

Water Rights Donation Tax Credit

This Act establishes a credit against the state income tax for people or companies that donate the right to withdraw water from streams to the state water conservation board for the purpose of reducing the amount of water that is withdrawn from the streams. The Act specifies that the state water conservation board will approve the credits by issuing certificates to water rights owners who permanently transfer water rights to the water conservation board. The bill establishes the credit at one half of the value of the donated water right, as determined by an appraisal, with a maximum value of \$250,000. It limits the total annual dollar amount of credits to \$2.0 million.

Submitted as:

Colorado

[HB 09-1067](#)

Status: Enacted into law in 2009.

Suggested State Legislation

(Title, enacting clause, etc.)

1 Section 1. [*Short Title.*] This Act shall be cited as “The Water Rights Donation Tax
2 Credit Act.”

3
4 Section 2. [*Definitions.*]

5 (1) As used in this Act:

6 (a) “board” means the [water conservation board] created in [insert citation].

7 (b) “credit certificate” means a statement issued by the [board] certifying that a
8 given water right donation qualifies for the credit authorized in this section and specifying the
9 amount of the credit allowed.

10 (c) “department” means the [department of revenue].

11 (d) “owner of a water right” means a taxpayer who owns a water right.

12 (e) “person” means any individual, firm, corporation, partnership, limited liability
13 company, joint venture, estate, trust, or group or combination acting as a unit that donates during
14 the taxable year all or part of a water right to the [board] with the intent that such right be
15 converted to an instream flow right pursuant to [insert citation].

16 (f) “taxpayer” has the same meaning as set forth in [insert citation].

17 (g) “water right” means a right to use in accordance with its priority a certain
18 portion of the waters of the state by reason of the appropriation of the same.

19 (h) “waters of the state” means all surface and underground water in or tributary
20 to all natural streams within this state, except waters referred to in [insert citation].

21
22 Section 3. [*Instream Flow Incentive Tax Credit.*]

23 (1) (a) Except as provided in subsection (5) of this section, for income tax years
24 commencing on or after [January 1, 2009, but prior to January 1, 2015], there may, at the
25 discretion of the [board], be allowed to any person an [Instream Flow Incentive Tax Credit] with
26 respect to the income taxes imposed by [insert citation] in the amount determined by the [board]
27 pursuant to paragraph (b) of this section (3).

28 (b) The [board] shall have the exclusive authority to approve any [Instream Flow

29 Incentive Tax Credits] allowed pursuant to Paragraph (a) of this section (3). The credit shall only
30 be available for permanent transfers of water rights acquired pursuant to the [board's] public
31 review process specified in [insert citation], and upon a finding by the [board], in accordance
32 with [insert citation], that the proposed donation will preserve the environment to a reasonable
33 degree. The credit shall not be available for a water right that is decreed for irrigation on land for
34 which a Conservation Easement Tax Credit is claimed pursuant to [insert citation] unless such
35 water right is specifically excluded from the terms of such conservation easement. The [board]
36 shall approve a credit by issuing to the person a credit certificate on or before [September 1 of
37 the tax year in which the donation is accepted].

38 (c) The amount of a credit authorized in this section (3) shall be determined by the
39 [board], subject to the following guidelines:

40 (I) the credit shall be in an amount equal to or less than [one-half of the
41 value of the water right proposed to be donated to the board];

42 (II) the value of the water right shall be determined by the [board], in
43 consultation with the proposed donor.

44 (III) In determining the value of the water right, the [board] may consider,
45 in addition to other factors the [board] deems appropriate, the following:

46 (A) any appraisal or other documentation submitted by the donor;

47 (B) the seniority, historic consumptive use, and decreed use of the
48 water right;

49 (C) the location of the existing point of diversion of the water
50 right; and

51 (D) the extent to which aquatic and riparian habitat would be
52 preserved by conversion of the water right to an instream flow.

53 (d) In no event shall the [board] issue a credit certificate if the aggregate sum of
54 credits approved by the [board] pursuant to this section and not yet eligible to be taken as
55 described in subsection (5) of this section exceeds [two million dollars].

56 (e) No later than [January 30, 2010], and no later than [January 30 each year]
57 thereafter, the [board] shall report to the [finance committees of the senate and house, the
58 agriculture and natural resources committee of the senate, and the agriculture, livestock, and
59 natural resources committee of the house of representatives, or any successor committees], about
60 instream flow rights acquired and tax credit certificates issued pursuant to this section.

61 (2) If a person receiving a credit authorized in this section is a partnership, limited
62 liability company, S corporation, or similar pass-through entity, the person may allocate the
63 credit among its partners, shareholders, members, or other constituent taxpayers in any manner
64 agreed to by such persons. The person shall certify to the [board] and the [department] the
65 amount of credit allocated to each constituent taxpayer, and the [board] shall issue credit
66 certificates in the appropriate amounts to each partner, shareholder, member, or other constituent
67 taxpayer. Each constituent taxpayer shall be allowed to claim such amount subject to any
68 restrictions set forth in this section.

69 (3) If a credit authorized in this section approved by the [board] exceeds the income tax
70 due on the income of the taxpayer for the taxable year, the excess credit may not be carried
71 forward and shall be refunded to the taxpayer.

72 (4) No later than [November 30, 2009], and no later than [November 30 of each year]
73 thereafter, the [board] shall provide the [department] an electronic report of the taxpayers
74 receiving a credit for that income tax year that includes the following information:

75 (a) the taxpayer's name;

76 (b) the taxpayer's [state account number] or Social Security number;

77 (c) the amount of the credit allocated; and

78 (d) the associated pass-through entity name and state account number if the credit
79 is allocated from a pass-through entity pursuant to subsection (2) of this section.

80 (5) If the revenue estimate prepared by the [staff of the legislative council] in [June 2009
81 and each June thereafter] indicates that the amount of the total state [General Fund] revenues for
82 that particular fiscal year will not be sufficient to grow the total state [General Fund]
83 appropriations by [six percent] over such appropriations for the previous fiscal year, then the
84 credit authorized in this Act shall not be allowed for any income tax year commencing during the
85 calendar year in which the forecast is prepared. The credit certificate shall remain valid for the
86 next tax year in which the revenue estimate prepared by the [staff of the legislative council]
87 indicates that the amount of the total general fund revenues will be sufficient to grow the total
88 state [General Fund] appropriations by [six percent] over such appropriations for the previous
89 fiscal year.

90 (6) The [executive director of the department] may promulgate rules as may be necessary
91 to administer and enforce any provision of this section. The rules shall be promulgated in
92 accordance with [insert citation], and shall be included in income tax forms.

93 (7) Any taxpayer who offsets a tax deficiency with a credit that is disallowed pursuant to
94 this section shall be liable for such tax deficiency, interest, and penalties as may be specified in
95 [insert citation] or otherwise provided by law.

96
97 Section 4. [*Severability.*] [Insert severability clause.]

98
99 Section 5. [*Repealer.*] [Insert repealer clause.]

100
101 Section 6. [*Effective Date.*] [Insert effective date.]