

CHAPTER 290

TAXATION

HOUSE BILL 07-1361

BY REPRESENTATIVE(S) Madden, Curry, Garcia, Borodkin, Cerbo, Fischer, Gibbs, Kefalas, Labuda, Levy, Liston, Marostica, Massey, Merrifield, Mitchell V., Todd, Jahn, McGihon, and Roberts;
also SENATOR(S) Isgar, Fitz-Gerald, Harvey, Kopp, Penry, Schwartz, Taylor, Tupa, Veiga, and Wiens.

AN ACT

CONCERNING THE IMPLEMENTATION OF ADDITIONAL REQUIREMENTS TO VERIFY THE VALIDITY OF A STATE INCOME TAX CREDIT CLAIMED BY A TAXPAYER FOR DONATING A CONSERVATION EASEMENT IN THE STATE.

Be it enacted by the General Assembly of the State of Colorado:

SECTION 1. Part 1 of article 33 of title 24, Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW SECTION to read:

24-33-112. Conservation easement holders - submission of information.

(1) ANY ORGANIZATION THAT ACCEPTS A DONATION OF A CONSERVATION EASEMENT IN GROSS FOR WHICH A STATE INCOME TAX CREDIT IS CLAIMED IN ACCORDANCE WITH THE PROVISIONS OF SECTION 39-22-522, C.R.S., SHALL SUBMIT THE FOLLOWING INFORMATION TO THE DEPARTMENT OF REVENUE, THE DEPARTMENT OF AGRICULTURE, AND THE DEPARTMENT OF NATURAL RESOURCES:

(a) THE NUMBER OF CONSERVATION EASEMENTS HELD BY THE ORGANIZATION IN COLORADO;

(b) THE NUMBER OF ACRES SUBJECT TO EACH CONSERVATION EASEMENT HELD IN COLORADO;

(c) THE NAMES OF THE BOARD MEMBERS IF THE ORGANIZATION IS A PRIVATE NONPROFIT ORGANIZATION OR THE NAMES OF THE ELECTED OR APPOINTED OFFICIALS IF THE ORGANIZATION IS A PUBLIC ENTITY; AND

(d) A SIGNED STATEMENT FROM THE ORGANIZATION ACKNOWLEDGING THAT:

Capital letters indicate new material added to existing statutes; dashes through words indicate deletions from existing statutes and such material not part of act.

(I) THE ORGANIZATION HAS A COMMITMENT TO PROTECT THE CONSERVATION PURPOSE OF THE DONATION AND HAS THE RESOURCES TO ENFORCE THE RESTRICTIONS; AND

(II) THE ORGANIZATION HAS ADEQUATE RESOURCES AND POLICIES IN PLACE TO PROVIDE ANNUAL MONITORING OF EACH CONSERVATION EASEMENT HELD BY THE ORGANIZATION IN COLORADO.

(2) AN ORGANIZATION THAT ACCEPTS A CONSERVATION EASEMENT IN ANY CALENDAR YEAR COMMENCING ON OR AFTER JANUARY 1, 2008, SHALL SUBMIT THE INFORMATION REQUIRED BY SUBSECTION (1) OF THIS SECTION PRIOR TO ACCEPTING THE EASEMENT, BUT IN NO EVENT LATER THAN APRIL 15 OF THAT CALENDAR YEAR. AN ORGANIZATION SHALL NOT ACCEPT ANY DONATION OF A CONSERVATION EASEMENT IN GROSS FOR WHICH A CREDIT IS CLAIMED UNLESS THE ORGANIZATION HAS SUBMITTED THE INFORMATION REQUIRED BY THIS SUBSECTION (2) WITH THE DEPARTMENT OF REVENUE, THE DEPARTMENT OF AGRICULTURE, AND THE DEPARTMENT OF NATURAL RESOURCES. THE DEPARTMENT OF NATURAL RESOURCES AND THE DEPARTMENT OF AGRICULTURE SHALL MAKE THE INFORMATION AVAILABLE TO THE PUBLIC UPON REQUEST.

SECTION 2. 35-1-104 (1), Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW PARAGRAPH to read:

35-1-104. Functions, powers, and duties. (1) The department has and shall exercise the following functions, powers, and duties:

(ee) TO RECEIVE SUBMISSIONS OF INFORMATION AS SPECIFIED IN SECTION 24-33-112, C.R.S., FROM ORGANIZATIONS THAT ACCEPT DONATIONS OF CONSERVATION EASEMENTS IN GROSS FOR WHICH A STATE INCOME TAX CREDIT IS CLAIMED AND TO MAKE THE INFORMATION AVAILABLE TO THE PUBLIC UPON REQUEST.

SECTION 3. 39-22-522 (3), (3.5), and (7) (i), Colorado Revised Statutes, are amended, and the said 39-22-522 is further amended BY THE ADDITION OF THE FOLLOWING NEW SUBSECTIONS, to read:

39-22-522. Credit against tax - conservation easements. (3) In order for any taxpayer to qualify for the credit provided for in subsection (2) of this section, the taxpayer shall ~~file with~~ SUBMIT THE FOLLOWING IN A FORM APPROVED BY THE EXECUTIVE DIRECTOR TO the department of revenue at the same time as the taxpayer files a return for the taxable year in which the credit is claimed:

(a) A STATEMENT INDICATING WHETHER A DEDUCTION WAS CLAIMED ON THE TAXPAYER'S FEDERAL INCOME TAX RETURN FOR A CONSERVATION EASEMENT IN GROSS;

(b) A STATEMENT THAT REFLECTS THE INFORMATION INCLUDED IN THE NONCASH CHARITABLE CONTRIBUTIONS FORM USED TO CLAIM A DEDUCTION FOR A CONSERVATION EASEMENT IN GROSS ON A FEDERAL INCOME TAX RETURN;

(c) A STATEMENT TO BE MADE AVAILABLE TO THE PUBLIC BY THE DEPARTMENT

OF REVENUE THAT INCLUDES A SUMMARY OF THE CONSERVATION PURPOSES AS DEFINED IN SECTION 170 (h) OF THE INTERNAL REVENUE CODE THAT ARE PROTECTED BY THE EASEMENT; THE COUNTY, TOWNSHIP, AND RANGE WHERE THE EASEMENT IS LOCATED; THE NUMBER OF ACRES SUBJECT TO THE EASEMENT; THE AMOUNT OF THE TAX CREDIT CLAIMED; AND THE NAME OF THE ORGANIZATION HOLDING THE EASEMENT;

(d) A summary of a qualified appraisal ~~as defined in 26 CFR 1.170A-13 (c) (4) (1998)~~ THAT MEETS THE REQUIREMENTS SET FORTH IN SUBSECTION (3.3) OF THIS SECTION; however, if requested by the department OF REVENUE, the taxpayer shall submit the appraisal itself.

(e) A SWORN AFFIDAVIT FROM THE APPRAISER THAT INCLUDES:

(I) A STATEMENT SPECIFYING THE VALUE OF THE UNENCUMBERED PROPERTY AND THE TOTAL VALUE OF THE CONSERVATION EASEMENT IN GROSS;

(II) IF THE APPRAISAL SEPARATELY ALLOCATES THE VALUES OF SAND AND GRAVEL, MINERALS, WATER, OR IMPROVEMENTS, A STATEMENT OF THE SEPARATE VALUE OF THE SAND AND GRAVEL, MINERALS, WATER, OR IMPROVEMENTS BEFORE AND AFTER THE CONSERVATION EASEMENT IN GROSS IS GRANTED;

(III) AN ACKNOWLEDGMENT SPECIFYING WHETHER A SUBDIVISION ANALYSIS WAS THE PRIMARY METHODOLOGY USED IN THE APPRAISAL; AND

(IV) A STATEMENT SPECIFYING HOW THE APPRAISER SATISFIES QUALIFIED APPRAISER AND LICENSING REQUIREMENTS SET FORTH IN SUBSECTION (3.3) OF THIS SECTION; AND

(f) A SWORN AFFIDAVIT FROM THE HOLDER OF THE CONSERVATION EASEMENT IN GROSS THAT INCLUDES THE FOLLOWING:

(I) A COPY OF THE INFORMATION FILED BY THE HOLDER WITH THE DEPARTMENT OF REVENUE, THE DEPARTMENT OF AGRICULTURE, AND THE DEPARTMENT OF NATURAL RESOURCES IN ACCORDANCE WITH SECTION 24-33-112, C.R.S.;

(II) AN ACKNOWLEDGMENT OF WHETHER THE TRANSACTION IS PART OF A SERIES OF TRANSACTIONS BY THE SAME DONOR; AND

(III) AN ACKNOWLEDGMENT THAT THE HOLDER HAS REVIEWED THE COMPLETED COLORADO GROSS CONSERVATION EASEMENT CREDIT SCHEDULE TO BE FILED BY THE TAXPAYER AND THAT THE PROPERTY IS ACCURATELY DESCRIBED IN THE SCHEDULE.

(3.3) THE APPRAISAL FOR A CONSERVATION EASEMENT IN GROSS FOR WHICH A CREDIT IS CLAIMED SHALL BE A QUALIFIED APPRAISAL FROM A QUALIFIED APPRAISER, AS THOSE TERMS ARE DEFINED IN SECTION 170 (f) (11) OF THE INTERNAL REVENUE CODE. THE APPRAISAL SHALL BE IN CONFORMANCE WITH THE UNIFORM STANDARDS FOR PROFESSIONAL APPRAISAL PRACTICE PROMULGATED BY THE APPRAISAL STANDARDS BOARD. THE APPRAISER SHALL HOLD A VALID LICENSE AS A CERTIFIED GENERAL APPRAISER IN ACCORDANCE WITH THE PROVISIONS OF PART 7 OF ARTICLE 61 OF TITLE 12, C.R.S. IF THERE IS A FINAL DETERMINATION, OTHER THAN BY

SETTLEMENT OF THE TAXPAYER, THAT AN APPRAISAL SUBMITTED IN CONNECTION WITH A CLAIM FOR A CREDIT PURSUANT TO THIS SECTION IS A SUBSTANTIAL OR GROSS VALUATION MISSTATEMENT AS SUCH MISSTATEMENTS ARE DEFINED IN SECTION 1219 OF THE FEDERAL "PENSION PROTECTION ACT OF 2006", PUB.L. 109-280, THE DEPARTMENT SHALL SUBMIT A COMPLAINT REGARDING THE MISSTATEMENT TO THE BOARD OF REAL ESTATE APPRAISERS FOR DISCIPLINARY ACTION IN ACCORDANCE WITH THE PROVISIONS OF PART 7 OF ARTICLE 61 OF TITLE 12, C.R.S.

(3.5) The executive director of the department of revenue shall have the authority, pursuant to subsection (8) of this section, to require additional information from the taxpayer or transferee regarding the appraisal value of the easement, the amount of the credit, and the validity of the credit. In resolving disputes regarding the validity or the amount of a credit allowed pursuant to subsection (2) of this section, including the value of the conservation easement for which the credit is granted, the executive director shall have the authority, for good cause shown, to review and accept or reject, in whole or in part, the appraisal value of the easement, the amount of the credit, and the validity of the credit based upon the internal revenue code and federal regulations in effect at the time of the donation. IF THE EXECUTIVE DIRECTOR REASONABLY BELIEVES THAT THE APPRAISAL REPRESENTS A GROSS VALUATION MISSTATEMENT, THE EXECUTIVE DIRECTOR SHALL HAVE THE AUTHORITY TO REQUIRE THE TAXPAYER TO PROVIDE A SECOND APPRAISAL AT THE EXPENSE OF THE TAXPAYER. In the event the executive director rejects, in whole or in part, the appraisal value of the easement, the amount of the credit, or the validity of the credit, the procedures described in sections 39-21-103, 39-21-104, 39-21-104.5, and 39-21-105 shall apply.

(7) For income tax years commencing on or after January 1, 2000, a taxpayer may transfer all or a portion of a tax credit granted pursuant to subsection (2) of this section to another taxpayer for such other taxpayer, as transferee, to apply as a credit against the taxes imposed by this article subject to the following limitations:

(i) The donor of an easement for which a tax credit is claimed or the transferor of a tax credit transferred pursuant to this subsection (7) shall be the tax matters representative in all matters with respect to the credit. The tax matters representative shall be responsible for representing and binding the transferees with respect to all issues affecting the credit, including, but not limited to, the charitable contribution deduction, the appraisal, notifications and correspondence from and with the department of revenue, audit examinations, assessments or refunds, settlement agreements, and the statute of limitations. THE TRANSFEREE SHALL BE SUBJECT TO THE SAME STATUTE OF LIMITATIONS WITH RESPECT TO THE CREDIT AS THE TRANSFEROR OF THE CREDIT.

(10) ON OR BEFORE JULY 1, 2008, THE DEPARTMENT OF REVENUE SHALL CREATE A REPORT, WHICH SHALL BE MADE AVAILABLE TO THE PUBLIC, ON THE CREDITS CLAIMED IN THE PREVIOUS YEAR IN ACCORDANCE WITH THIS SECTION. FOR EACH CREDIT CLAIMED FOR A CONSERVATION EASEMENT IN GROSS, THE REPORT SHALL SUMMARIZE BY COUNTY WHERE THE EASEMENT IS LOCATED, THE ACRES UNDER EASEMENT, THE APPRAISED VALUE OF THE EASEMENT, THE DONATED VALUE OF THE EASEMENT, AND THE NAME OF ANY HOLDERS OF THE EASEMENT, EXCEPT THAT THE DEPARTMENT SHALL COMBINE SUCH INFORMATION FOR MULTIPLE COUNTIES WHERE

NECESSARY TO ENSURE THAT THE INFORMATION FOR NO FEWER THAN THREE EASEMENTS IS SUMMARIZED FOR ANY COUNTY OR COMBINATION OF COUNTIES IN THE REPORT. THE REPORT SHALL BE UPDATED ANNUALLY TO REFLECT THE SAME INFORMATION FOR ANY ADDITIONAL CREDITS THAT HAVE BEEN GRANTED SINCE THE PREVIOUS REPORT.

(11) ON OR BEFORE DECEMBER 31, 2007, THE DEPARTMENT OF REVENUE SHALL CREATE A REPORT, WHICH SHALL BE MADE AVAILABLE TO THE PUBLIC, WITH AS MUCH OF THE INFORMATION SPECIFIED IN PARAGRAPH (c) OF SUBSECTION (3) OF THIS SECTION AS IS AVAILABLE TO THE DEPARTMENT, SUMMARIZED BY COUNTY, FOR EACH TAX CREDIT CLAIMED FOR A CONSERVATION EASEMENT IN GROSS FOR TAX YEARS COMMENCING ON OR AFTER JANUARY 1, 2000.

SECTION 4. Effective date - applicability. (1) This act shall take effect at 12:01 a.m. on the day following the expiration of the ninety-day period after final adjournment of the general assembly that is allowed for submitting a referendum petition pursuant to article V, section 1 (3) of the state constitution, (August 8, 2007, if adjournment sine die is on May 9, 2007); except that, if a referendum petition is filed against this act or an item, section, or part of this act within such period, then the act, item, section, or part, if approved by the people, shall take effect on the date of the official declaration of the vote thereon by proclamation of the governor.

(2) The provisions of this act shall apply to credits for conservation easements in gross claimed on or after the applicable effective date of this act.

Approved: May 24, 2007