

STATE OF COLORADO

DEPARTMENT OF REVENUE

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John W. Hickenlooper
Governor

June 29, 2012

Barbara J. Brohl
Executive Director

The Honorable Cheri Gerou
Chair, Joint Budget Committee
Colorado General Assembly

John Vecchiarelli
Division Director

The Honorable Brian DelGrosso
Chair, House Finance Committee
Colorado General Assembly

The Honorable Michael Johnston
Chair, Senate Finance Committee
Colorado General Assembly

Dear Senators and Representatives:

Section 39-22-522.5(12), C.R.S., requires the Department of Revenue (DOR) to submit a quarterly report to the Joint Budget Committee and the Finance Committees of the General Assembly which details the following information:

a) CASE SPECIFIC INFORMATION

The number of tax credits claimed pursuant to section 39-22-522 for which the Executive Director mailed a notice of deficiency, notice of rejection of refund claim, or notice of disallowance pursuant to section 39-21-103.

- As of 06/20/12, the Department has disallowed conservation easement tax credits in 636 cases.

b) APPRAISAL SPECIFIC INFORMATION

The number of such cases sent to the Conservation Easement Oversight Commission (CEOC) for review pursuant to section 12-61-721, C.R.S.

- The Department sent appraisals to the CEOC for review of all of the 636 cases for which credits have been disallowed.
- As of 06/20/12, the Department sent 699 appraisals (or partial appraisals) to the CEOC for review. Of these 699 appraisals, 12 were for a 2nd review. Therefore, 687 unique appraisals were sent to the CEOC for review.
- NOTE: Some of these appraisals were sent to the CEOC for review prior to the Department disallowing any credits.

c) CEOC RECOMMENDATIONS

The number of such cases returned to the Executive Director with the advice of the CEOC created in section 12-61-721(1), C.R.S., and the action, if any, taken by the Department of Revenue on the cases returned by the commission.

- The CEOC returned recommendations to the Executive Director on 667 of the unique appraisals sent for review. The remaining 20 appraisals are scheduled for review and discussion by the CEOC at the 08/24/12 meeting.
- The CEOC recommended approval of credits in 35 cases involving appraisals which don't appear to violate the Uniform Standards of Professional Appraisal Practice (USPAP).
- The CEOC recommended approval of credits in 36 cases involving appraisals which may violate USPAP.
- The CEOC recommended rejection of credits in 549 cases.
- The CEOC offered no opinion in 47 cases.
- The Department disallowed credits with favorable recommendations from the CEOC in 7 cases due to duplicate claims by the Tax Matters Representative and in 2 cases due to missing documentation.

d) MEDIATION PROCESS

The number and progress of any cases that are in a mediation process and the status of such mediation.

- No new cases have been sent to mediation.
- NOTE: Per Regulation 39-21-522, enacted September 1, 2011, the Department will treat a request for mediation as an agreement to extend the statutory deadline to hold administrative hearing.

e) REFERRALS TO THE ATTORNEY GENERAL'S OFFICE

The number of cases referred to the Attorney General's office for resolution.

- As of 06/20/12, 490 cases, including both those subject to the election provisions of HB11-1300 and those outside the scope of those provisions, have been sent forward to the Attorney General's office for resolution.
- Seventeen of the 490 cases are not subject to HB11-1300. The Department transferred jurisdiction to District Court pursuant to Section 39-22-522.5(5)(b), C.R.S. in 13 cases. Four cases had a formal hearing pursuant to Section 39-21-103, C.R.S. in which the Executive Director's designee ruled in favor of the Department. These 4 cases are currently on appeal in District Court.
- Elections have been made pursuant to Section 39-21-522.5, C.R.S. in 502 of the 543 cases subject to the election provisions of HB11-1300: 473 made an election to waive the administrative hearing and appeal to District Court; 29 made an election to remain in the administrative process and requested an expedited hearing; 41 made no elections.
- The chart below reconciles the numbers previously discussed:

H.B. 1300		Non H.B. 1300		Total Cases
Elected District Court/To OAG	473	On Appeal/To OAG	17	490
Elected Expedited Hearing	29			29
Total # making an Election	502			
Made No Election	41	Remain in Admin Process	76	117
Total # of Cases	543		93	636

- As of 06/20/12, the Department has received 32 petitions by Transferees to change the Tax Matters Representative in the cases involving no elections. Seventeen of these 32 petitions have been granted, 12 have been denied, and the remaining 3 are being reviewed.
- NOTE: The numbers may differ from previous reports due to consolidation of district court cases and changes in Tax Matters Representatives.

f) CASES RESOLVED BY THE DEPARTMENT OF REVENUE

The number of cases resolved by the Department of Revenue.

- The Department sent Notices of Final Determination in 4 of the cases sent to the Attorney General's office prior to the effective date of House Bill 11-1300. These 4 cases are currently on appeal in District Court.
- The Department sent Notices of Final Determination to the Tax Matters Representative and Transferees in 1 case not subject to House Bill 11-1300 that was not timely protested.
- The Department has settled 32 cases involving \$8,260,023 in tax credits claimed.

g) DOLLAR AMOUNTS OWED OR WAIVED

The amount of deficient taxes, interest, and penalties determined to be owed or waived by the Department of Revenue in administering the resolution of cases.

- The 5 cases in which Notices of Final Determination were issued by the Department involved a total assessed amount of \$1,787,641 (\$1,107,028 in taxes, \$555,907 in interest, and \$124,706 in penalties); \$2,469 was waived (\$1,440 in taxes, \$856 in interest, and \$173 in penalties).
- In the 32 cases settled by the Department, \$2,148,339 was determined to be owed (\$2,083,837 in taxes, \$46,534 in interest, and \$17,968 in penalties); \$8,074,805 was waived by the Department (\$6,176,186 in taxes, \$1,347,451 in interest, and \$551,168 in penalties).

h) CREDITS ALLOWED IN FULL

The number and total amount of credits that were originally contested but subsequently allowed to be claimed in full.

- Of the 35 appraisals which don't appear to violate USPAP and the CEOC recommended for approval, only 19 were originally disallowed by the Department. The remaining 16 were merely reviewed without having had the credit disallowed. Of the 19 appraisals which involved disallowed credits, 10 of these cases, consisting of \$2,824,150 in credits, were subsequently allowed in full.

i) DOLLAR AMOUNTS EXPENDED

The amount of moneys expended by the Department of Revenue in administering the resolution of cases.

- Between July 2011 and May 2012, the Department spent \$2,348,477 on the resolution of disputed conservation easement cases as follows:
 - DOR Salary and Benefits: \$532,169;
 - Appraisals and Other Litigation Costs: \$482,694;
 - Attorney General Costs: \$1,328,389; and
 - General Operating Expenses: \$5,225

Sincerely,



Barbara J. Brohl

Executive Director
Colorado Department of Revenue

Cc: Members of the Joint Budget Committee, Colorado General Assembly
Members of the House Finance Committee, Colorado General Assembly
Members of the Senate Finance Committee, Colorado General Assembly
Mr. David Meng, Staff, Joint Budget Committee, Colorado General Assembly

Joint Budget Committee Members:

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The Honorable Mary Hodge, Joint Budget Committee, Colorado General Assembly
The Honorable Kent Lambert, Joint Budget Committee, Colorado General Assembly
The Honorable Claire Levy, Joint Budget Committee, Colorado General Assembly
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The Honorable Keith King, Senate Finance Committee, Colorado General Assembly
The Honorable Mark Scheffel, Senate Finance Committee, Colorado General Assembly