

Income 42: Contaminated Land Redevelopment Credit

The contaminated land redevelopment credit is available to property owners who receive a certificate from the Colorado Department of Public Health and Environment (“CDPHE”) verifying the credit and the approved environmental remediation of their property within Colorado. If the property owner is a taxpayer - such as an individual, trust, or C corporation - the taxpayer can either apply the credit toward its tax liability or transfer the credit to another taxpayer. If the property owner is not a taxpayer, but is instead a qualified entity, the qualified entity can transfer the amount allowable as a credit to a taxpayer for application against the taxpayer’s income tax liability. A “qualified entity” is a county, home rule county, city, town, home rule city and county, or a private nonprofit entity that is exempt from Colorado income tax.

The term “brownfield” is commonly used to refer to the type of contaminated land redevelopment that qualifies for the credit.

COMPUTING THE CREDIT

The credit awarded by CDPHE cannot exceed:

- 40% of the first \$750,000 paid by the property owner for the approved remediation plus
- 30% of the next \$750,000 paid by the property owner for the approved remediation.

A tax credit is not allowed for expenditures over the first \$1,500,000 for the approved remediation.

The aggregate amount of credit CDPHE can award for a calendar year is limited to \$3,000,000. If CDPHE receives credit applications in excess of the \$3,000,000 limit, it can place up to \$1,000,000 of the excess on a wait list for the next year.

TRANSFERRING THE CREDIT

A property owner can transfer all or part of the credit that the property owner has not used to a transferee for application against the transferee’s tax liability. Any credit transfer must occur prior to the due date of the income tax return, not including extensions, on which the transferee claims the credit. If the property owner is a pass-through entity (such as a partnership or S corporation), the pass-through entity can transfer the credit collectively, on behalf of its members, if all of the members consent to the transfer. A transferee cannot transfer a credit to another taxpayer.

If the property owner or a transferee who acquired a credit from a qualified entity dies prior to using or transferring the entirety of the credit, the decedent’s estate can either apply the remaining credit toward taxes owed by the estate or transfer the remaining credit to another taxpayer.

Disallowance of a transferred credit

If a credit that has been transferred is disallowed, the transferee will be liable for the tax otherwise offset by the disallowed credit, plus any applicable penalty and interest. The property owner is the tax matter representative in all matters with respect to the credit and is responsible for representing and binding the transferees with respect to all issues affecting the credit, including credits that have been disallowed. For additional information regarding tax matters representatives, see §§ 39-22-526(1)(d)(VIII) and (2)(c)(VII), C.R.S. and Regulation 39-22-526(5), 1 CCR 201-2.

CLAIMING THE CREDIT

Every taxpayer claiming a credit and every property owner transferring a credit must file an income tax return along with the required documentation. Any taxpayer either claiming a credit against their tax liability or carrying forward a credit to a subsequent tax year must complete and attach to their Colorado income tax return:

- Remediation of Contaminated Land Credit Use Schedule (DR 0349) and
- A copy of the tax credit certification letter issued by CDPHE.

Any property owner transferring a credit must complete and attach to their Colorado income tax return:

- Remediation of Contaminated Land Credit Transfer Schedule (DR 0348),
- Remediation of Contaminated Land Credit Use Schedule (DR 0349), and
- A copy of the tax credit certification letter issued by CDPHE.

Any county, home rule county, city, town, home rule city and county, or a private nonprofit entity that transfers a credit must submit documents as attachments to a Colorado C Corporation Income Tax Return (DR 0112). For electronically filed returns, a scanned copy of CDPHE tax credit certification letter can be submitted either via e-file or by using the E-Filer Attachment function online at Colorado.gov/RevenueOnline.

Carryforward of excess credits

If the credit allowed to a taxpayer, either as a property owner or transferee, exceeds the taxpayer's net tax liability, the excess may be carried forward for up to five years after the tax year in which the property owner initially claimed the credit. Any credit carried forward must be applied toward the earliest tax year possible. Any credit remaining after the five-year carryforward period is extinguished and may no longer be used.

ADDITIONAL RESOURCES

- *Colorado statutes and regulations*
 - § 39-22-526, C.R.S. Credit for environmental remediation of contaminated land
 - Reg. 39-22-526, 1 CCR 201-2. Credit for environmental remediation of contaminated land
 - § 25-16-303, et seq., C.R.S. Voluntary Clean-Up and Redevelopment Act
 - Senate Bill 14-073
- *Colorado forms, publications, and guidance*
 - Remediation of Contaminated Land Credit Use Schedule (DR 0349)
 - Remediation of Contaminated Land Credit Transfer Schedule (DR 0348)
 - *Individual* Credit Schedule (DR 0104CR)
 - Credit Schedule for Corporations (DR 0112CR)
 - Colorado Pass-Through Entity Credit Schedule (DR 0106CR)
 - Fiduciary Credit Schedule (DR 0105 - Schedule G)
- *Other resources*
 - Colorado Department of Public Health and Environment - colorado.gov/pacific/cdphe/brownfields

FYIs represent a good faith effort to provide general information concerning a variety of Colorado tax topics in simple and straightforward language. By their nature, however, FYIs cannot and do not address all taxpayer situations nor do they provide a comprehensive overview of Colorado's tax laws. For this reason, FYIs are not binding on the Colorado Department of Revenue, nor do they replace, alter, or supersede Colorado law and regulations.

A taxpayer seeking additional guidance regarding the tax consequences of a particular transaction or factual scenario can request a Private Letter Ruling (PLR) or General Information Letter (GIL). Requests for PLRs and GILs must comply with certain requirements, which are currently set forth at 1 Code of Colorado Regulations 201-1, Regulation 24-35-103.5. PLRs are binding upon the Department only with respect to the specific taxpayer that requested the PLR. GILs are for informational purposes only and are not binding on the Department.