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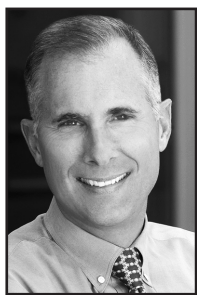
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Legislature comes to rescue of conservation easement taxpayers

By some estimations, there are more than 600 problematic conservation easement donations in Colorado. By statute, landowners can conserve their lands by donating a conservation easement to a governmental entity or a qualified charity. In exchange, landowners are entitled to a federal income tax deduction and a transferable state income tax credit – meaning the credit can be sold to other taxpayers. The amount of deduction and credit depends on the fair market value of the donated easement. The Colorado Department of Revenue has disputed some of the appraisals that value the easements, thereby denying landowners and credit-purchasers any state income tax credit.

These disputes have languished due to scarce departmental resources and/or skepticism by landowners that they will receive impartial treatment. Prior to enactment of new procedural rules in May, taxpayers had to first exhaust their administrative remedies before their case could be heard in district court. The administrative remedy here is participating in a hearing before the department's executive director, and only after this hearing can a taxpayer then appeal his case to court. To have his day in court though, the taxpayer had to post a bond equal to twice the amount of disputed tax, penalties and interest, with penalties and interest continuing to accrue during the judicial process.

Recognizing the importance Colorado's conservation easement program plays in preserving the state's natural



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resources, and wanting to provide for equitable and expedited resolution of these problematic cases, the Colorado Legislature passed and Gov. Hickenlooper signed into law House Bill 11-1300.

This statute, known as the Looper Bill, provides new procedural rules for addressing any dispute regarding a tax credit from a conservation easement donation made on or after Jan. 1, 2000, for which a final determination has yet been issued.

A landowner (who for purposes of this statute is referred to as a tax matters representative, or TMR) now has three options for resolving his case.

First, if the TMR received a notice of deficiency, disallowance or rejection of refund claim that was mailed by the department on or before May 1, 2011, but for which a final determination has not been issued prior to May 19, 2011, the bill's effective date, he can now waive the administrative hearing and appeal directly to district court. This option requires the TMR to mail a notice of appeal via certified mail on or before Oct. 1, 2011, to both the district court for the county in which his land is located and to the department. As an inducement to bypass the administrative hearing process, the Looper Bill waives

both the bonding requirement and the accrual of interest and penalties while the case is on appeal to the district court.

Second, the TMR can request an expedited hearing before the executive director. This option also requires mailing a written request for a hearing and final determination to the department via certified mail on or before Oct. 1, 2011. Under this option, the department must hold a hearing and issue a final determination on or before July 1, 2014.

Third, if the TMR does nothing, the department must hold a hearing and issue a final determination on or before July 1, 2016. Importantly, if the TMR chooses this approach, any purchaser of credits from the TMR may petition the department on or before Nov. 1, 2011, to change the TMR. If this petition is granted, the new TMR has 30 days to take advantage of either Option 1 or Option 2.

What happens if a TMR receives a final determination under Option 2 or Option 3 adverse to his claim? In this instance, the avenue of relief is for the TMR to file a notice of appeal with the district court for the county in which the TMR resides within 30 days after the determination is mailed. Unfortunately, the bonding requirement applies and interest and penalties continue to accrue. And where the TMR fails to file a timely appeal, a credit-purchaser may within 10 days after the final date for filing an appeal petition the department to change the TMR. If that petition is granted, the new TMR has another 30 days from the date of the department's order to

file a notice of appeal with the district court.

If the TMR decides to proceed with Option 2 or Option 3, there is an opportunity for the TMR and any credit-purchaser to mitigate his damages. If payment in an amount that satisfies an agreed upon tax deficiency is received by the department on or before June 30, 2012, all additional amounts of penalties and interest owing is waived.

What incentive is there for the department to comply with the deadlines outlined in Options 2 and 3? If the department fails to issue a timely final determination, its authority to dispute the credit is waived, the credit is allowed in full, and no interest and penalties can be imposed. So, yes, incentive exists.

Finally, while the above processes are ongoing, the Looper Bill prohibits the department from collecting against the TMR or any credit-purchasers. However, once a final determination is issued or at the conclusion of the judicial process, including appeals to Colorado's appellate courts, the department is then free to pursue collection of any amount of disputed tax, penalties and interest.

Only time will tell if the Looper Bill will prove successful. As an expression of state policy, the Legislature intends that any appeal under Option 1 be expedited by the district courts to the extent practicable and be administered in a manner deemed most efficient and fair, and that the department is strongly encouraged to waive interest and penalties where TMRs and credit-purchasers have acted in good faith.▲