



**COLORADO**  
Department of Revenue

Taxation Division

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GIL 22-006

October 17, 2022

XXXXXXXXXX  
XXXXXXXXXX  
XXXXXXXXXX  
XXXXXXXXXX

Re: Refund limitation for conservation easement credits from donations made by pass-through entities

Dear XXXXXXXXXXXX:

You submitted a request for a general information letter regarding conservation easement credits. 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, 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.

### Issue

This letter discusses the statutory limit for conservation easement tax credits in the event a refund is claimed for the credit and how that limit applies to a credit allowed for a donation made by a pass-through entity.

### Discussion

Colorado allows an income tax credit to each taxpayer who makes a qualifying donation of a perpetual conservation easement in gross during the tax year.<sup>1</sup> The taxpayer may transfer all or a portion of the credit<sup>2</sup> or apply the credit toward the tax they owe, but generally cannot claim a refund for any part of the credit. However, if state revenues exceed certain limitations, taxpayers may be allowed to claim a refund for the credit.<sup>3</sup>

Section 39-22-522(5)(b)(III), C.R.S., prescribes limits that apply if any refund is claimed for the credit. The first sentence of section 39-22-522(5)(b)(III), C.R.S., establishes the general limitation on usage of the credit if any refund is claimed:

“If any refund is claimed pursuant to subsection (5)(b)(I) of this section, then the aggregate amount of the refund and amount of the credit used as an offset against income taxes,

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<sup>1</sup> Section 39-22-522(2), C.R.S. The credit is allowed only if the Division of Conservation has issued a credit certificate to the taxpayer. Section 39-22-522(2.5), C.R.S.

<sup>2</sup> Section 39-22-522(7), C.R.S.

<sup>3</sup> Section 39-22-522(5)(b), C.R.S.

excluding amounts transferred to or used by a transferee, for that income tax year shall not exceed fifty thousand dollars for that income tax year.”

The statute states unambiguously that the \$50,000 limit applies to “the aggregate amount of the refund and amount of the credit used as an offset against income taxes.”<sup>4</sup> If any refund is claimed, the total combined amount of the refund and the credit applied toward tax cannot exceed \$50,000.

The second sentence in section 39-22-522(5)(b)(III), C.R.S., clarifies this application of this limitation to credits resulting from conservation easements donated by a pass-through entity:

“In the case of a partnership, S corporation, or other similar pass-through entity that donates a conservation easement as an entity, if any refund is claimed pursuant to subsection (5)(b)(I) of this section, the aggregate amount of the refund and the credit claimed by the partners, members, or shareholders of the entity shall not exceed the dollar limitation set forth in this subsection (5)(b)(III) for that income tax year.”

Read in context, it is clear that “the aggregate amount of the refund and the credit claimed” has the same meaning as “the aggregate amount of the refund and amount of the credit used as an offset against income taxes” as stated in the first sentence of section 39-22-522(5)(b)(III), C.R.S. This provision simply clarifies that the same general limitation established in the first sentence of section 39-22-522(5)(b)(III), C.R.S., applies collectively to all partners, members, or shareholders of the entity.

The last sentence in section 39-22-522(5)(b)(III), C.R.S., clarifies that the limit it establishes does not restrict the application of the credit to offset tax if no refund is claimed pursuant to section 39-22-522(5)(b)(I), C.R.S.:

“Nothing in this subsection (5)(b)(III) shall limit a taxpayer’s ability to claim a credit against taxes due in excess of fifty thousand dollars in accordance with subsection (4) of this section.”

The amount of credit applied toward tax is not independently limited by section 39-22-522(5)(b)(III), C.R.S. Rather, section 39-22-522(5)(b)(III), C.R.S., limits the aggregate amount of the refund and amount of the credit applied toward tax only if any refund is claimed pursuant to section 39-22-522(5)(b)(I), C.R.S.

### **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.

Thank you for your request.

Sincerely,

Office of Tax Policy  
Colorado Department of Revenue

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<sup>4</sup> Excluding amounts transferred to or used by a transferee.