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MEMORANDUM

November 3, 2015

TO: Interested Persons
FROM: Greg Sobetski, Economist, 303-866-4105
SUBJECT: Conservation Easement Income Tax Incentives

Summary

The federal and state governments each provide tax incentives for landowners who designate their land as a conservation easement, foregoing certain use rights in order to preserve the land in perpetuity. This memorandum provides information on federal and state conservation easement tax incentives.

A conservation easement is a voluntary legal agreement between a landowner and a charitable organization or government entity that permanently preserves scenic or agricultural open space, natural habitat, or recreational areas for the benefit of the public. These agreements can be individually suited to preserve the specific qualities of the property, allowing it to remain under private ownership and control. For example, an agreement may preserve traditional land uses such as family ranching or farming and may or may not allow public access to the property protected by the easement.

Both the federal government and Colorado provide tax incentives to landowners who designate their land as a conservation easement. These programs are described below.

Federal Conservation Easement Income Tax Deduction

Federal law allows taxpayers to claim an income tax deduction for the charitable donation of qualifying conservation easements. The full amount of the donation can be deducted from a taxpayer's adjusted gross income (AGI) for tax purposes, subject to constraints on the amount by which AGI can be reduced for a single tax year. Federal law requires that conservation easements meet a conservation purpose such as:

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- preservation of land areas for outdoor recreation of the general public;
- protection of a relatively natural habitat for fish, wildlife, or plants;
- preservation of open space, including farmland and forest land; or
- preservation of a historically significant land area or structure.¹

Effective January 1, 2015, the maximum amount by which donors may reduce their AGI for tax purposes is capped at 30 percent for a given tax year, a cap that applies to all charitable contributions for which a deduction is claimed. The amount by which the deduction exceeds 30 percent of a taxpayer's AGI may be carried forward and applied against the taxpayer's AGI for up to five subsequent tax years.

State Conservation Easement Income Tax Credit

Colorado offers a state income tax credit for the donation of a conservation easement. The same requirements that an easement must satisfy in order to qualify as a charitable contribution under federal law are used to determine eligibility for the state income tax credit.

The tax credit has been available since tax year 2000 for resident individuals, corporations, trusts, and estates that donate a conservation easement to a government entity or a 501(c)(3) charitable organization in perpetuity. State law defines a conservation easement as a right of the owner of the easement to prohibit certain acts with respect to the property in order to preserve its value for recreation, education, habitat, open space, or historical importance.²

Credit certificates. A Colorado taxpayer can claim a state income tax credit during the tax year when the easement is donated. Beginning in tax year 2014, taxpayers are required to apply for a credit certificate from the Division of Real Estate (the division) in the Department of Regulatory Agencies.³ The division reviews an assessment of the property's fair market value (FMV) in order to determine the amount of credit for which the easement qualifies. Table 1 summarizes the amount of credit that the division may award for an easement donated through tax year 2014 and beginning tax year 2015.⁴

Table 1
Colorado Conservation Easement Tax Credit Available per Taxpayer per Year

	Through Tax Year 2014	Beginning Tax Year 2015
Credit for first \$100,000 FMV	50 percent of FMV	75 percent of FMV
Credit for FMV above \$100,000	50 percent of FMV	
Maximum Credit per Taxpayer per Year	\$375,000	\$1,500,000

¹26 U.S.C. § 170 (h)(4)(A).

²Section 38-30.5-102, C.R.S.

³Senate Bill 13-221.

⁴Senate Bill 15-206 increased the amount of credit allowed for the first \$100,000 of easement fair market value and increased the total amount of credit that can be awarded for a single easement.

Since tax year 2011, state law has capped the aggregate value of credit certificates that the division can issue for a single tax year. The cap is set at \$45 million for 2014 and all subsequent tax years.⁵ The division may process applications for credit certificates after the \$45 million cap has been reached; however, approved certificates are not issued until the following tax year when the cap has reset. The division is responsible for notifying the Department of Revenue (DOR) of certificates issued each year.

For tax year 2013, the division issued credit certificates worth a total of \$28.2 million. The division received 46 applications for credit certificates worth a total of \$11.2 million in tax year 2014; processing of these applications is ongoing.

Application of credit against income tax liability. Unless the state incurred a TABOR surplus in the prior fiscal year (see below), the conservation easement credit is not refundable, meaning that a taxpayer may claim a credit amount less than or equal to his or her tax liability. Any amount by which the taxpayer's outstanding credit exceeds his or her tax liability may be carried forward for up to 20 subsequent tax years.⁶

If, for the fiscal year preceding the tax year for which a credit is claimed, state revenues exceed the limit on state spending in the Taxpayer's Bill of Rights (TABOR),⁷ a portion of the outstanding credit in excess of a taxpayer's income tax liability may be refunded to the taxpayer.⁸ The total amount of credit claimed may not exceed the greater of the taxpayer's income tax liability and \$50,000. For example:

- if a taxpayer has carried forward credit worth \$150,000 from previous tax years; and
- if the state has incurred a TABOR surplus in the previous fiscal year; and
- if the taxpayer's income tax liability is \$20,000; then
- \$20,000 of the credit may be used to offset the taxpayer's income tax liability;
- \$30,000 of the credit may be refunded to the taxpayer; and
- \$100,000 may be carried forward and claimed in subsequent tax years.

Because state revenue exceeded the TABOR limit in FY 2014-15, the conservation easement credit is partially refundable for tax year 2015. The September 2015 Legislative Council Staff economic and revenue forecast anticipates that state revenue will exceed the TABOR limit in FY 2016-17 and FY 2017-18. Assuming the forecast, the conservation easement credit will be refundable in both tax year 2017 and tax year 2018.

Transferability. The conservation easement credit is transferable, meaning that a donor may transfer a credit, in whole or in part, to another taxpayer.⁹ Transferability allows a donor to realize the financial benefit of the credit more quickly if he or she can find a transferee willing to purchase the credit. To transfer a credit, both the donor and the transferee must file written statements with their income tax returns specifying the amount of credit that has been transferred.

A transferee may use transferred credit to offset his or her income tax liability, but may not use the credit to obtain a refund even after the state incurs a TABOR surplus. Disputes regarding the credit are resolved between the state and the donor, without the legal participation of the transferee.

Table 2 summarizes the acreage of Colorado conservation easements, by county, for which

⁵House Bill 13-1183.

⁶Section 39-22-522 (5)(a), C.R.S.

⁷Colo. Const. art. X, § 20 (7)(a).

⁸Section 39-22-522 (5)(b), C.R.S.

⁹Section 39-22-522 (7), C.R.S.

tax credits were awarded between 2011 and 2014. Only counties with more than 5,000 acres in qualifying easements are included in the table; however, statewide totals include 34 other counties in which qualifying easements were created. Because data prior to 2011 are unavailable, the total acreage and percentage of land area held in conservation easements is significantly greater than that shown.

**Table 2
Acreage of Conservation Easement Credit Awards by County, 2011 to 2014**

County	Acres added to Conservation Easements	Total Land Area of County or State	Percentage of County or State Land Area added to Easements
Moffat	41,415	3,040,640	1.4 percent
Routt	37,030	1,515,520	2.4 percent
Las Animas*	32,599	3,056,000	1.1 percent
Cheyenne	20,018	1,137,920	1.8 percent
Jackson	14,079	1,037,440	1.4 percent
Bent	13,578	986,240	1.4 percent
Otero	12,178	812,800	1.5 percent
Rio Blanco	8,521	2,062,720	0.4 percent
Pueblo	7,106	1,534,720	0.5 percent
Park	6,344	1,415,040	0.5 percent
Gunnison	5,443	2,086,400	0.3 percent
Montrose	5,190	1,435,520	0.4 percent
Elbert	5,119	1,184,640	0.4 percent
State	272,788	66,620,160	0.4 percent

Source: Colorado Department of Regulatory Agencies, Division of Real Estate.

*Data for Las Animas County include easements that span Las Animas and Baca counties. Acreage data for easements spanning multiple counties are not segmentable by county.