



# COLORADO

## Department of Revenue

Executive Director's Office

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June 30, 2016

The Honorable Millie Hamner  
Chair, Joint Budget Committee  
Colorado General Assembly

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

The Honorable Tim Neville  
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 on the conservation easement (CE) program.

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. It is important to note that "tax credits" and "cases" discussed in this report refer to CE donations rather than cases filed in any legal proceeding.

Since the inception of the CE program in 2000, the Department has reviewed over 27,000 income tax returns claiming CE tax credits. Of the 4,305 donations of conservation easements for which tax credits have been claimed the Department allowed tax credits for 3,584 donations (83 percent) and disallowed tax credits related to 721 donations (17 percent).

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

- a) For tax years prior to 2014, CE donors are statutorily required to submit an appraisal which provides a value of the CE donated with their tax returns claiming the CE tax credits. 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 697 of the 721 cases for which credits have been disallowed. The remaining 24 cases which were not sent for consultation were disallowed for tax compliance issues such as missing documentation (including tax returns) and/or over-claimed tax credits.
  - As of June 24, 2016, the Department sent 756 appraisals (or partial appraisals) to the CEOC for review. Of these 756 appraisals, 24 were for a 2<sup>nd</sup> or 3<sup>rd</sup> review.

Therefore, 732 appraisals of unique easement donations were sent to the CEOC for review.

- b) In response to the request for consultation on the 756 appraisals sent to the CEOC and DRE, the Department received recommendations on all 756 appraisals.
- If either the CEOC or the DRE (or both) made a negative recommendation on the appraisal, the Department disallowed the tax credits.
  - When both the CEOC and the DRE found no issue with the appraisal, the Department allowed the tax credits.
  - 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:	REJECT	REJECT	REJECT	ACCEPT	ACCEPT	NO OPINION	NO OPINION	NO	TOTALS
CEOC Recommendation	MAY VIOLATE	NO OPINION	APPEARS OK	MAY VIOLATE	APPEARS OK	MAY VIOLATE	NO OPINION	RECOMMEND	
DRE Recommendation								NO	
								RECOMMEND	
Total Appraisals Reviewed	570	41	6	44	38	4	41	12	756
Multiple Appraisals on Easement	15	1	3	1	3	0	1	0	24
<b>Total Unique Donations Reviewed</b>	<b>555</b>	<b>40</b>	<b>3</b>	<b>43</b>	<b>35</b>	<b>4</b>	<b>40</b>	<b>12</b>	<b>732</b>
INITIAL DEPARTMENT ACTION:									
Credit Not Used/Not Disallowed	6	0	1	2	19	0	0	4	32
Still Under Review	3	0	0	0	0	0	0	0	3
<b>Total Cases Disallowed (Reviewed Donations less Initial Action)</b>	<b>546</b>	<b>40</b>	<b>2</b>	<b>41</b>	<b>16</b>	<b>4</b>	<b>40</b>	<b>8</b>	<b>697</b>
FINAL DEPARTMENT/COURT ACTION:									
Allowed in Full by Revenue	11	0	1	7	8	0	3	1	31
Settled by Revenue	471	34	1	22	8	1	37	3	577
Allowed in Full by Court	2	0	0	0	0	0	0	0	2
Disallowed in Entirety by Court	7	0	0	0	0	0	0	0	7
<b>Total Remaining Active Cases (Disallowed Donations less Final Action)</b>	<b>55</b>	<b>6</b>	<b>0</b>	<b>12</b>	<b>0</b>	<b>3</b>	<b>0</b>	<b>4</b>	<b>80</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 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, requested mediation. All of these cases reached a settlement.
  - Two cases which made no election under the provisions of HB11-1300 requested mediation. The mediation for these 2 cases was held on May 4, 2016. No settlement was reached at the mediation. However, settlement discussions have continued and as of June 24, 2016, a settlement in principle was reached.
  - 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) as of June 24, 2016, 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**

<b>HB11-1300</b>		<b>Non HB11-1300</b>		<b>Total Cases</b>	<b>To OAG</b>	<b>Resolved Cases</b>	<b>Active Cases</b>
Elected District Court	478	On Appeal/Transferred to Court	26	504	504	497	7
Elected Expedited Hearing	30	To Hearing		30	1	0	1
<b>Total # making an Election</b>	<b>508</b>						
Made No Election	35	To Hearing		35	9	4	5
		Remain in Admin Process	152	152	6	2	4
<b>Total # of Cases</b>	<b>543</b>		<b>178</b>	<b>721</b>	<b>520</b>	<b>503</b>	<b>17</b>

- Of the 543 cases subject to the provisions of HB11-1300 13 remain active. These 13 cases involve donations made by 4 taxpayers.
  - A total of 520 cases were forwarded to the OAG for resolution. These cases include both those subject to the election provisions of HB11-1300 and those outside the scope of those provisions. A total of 17 cases remain active (13 under the provisions of HB11-1300 and 4 outside that legislation).
  - 32 of the 520 cases were 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.
  - The Department and the OAG have worked diligently to resolve the disputed tax credit cases. All of the 13 remaining HB11-1300 cases are in litigation. However, 7 of the remaining 13 HB11-1300 cases have been settled in principle. Thus, only 6 cases, involving 1 taxpayer, remain of the original 543 HB11-1300 cases.
- e) The Department has resolved the majority of the disputes related to the disallowance of tax credits in the 721 cases reported above.
- As of June 24, 2016, the Department has resolved 638 cases: 33 cases were allowed the tax credits in full, 21 cases were resolved prior to input from the CEOC or DRE, and 584 cases were resolved 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 3 cases in which the Department prevailed in District Court and the TMR did not timely appeal.
  - 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 \$24,494,804 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 16 additional cases which will result in \$1,162,916 of tax received, \$348,774 in abandoned tax credits, and \$1,378,312 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 8 cases in which Notices of Final Determination were issued by the Department involved a total assessed amount of \$1,861,384 (\$1,249,210 in taxes, \$484,738 in interest, and \$127,436 in penalties); \$198,785 was waived (\$1,440 in taxes, \$195,216 in interest, and \$2,129 in penalties).
- In the 593 cases settled by the Department (584 with CEOC/DRE input and 21 prior to consultation), \$112,702,210 was determined to be owed (\$111,958,975 in taxes, \$485,146 in interest, and \$258,089 in penalties); \$88,516,479 was waived by the Department (\$35,748,055 in taxes, \$40,305,273 in interest, and \$13,807,845 in penalties).
- The chart below summarizes the Department's resolution of CE cases.

**Department's Resolution of CE Cases**

	Owed	Abandoned	Total Due	Waived	Allowed	Total Waived/Allowed	Totals	Percentage of Totals Found to be Due
<b>Tax</b>	\$ 113,208,185	\$ 24,494,804	\$ 137,702,989	\$ 35,749,495	\$ 8,250,570	\$ 44,000,065	\$ 181,703,054	76%
<b>Penalty</b>	\$ 385,525	\$ -	\$ 385,525	\$ 13,809,974		\$ 13,809,974	\$ 14,195,499	3%
<b>Interest</b>	\$ 969,884	\$ -	\$ 969,884	\$ 40,500,489		\$ 40,500,489	\$ 41,470,373	2%
	<u>\$ 114,563,594</u>	<u>\$ 24,494,804</u>	<u>\$ 139,058,398</u>	<u>\$ 90,059,958</u>	<u>\$ 8,250,570</u>	<u>\$ 98,310,528</u>	<u>\$ 237,368,926</u>	

g) In some cases, after consultation with the DRE and CEOC, the Department determined that the CE tax credits disallowed and originally contested should be allowed to be claimed in full.

- Of the 732 appraisals of unique easement donations which were reviewed by the CEOC and DRE, 32 had no tax credits disallowed at the recommendation of the CEOC and DRE and 3 have tax credits which are still under review after recent recommendations by the CEOC and DRE.
- The Department disallowed tax credits involving an additional 24 conservation easement donations as a result of tax compliance issues such as missing documentation (including tax returns) and/or over-claimed tax credits. Therefore, tax credits were disallowed and contested in 721 cases.
- Of these 721 cases, 33 cases, consisting of \$8,250,570 in tax credits, were subsequently allowed in full.

h) The Department's costs of administering the resolution of the CE cases are as follows:

	<u>FY 2011-12</u>	<u>FY 2012-13</u>	<u>FY 2013-14</u>	<u>FY 2014-15</u>	<u>FY 2015-16</u>	<u>TOTALS</u>
<b>DOR Salary &amp; Benefits</b>	\$ 532,169	\$ 601,381	\$ 628,958	\$ 636,937	\$ 421,789	<b>\$2,821,234</b>
<b>Appraisals &amp; Other Litigation Costs</b>	\$ 746,676	\$ 961,910	\$ 328,089	\$ 94,333	\$ 57,694	<b>\$2,188,702</b>
<b>Attorney General Costs</b>	\$ 1,466,610	\$ 1,449,646	\$ 1,030,470	\$ 508,226	\$ 321,876	<b>\$4,776,828</b>
<b>DOR Travel Expenses</b>	\$ -	\$ 906	\$ 224	\$ 1,049	\$ 854	<b>\$ 3,033</b>
<b>General Operating Expenses</b>	\$ 11,796	\$ 3,671	\$ 46	\$ -	\$ -	<b>\$ 15,513</b>
	<u>\$ 2,757,251</u>	<u>\$ 3,017,514</u>	<u>\$ 1,987,787</u>	<u>\$ 1,240,545</u>	<u>\$ 802,213</u>	<u><b>\$9,805,310</b></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. Scott Thompson, Staff, Joint Budget Committee, Colorado General Assembly  
Ms. Katie Ruedebusch, Staff, House Finance Committee, Colorado General Assembly  
Ms. Kori Donaldson, Staff, Senate Finance 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, Deputy Director, Office of State Planning & Budgeting  
Ms. Alice Wheet, Budget Analyst, Office of State Planning & Budgeting

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The Honorable Kevin Grantham, Joint Budget Committee, Colorado General Assembly  
The Honorable Bob Rankin, Joint Budget Committee, Colorado General Assembly  
The Honorable Pat Steadman, Joint Budget Committee, Colorado General Assembly  
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The Honorable Mike Johnston, Senate Finance Committee, Colorado General Assembly  
The Honorable Andy Kerr, Senate Finance Committee, Colorado General Assembly