be accredited by the Land Trust Accreditation Commission.
- A county or municipal government can only hold a conservation easement on real property that lies at least partially within the government's jurisdiction.

## Summary

Major changes will take place to the GCTCP beginning on January 1, 2013. While some of the changes add clarity, the process will likely become more expensive and burdensome while the tax credits become less valuable because of the charitable deduction add back provisions.

Should you have any questions or otherwise wish to discuss your particular planning needs or objectives, please contact any attorney in the Firm's Tax Department.