



Tax Credit Update—CRC Obtains Private Letter Ruling; Nonprofits Now Eligible to Earn Tax Credits!

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Background

Since the tax credit was created in Colorado over a decade ago, the CO Dept. of Revenue had taken the position that nonprofits (generally, §501(c)(3) entities) were not eligible to earn tax credits through a conservation easement donation because they were not "taxpayers." The attorneys at CRC have long believed this to be a misinterpretation of the tax credit statute. So, in the summer of 2013, CRC submitted a Private Letter Ruling Request challenging the Dept. of Revenue's position.

The Private Letter Ruling

This month, the CO Dept. of Revenue issued the Private Letter Ruling and reversed its long held position regarding nonprofits and tax credits. In its private letter ruling request, CRC essentially argued that the State's interpretation of "taxpayer" was too restrictive and treated similarly situated taxpayers differently; the tax credit statute contains no requirement that a taxpayer have taxable income to earn the tax credit. Indeed, the statute made the credit transferable (and refundable) precisely because the majority of people and entities who earn the credit have little or no income. Therefore, to treat nonprofits differently because they have no taxable income results in unequal treatment under the tax credit statute.

What Does This Mean for Your Land Trust?

Nonprofit landowners likely abound in your service area – think camps, retreats and religious organizations that hold large parcels of land, many with exceptional conservation values. We believe that land conservation in Colorado will benefit significantly by bringing an entirely new group of landowners to the conservation easement table. The attorneys at CRC are ready to work with land trusts and government open space departments to conduct outreach and education to these new potential conservation easement donors. We can provide the expertise needed to thoroughly understand how the ruling could benefit land trusts and their constituent nonprofit landowners.

What About Land Trusts?

In the Private Letter Ruling, the CO Dept. of Revenue expressed its general opinion that it believes a land trust cannot earn credits by placing an easement on its own land, because such land would already have been protected by the land trust's acquisition of it. We think that opinion is too broad, and that there would be appropriate cases where a land trust itself could earn credits. Moreover, it is now the Conservation Easement Oversight Commission (CEOC) that has jurisdiction over such questions. We expect that this issue will be further clarified by the CEOC in the coming months.

Read the Ruling

The full text of the ruling can be found on our website: www.taxcreditexchange.com.

Questions?

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As always, we'd like to point out that the Conservation Resource Center is Colorado's only nonprofit organization that specializes in the transfer of tax credits. As a nonprofit, CRC depends on your referrals of landowners interested in transferring their tax credits. We continue to appreciate your support.