



## COLORADO

### Department of Revenue

Executive Director's Office

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September 30, 2014

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

The Honorable Lois Court  
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 (Department) 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 (CE) donations rather than cases filed in any legal proceeding.

Since the inception of the CE program in 2000, there have been 4,243 donations of conservation easements for which tax credits have been claimed. Over 25,000 income tax returns claiming CE tax credits have been filed. The Department reviews all of these returns and has disallowed tax credits in 682 cases.

To assist with your understanding of the activity involving these disallowed credits and to comply with the reporting requirements, the Department offers the following information:

- a) For tax years prior to 2014, the Department received at least one appraisal for each CE donation. In many instances, the Department received multiple appraisals for the same donation.
  - The Department sent appraisals to the Conservation Easement Oversight Commission (CEOC) and the Division of Real Estate (DRE) for review of all of the 682 cases for which credits have been disallowed.
  - As of 09/22/14, the Department sent 725 appraisals (or partial appraisals) to the CEOC for review. Of these 725 appraisals, 13 were for a 2<sup>nd</sup> or 3<sup>rd</sup> review. Therefore, 712 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.

b) In response to the request for consultation on the 725 appraisals sent to the CEOC and DRE, the Department received recommendations on all 725 appraisals.

- 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 as a result of the recommendations:

UNIQUE CONSERVATION EASEMENT DONATIONS										
CEOC/DRE RECOMMENDATION:										
CEOC Recommendation	REJECT	REJECT	REJECT	ACCEPT	ACCEPT	ACCEPT	NO OPINION	NO OPINION	NO	TOTALS
DRE Recommendation	MAY VIOLATE	NO OPINION	APPEARS OK	MAY VIOLATE	NO OPINION	APPEARS OK	MAY VIOLATE	NO OPINION	NO RECOMMEND	
Total Appraisals Reviewed	551	41	3	40	0	36	1	41	12	725
Multiple Appraisals on Easement	8	1	0	1	0	2	0	1	0	13
<b>Total Unique Donations Reviewed</b>	<b>543</b>	<b>40</b>	<b>3</b>	<b>39</b>	<b>0</b>	<b>34</b>	<b>1</b>	<b>40</b>	<b>12</b>	<b>712</b>
INITIAL DEPARTMENT ACTION:										
Credit Not Used/Not Disallowed	4	0	1	2	0	18	0	0	3	28
Still Under Review	1	0	0	0	0	0	1	0	0	2
<b>Total Cases Disallowed (Reviewed Donations less Initial Action)</b>	<b>538</b>	<b>40</b>	<b>2</b>	<b>37</b>	<b>0</b>	<b>16</b>	<b>0</b>	<b>40</b>	<b>9</b>	<b>682</b>
FINAL DEPARTMENT/COURT ACTION:										
Allowed in Full by Revenue	2	0	1	4	0	8	0	3	1	19
Settled by Revenue	225	28	0	15	0	8	0	33	2	311
Allowed in Part/Full by Court	0	0	0	0	0	0	0	0	0	0
Disallowed in Entirety by Court	4	0	0	0	0	0	0	0	0	4
<b>Total Remaining Active Cases (Disallowed Donations less Final Action)</b>	<b>307</b>	<b>12</b>	<b>1</b>	<b>18</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>4</b>	<b>6</b>	<b>348</b>

c) One of the statutory options provided for resolution of taxpayer disputes of disallowed CE tax credits is through a mediation process. Due to the overwhelming success of HB11-1300, only a small number of cases were involved in 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 terms of the written agreement have not yet been met in the 18 cases mediated on June 12, 2013.

- 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 an administrative hearing.

d) As a result of District Court filings and requests for administrative hearings related to the CE tax credit disallowances, the Office of the Attorney General (OAG) has been involved in the resolution of a majority of the cases.

- 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	478	On Appeal/Transferred to Court	26	<b>504</b>
Elected Expedited Hearing	30	To Hearing		<b>30</b>
<b>Total # making an Election</b>	<b>508</b>			
Made No Election	35	Remain in Admin Process	113	<b>148</b>
<b>Total # of Cases</b>	<b>543</b>		<b>139</b>	<b>682</b>

- Elections have been made pursuant to Section 39-22-522.5, C.R.S. in 508 of the 543 cases subject to the election provisions of HB11-1300: 478 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; 35 made no elections.
- As of 09/22/14, 504 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.
- 26 of the 504 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 22 cases. 4 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. 3 of these 4 cases have been closed and the remaining 1 will be closed when payment is received in full.
- As of 09/22/14, the Department had 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.

- e) The Department has been successful in its efforts to resolve the disputes related to the disallowance of tax credits in the 682 cases reported above.
- As of 09/22/14, the Department has resolved 340 cases: 19 cases were allowed the tax credits in full, 6 cases were resolved prior to input from the CEOC or DRE, and 315 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. 3 of these 4 cases are closed and included in the resolved cases above and the remaining 1 will be closed when payment is received in full.
  - The Department sent Notices of Final Determination to the Tax Matters Representative (TMR) in 1 case in which the Department prevailed in District Court and the TMR did not appeal. There were no Transferees in this 1 case.
  - 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.
  - NOTE: The Department settled 1 case subject to House Bill 11-1300 which was previously reported as having sent Notices of Final Determination to the TMR and Transferees when the TMR failed to provide required documentation within 60 days of the Department's written request.
  - Tax credits totaling \$13,434,507 have been abandoned as part of the settlements reached in the cases discussed above. (These tax credits would have been used against future tax liabilities had taxpayers not agreed to abandon these credits as part of settlements reached.)
  - The Department has reached settlements in principle in 214 additional cases which will result in \$28,766,097 of tax received, \$7,203,102 in abandoned tax credits, and \$5,504,389 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.
- f) In administering the resolution of the cases itemized in item e above, the Department determined the amount of deficient taxes, interest, and penalties to be owed or waived as follows:
- The 6 cases in which Notices of Final Determination were issued by the Department involved a total assessed amount of \$1,839,041 (\$1,213,142 in taxes, \$499,903 in interest, and \$125,996 in penalties); \$150,196 was waived (\$1,440 in taxes, \$146,627 in interest, and \$2,129 in penalties).
  - In the 321 cases settled by the Department (315 with CEOC/DRE input and 6 prior to consultation), \$53,971,365 was determined to be owed (\$53,801,769 in taxes, \$146,643 in interest, and \$22,953 in penalties); \$51,652,978 was waived by the Department (\$22,463,094 in taxes, \$21,473,818 in interest, and \$7,716,066 in penalties).
- g) In some cases, the Department determined that the CE tax credits that were disallowed and originally contested should be allowed to be claimed in full.
- Of the 712 appraisals of unique easement donations which were reviewed by the CEOC and DRE, 28 were reviewed without having any credits disallowed, and 2 remain under review. Therefore, credits were disallowed and contested in 682 cases. Of these 682 cases, 19 cases, consisting of \$4,794,970 in tax credits, were subsequently allowed in full.

- h) The Department's costs of administering the resolution of the CE cases are as follows:
- 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 June 30, 2014, the Department spent \$1,987,787 on the resolution of disputed conservation easement cases as follows:
    - DOR Salary and Benefits: \$628,958;
    - Appraisals and Other Litigation Costs: \$328,089;
    - Attorney General Costs: \$1,030,470;
    - DOR Travel Expenses: \$224; and
    - General Operating Expenses: \$46.
  
  - Between July 1, 2014 and August 31, 2014, the Department spent \$265,844 on the resolution of disputed conservation easement cases as follows:
    - DOR Salary and Benefits: \$154,292;
    - Appraisals and Other Litigation Costs: \$0;
    - Attorney General Costs: \$111,028;
    - DOR Travel Expenses: \$524; and
    - General Operating Expenses: \$0.

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 & Budget  
The Honorable John Kefalas, Colorado General Assembly

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The Honorable Kent Lambert, Joint Budget 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