

CONSERVATION TAX CREDITS
A LANDOWNER'S GUIDE



CONSERVATION RESOURCE CENTER
TAX CREDIT EXCHANGE

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Kehmeier Ranch, Delta County

PRESERVING OPEN LANDS

The Colorado Conservation Tax Credit is a unique tool by which landowners can preserve their land for generations to come. Take, for instance, the Kehmeier family. Dorothy and Norman Kehmeier's 300-acre Delta County ranch has been in their family for 110 years. They have always wanted to protect their ranch from development and eventually pass it to their children. The Conservation Tax Credit provided them with the financial opportunity to accomplish this goal.

"We started considering conservation easements, but we couldn't really afford to make such a huge financial donation. Then Colorado came up with the transferable tax credit system. We recognized it immediately as a way by which we could keep our land and still liquidate some of its value to meet our financial needs as we grow older."

The Kehmeiers transferred their Credits through the Tax Credit Exchange and used the proceeds to upgrade their farm machinery, buy back original family acreage that had been sold off, and pass along some of the proceeds to their children. After watching Dorothy and Norman's experience, many of their neighbors have followed suit, protecting hundreds of acres of open land in Delta County.

"The best part is the knowledge that our land will never be developed, but will be a part of a larger corridor of open land that we helped to create."

—NORMAN KEHMEIER



WHAT IS THE COLORADO CONSERVATION TAX CREDIT?

The Colorado Conservation Tax Credit (Credit) is a state income tax credit of up to \$375,000 available to a landowner who elects to place a conservation easement on his or her land.

A conservation easement is a written agreement between a landowner and a land trust or local government open space program that preserves the conservation and, if applicable, agricultural values of the land. At the same time, it allows a landowner continued ownership and use of the land consistent with the terms of the easement. Considerations in drafting an easement include: the characteristics of the property, the conservation values to be protected, and each party's needs and expectations.



Park Creek Ranch, Larimer County; Edie & Ken Yates

The Colorado Conservation Tax Credit is a state income tax credit of up to \$375,000 available to landowners that elect to place a conservation easement on their land.



HOW DO I EARN A COLORADO CONSERVATION TAX CREDIT?

The Colorado Conservation Tax Credit is earned the moment you make a donation of a qualified conservation easement to a land trust or government open space program. The value of your Credit is determined by the value of the donated portion of the conservation easement. The Credit may be earned by full or partial (bargain sale) donation of an easement. In the case of a partial donation, the value of the Credit will be determined based on the donated value, rather than on the total value of the easement.

Gunnison County

HOW A CREDIT IS VALUED:

EXAMPLE #1: John Brown has donated a conservation easement appraised at \$460,000 to his local land trust. He has therefore earned a Colorado Conservation Tax Credit of \$230,000.

EXAMPLE #2: Mary Smith has donated a conservation easement appraised at \$830,000 to her local land trust. She has therefore earned the maximum Colorado Conservation Tax Credit of \$375,000.

Please note that it is important to use experienced professionals when donating a conservation easement if you plan to take advantage of the state and federal tax benefits. To help ensure the quality of your transaction, use care in selecting the organization that will hold your easement, and in selecting the legal, accounting and appraisal professionals involved in structuring the transaction. (Please see page 10, "How Can I Maximize the Likelihood of Selling My Credit.")

WHO IS ELIGIBLE TO EARN A COLORADO CONSERVATION TAX CREDIT?

The following groups are eligible to earn a Credit:

- Colorado residents.
- Members (both residents and nonresidents) of pass through entities such as an LLC or partnership.
- C Corporations.
- Trusts and estates.

Limitations on earning a Credit include the following:

- An individual or entity may earn only one Credit in a calendar year.
- An individual or entity cannot earn a Credit in any year in which they have a previous outstanding Credit that has not been entirely used. This is true whether the unused Credit is held by the individual or entity that earned the Credit, or by a third party to whom it was transferred.

(Please see page 7, "How Can I Transfer a Colorado Conservation Tax Credit?")



Saltworks Ranch, Park County

HOW CAN I USE MY CONSERVATION TAX CREDIT?

Apply it to your own state income tax:

The Credit can be used to pay your taxes in lieu of cash. If you apply the Credit to your own state income tax, your taxes will be reduced by the amount of the Credit. If your Credit exceeds your taxes owed, the Credit can be carried forward and used over the next 20 years. After twenty years, any unused portion of the Credit expires.

In surplus years, receive a cash refund from the State of Colorado:

In years when Colorado has a state budget surplus, you may claim a cash refund of up to \$50,000 of your Credit. The Colorado Department of Revenue deducts your state taxes owed from this \$50,000 refund. Therefore, if you owe \$2,000 of state income tax in a surplus year, you may elect to receive a \$48,000 cash refund from the State. Unfortunately, since the inception of the Credit in 1999, budget surpluses have been rare.

The third option for using a Credit is to transfer all or a portion of the Credit to another Colorado taxpayer... this is by far the most common use of the Conservation Tax Credit.

Transfer (sell) the Credit to a third party:

The third option for using a Credit is to transfer all or a portion of the Credit to another Colorado taxpayer who can apply the Credit to his or her state income taxes. As most landowners cannot immediately make full use of their Credit (because its value exceeds the landowner's taxes due) this is by far the most common use of the Credit.

Transfer of the Credit is subject to the following limitations:

- A Credit may only be used once, so a landowner cannot both use the entire Credit and transfer it to a third party. However, a landowner may use a portion of a Credit and transfer its remaining value to a third party.

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- If you use your Credit to claim a tax refund (in a surplus year) you may not transfer any portion of the Credit to a third party in that same year. However, you may use a portion of the Credit to offset your taxes as discussed above.
- A Credit may only be transferred once.
- A third party purchasing a Credit may only use that Credit to offset his or her taxes. The purchaser is not eligible to request a refund and may not transfer the Credit. The purchaser may elect to carry any unused portion of the Credit forward and use it the next year. However, in these cases, the landowner that originally earned the Credit may not earn another Credit until the purchaser has used the entire Credit.

The ability to transfer Credits has enabled many landowners to protect important conservation and agriculturally significant areas in Colorado – landowners who would otherwise be financially unable to preserve their land through a conservation easement.



Kehmeier Ranch, Delta County



The ability to transfer Credits has enabled many landowners to protect important conservation and agriculturally significant areas in Colorado...

HOW CAN I TRANSFER A COLORADO CONSERVATION TAX CREDIT?

Transfer the Credit on your own

One option you have is to find your own third party (or parties) to purchase your Credit.

Transfer the Credit through a Credit facilitator

You may opt to work through a credit facilitator. This is a common choice among both landowners selling Credits, and purchasers buying Credits. Facilitators match landowners seeking to sell Credits with their inventory of clients seeking to purchase Credits. Facilitators also provide the required agreements, documentation and expertise to facilitate the transfer. Finally, facilitators offer Credit purchasers, who may have little knowledge of conservation easement law, a higher level of assurance that the Credit they purchase will not have issues which might result in the Credit being disallowed or reduced in value.

While Credit facilitators may have somewhat different procedures, generally, to transfer a Credit through a facilitator you need to:

- Find a reputable facilitator.

(Please see page 9, "How Do I Select a Tax Credit Facilitator?")

- Register to sell your Credits early in the year, even if your donation has not yet been made. Most Credits are matched with Buyers on a first come first served basis.
- Provide the facilitator with your transaction documentation. Transaction documentation may include a copy of the conservation easement appraisal, a copy of the deed of conservation easement, IRS Form 8283, title commitment or policy, baseline documentation, and mineral information (if applicable).

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- Allow the facilitator to conduct a thorough review of the documentation to ensure the transaction meets his or her program standards. Registering early is the best way for you to learn of issues that may affect the transferability of your Credit in a timely manner.
- Review and sign all transfer documents.
- Receive your check for the payment of your Credit immediately after your Credit has been transferred.

Timing of the Credit Transfer

Individuals who wish to purchase a Credit and apply it to their taxes in a given year, have until the tax filing deadline (typically April 15th) of the following year to complete the Credit transfer. This means that most Credits will be transferred, and payments to landowners made, in the first quarter of the year after the donation of the conservation easement.



*Seven Lakes Ranch,
Las Animas County*

FACILITATED CREDIT TRANSFER TRANSACTION

John Brown has a \$230,000 Colorado Conservation Tax Credit that exceeds his taxes due. Rather than using the Credit over 20 years, he wishes transfer it and immediately receive cash that he can reinvest in his ranching operation. John is unable to find a buyer for the Credit, so he contacts a tax credit facilitator.

John's Credit is matched with a purchaser who needs the Credit to offset his or her Colorado state income tax. Credit prices are market driven, but purchasers have recently saved approximately 13% on their state income taxes.

Sellers like John have typically received approximately 82% of the value of his Credit. The remaining 5% of the value of the Credit funds the transaction costs of the facilitator.

HOW DO I SELECT A CREDIT FACILITATOR?

Transferring a Colorado Conservation Tax Credit involves a complex area of law with rules and regulations that are continually evolving. Questions that may help you select an appropriate facilitator include:



- What is the facilitator's level of professional expertise in both land conservation and Credit facilitation?
- How long has the facilitator been transferring Credits and how many have they transferred?
- Over time, and more recently, what percentage of registered Credits was the facilitator able to successfully transfer?
- What portion of the Credit value will the landowner receive? What discount does the purchaser receive?
- Does the facilitator have any potential conflicts of interest in selling the Credit?
- Does the facilitator conduct follow-up reporting for landowners considering multiple donations?
- Does the facilitator provide instructions for filing the Credit transfer with the Department of Revenue?

THE LEGISLATIVE LANDSCAPE

Over the past few years, Colorado's Legislature has made several changes to the Colorado Conservation Tax Credit. In 2007, House Bill 1361 added new filing requirements for taxpayers claiming and transferring credits. In 2008, House Bill 1353 created, among other things, additional requirements for land trusts and appraisers in connection with conservation easement donations.

For the most part, these changes do not affect how credits are earned or their transferability. What has changed, however, are some of the documentation and filing requirements for taxpayers earning and selling the Credits.

The Conservation Resource Center has been at the forefront of interpreting any new legislation affecting the Credit and we have worked closely with the Colorado Department of Revenue and the IRS to assure that we have the most accurate and current information available to landowners and members of the conservation community.

Please contact the Conservation Resource Center for further information regarding current or pending legislation as well as any information regarding the Credits.



Park Creek Ranch, Larimer County; Edie & Ken Yates

HOW CAN I MAXIMIZE THE LIKELIHOOD OF SELLING MY CREDIT?

Work with a reputable land trust or local government open space program

Land trusts work locally, regionally, state-wide, and even nationally. Some land trusts have specific priorities. For example, priorities might include protection of open space within a particular community, preservation of agricultural lands, or securing important wildlife habitat. There are also many city, county and state agencies that hold conservation easements.

For assistance in selecting a reputable land trust or government open space program that would be the most appropriate for your situation, please contact the Colorado Coalition of Land Trusts (www.cclt.org).

Select qualified professionals that have direct experience working with conservation easements

Working with qualified professionals is your best way to ensure the transferability of your Credit. The process of placing a conservation easement on your land involves many issues affecting your tax liabilities and legal rights. Given the complexity of the transaction and the tax consequences of transferring Credits, it is highly advisable to consult with an attorney and/or a tax professional who has substantial experience in this area.

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It is also critical to work with an experienced conservation easement appraiser. Recently, the IRS has raised questions regarding appraisals of charitable contributions, including donations of conservation easements. The Conservation Resource Center's Tax Credit Exchange appraisal guidelines are available at www.taxcreditexchange.com. You may also contact the Colorado Coalition of Land Trusts (www.cclt.org) for additional information regarding conservation easement appraisals.

It is important that you assemble a competent team of advisors to assist you in this process. If there is a problem with the Credit, a purchaser will likely pass it over in favor of one without any problems. A sound transaction will yield a sound Credit.

Even if you plan to transfer your Credit on your own, you may wish to register with a tax credit facilitator

While landowners often plan to locate their own purchasers, it is often more difficult than they anticipate. You can register with the Conservation Resource Center's Tax Credit Exchange and still maintain your ability to sell your Credit on your own. This way, in the event that you are unable to identify a purchaser, you are in line to be matched with a purchaser through a facilitator and need not wait another year to transfer your Credit.



ONCE I HAVE USED OR TRANSFERRED MY CREDIT, WHAT HAPPENS NEXT?

- File the appropriate forms with the Colorado Department of Revenue and the Internal Revenue Service. The Conservation Resource Center's Tax Credit Exchange provides assistance in this area.
- If you transferred your Credit, the sale results in taxable income. The IRS has not yet ruled on how this income should be taxed. It is advisable to consult with your tax professional about how you should treat the proceeds of the sale.
- Whether you used the Credit yourself or transferred it to a third party, be sure the entire Credit was used prior to attempting to earn an additional Credit in the future. You may not earn another Credit if any portion of your previous Credit is outstanding. (Even if you transferred the Credit to a third party.)
- If you plan to earn an additional Credit, please contact the Conservation Resource Center to register your Credit.

THE CONSERVATION RESOURCE CENTER'S TAX CREDIT EXCHANGE

The Conservation Resource Center's Tax Credit Exchange is run by attorneys with more than 30 years combined experience in conservation law and policy. In 2000, the Conservation Resource Center established the first transfer market for conservation tax credits and remains the most successful tax credit program in Colorado. The Tax Credit Exchange maintains the highest internal standards for credits transferred through our program. We also enjoy a close working relationship with the Internal Revenue Service and the Colorado Department of Revenue, so we can provide immediate updates to landowners, land trusts, and professionals on relevant tax credit legislation and rulemakings.

The Tax Credit Exchange is the only nonprofit tax credit facilitator in Colorado. Each year, we donate a significant portion of our proceeds to Colorado land conservation organizations. In addition, we provide technical and policy support to landowners, land trusts, and related professionals on conservation easement and tax credit issues.

Contact us for information or assistance in any phase of your conservation easement donation and Credit transfer.



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