

## *Ruling 99-01*

Vermont Department of Taxes

Date: January 8, 1999

Written By: William B. Hayden, Tax Policy Analyst

Approved By: Sean P. Campbell, Commissioner of Taxes

You requested a formal ruling on whether the purchase of approximately 100 acres of land by [corporation], a Vermont nonprofit corporation, will qualify for exemption from land gains under 32 V.S.A. §10002(i). This ruling is based on the information in your letter addressed to Kelly A. Bain dated October 16, 1998 and your letter to me dated November 10, 1998.

### Issue

Will the purchase of approximately 100 acres of land by [corporation] qualify for exemption from land gains tax under 32 V.S.A. §10002(i)?

### Facts

32 V.S.A. §10002(i) excludes from the definition of land subject to the tax on land gains ". . . farmland and open-space land sold to organizations qualifying under section 501(c)(3) of the Internal Revenue Code of 1986, as amended, which will also meet the "public support" test under 509(a)(2) of the Code, provided one of the stated purposes of the organization is to acquire property or rights and interests in property in order to preserve agricultural, forestry or open-space uses, and provided that the property transferred, or rights and interests in the property, will be held for agricultural, forestry or open space purposes, and is so held by such organization for at least six years." A further requirement of 32 V.S.A. §10002(i) is that the land be used for a conservation purpose as defined in section 170(h) of the Internal Revenue Code of 1986, as amended.

[Corporation] was incorporated as a Vermont nonprofit corporation.

[Corporation] holds 501(c)(3) exempt organization status from the Internal Revenue Service. Because [Corporation] was a newly created organization when it applied for exempt status the IRS did not make a final determination of its foundation status under section 501(a) of the Internal Revenue Code but, during the advance ruling period, the I.R.S. is considering the Taxpayer as having a foundation status of 509(a)(1).

If, after the Advance Ruling Period ends (12/31/99), [Corporation] establishes that it has been a publicly supported organization, the IRS will classify it as a section 509(a)(1) or 509(a)(2) organization as long as it continues to meet the requirements of the applicable support test.

[Corporation's] objective and purpose is to protect and replant threatened plant species and raise public awareness of the plight of wild medicinal plants.

[Corporation] is negotiating to buy a 100 acre parcel of land. This land is located in [City, State] and is open-space land with no buildings.

[Corporation] plans to protect this natural habitat from logging and development.

[Corporation] also will reintroduce certain native plant species and install a "medicine trail" to allow members of the public limited access to areas that are replanted to educate them about the native plant species.

## Ruling

The purchase of the 100 acre parcel of open-space land in [City, State] by [Corporation] will qualify for exemption from land gains tax under 32 V.S.A. §10002(l) if [Corporation] meets the public support test of 509(a)(2) of the Internal Revenue Code and if the land is held by the organization for the purposes described above for at least six years.

The Internal Revenue Service has postponed making a final decision as to [Corporation's] foundation status because it is a newly created organization. The Department of Taxes is also not in a position to determine whether [Corporation] meets the public support test until enough time has passed to determine what amount and type of public support is received by this organization. The end of the advance ruling period (December 31, 1999) should be a reasonable time for making this determination.

Because [Corporation's] foundation status and therefore its exemption status will not be known until after the advance ruling period the buyer and seller should follow the provisions of 32 V.S.A. §10007 with regard to withholding and remittance of 10% of all consideration paid to the seller. Pursuant to the discretion granted under § 10007(b), the time in which the seller is required to pay the balance of the tax or claim a refund is extended until the Internal Revenue Service has made a final determination of [Corporation] foundation status<sup>1</sup>.

After the end of the advance ruling period the seller must submit to the Department a copy of the Internal Revenue Service's determination of [Corporation's] foundation status along with its request for refund or remittance of taxes due.

This ruling is issued solely to your organization and is limited to the facts presented as affected by current rules and regulations. Other taxpayers may refer to this ruling to determine the Department's general approach, but the Department will not be bound by

this ruling in the case of any other taxpayer or in the case of any change in the relevant statute or regulation.

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<sup>1</sup> If at the time the return is filed the total tax due is less than the amount that had been withheld and remitted to the Department the seller may claim a refund as provided in 32 V.S.A. §10007. Further refund may be requested once the Internal Revenue Service has determined [Corporation's] foundation status.