



COLORADO

Department of Revenue

Taxation Division

Office of Tax Policy Analysis
P.O. Box 17087
Denver, CO 80217-0087

GIL-20-003

December 7, 2020

XXXXXXXXXX
Attn: XXXXXXXXXXXX
XXXXXXXXXX
XXXXXXXXXX

Re: Eligibility to claim a conservation easement tax credit

Dear XXXXXXXXXXXX:

You submitted a request for guidance on behalf of XXXXXXXXXXXX (“Company”), regarding Company’s eligibility to claim a conservation easement tax credit.

The Colorado Department of Revenue (“Department”) issues general information letters and private letter rulings. A general information letter provides a general overview of the relevant tax issues, but is not binding on the Department. A private letter ruling provides a specific determination for a specific set of facts, is binding on the Department but not on the taxpayer, and requires payment of a fee. For more information about general information letters and private letter rulings, please see 1 CCR 201-1, Rule 24–35–103.5.

It is important to remember that general information letters are general discussions of tax law and are not binding on the Department. If you would like the Department to issue a private letter ruling on the issues raised here, you may submit a request and pay the fee in compliance with 1 CCR 201-1, Rule 24-35-103.5.

Issues

1. Is a ditch company formed either under article 42 of title 7, or as a Colorado nonprofit corporation under article 121 of title 7, eligible to earn conservation easement tax credits pursuant to section 39-22-522, C.R.S?
2. How is the ability to earn conservation easement tax credits affected, if at all, by the fact that some of a ditch company's shareholders are local government entities?

Discussion

Colorado allows a credit against income tax to each taxpayer who makes a qualifying donation of a perpetual conservation easement in gross.¹ The term “taxpayer” is specifically defined for

¹ Section 39-22-522(2), C.R.S.

this credit to limit the allowance of the credit to certain types of persons.² Nonprofit corporations are among the qualified taxpayers allowed to claim the conservation easement tax credit.³

Whether formed under article 42 or articles 121 to 137 of title 7, C.R.S., a mutual ditch company is a nonprofit corporation. Corporations formed under articles 121 to 137 are, by definition, nonprofit corporations.⁴ Article 42 of title 7, C.R.S. allows the direct formation of a ditch company as a corporation.⁵ Mutual ditch companies are formed expressly for the purpose of furnishing water to shareholders upon the payment of an annual assessment.⁶ They exist primarily for the benefit of their shareholders, not for profit or hire.⁷ In addition, articles 42 and 121 both specify that a nonprofit corporation formed under article 121 may become a mutual ditch company by complying with article 42.⁸ Therefore, mutual ditch companies are “nonprofit corporations” within the meaning of 1 CCR 201-2, Rule 39-22-522(1)(e).

Although nonprofit corporations generally qualify for the conservation easement tax credit, “a nonprofit corporation that has a state governmental entity as a shareholder cannot claim such a credit.”⁹ A “state governmental entity” includes the state and its political subdivisions. The phrase “state governmental entity” in the rule cannot be limited to the state itself because “municipalities and counties exist for the convenient administration of government and are merely instruments of the state, created to carry out the will of the state.”¹⁰ Such local governments are not “taxpayers” eligible to claim a conservation easement tax credit.¹¹ Had the General Assembly intended to include any governmental entities among the “taxpayers” that qualify for the credit, it would have listed them in the definition of that term.

A ditch company whose shareholders include state governmental entities is ineligible to claim any portion of a conservation easement tax credit. In some cases, a pro rata credit is allowed for a partnership, S corporation, or other similar pass-through entity, because each partner, member, and subchapter S shareholder of such pass-through entity is also a “taxpayer” eligible for the credit and subject to its subsequent requirements and limitations.¹² Each partner, member, or shareholder is automatically allocated their share of the credit.¹³ As a result, one member may be eligible for their share while another is not.¹⁴ However, there are no corresponding provisions allowing or disallowing a partial credit to the shareholders of other types of entities. Therefore, nonprofit corporations, including mutual ditch companies, with state governmental shareholders may not claim any portion of a conservation easement tax credit.

² Section 39-22-522(1), C.R.S. See also, 1 CCR 201-2, Rule 39-22-522(1).

³ 1 CCR 201-2, Rule 39-22-522(1)(e).

⁴ Section 7-121-401(26), C.R.S.

⁵ Section 7-42-101(1), C.R.S.

⁶ Section 7-42-104, C.R.S.; *Jacobucci v. District Court*, 541 P.2d 667, 671 (Colo. 1975).

⁷ *Jacobucci*, 541 P.2d at 671.

⁸ Sections 7-42-101(2) and 7-121-401(25.5), C.R.S.

⁹ 1 CCR 201-2, Rule 39-22-522(1)(e).

¹⁰ *Enger v. Walker Field, Colorado Public Airport Auth.*, 181 Colo. 253, 260, 508 P.2d 1245, 1248 (1973) (quotation marks omitted).

¹¹ Section 39-22-522(1), C.R.S. Cf. section 39-22-526(2), C.R.S. (allowing a “transferable expense amount” to “qualified entities” for certain environmental remediation expense separate from the income tax credit allowed to “taxpayers” for the same).

¹² Section 39-22-522(1), C.R.S.

¹³ Section 39-22-522(4)(b), C.R.S.; 1 CCR 201-2, Rule 39-22-522(1)(b).

¹⁴ *E.g.*, section 39-22-522(6), C.R.S.; 1 CCR 201-2, Rule 39-22-522(2)(a) and (b).

Miscellaneous

This letter represents the good faith opinion of Department personnel who are knowledgeable on state taxes issues. However, the Department does not make a specific determination on any of the issues raised and the Department is not bound by this general information letter.

Please provide feedback to help us measure and improve the success of this program. A short survey can be found at tax.colorado.gov/how-was-your-service. Follow the link for the Tax Policy Analysis office and choose the "I requested Guidance or a Letter Ruling (PLR or GIL)" option.

Sincerely,

Office of Tax Policy Analysis
Colorado Department of Revenue