



Brownfields Law Alert – Comments Due in One Week on Income Tax Credit for Environmental Remediation of Contaminated Land Draft Rule

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LAST CALL—Colorado Department of Revenue Requests Comment on Draft Rule on the Income Tax Credit for Environmental Remediation of Contaminated Land by Wednesday, March 21, 2018

The Department of Revenue Division of Taxation (the "Department") is soliciting public comments on a new rule for the income tax credit on environmental remediation of contaminated land found in Colorado Revised Statutes §39-22-526. This rule seeks to clarify requirements relating to the filing and transfer of the credit. The Department invites the public to review and comment on the proposed rule through **Wednesday, March 21, 2018**.

BACKGROUND

During the 2014 legislative session, the General Assembly passed Senate Bill 14-073, which re-established an income tax credit of up to \$525,000 for approved environmental remediation of contaminated land. The credit is available to taxpayers and may be transferred to another taxpayer. So-called "qualified entities" such as counties, home rule counties, cities, towns, home rule cities, and private nonprofit entities also may transfer a similar "transferrable expense amount" to a taxpayer for use as a tax credit regardless of whether the qualifying entity receives value.

Among other things, the proposed rule:

- Clarifies that tax credits generated in the final year prior to expiration of the credit may not be carried forward past that year (past 2022; the tax credit expires on January 1, 2023).
- Prohibits the transfer of tax credits to pass-through entities and restricts the transfer to C corporations and individuals.
- Prohibits the subsequent transfers of a credit by a transferee.
- Establishes the circumstances in which the tax matters representative may be replaced for unavailability or unwillingness to act.
- Restricts the ability of a transferee to challenge or appeal a determination of the Department with respect to a credit or transferrable expense amount.
- Authorizes the Department to allocate any adjustments to claimed credits among multiple transferees proportionally or "in any manner appropriate to the circumstances."

HOW TO PARTICIPATE

Review Senate Bill 14-073 and the draft rule. If you have an issue you would like the Department to consider addressing in the draft rule or comments on content in the current draft of the rule, you may submit comments to dor_taxrules@state.co.us

Please contact Polly Jessen or Bill Siberstein if you have any questions about the proposed rule or if we may assist you in commenting.

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