

CHAPTER 175

TAXATION

HOUSE BILL 10-1197

BY REPRESENTATIVE(S) Ferrandino, Judd, Labuda, Pommer, Fischer;
also SENATOR(S) Heath.

AN ACT

CONCERNING A DECREASE IN THE MAXIMUM AMOUNT OF A STATE INCOME TAX CREDIT THAT MAY BE CLAIMED FOR THE DONATION OF A CONSERVATION EASEMENT IN GROSS, AND MAKING AN APPROPRIATION THEREFOR.

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

SECTION 1. 39-1-102 (1.6) (a) (III), Colorado Revised Statutes, is amended to read:

39-1-102. Definitions. As used in articles 1 to 13 of this title, unless the context otherwise requires:

(1.6) (a) "Agricultural land", whether used by the owner of the land or a lessee, means one of the following:

(III) A parcel of land that consists of at least eighty acres, or of less than eighty acres if such parcel does not contain any residential improvements, and that is subject to a perpetual conservation easement, if such land was classified by the assessor as agricultural land under subparagraph (I) or (II) of this paragraph (a) at the time such easement was granted, if the grant of the easement was to a qualified organization, if the easement was granted exclusively for conservation purposes, and if all current and contemplated future uses of the land are described in the conservation easement. "Agricultural land" under this subparagraph (III) does not include any portion of such land that is actually used for nonagricultural commercial or NONAGRICULTURAL residential purposes.

SECTION 2. 39-1-103 (5) (a), Colorado Revised Statutes, is amended to read:

39-1-103. Actual value determined - when. (5) (a) All real and personal

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

property shall be appraised and the actual value thereof for property tax purposes determined by the assessor of the county wherein such property is located. The actual value of such property, other than agricultural lands exclusive of building improvements thereon and other than residential real property and other than producing mines and lands or leaseholds producing oil or gas, shall be that value determined by appropriate consideration of the cost approach, the market approach, and the income approach to appraisal. The assessor shall consider and document all elements of such approaches that are applicable prior to a determination of actual value. Despite any orders of the state board of equalization, no assessor shall arbitrarily increase the valuations for assessment of all parcels represented within the abstract of a county or within a class or subclass of parcels on that abstract by a common multiple in response to the order of said board. If an assessor is required, pursuant to the order of said board, to increase or decrease valuations for assessment, such changes shall be made only upon individual valuations for assessment of each and every parcel, using each of the approaches to appraisal specified in this paragraph (a), if applicable. The actual value of agricultural lands, exclusive of building improvements thereon, shall be determined by consideration of the earning or productive capacity of such lands during a reasonable period of time, capitalized at a rate of thirteen percent. Land that is valued as agricultural and that becomes subject to a perpetual conservation easement shall continue to be valued as agricultural notwithstanding its dedication for conservation purposes; except that, if any portion of such land is actually used for nonagricultural commercial or NONAGRICULTURAL residential purposes, that portion shall be valued according to such use. NOTHING IN THIS SUBSECTION (5) SHALL BE CONSTRUED TO REQUIRE OR PERMIT THE RECLASSIFICATION OF AGRICULTURAL LAND OR IMPROVEMENTS, INCLUDING RESIDENTIAL PROPERTY, DUE SOLELY TO SUBJECTING THE LAND TO A PERPETUAL CONSERVATION EASEMENT. The actual value of residential real property shall be determined solely by consideration of the market approach to appraisal. A gross rent multiplier may be considered as a unit of comparison within the market approach to appraisal. The valuation for assessment of producing mines and of lands or leaseholds producing oil or gas shall be determined pursuant to articles 6 and 7 of this title.

SECTION 3. Part 1 of article 21 of title 39, Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW SECTION to read:

39-21-122. Revenue impact of 2010 tax legislation - tracking by department.

THE DEPARTMENT OF REVENUE SHALL ACCOUNT FOR ALL REVENUE ATTRIBUTABLE TO THE ENACTMENT OF HOUSE BILL 10-1197, ENACTED IN 2010, AND SHALL, TO THE EXTENT SUCH INFORMATION IS AVAILABLE, MAKE QUARTERLY REPORTS TO THE GENERAL ASSEMBLY REGARDING THE QUARTERLY AND CUMULATIVE NET REVENUE GAIN TO THE STATE RESULTING FROM THE ENACTMENT OF SAID BILL.

SECTION 4. 39-22-522, Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW SUBSECTION to read:

39-22-522. Credit against tax - conservation easements.

(2.5) NOTWITHSTANDING ANY OTHER PROVISION OF THIS SECTION, FOR INCOME TAX YEARS COMMENCING DURING THE 2011, 2012, AND 2013 CALENDAR YEARS, A TAXPAYER CONVEYING A CONSERVATION EASEMENT IN 2011, 2012, OR 2013 AND CLAIMING A CREDIT PURSUANT TO THIS SECTION SHALL, IN ADDITION TO ANY OTHER

REQUIREMENTS OF THIS SECTION, SUBMIT A CLAIM FOR THE CREDIT TO THE DIVISION OF REAL ESTATE IN THE DEPARTMENT OF REGULATORY AGENCIES. THE DIVISION SHALL ISSUE A CERTIFICATE FOR THE CLAIMS RECEIVED IN THE ORDER SUBMITTED. AFTER CERTIFICATES HAVE BEEN ISSUED FOR CREDITS THAT EXCEED AN AGGREGATE OF TWENTY-SIX MILLION DOLLARS FOR ALL TAXPAYERS FOR INCOME TAX YEARS COMMENCING IN EACH OF THE 2011, 2012, AND 2013 CALENDAR YEARS, ANY CLAIMS THAT EXCEED THE AMOUNT ALLOWED FOR A SPECIFIED CALENDAR YEAR SHALL BE PLACED ON A WAIT LIST IN THE ORDER SUBMITTED AND A CERTIFICATE SHALL BE ISSUED FOR USE OF THE CREDIT IN 2012 OR 2013. THE DIVISION SHALL NOT ISSUE CREDIT CERTIFICATES THAT EXCEED TWENTY-SIX MILLION DOLLARS FOR EACH INCOME TAX YEAR COMMENCING IN THE 2011, 2012, AND 2013 CALENDAR YEARS. NO CLAIM FOR A CREDIT SHALL BE ALLOWED FOR ANY INCOME TAX YEAR COMMENCING DURING THE 2011, 2012, OR 2013 CALENDAR YEARS UNLESS A CERTIFICATE HAS BEEN ISSUED BY THE DIVISION. THE RIGHT TO CLAIM THE CREDIT SHALL BE VESTED IN THE TAXPAYER AT THE TIME A CREDIT CERTIFICATE IS ISSUED. THE DIVISION MAY PROMULGATE RULES IN ACCORDANCE WITH ARTICLE 4 OF TITLE 24, C.R.S., FOR THE ISSUANCE OF CERTIFICATES IN ACCORDANCE WITH THIS SUBSECTION (2.5).

SECTION 5. Part 7 of article 61 of title 12, Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW SECTION to read:

12-61-722. Conservation easement tax credit certificates. (1) THE DIVISION SHALL RECEIVE CLAIMS FROM AND ISSUE CERTIFICATES TO CERTIFIED CONSERVATION EASEMENT HOLDERS FOR INCOME TAX CREDITS FOR CONSERVATION EASEMENTS DONATED DURING THE 2011, 2012, AND 2013 CALENDAR YEARS IN ACCORDANCE WITH THE PROVISIONS OF SECTION 39-22-522 (2.5), C.R.S. NOTHING IN THIS SECTION SHALL BE CONSTRUED TO RESTRICT OR LIMIT THE AUTHORITY OF THE DIVISION TO ENFORCE THE PROVISIONS OF THIS PART 7. THE DIVISION MAY PROMULGATE RULES IN ACCORDANCE WITH ARTICLE 4 OF TITLE 24, C.R.S., FOR THE ISSUANCE OF THE CERTIFICATES. IN PROMULGATING ANY SUCH RULES, THE DIVISION MAY INCLUDE BUT SHALL NOT BE LIMITED TO PROVISIONS GOVERNING THE FOLLOWING:

- (a) THE REVIEW OF THE TAX CREDIT CERTIFICATE;
- (b) THE ADMINISTRATION AND FINANCING OF THE CERTIFICATION PROCESS;
- (c) THE NOTIFICATION TO THE PUBLIC REGARDING THE AGGREGATE AMOUNT OF CERTIFICATES THAT HAVE BEEN ISSUED AND THAT ARE ON THE WAIT LIST;
- (d) THE NOTIFICATION TO THE TAXPAYER, THE ENTITY TO WHICH THE EASEMENT WAS GRANTED, AND THE DEPARTMENT OF REVENUE REGARDING THE CERTIFICATES ISSUED; AND
- (e) ANY OTHER MATTERS RELATED TO ADMINISTERING THE PROVISIONS OF SECTION 39-22-522 (2.5), C.R.S.

SECTION 6. Appropriation. In addition to any other appropriation, there is hereby appropriated, out of any moneys in the conservation easement holder certification fund created in section 12-61-720 (3), Colorado Revised Statutes, not otherwise appropriated, to the department of regulatory agencies, for allocation to

the division of real estate, for the fiscal year beginning July 1, 2010, the sum of nine thousand twenty-eight dollars (\$9,028) cash funds and 0.2 FTE, or so much thereof as may be necessary, for the implementation of this act.

SECTION 7. Act subject to petition - effective date. 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 (August 11, 2010, if adjournment sine die is on May 12, 2010); except that, if a referendum petition is filed pursuant to section 1 (3) of article V of the state constitution against this act or an item, section, or part of this act within such period, then the act, item, section, or part shall not take effect unless approved by the people at the general election to be held in November 2010 and shall take effect on the date of the official declaration of the vote thereon by the governor.

Approved: April 29, 2010