

Conservation Easement Appeals in the Colorado Courts

Quarterly Report Prepared Pursuant to C.R.S. § 39-22-522.5(13)

June 15, 2012

Prepared by the Colorado State Court Administrator's Office, Division of Planning and Analysis



C.R.S. § 39-22-522.5(13) requires the State Court Administrator to provide a report to the Joint Budget Committee and the Finance Committees of the General Assembly on or before June 15, 2012. This report will describe (a) the number of taxpayers electing to appeal pursuant to C.R.S. § 39-22-522.5(2); (b) the number of cases pending before the district courts or on appeal before other courts; (c) the number of cases finally resolved; (d) the amount of moneys estimated to have been expended by the courts in administering the appeals; and (e) the amount of deficient taxes, interest, and penalties determined to be owed or waived in connection with the appeals.

A. The number of taxpayers electing to appeal pursuant to C.R.S. § 39-22-522.5(2)

Under C.R.S. § 39-22-522, “taxpayer” means “...a resident individual or a domestic or foreign corporation...” subject to the provisions of part 3 of article 22, “...a partnership, S corporation, or other similar pass-through entity, estate, or trust that donates a conservation easement as an entity, and a partner, member, and subchapter S shareholder of such pass-through entity.” Therefore, there are a number of categories of “taxpayers” that have elected to appeal pursuant to C.R.S. § 39-22-522.5 and the actual number of taxpayers electing to appeal requires explanation. The State Court Administrator’s Office (“SCAO”) now identifies two major categories of taxpayers that it intends to report upon as the tax credit appeal proceedings develop. These categories are the Named Tax Matters Representative and Individual Representatives of TMR Entities.

SCAO determines that there are approximately 412 named Tax Matters Representatives (“TMR”) and 442 conservation easements involved in the appeals filed before the district courts. Currently, this is the most accurate number that SCAO can provide which reflects the taxpayers electing to appeal. This number is based on the TMRs named and the facts set forth in the Plaintiffs’ Notices of Appeal. The Tax Matters Representative represents and binds all transferees with respect to all issues regarding the credit claim. The tax matters representative is defined by C.R.S. §39-22-522(7)(i) as “the donor of an easement for which a tax credit is claimed or the transferor of a tax credit transferred...” pursuant to C.R.S. § 39-22-522(7).

There are 235 entities named as Tax Matters Representatives and approximately 149 of the TMR entities are pass-through entities. 137 individuals and 4 entities represent the Named TMR entities. 113 of the Representatives of TMR Entities are not also named as an individual TMR in a separate case.

SCAO finds it is unnecessary to consider the number of tax credit transferees in calculating the number of tax payers electing to appeal, due to the decision on interlocutory appeal in 11CA2634, entitled *Barbara Brohl, Executive director of the Colorado Department of Revenue, Appellant, v. Walter Kowalchik, et al. Appellees*. The Colorado Court of Appeals determined that tax credit transferees need not be added as necessary parties.

Conservation Easement Tax Credit Appeal Taxpayer Summary

	Number of Named Tax Matters Representatives	Representatives of TMR Entities
Individuals	177	137
Pass-Through Entities	149	0
Other Business Entities, Trusts and Estates	86	4
Total	412	141

B. The number of cases pending before the district courts or on appeal before other courts and the number of cases finally resolved

As of June 8, 2012, approximately 188 conservation easement tax credit appeals had been filed in the district courts. Region 1 has 41 cases, Region 2 has 126 and Region 3 has 21 cases. In Region 1, two cases have been closed, and in Region 2, seven cases have been closed. In Region 3, five cases have been closed. Therefore, there are a total of 174 open cases pending before all three regions and 14 cases are resolved. No cases are pending appeal before other courts.

Since March 1, 2012, new conservation easement tax credit appeal cases have been opened in Regions 2 and 3 pursuant to C.R.S. § 39-22-522.5(4). Under this provision, "...any person who has claimed a credit... in relation to the tax matters representative's donation may petition the department on or before November 1, 2011, to change the tax matter representative's designation." Further, "[i]f the department grants the petition, the new tax matters representative may file an appeal pursuant to subsection (2) of this section... within thirty days of the department's order regarding the petition."

Conservation Easement Tax Credit Appeal Case Summary as of June 8, 2012

Region	Cases Filed	Cases on Appeal	Cases Closed	Total Open Cases To Date
Region 1	41	0	2	39
Region 2	126	0	7	119
Region 3	21	0	5	16
Total	188	0	14	174

C. The amount of moneys estimated to have been expended by the courts in administering the appeals

The table below lists the amount of money estimated to have been expended by the courts from the passage of House Bill 11-1300 in May 2011 through March 2012:

Type	Amount
Personal Services	\$91,339
Operating	\$3,643
Total	\$94,982

D. The amount of deficient taxes, interest, and penalties determined to be owed or waived in connection with the appeals

No judgments have been entered in any conservation easement cases to date. The 14 cases that SCAO reports as resolved, the courts closed on procedural, settlement or voluntary dismissal grounds.