



COLORADO
Department of Revenue

Executive Director's Office

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June 30, 2017

The Honorable Kent Lambert
Chair, Joint Budget Committee
Colorado General Assembly

The Honorable Dan Pabon
Chair, House Finance Committee
Colorado General Assembly

The Honorable Tim Neville
Chair, Senate Finance Committee
Colorado General Assembly

Dear Senators and Representatives:

Pursuant to Section 39-22-522 (10), C.R.S., during years 2008 through 2017, the Department submitted quarterly reports to the Joint Budget Committee and the Finance Committees of the General Assembly on the administration of the Gross Conservation Easement Program. This is the final quarterly report.

State law requires quarterly reports to provide 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 4,347 donations of conservation easements for which tax credits have been claimed the Department allowed tax credits for 3,607 donations (83 percent) and disallowed tax credits related to 740 donations (17 percent).

The Department resolved all but 6 Conservation Easement cases that were in dispute prior to 2011, when HB11-1300 was enacted. Many of these cases were resolved through settlement, hearing outcome, or District Court outcome. The Department is pleased to report that these six cases have resolutions pending in District Court.

As of June 23, 2017, the Department's resolution of these cases resulted in the following summary statistics. Total tax collected \$140,000,000. Total tax waived \$58,200,000. Total cost of administering program \$10,400,000.

Gross Conservation Easement Summary Statistics

| | |
|---|------------------|
| Total Taxes Determined to Be Owed: | \$114.7 M |
| Total Credits Abandoned*: | \$25.3 M |
| Total Taxes Due & Credits Abandoned: | \$140.0 M |
| Total Taxes Waived: | \$49.5 M |
| Total Credits Allowed in Full: | \$8.7 M |
| Total Taxes Waived & Credits Allowed | \$58.2 M |
| Total Costs for Administering Resolution of Cases | \$10.4 M |

*These tax credits would have been used against future tax liabilities had taxpayers not agreed to abandon these credits as part of settlements reached.

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 703 of the 740 cases for which credits have been disallowed. The remaining 37 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 23, 2017, the Department sent 763 appraisals (or partial appraisals) to the CEOC for review. Of these 763 appraisals, 25 were for a 2nd or 3rd review. Therefore, 738 appraisals of unique easement donations were sent to the CEOC for review.
- b) The chart below details the recommendations of the CEOC and the DRE after the Department's request for consultation on 763 appraisals as well as the action taken by the Department as a result of the recommendations:

| UNIQUE CONSERVATION EASEMENT DONATIONS | | | | | | | | | | |
|--|---------------------|------------|------------|--------------------|------------|-------------|--------------|--------------|------------|--------|
| CEOC/DRE RECOMMENDATION: | CEOC Recommendation | | | DRE Recommendation | | | NO RECOMMEND | | | TOTALS |
| | REJECT | REJECT | REJECT | ACCEPT | ACCEPT | NO OPINION | NO OPINION | NO OPINION | | |
| | MAY VIOLATE | NO OPINION | APPEARS OK | MAY VIOLATE | APPEARS OK | MAY VIOLATE | NO OPINION | NO RECOMMEND | | |
| Total Appraisals Reviewed | 576 | 41 | 6 | 45 | 38 | 4 | 41 | 12 | 763 | |
| Multiple Appraisals on Easement | 15 | 1 | 3 | 2 | 3 | 0 | 1 | 0 | 25 | |
| Total Unique Donations Reviewed | 561 | 40 | 3 | 43 | 35 | 4 | 40 | 12 | 738 | |
| 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) | 552 | 40 | 2 | 41 | 16 | 4 | 40 | 8 | 703 | |
| FINAL DEPARTMENT/COURT ACTION: | | | | | | | | | | |
| Allowed in Full by Revenue | 11 | 0 | 1 | 9 | 8 | 0 | 3 | 1 | 33 | |
| Settled by Revenue | 487 | 34 | 1 | 28 | 8 | 1 | 37 | 4 | 600 | |
| 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) | 42 | 6 | 0 | 4 | 0 | 3 | 0 | 3 | 56 | |

- 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-five cases which were subject to 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 June 23, 2017, 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 | 498 | 6 |
| Elected Expedited Hearing | 30 | To Hearing | | 30 | 1 | 1 | 0 |
| Total # making an Election | 508 | | | | | | |
| Made No Election | 35 | To Hearing | | 35 | 9 | 9 | 0 |
| | | Remain in Admin Process | 171 | 171 | 11 | 6 | 5 |
| Total # of Cases | 543 | | 197 | 740 | 525 | 514 | 11 |

- Of the 543 cases subject to the provisions of HB11-1300 6 remain active. These 6 cases involve donations made by 1 taxpayer.
- The Department and the OAG have worked diligently to resolve the disputed tax credit cases. All of the 6 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 525 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 11 cases remain active (6 under the provisions of HB11-1300 and 5 outside that legislation).

- e) The Department has resolved the majority of the disputes related to the disallowance of tax credits in the 740 cases reported above.
- As of June 23, 2017, the Department has resolved 664 cases: 35 cases were allowed the tax credits in full, 27 cases were resolved prior to input from the CEOC or DRE, and 610 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.
 - Tax credits totaling \$25,305,497 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 2 additional cases which will result in \$136,801 of tax received, \$56,542 in abandoned tax credits, and \$199,662 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 637 cases settled by the Department (610 with CEOC/DRE input and 27 prior to consultation), \$113,794,017 was determined to be owed (\$113,044,758 in taxes, \$489,973 in interest, and \$259,286 in penalties); \$96,332,400 was waived by the Department (\$40,721,661 in taxes, \$41,439,638 in interest, and \$14,171,101 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 | \$ 114,666,118 | \$ 25,305,497 | \$ 139,971,615 | \$ 40,770,901 | \$ 8,693,238 | \$ 49,464,139 | \$ 189,435,754 | 74% |
| Penalty | \$ 395,801 | \$ - | \$ 395,801 | \$ 14,208,809 | | \$ 14,208,809 | \$ 14,604,610 | 3% |
| Interest | \$ 1,027,832 | \$ - | \$ 1,027,832 | \$ 41,706,503 | | \$ 41,706,503 | \$ 42,734,335 | 2% |
| | \$ 116,089,751 | \$ 25,305,497 | \$ 141,395,248 | \$ 96,686,213 | \$ 8,693,238 | \$ 105,379,451 | \$ 246,774,699 | |

- 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 740 cases originally disallowed, 35 cases, consisting of \$8,693,238 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 2016-17 | TOTALS |
|--|---------------------|---------------------|---------------------|---------------------|-------------------|-------------------|---------------------|
| DOR Salary & Benefits | \$ 532,169 | \$ 601,381 | \$ 628,958 | \$ 636,937 | \$ 421,789 | \$ 354,499 | \$ 3,175,733 |
| Appraisals & Other Litigation Costs | \$ 746,676 | \$ 961,910 | \$ 328,089 | \$ 94,333 | \$ 68,325 | \$ 12,923 | \$ 2,212,256 |
| Attorney General Costs | \$ 1,466,610 | \$ 1,449,646 | \$ 1,030,470 | \$ 508,226 | \$ 350,995 | \$ 161,728 | \$ 4,967,675 |
| 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 | \$ 529,150 | \$10,374,210 |

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
Ms. Jessi Neuberg, Staff, Joint Budget Committee, Colorado General Assembly
Ms. Kori Donaldson, Staff, House Finance Committee, Colorado General Assembly
Mr. Matt Becker, 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 Dominick Moreno, Joint Budget Committee, Colorado General Assembly
The Honorable Bob Rankin, Joint Budget Committee, Colorado General Assembly
The Honorable Dave Young, Joint Budget Committee, Colorado General Assembly

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The Honorable Daniel Kagan, Senate Finance Committee, Colorado General Assembly
The Honorable Jack Tate, Senate Finance Committee, Colorado General Assembly