



COLORADO

Department of Revenue

Executive Director's Office

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September 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:

The Department is proud to advise you that all Conservation Easement cases that were in dispute prior to 2011, when HB11-1300 was enacted, have been resolved. The majority of them were resolved through settlement, hearing outcome, or District Court outcome. All but ten have signed settlement agreements, and those ten have resolutions pending in District Court. Through future reports we will inform you when those final ten resolutions are formally approved.

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 4,309 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 725 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 699 of the

724 cases for which credits have been disallowed. The remaining 25 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 September 23, 2016, the Department sent 758 appraisals (or partial appraisals) to the CEOC for review. Of these 758 appraisals, 25 were for a 2nd or 3rd review. Therefore, 733 appraisals of unique easement donations were sent to the CEOC for review.

b) In response to the request for consultation on the 758 appraisals sent to the CEOC and DRE, the Department received recommendations on 756 appraisals.

- 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	NO OPINION	NO OPINION	NO RECOMMEND	TOTALS
DRE Recommendation	MAY VIOLATE	NO OPINION	APPEARS OK	MAY VIOLATE	APPEARS OK	MAY VIOLATE	NO OPINION	NO RECOMMEND	
Total Appraisals Reviewed	570	41	6	44	38	4	41	12	766
Multiple Appraisals on Easement	15	1	3	1	3	0	1	0	24
Total Unique Donations Reviewed	555	40	3	43	35	4	40	12	732
INITIAL DEPARTMENT ACTION:									
Credit Not Used/Not Disallowed	9	0	1	2	19	0	0	4	35
Still Under Review	0	0	0	0	0	0	0	0	0
Total Cases Disallowed (Reviewed Donations less Initial Action)	546	40	2	41	16	4	40	8	697
FINAL DEPARTMENT/COURT ACTION:									
Allowed in Full by Revenue	11	0	1	7	8	0	3	1	31
Settled by Revenue	475	34	1	27	8	1	37	3	586
Allowed in Full by Court	2	0	0	0	0	0	0	0	2
Disallowed in Entirety by Hearing/Court	10	0	0	0	0	0	0	0	10
Total Remaining Active Cases (Disallowed Donations less Final Action)	48	6	0	7	8	3	0	4	68

- 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.

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.
- 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 September 23, 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							
HB11-1300		Non HB11-1300		Total Cases	To OAG	Resolved Cases	Active Cases
Elected District Court	478	On Appeal/Transferred to Court	26	504	504	497	7
Elected Expedited Hearing	30	To Hearing		30	1	0	1
Total # making an Election	508						
Made No Election	35	To Hearing		35	9	7	2
		Remain in Admin Process	155	155	6	4	2
Total # of Cases	543		181	724	520	508	12

- Of the 543 cases subject to the provisions of HB11-1300 10 remain active. These 10 cases involve donations made by 3 taxpayers.
- The Department and the OAG have worked diligently to resolve the disputed tax credit cases. All of the 10 remaining HB11-1300 cases are in litigation and all have either been settled in principle or await final ruling by a District Court judge. Thus, all of the original 543 HB11-1300 cases have been resolved.
- 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 12 cases remain active (10 under the provisions of HB11-1300 and 2 outside that legislation).

e) The Department has resolved the majority of the disputes related to the disallowance of tax credits in the 724 cases reported above.

- As of September 23, 2016, the Department has resolved 654 cases: 33 cases were allowed the tax credits in full, 25 cases were resolved prior to input from the CEOC or DRE, and 596 cases were resolved after consultation with the CEOC and DRE.
- The Department sent Notices of Final Determination in 11 of the cases sent to the Attorney General's office. Four cases were prior to the effective date of House Bill 11-1300. In 3 cases the Department prevailed in District Court and the TMR did not timely appeal. In 3 cases the Department prevailed at Administrative Hearing and the TMR did not timely appeal. One case was not subject to House Bill 11-1300 and 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 15 additional cases which will result in \$2,798,580 of tax received, \$774,023 in abandoned tax credits, and \$461,799 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 11 cases in which Notices of Final Determination were issued by the Department involved a total assessed amount of \$2,295,734 (\$1,621,360 in taxes, \$537,859 in interest, and \$136,515 in penalties); \$353,813 was waived (\$49,240 in taxes, \$266,865 in interest, and \$37,708 in penalties).
- In the 621 cases settled by the Department (596 with CEOC/DRE input and 25 prior to consultation), \$112,798,750 was determined to be owed (\$112,055,515 in taxes, \$485,146 in interest, and \$258,089 in penalties); \$92,739,584 was waived by the Department (\$38,073,898 in taxes, \$40,727,358 in interest, and \$13,938,328 in penalties).
- The chart below summarizes the Department's resolution of CE cases.

	Owed	Abandoned	Total Due	Waived	Allowed	Total Waived/Allowed	Totals	Percentage of Totals Found to be Due
Tax	\$ 113,676,875	\$ 24,979,847	\$ 138,656,722	\$ 38,123,138	\$ 8,250,570	\$ 46,373,708	\$ 185,030,430	75%
Penalty	\$ 394,604	\$ -	\$ 394,604	\$ 13,976,036		\$ 13,976,036	\$ 14,370,640	3%
Interest	\$ 1,023,005	\$ -	\$ 1,023,005	\$ 40,994,223		\$ 40,994,223	\$ 42,017,228	2%
	\$ 115,094,484	\$ 24,979,847	\$ 140,074,331	\$ 93,093,397	\$ 8,250,570	\$ 101,343,967	\$ 241,418,298	

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 in full.

- Of the 724 cases originally disallowed, 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:

	FY 2011-12	FY 2012-13	FY 2013-14	FY 2014-15	FY 2015-16	FY 2015-16	TOTALS
DOR Salary & Benefits	\$ 532,169	\$ 601,381	\$ 628,958	\$ 636,937	\$ 421,789	\$ 112,399	\$ 2,933,633
Appraisals & Other Litigation Costs	\$ 746,676	\$ 961,910	\$ 328,089	\$ 94,333	\$ 68,325	\$ 4,689	\$ 2,204,022
Attorney General Costs	\$ 1,466,610	\$ 1,449,646	\$ 1,030,470	\$ 508,226	\$ 350,995	\$ 32,823	\$ 4,838,770
DOR Travel Expenses	\$ -	\$ 906	\$ 224	\$ 1,049	\$ 854	\$ -	\$ 3,033
General Operating Expenses	\$ 11,796	\$ 3,671	\$ 46	\$ -	\$ -	\$ -	\$ 15,513
	\$ 2,757,251	\$ 3,017,514	\$ 1,987,787	\$ 1,240,545	\$ 841,963	\$ 149,911	\$ 9,994,971

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 Wheat, 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
The Honorable Dave Young, 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