



COLORADO
Department of Revenue

Executive Director's Office

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December 31, 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 684 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 684 cases for which credits have been disallowed.
 - As of 12/19/14, the Department sent 730 appraisals (or partial appraisals) to the CEOC for review. Of these 730 appraisals, 16 were for a 2nd or 3rd review. Therefore, 714 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 730 appraisals sent to the CEOC and DRE, the Department received recommendations on all 730 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 RECOMMEND	TOTALS
DRE Recommendation	MAY VIOLATE	NO OPINION	APPEARS OK	MAY VIOLATE	NO OPINION	APPEARS OK	MAY VIOLATE	NO OPINION	RECOMMEND	
Total Appraisals Reviewed	555	41	3	41	0	36	1	41	12	730
Multiple Appraisals on Easement	11	1	0	1	0	2	0	1	0	16
Total Unique Donations Received	544	40	3	40	0	34	1	40	12	714
INITIAL DEPARTMENT ACTION:										
Credit Not Used/Not Disallowed	4	0	1	2	0	18	0	0	3	28
Still Under Review	1	0	0	1	0	0	0	0	0	2
Total Cases Disallowed (Reviewed Donations less Initial Action)	539	40	2	37	0	16	1	40	9	684
FINAL DEPARTMENT/COURT ACTION:										
Allowed in Full by Revenue	2	0	1	4	0	8	0	3	1	19
Settled by Revenue	285	28	0	15	0	8	0	33	2	371
Allowed in Part/Full by Court	0	0	0	0	0	0	0	0	0	0
Disallowed in Entirety by Court	5	0	0	0	0	0	0	0	0	5
Total Remaining Active Cases (Disallowed Donations less Final Action)	247	12	1	18	0	0	1	4	6	289

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 resolution of cases under 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.

Conservation Easement Cases sent to the OAG				
HB11-1300		Non HB11-1300		Total
Elected District Court	478	On Appeal/T transferred to Court	26	504
Elected Expedited Hearing	30	To Hearing		30
Total # making an Election	508			
Made No Election	35	Remain in Admin Process	115	150
Total # of Cases	543		141	684

- 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 12/19/14, 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. All 4 of these cases have been closed.
- As of 12/19/14, 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 resolved the disputes related to the disallowance of tax credits in the 684 cases reported above.
- As of 12/19/14, the Department has resolved 396 cases: 19 cases were allowed the tax credits in full, 6 cases were resolved prior to input from the CEOC or DRE, and 371 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. All 4 of these cases are closed.
 - 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 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.
 - 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 175 additional cases which will result in \$25,615,312 of tax received, \$2,824,803 in abandoned tax credits, and \$4,978,438 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 \$2,190,882 (\$1,437,010 in taxes, \$602,764 in interest, and \$151,108 in penalties); \$150,196 was waived (\$1,440 in taxes, \$146,627 in interest, and \$2,129 in penalties).
 - In the 377 cases settled by the Department (371 with CEOC/DRE input and 6 prior to consultation), \$69,793,250 was determined to be owed (\$69,480,415 in taxes, \$258,283 in interest, and \$54,552 in penalties); \$58,182,343 was waived by the Department (\$25,133,649 in taxes, \$24,388,888 in interest, and \$8,659,806 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 714 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 684 cases. Of these 684 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:

	FY 11/12	FY 12/13	FY 13/14	FY 14/15	TOTALS
DOR Salary & Benefits	\$ 532,169.00	\$ 601,381.00	\$ 628,958.00	\$ 316,947.00	\$ 2,079,455.00
Appraisals & Other Litigation Costs	\$ 746,676.00	\$ 961,910.00	\$ 328,089.00	\$ 17,686.00	\$ 2,054,361.00
Attorney General Costs	\$ 1,466,610.00	\$ 1,449,646.00	\$ 1,030,470.00	\$ 241,341.00	\$ 4,188,067.00
DOR Travel Expenses	\$ -	\$ 906.00	\$ 224.00	\$ 1,049.00	\$ 2,179.00
General Operating Expenses	\$ 11,796.00	\$ 3,671.00	\$ 46.00	\$ -	\$ 15,513.00
	<u>\$ 2,757,251.00</u>	<u>\$ 3,017,514.00</u>	<u>\$ 1,987,787.00</u>	<u>\$ 577,023.00</u>	<u>\$ 8,339,575.00</u>

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 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
The Honorable Bob Rankin, 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