

The information in this publication applies to conservation easements donated on or after January 1, 2021. For conservation easements donated prior to January 1, 2021, please see FYI Income 39: Gross Conservation Easement Credit.

This publication is designed to provide general guidance regarding conservation easement credits and to supplement guidance provided in the [Colorado Individual Income Tax Guide](#) and the [Colorado Corporate Income Tax Guide](#). Nothing in this publication modifies or is intended to modify the requirements of Colorado's statutes and regulations. Taxpayers are encouraged to consult their tax advisors for guidance regarding specific situations.

Eligible conservation easement donors

Subject to approval by the Division of Conservation, a credit is allowed to any "taxpayer," as defined in section 39-22-522(1)(b), C.R.S., who donates a conservation easement on property in Colorado. The definition of "taxpayer" for the purpose of the credit includes:

- any person or entity filing a state income tax return;
- domestic or foreign corporations subject to Colorado income tax;
- partnerships, S corporations, or other similar pass-through entities;
- estates and trusts;
- nonprofit entities; and
- certain entities authorized to conduct water activities, as described below.

Entities authorized to conduct water activities

Any entity created pursuant to article 41, 45, 46, 47, 48, or 50 of title 37, or article 42 of title 7 that has authority to conduct water activities, as defined by section 37-45.1-102(3), C.R.S., and that conveys a conservation easement in gross pursuant to section 38-

30.5-104, C.R.S., is defined as a "taxpayer" by section 39-22-522(1)(b), C.R.S. A ditch or reservoir company formed pursuant to article 42 of title 7, or otherwise, is entitled to act on its own behalf in granting a conservation easement and earning and transferring tax credits under this section, whether or not any of its shareholders or members are governmental entities.

A governmental entity described in the preceding paragraph may qualify for a transferrable credit for a conservation easement it donates on property in Colorado, even if it is exempt from Colorado income tax. The governmental entity must apply to the Division of Conservation for a tax credit certificate in the same manner as any other conservation easement donor.

Conservation easement donations

Several conditions must be met for a conservation easement donation to qualify for a conservation easement credit.

- 1) The donated conservation easement must be a perpetual conservation easement in gross.
- 2) The donated conservation easement must be created pursuant to article 30.5 of title 38, C.R.S.
- 3) The donated conservation easement must be upon real property located in Colorado.
- 4) The donated conservation easement must be upon real property the taxpayer owns.
- 5) The conservation easement must be donated to a governmental entity or a charitable organization that is exempt under section 501(c)(3) of the Internal Revenue Code.
- 6) The donation must meet the requirements of section 170 of the Internal Revenue Code and any federal regulations promulgated in accordance with such section.

A donor may not claim multiple credits for separate donations they make in the same tax year, even if the donations are made by different pass-through entities of

which the taxpayer is a member, or if one or more of the credits are transferred to one or more transferees. Additionally, any credit a donor cannot claim because they made multiple donations in one tax year may not be transferred or claimed in any subsequent tax year.

Credit calculation and limitations

Subject to certain limitations, the credit is a percentage of the fair market value (FMV) of the donation, excluding any amount received by the donor as part of a bargain sale for the easement. The credit percentage depends on the year in which the qualifying donation is made.

- For qualifying donations made on or after January 1, 2021, but before January 1, 2027, the credit is generally 90% of the FMV of the donation.
- For qualifying donations made on or after January 1, 2027, but before January 1, 2032, the credit is generally 80% of the FMV of the donation.

If the taxpayer holds the property encumbered by the easement for less than one year prior to donating the easement, the value of the easement for the purpose of calculating the credit is limited to the taxpayer's basis in the donated easement as determined pursuant to sections 170(e) and 170(h) of the Internal Revenue Code.

The credit allowed for a donation cannot exceed \$5 million. If the credit exceeds \$1.5 million, it is allowed in increments of no more than \$1.5 million per tax year, with additional increments allowed for subsequent tax years.

Annual credit cap

Credits are subject to an annual cap administered by the Division of Conservation. Please visit [Conservation.Colorado.gov](https://www.conservation.colorado.gov) to see the Tax Credit Cap Tracker detailing the annual cap, credit amounts reserved, and credit amounts issued for each year.

Donor requirements

Conservation easement donors must comply with several requirements, described below, with respect to the credit allowed for their easement donations.

Tax credit certificates for donors

Conservation easement donors seeking to claim a credit for their donation must apply to the Division of Conservation for a tax credit certificate. No claim for a credit is allowed unless a certificate has been issued by the Division. Please visit the Division's website at [Conservation.Colorado.gov](https://www.Conservation.Colorado.gov) for additional information.

Tax return filing requirements for donors

A donor must submit the following documents with their Colorado income tax return for the year of the credit certificate in order to properly claim the credit:

- The tax credit certificate issued by the Division of Conservation for the donation;
- [Gross Conservation Easement Donor Schedule \(DR 1305\)](#); and
- [IRS Form 8283, Noncash Charitable Contributions](#).

A donor must also file one or more of the following forms to report any credit transfer(s), use, carryforward(s), or allocation to pass-through entity members :

- [Gross Conservation Easement Credit Transfer Schedule \(DR 1305E\)](#);
- [Gross Conservation Easement Credit Pass-Through Schedule \(DR 1305F\)](#); or
- [Gross Conservation Easement Credit Use Schedule \(DR 1305G\)](#).

Addback for charitable contribution deduction

Conservation easement donors are generally required to add back on their Colorado income tax returns any charitable contribution deductions claimed on their federal returns for the donation of the easement. The donor is required to add back the amount of the federal deduction irrespective of whether any or all of the credit is waitlisted to a subsequent tax year, transferred, carried forward to a subsequent tax year by the donor or any transferee(s); or allowed as increments in subsequent tax years.

The addback is generally required for the full amount of the charitable contribution deduction the donor claims and deducts on their federal income tax return. Please see [1 CCR 201-2](#), Rules 39-22-104(3)(g) and 39-22-304(2)(f) for information about limitations on the required addback amount. [IRS Publication 526](#) provides information regarding the federal charitable contribution deduction.

Credit use by donors

In general, a conservation easement donor who has been issued a tax credit certificate by the Division of Conservation may:

- apply the credit toward the income tax they owe;
- claim a refund, if certain conditions are met, as described later in this publication; or
- transfer all or a portion of the credit, as described later in this publication.

The donor may carry forward to the next tax year any part of the credit that the donor has not applied toward tax, claimed as a refund, or transferred to another taxpayer. Unused credits may be carried forward for up to 20 tax years, but must be first applied against the income tax due for the earliest of the tax years possible.

In the event of the death of the donor, any unused credit held by the donor may be applied to taxes owed by the donor's estate or may be transferred by the estate to any other taxpayer, as described later in this publication.

Refund claims by donors

For certain tax years, a donor (not including any governmental entity discussed below) may be allowed to claim a refund for some portion of the credit. Please visit [Tax.Colorado.gov/gross-conservation-easement](https://tax.colorado.gov/gross-conservation-easement) for a list of the tax years for which a donor may claim a refund of the credit.

If any refund of the credit is claimed for a given tax year, the combined amount of credit applied against tax and claimed as a refund for that tax year by the donor(s) of that credit may not exceed the applicable limit. In the case of a partnership, S corporation, or other similar pass-through entity that donates a conservation easement, if any partners, shareholders, or members claim a refund for the credit, the aggregate amount of the refund and the credit claimed by all of the partners, members, or shareholders may not exceed the limit.

- For tax years commencing before January 1, 2027, the limit is \$50,000.
- For tax years commencing on or after January 1, 2027, the limit is \$200,000.

Credits transferred to or used by transferees are not considered in the application of these limits.

Governmental entities

A governmental entity that has been issued a tax credit certificate by the Division of Conservation may not claim a refund for the credit or apply it toward tax. The governmental entity may only transfer the credit, which may then be claimed by the transferee(s) as a credit against their tax.

Credit transfers

A conservation easement donor who has been issued a tax credit certificate by the Division of Conservation may transfer all or a portion of the credit to a transferee for such transferee to apply as a credit against their Colorado income tax. The donor may only transfer portions of the credit that the donor has not already applied against their income tax, received as a refund, or transferred to a transferee. The transfer must occur prior to the due date of the income tax return, including extensions, on which the transferee claims the transferred credit.

Tax credit certificates for transferred credits

Any transferee who claims a transferred credit must first obtain a conservation easement transferee tax credit certificate from the Division of Conservation. The transferor and transferee must jointly file a copy of the written credit transfer agreement with the Division of Conservation within 30 days of the date of the transfer. Please visit Conservation.Colorado.gov/tax-credit-certificates and Tax.Colorado.gov/sites/tax/files/documents/HB21-1233_Joint_Statement_12-2021.pdf for additional information about the certification of credit transfers.

Claiming a transferred credit

A transferee must file a [Gross Conservation Easement Credit Use Schedule \(DR 1305G\)](#) and a copy of the transferee tax credit certificate issued by the Division of Conservation with their income tax return to claim the credit. Provided that the applicable requirements are met, the transferee may apply the credit toward the income tax the transferee would otherwise owe for the tax year.

A transferee may neither transfer nor claim a refund of any part of the transferred credit. If the credit exceeds the amount of tax the transferee otherwise owes for the tax year, the excess credit may be carried forward to the following tax year. Excess credits may be carried forward for up to 20 tax years, but must be first applied against the income tax due for the earliest of the tax years possible.

In the event of the death of a transferee, any unused credit held by the transferee may be applied to taxes owed by the transferee's estate but may not be transferred to another transferee.

Transferees subject to insurance premiums tax

Please see section 39-22-522(13), C.R.S., and visit DOI.Colorado.gov/insurance-industry/insurance-companies/premium-tax-information for information about the use of credits transferred to transferees that are subject to insurance premiums tax.

Donations made by pass-through entities

Credit for a donation made by a pass-through entity is allocated and allowed to the pass-through entity's members, rather than to the pass-through entity itself. If certain conditions are met, the pass-through entity may transfer the credit directly on behalf of its members. If the full amount of the credit allocated to a member has not been transferred, refunded, or applied toward the member's tax liability, the member may carry forward the remaining credit to the following tax year.

Credit transfers by pass-through entities

A pass-through entity that makes a donation resulting in a credit may directly transfer the credit to other taxpayers on its members' behalf but only if all of the following conditions are met:

- Each partner, shareholder, or member consents to the transfer.
- Each partner, shareholder, or member could, under the restrictions of the law, have claimed and transferred their pro rata share of the credit directly.
- The partners, shareholders, or members have not yet transferred any of the credit to another taxpayer, used any of the credit either to offset their tax or to claim a refund, or carried forward any of the credit on their own returns.

If a partner, shareholder, or member has taken any of these actions, the pass-through entity cannot directly transfer any part of the credit on its members' behalf.

Additional resources

The following is a list of statutes, regulations, forms, and guidance pertaining to the conservation easement credit. This list is not, and is not intended to be, an exhaustive list of authorities that govern the tax treatment of every situation. Individuals and businesses with specific questions should consult their tax advisors.

Statutes and regulations

- § 12-15-105, C.R.S. Conservation easement tax credit certificates.
- § 12-15-106, C.R.S. Conservation easement tax credit certificate application process.
- § 39-22-104, C.R.S. Income tax imposed on individuals, estates, and trusts.
- § 39-22-304, C.R.S. Net income of corporation.
- § 39-22-522, C.R.S. Credit against tax - conservation easements.
- Rule 39-22-104(3)(g). Gross conservation easement addition.
- Rule 39-22-304(2)(f). Gross conservation easement addition.

Forms and guidance

- [Conservation.Colorado.gov](https://www.Conservation.Colorado.gov)
- [Tax.Colorado.gov/gross-conservation-easement](https://tax.Colorado.gov/gross-conservation-easement)
- [Tax.Colorado.gov/sites/tax/files/documents/HB21-1233_Joint_Statement_12-2021.pdf](https://tax.Colorado.gov/sites/tax/files/documents/HB21-1233_Joint_Statement_12-2021.pdf)
- [Colorado Individual Income Tax Guide](#)
- [Colorado Corporate Income Tax Guide](#)
- FYI Income 39: Gross Conservation Easement Credit
- [Gross Conservation Easement Donor Schedule \(DR 1305\)](#)
- [Gross Conservation Easement Credit Transfer Schedule \(DR 1305E\)](#)
- [Gross Conservation Easement Credit Pass-Through Schedule \(DR 1305F\)](#)
- [Gross Conservation Easement Credit Use Schedule \(DR 1305G\)](#)
- [IRS Form 8283, Noncash Charitable Contributions](#)