

Conservation Easement Appeals in the Colorado Courts

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

September 15, 2012

Prepared by the Colorado State Court Administrator's Office



C.R.S. § 39-22-522.5(13) requires the State Court Administrator to provide a report to the Joint Budget Committee and the House and Senate Finance Committees of the General Assembly on or before September 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)

The State Court Administrator’s Office (SCAO) has determined that there are approximately 420 named Tax Matters Representatives (“TMR”) and 450 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 Representatives represents and binds all transferees with respect to all issues regarding the credit claim.

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. Further, 113 of the Representatives of TMR Entities are not also named as an individual TMR in a separate case.

Conservation Easement Tax Credit Appeal Taxpayer Summary

	Number of Named Tax Matters Representatives	Representatives of TMR Entities
Individuals	185	137
Pass-Through Entities	149	0
Other Business Entities, Trusts and Estates	86	4
Total	420	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 September 14, 2012, approximately 193 conservation easement tax credit appeals had been filed in the district courts. Region 1 has 41 cases, Region 2 has 129 and Region 3 has 23 cases. In Region 1, 17 cases have been closed, and in Region 2, 46 cases have been closed. In Region 3, 6 cases have been closed. Therefore, there are a total of 124 open cases pending before all three regions. Approximately 55 of the cases closed have been consolidated and are pending resolution. A resolution has been reached in 14 cases. One case in Region 1 may be granted certification for an Interlocutory Appeal before the Court of Appeals within the next week.

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.”

In few instances, the Department of Revenue transferred jurisdiction over a case to the district court, pursuant to C.R.S. § 39-22-522.5(5)(b), by finding that the case cannot be reasonably resolved in the administrative process.

Conservation Easement Tax Credit Appeal Case Summary as of September 12, 2012

Region	Cases Filed	Cases on Appeal	Cases Closed	Total Open Cases To Date
Region 1	41	1	17	24
Region 2	129	0	46	83
Region 3	23	0	6	17
Total	193	0	69	124

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 June 2012:

Type	Amount
Personal Services	\$145,314
Operating	\$3,700
Total	\$149,014

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.