

# STATE OF COLORADO

## DEPARTMENT OF REVENUE

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December 31, 2013

John W. Hickenlooper  
Governor

The Honorable Crisanta Duran  
Chair, Joint Budget Committee  
Colorado General Assembly

Barbara J. Brohl  
Executive Director

The Honorable Lois Court  
Chair, House Finance Committee  
Colorado General Assembly

John Vecchiarelli  
Division Director

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

Dear Senator 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 specific information enumerated below. The legislation requires information about the number of "tax credits" and "cases" which may be difficult to reconcile with data from the State Court Administrator of the Judicial Department or from the Office of the Attorney General. Therefore, DOR wants to clarify that "tax credits" and "cases" discussed in this report refer to conservation easement donations rather than cases filed in any legal proceeding.

### 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 12/20/13, the Department has disallowed conservation easement tax credits in 674 cases, which includes cases that are subject to the provisions of HB11-1300 and those that are not (see section e below for further details).

### 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 and the Division of Real Estate (DRE) for review of all of the 674 cases for which credits have been disallowed.
- As of 12/20/13, the Department sent 713 appraisals (or partial appraisals) to the CEOC for review. Of these 713 appraisals, 11 were for a 2<sup>nd</sup> or 3<sup>rd</sup> review. Therefore, 702 appraisals of unique easement donations 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.

- Of the 713 total appraisals sent to for review, the CEOC returned recommendations on 710. The Department is awaiting written recommendations on the remaining 3 appraisals which were reviewed by the CEOC on December 9, 2013.
- Of the 702 appraisals of unique easement donations sent for review, the CEOC returned recommendations to the Executive Director on 699. For appraisals reviewed prior to December 3, 2012, the CEOC recommendations were to "Reject" or "Accept" the tax credits.
- For appraisals reviewed prior to December 3, 2012, the DRE recommendations were whether or not it appears there may be material violations of the Uniform Standards of Professional Appraisal Practice (USPAP) that could adversely impact the analyses and conclusions in the appraisal (designated in the Table below as "May Violate" or "Appears OK", respectively).
- For appraisals reviewed at the December 2012 consultation, the Department of Revenue submitted specific questions about areas of concern as recommended by a performance audit done by the Office of the State Auditor at the request of the General Assembly. In response to these questions, the CEOC and DRE prepared a written response to each but made "No Recommendation" as to the action to be taken.
- For appraisals reviewed after the December 2012 consultation, the Department of Revenue submitted specific questions about areas of concern as recommended by a performance audit done by the Office of the State Auditor at the request of the General Assembly. As a result of "No Recommendation" in the prior consultation, the Department of Revenue asked specifically whether the tax credit should be accepted. In response to these questions, the CEOC and DRE prepared a written response to each.
- The CEOC and/or DRE recommendation of "No Opinion" is typically rendered when insufficient information is provided on which to make a recommendation.
- The chart below details the recommendations of the CEOC and the DRE as well as the action taken by the Department:

UNIQUE CONSERVATION EASEMENT DONATIONS									
CEOC/DRE RECOMMENDATION:									
CEOC Recommendation	REJECT	REJECT	REJECT	ACCEPT	ACCEPT	ACCEPT	NO OPINION	NO RECOMMEND	TOTALS
DRE Recommendation	MAY VIOLATE	NO OPINION	APPEARS OK	MAY VIOLATE	NO OPINION	APPEARS OK	NO OPINION	NO RECOMMEND	
<b>Total Appraisals Reviewed</b>	539	41	3	38	0	36	41	12	710
Multiple Appraisals on Easement	7	1	0	0	0	2	1	0	11
<b>Total Unique Donations Received</b>	<b>532</b>	<b>40</b>	<b>3</b>	<b>38</b>	<b>0</b>	<b>34</b>	<b>40</b>	<b>12</b>	<b>699</b>
INITIAL DEPARTMENT ACTION:									
Credit Not Used/Not Disallowed	3	0	0	2	0	18	0	2	25
Still Under Review	0	0	0	0	0	0	0	0	0
<b>Total Cases Disallowed (Reviewed Donations less Initial Action)</b>	<b>529</b>	<b>40</b>	<b>3</b>	<b>36</b>	<b>0</b>	<b>16</b>	<b>40</b>	<b>10</b>	<b>674</b>
FINAL DEPARTMENT/COURT ACTION:									
Allowed in Full by Revenue	2	0	1	4	0	6	3	1	17
Settled by Revenue	96	21	0	14	0	2	13	1	147
Allowed in Part/Full by Court	0	0	0	0	0	0	0	0	0
Disallowed in Entirety by Court	0	0	0	0	0	0	0	0	0
<b>Total Remaining Active Cases (Disallowed Donations less Final Action)</b>	<b>431</b>	<b>19</b>	<b>2</b>	<b>18</b>	<b>0</b>	<b>8</b>	<b>24</b>	<b>8</b>	<b>510</b>

- Of the 34 appraisals of unique donations involving a favorable recommendation from the CEOC which don't appear to violate USPAP, 8 cases remain to be resolved because the Tax Matters Representative(s) either made more than one donation or claimed credits for more than one donation in the same tax year.

d) **MEDIATION PROCESS**

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

- Thirty-three cases which waived the administrative hearing and filed an appeal in District Court under the provisions of HB11-1300, have requested mediation. The mediation for 18 of these cases was held on June 12, 2013 and the mediation for 15 of these cases was held on August 13, 2013. All of these cases reached a settlement in principle; however, the details of the written agreement are still being negotiated.
- NOTE: Per Regulation 39-22-522, 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.

- The chart below details the number of cases sent to the Office of the Attorney General (OAG) under the provisions of HB11-1300 and under the provisions for formal hearings pursuant to Section 39-21-103, C.R.S. or the provisions for appeals of final agency action pursuant to Section 39-21-105, C.R.S.:

<b>Conservation Easement Cases sent to the OAG</b>				
<b>HB11-1300</b>		<b>Non HB11-1300</b>		<b>Total</b>
Elected District Court	480	On Appeal/T transferred to Court	27	<b>507</b>
Elected Expedited Hearing	30	To Hearing		<b>30</b>
<b>Total # making an Election</b>	<b>510</b>			
Made No Election	33	Remain in Admin Process	104	<b>137</b>
<b>Total # of Cases</b>	<b>543</b>		<b>131</b>	<b>674</b>

- Elections have been made pursuant to Section 39-22-522.5, C.R.S. in 510 of the 543 cases subject to the election provisions of HB11-1300: 480 made an election to waive the administrative hearing and appeal to District Court and have therefore been transferred to the OAG; 30 made an election to remain in the administrative process and requested an expedited hearing; 33 made no elections.
- As of 12/20/13, 507 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 OAG for resolution.
- Twenty-seven of the 507 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 23 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.

- As of 12/20/13, the Department has received 36 petitions by Transferees to change the Tax Matters Representative in the cases involving no elections. Twenty-two of these 36 petitions were granted and 14 were denied.
- 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.

- As of 12/20/13, the Department has resolved 169 cases: 17 cases were allowed the tax credits in full, 5 cases were settled prior to input from the CEOC or DRE, and 147 cases were settled after consultation with the CEOC and DRE.
- 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 (TMR) and Transferees in 1 case not subject to House Bill 11-1300 that was not timely protested.
- The Department sent Notices of Final Determination to the TMR and Transferees in 1 case subject to House Bill 11-1300 per Section 39-22-522.5(5)(e) when the TMR failed to provide required documentation within 60 days of the Department's written request.

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 6 cases in which Notices of Final Determination were issued by the Department involved a total assessed amount of \$2,176,145 (\$1,359,028 in taxes, \$662,410 in interest, and \$154,707 in penalties); \$2,469 was waived (\$1,440 in taxes, \$856 in interest, and \$173 in penalties).
- In the 152 cases settled by the Department (147 with CEOC/DRE input and 5 prior to consultation), \$22,641,254 was determined to be owed (\$22,498,301 in taxes, \$121,331 in interest, and \$21,622 in penalties); \$29,256,368 was waived by the Department (\$14,049,052 in taxes, \$10,916,726 in interest, and \$4,290,590 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 699 appraisals of unique easement donations which were reviewed by the CEOC and DRE, 25 were reviewed without having any credits disallowed. Therefore, credits were disallowed and contested in 674 cases. Of these 674 cases, 17 cases, consisting of \$4,537,738 in tax 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 1, 2011 and June 30, 2012, the Department spent \$2,757,251 on the resolution of disputed conservation easement cases as follows:
  - DOR Salary and Benefits: \$532,169;
  - Appraisals and Other Litigation Costs: \$746,676;

- Attorney General Costs: \$1,466,610; and
- General Operating Expenses: \$11,796
  
- Between July 1, 2012 and June 30, 2013, the Department spent \$3,017,514 on the resolution of disputed conservation easement cases as follows:
  - DOR Salary and Benefits: \$601,381;
  - Appraisals and Other Litigation Costs: \$961,910;
  - Attorney General Costs: \$1,449,646;
  - DOR Travel Expenses: \$906; and
  - General Operating Expenses: \$3,671
  
- Between July 1, 2013 and November 30, 2013, the Department spent \$915,556 on the resolution of disputed conservation easement cases as follows:
  - DOR Salary and Benefits: \$326,687;
  - Appraisals and Other Litigation Costs: \$104,516;
  - Attorney General Costs: \$484,129;
  - DOR Travel Expenses: \$224; and
  - General Operating Expenses: \$0

The numbers of cases and the dollars reported in this report reflect only conservation easement donations which have complete final resolution in accordance with statutory reporting requirements. However, the DOR would like to highlight that it has reached settlements in principle in 318 additional cases which will result in \$35,995,283 of tax received, \$7,268,494 in abandoned tax credits, and \$9,792,296 in tax waived. Penalty and interest are calculated as of the date payment of the settlement amount is received and therefore are not part of the numbers reported in this paragraph. As the terms of these settlement agreements are negotiated and payments are received, these figures will be included in sections c), f), g), and h) above.

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. Viktor Bojilov, Staff, Joint Budget Committee, Colorado General Assembly  
Mr. Dan Cartin, Director, Office of Legislative Legal Services  
Ms. Molly Otto, Manager of Library Services, Colorado Legislative Council  
Mr. Erick Scheminske, Office of State Planning & Budgeting  
The Honorable John Kefalas, Colorado General Assembly

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The Honorable Cheri Gerou, Joint Budget Committee, Colorado General Assembly  
The Honorable Mary Hodge, Joint Budget Committee, Colorado General Assembly  
The Honorable Kent Lambert, Joint Budget Committee, Colorado General Assembly  
The Honorable Jenise May, Joint Budget Committee, Colorado General Assembly

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The Honorable Brian DelGrosso, House Finance Committee, Colorado General Assembly  
The Honorable Mike Foote, House Finance Committee, Colorado General Assembly  
The Honorable Janak Joshi, House Finance Committee, Colorado General Assembly  
The Honorable Daniel Kagan, House Finance Committee, Colorado General Assembly  
The Honorable Jovan Melton, House Finance Committee, Colorado General Assembly  
The Honorable Dan Pabon, House Finance Committee, Colorado General Assembly  
The Honorable Kevin Priola, House Finance Committee, Colorado General Assembly  
The Honorable Lori Saine, House Finance Committee, Colorado General Assembly  
The Honorable Spencer Swalm, House Finance Committee, Colorado General Assembly  
The Honorable Jim Wilson, House Finance Committee, Colorado General Assembly

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The Honorable Kevin Grantham, Senate Finance Committee, Colorado General Assembly  
The Honorable Owen Hill, Senate Finance Committee, Colorado General Assembly  
The Honorable Jessie Ulibarri, Senate Finance Committee, Colorado General Assembly