

39-22-533. Instream flow incentive tax credit for water rights holders - rules - definitions - repeal.

(1) As used in this section, unless the context otherwise requires:

(a) "Board" means the Colorado water conservation board created in section [37-60-102](#), C.R.S.

(b) "Credit certificate" means a statement issued by the board certifying that a given water right donation qualifies for the credit authorized in this section and specifying the amount of the credit allowed.

(c) "Department" means the department of revenue.

(d) "Owner of a water right" means a taxpayer who owns a water right.

(e) "Person" means any individual, firm, corporation, partnership, limited liability company, joint venture, estate, trust, or group or combination acting as a unit that donates during the taxable year all or part of a water right to the board with the intent that such right be converted to an instream flow right pursuant to section [37-92-102](#) (3), C.R.S.

(f) "Taxpayer" has the same meaning as set forth in section [39-21-101](#) (4).

(g) "Water right" means a right to use in accordance with its priority a certain portion of the waters of the state by reason of the appropriation of the same.

(h) "Waters of the state" means all surface and underground water in or tributary to all natural streams within the state of Colorado, except waters referred to in section [37-90-103](#) (6), C.R.S.

(2) (a) Except as provided in subsection (6) of this section, for income tax years commencing on or after January 1, 2009, but prior to January 1, 2015, there may, at the discretion of the board, be allowed to any person an instream flow incentive tax credit with respect to the income taxes imposed by this article in the amount determined by the board pursuant to paragraph (b) of this subsection (2).

(b) The board shall have the exclusive authority to approve any instream flow incentive tax credits allowed pursuant to paragraph (a) of this subsection (2). The credit shall only be available for permanent transfers of water rights acquired pursuant to the board's public review process specified in 2 CCR 408-2, paragraphs 6m. and 11., and upon a finding by the board, in accordance with section [37-92-102](#) (3), C.R.S., that the proposed donation will preserve the environment to a reasonable degree. The credit shall not be available for a water right that is decreed for irrigation on land for which a conservation easement tax credit is claimed pursuant to section [39-22-522](#) unless such water right is specifically excluded from the terms of such conservation easement. The board shall approve a credit by issuing to the person a credit certificate on or before September 1 of the tax year in which the donation is accepted.

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

(I) The credit shall be in an amount equal to or less than one-half of the value of the water right

proposed to be donated to the board;

(II) The value of the water right shall be determined by the board, in consultation with the proposed donor. In determining the value of the water right, the board may consider, in addition to other factors the board deems appropriate, the following:

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

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

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

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

(d) In no event shall the board issue a credit certificate if the aggregate sum of credits approved by the board pursuant to this section and not yet eligible to be taken as described in subsection (6) of this section exceeds two million dollars.

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

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

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

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

(a) The taxpayer's name;

(b) The taxpayer's Colorado account number or social security number;

(c) The amount of the credit allocated; and

(d) The associated pass-through entity name and Colorado account number if the credit is allocated from a pass-through entity pursuant to subsection (3) of this section.

(6) If the revenue estimate prepared by the staff of the legislative council in June 2009 and each June thereafter indicates that the amount of the total general fund revenues for that particular fiscal year will not be sufficient to grow the total state general fund appropriations by six percent over such appropriations for the previous fiscal year, then the credit authorized in this section shall not be allowed for any income tax year commencing during the calendar year in which the forecast is prepared. The credit certificate shall remain valid for the next tax year in which the revenue estimate prepared by the staff of the legislative council indicates that the amount of the total general fund revenues will be sufficient to grow the total state general fund appropriations by six percent over such appropriations for the previous fiscal year.

(7) The executive director of the department may promulgate rules as may be necessary to administer and enforce any provision of this section. The rules shall be promulgated in accordance with article [4](#) of title [24](#), C.R.S., and shall be included in income tax forms.

(8) Any taxpayer who offsets a tax deficiency with a credit that is disallowed pursuant to this section shall be liable for such tax deficiency, interest, and penalties as may be specified in this article or otherwise provided by law.

(9) This section is repealed, effective December 31, 2024.

Source: L. 2009: Entire section added and (6) amended, ([HB 09-1067](#)), ch. 426, pp. 2377, 2380, §§ 1, 2, effective August 5.