



COLORADO
Department of Revenue

Executive Director's Office

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September 30, 2015

The Honorable Kent Lambert
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, there have been 4,295 donations of conservation easements for which tax credits have been claimed. Over 26,000 income tax returns claiming CE tax credits have been filed. The Department has reviewed all of these returns and has disallowed tax credits related to 695 donations.

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, 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 all of the 695 cases for which credits have been disallowed.
 - As of September 25, 2015, the Department sent 746 appraisals (or partial appraisals) to the CEOC for review. Of these 746 appraisals, 22 were for a 2nd or 3rd review. Therefore, 724 appraisals of unique easement donations were sent to the CEOC for review.

- NOTE: Some of these appraisals were sent to the CEOC for review prior to the Department's disallowance of any tax credits.

b) In response to the request for consultation on the 746 appraisals sent to the CEOC and DRE, the Department received recommendations on all 746 appraisals.

- For appraisals reviewed prior to December 3, 2012, the CEOC recommendations were to "Reject" or "Accept" the tax credits.
- For appraisals reviewed prior to December 3, 2012, the DRE recommendations were whether or not it appears there may be material violations of the Uniform Standards of Professional Appraisal Practice (USPAP) that could adversely impact the analyses and conclusions in the appraisal (designated in the Table below as "May Violate" or "Appears OK", respectively).
- For appraisals reviewed at the December 2012 consultation, the Department of Revenue submitted specific questions about areas of concern as recommended by a performance audit done by the Office of the State Auditor at the request of the General Assembly. In response to these questions, the CEOC and DRE prepared a written response to each but made "No Recommendation" as to the action to be taken.
- For appraisals reviewed after the December 2012 consultation, the Department of Revenue submitted specific questions about areas of concern as recommended by a performance audit done by the Office of the State Auditor at the request of the General Assembly. As a result of "No Recommendation" in the prior consultation, the Department of Revenue asked specifically whether the tax credit should be accepted. In response to these questions, the CEOC and DRE prepared a written response to each.
- 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:

CEOC/DRE RECOMMENDATION:	CEOC Recommendation		DRE Recommendation		NO RECOMMENDATION				TOTALS
	REJECT	REJECT	REJECT	ACCEPT	ACCEPT	NO OPINION	NO OPINION	NO RECOMMENDATION	
	MAY VIOLATE	NO OPINION	APPEARS OK	MAY VIOLATE	APPEARS OK	MAY VIOLATE	NO OPINION	RECOMMEND	
Total Appraisals Reviewed	562	41	6	42	38	4	41	12	746
Multiple Appraisals on Easement	13	1	3	1	3	0	1	0	22
Total Unique Donations Reviewed	549	40	3	41	35	4	40	12	724
INITIAL DEPARTMENT ACTION:									
Credit Not Used/Not Disallowed	4	0	1	2	19	0	0	3	29
Still Under Review	0	0	0	0	0	0	0	0	0
Total Cases Disallowed (Reviewed Donations less Initial Action)	545	40	2	39	16	4	40	9	695
FINAL DEPARTMENT/COURT ACTION:									
Allowed in Full by Revenue	8	0	1	4	8	0	3	1	25
Settled by Revenue	405	33	0	20	8	1	35	3	505
Allowed in Part/Full by Court	2	0	0	0	0	0	0	0	2
Disallowed in Entirety by Court	5	0	0	0	0	0	0	0	5
Total Remaining Active Cases (Disallowed Donations less Final Action)	125	7	1	15	0	3	2	5	158

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. The mediation for 18 of these cases was held on June 12, 2013, and the mediation for 15 of these cases was held on August 13, 2013. 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) 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
Elected District Court	478	On Appeal/Transferred to Court	26	504	504
Elected Expedited Hearing	30	To Hearing		30	1
Total # making an Election	<u>508</u>				
Made No Election	35	To Hearing		35	9
		Remain in Admin Process	126	126	3
Total # of Cases	<u>543</u>		<u>152</u>	<u>695</u>	<u>517</u>

- Elections have been made pursuant to Section 39-22-522.5, C.R.S. in 508 of the 543 cases subject to the election provisions of HB11-1300: 478 made an election to waive the administrative hearing and appeal to District Court and were therefore transferred to the OAG; 30 made an election to remain in the administrative process and requested an expedited hearing; 35 made no election.
- As of September 25, 2015, 517 cases, including both those subject to the election provisions of HB11-1300 and those outside the scope of those provisions, were sent forward to the OAG for resolution.
- 29 of the 517 cases are 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. All 4 of these cases have been closed.
- As of September 25, 2015, the Department had received 36 petitions by Transferees to change the Tax Matters Representative in the cases involving no elections. Twenty-two of these 36 petitions were granted and 14 were denied.

- NOTE: The numbers may differ from previous reports due to consolidation of District Court cases and changes in Tax Matters Representatives.

e) The Department has resolved the disputes related to the disallowance of tax credits in the 695 cases reported above.

- As of September 25, 2015, the Department has resolved 538 cases: 27 cases were allowed the tax credits in full, 6 cases were resolved prior to input from the CEOC or DRE, and 505 cases were settled 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 1 case in which the Department prevailed in District Court and the TMR did not appeal. There were no Transferees in this case.
- 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 \$21,805,186 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 58 additional cases which will result in \$8,042,044 of tax received, \$1,336,291 in abandoned tax credits, and \$1,497,732 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 bullet point.

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 6 cases in which Notices of Final Determination were issued by the Department involved a total assessed amount of \$2,190,882 (\$1,437,010 in taxes, \$602,764 in interest, and \$151,108 in penalties); \$198,785 was waived (\$1,440 in taxes, \$195,216 in interest, and \$2,129 in penalties).
- In the 511 cases settled by the Department (505 with CEOC/DRE input and 6 prior to consultation), \$99,254,757 was determined to be owed (\$98,697,837 in taxes, \$413,468 in interest, and \$143,452 in penalties); \$79,261,967 was waived by the Department (\$32,057,645 in taxes, \$35,290,032 in interest, and \$11,914,290 in penalties).

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

- Of the 724 appraisals of unique easement donations which were reviewed by the CEOC and DRE, 29 had no tax credits disallowed at the recommendation of the CEOC and DRE. Therefore, credits were disallowed and contested in 695 cases.

- Of these 695 cases, 27 cases, consisting of \$6,918,390 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>
DOR Salary & Benefits	\$ 532,169	\$ 601,381	\$ 628,958	\$ 636,937	\$ 111,422	\$2,510,867
Appraisals & Other Litigation Costs	\$ 746,676	\$ 961,910	\$ 328,089	\$ 94,333	\$ 23,821	\$2,154,829
Attorney General Costs	\$ 1,466,610	\$ 1,449,646	\$ 1,030,470	\$ 508,226	\$ 86,764	\$4,541,716
DOR Travel Expenses	\$ -	\$ 906	\$ 224	\$ 1,049	\$ -	\$ 2,179
General Operating Expenses	\$ 11,796	\$ 3,671	\$ 46	\$ -	\$ -	\$ 15,513
	<u>\$ 2,757,251</u>	<u>\$ 3,017,514</u>	<u>\$ 1,987,787</u>	<u>\$ 1,240,545</u>	<u>\$ 222,007</u>	<u>\$9,225,104</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, Office of State Planning & Budgeting
Ms. Alice Wheet, Office of State Planning & Budgeting

Joint Budget Committee Members:

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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 Kevin Van Winkle, House Finance Committee, Colorado General Assembly
The Honorable Jim Wilson, House Finance Committee, Colorado General Assembly

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The Honorable Chris Holbert, Senate Finance Committee, Colorado General Assembly
The Honorable Mike Johnston, Senate Finance Committee, Colorado General Assembly
The Honorable Andy Kerr, Senate Finance Committee, Colorado General Assembly