



YOUR  
LAND  
YOUR LEGACY  
YOUR  
FUTURE



**Conservation  
Tax Credit Transfer**  
YOUR LAND. YOUR LEGACY. YOUR FUTURE.

# FOUNDING AND HISTORY OF CONSERVATION TAX CREDIT TRANSFER

Conservation Tax Credit Transfer (CTCT) was founded by Carl and Karen Spina in 2000, the same year Colorado passed legislation creating the conservation easement tax credit transfer and sale program. The Spina's donated a conservation easement on their ranch that same year, qualifying them for a conservation tax credit and realized others could benefit from selling their tax credits as well. CTCT has been a leader in the conservation tax credit program facilitating the transfer and sale of the first two conservation tax credits in Colorado and has since completed thousands of tax credit transfer and sale transactions to date.

Jody Barbour, Principal Owner of CTCT, joined the company in 2009 after 20 years as a real estate transaction paralegal, succeeding Carl and Karen when they retired in 2015.

CTCT has collaborated with landowners, conservation easement holders, attorneys, appraisers, accountants, and legislators to modify and refine the conservation tax credit legislation through the most recent legislation HB 21-1233. Carl, Karen, and Jody have served on legislative taskforces, attended and presented at industry conferences and workshops, and continue to offer their experience and expertise to help strengthen Colorado's conservation easement and tax credit program. CTCT brings professional experience and passion for land and water conservation to each and every tax credit transfer and sale transaction.

CTCT is invested and dedicated in helping landowners conserve their land and preserve their legacy. Our goal is to assist you in fully understanding all that is involved in your decision to donate a conservation easement and to transfer/sell your tax credit.

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# IMPORTANT ASPECTS OF A A CONSERVATION EASEMENT

*This communication is offered with the understanding that the information is not considered legal, accounting, or tax advice. It is for information purposes only. Landowners are strongly encouraged to seek legal and tax advice from experienced professionals before recording a conservation easement.*

Conservation easements have state and federal tax benefits. With recent changes to a 90% Colorado conservation easement tax credit and federal tax rules, adequate consideration should be given to these changes and how they might impact you, your goals and future generations. Knowing and planning ahead can help you make the most of a wonderful and forever decision.

The donation of a conservation easement is considered by the IRS as a non-cash charitable contribution. To qualify for state and federal tax benefits the transaction must be a qualified contribution. A qualified conservation easement contribution includes, but is not limited to:

- One of four Conservation Purposes:
  - 1) Preservation of open space.
  - 2) Protection of relatively natural habitat (fish, wildlife, or plants).
  - 3) Preservation of land for education or outdoor recreation by the public.
  - 4) Preservation of historical land or structures.
- Perpetuity. A conservation easement is forever! It stays and runs with the land even after it is sold or transferred to another owner.
- Granted to a qualified organization (qualified non-profit/certified easement holder/land trust in CO for the state tax credit). Check to see if the easement holder is qualified.
- A qualified appraisal by a qualified appraiser. Check to see if your appraiser is qualified and experienced in conservation easements.



- A substantiation letter is required from the easement holder, known as a Donee Acknowledgment Letter, acknowledging the donation, and stating no goods or services were provided in return for the donation.
- Baseline or Present Conditions Report that identifies the values protected by the easement documented by a report that includes a statement acknowledging that the report accurately reflects the conservation value and condition of the property at the time of the donation.
- If the mineral rights have been severed from the surface estate, a Mineral Report from a qualified geologist assessing the likelihood of surface mining is required.
- If the easement property is subject to a mortgage, a Subordination Agreement from the mortgage holder subordinating the mortgage to the conservation easement is required. The subordination agreement must be completed and recorded in the county records prior to recording the conservation easement. Talk with your lender and land trust/easement holder early in the process.

The transaction must meet these and other qualifications to qualify for the state tax credit and federal deduction.

- The terms of an easement are negotiable. You can reserve rights for future use (housing, agricultural buildings, cabins, limited subdivision, and carbon). Consider your needs and your future generation's needs.



## COLORADO TAX CREDIT

For conservation easements made in 2021 and later, the Colorado state tax credit is equal to 90% of the donated value of the conservation easement, as determined by a qualified appraisal, up to \$5 million, issued in increments of \$1.5 million annually. The statewide annual cap is \$45 million.

Conservation tax credits are only issued by the Colorado Division of Conservation, under the Department of Regulatory Agencies. CTCT assists landowners with applying for the state conservation tax credit, selling and transferring the tax credit, and tax compliance.

The tax credit can be carried forward for a period of 20 years from the date of the issuance of the tax credit certificate.

Conservation easement donors can receive up to a \$50,000 state refund in allowable surplus years (allocated to joint donors or pass-through entities in the total amount of \$50,000). The newly signed House Bill 21-1233 allows donor taxpayers to take the refund and sell a tax credit in the same tax year.

Under the tax code, tax credits are considered capital assets, subject to ordinary income or long-term capital gain. The long-term capital gain holding period is a year and a day. Based on an individual's needs and financial situation they may choose to hold the sale of their credit for a year and a day.

## FEDERAL TAX DEDUCTION

The amount of allowable federal income tax deduction is 100% for a qualified farmer/rancher or 50% for most others. The deduction can be used for 16 years (the year of donation plus 15 years).

A qualified farmer/rancher for tax purposes is determined by the IRS. Qualification as a farmer/rancher could change from one year to the next if income received in a certain tax year is from a source other than farming/ranching, such as proceeds from a bargain sale of an easement or proceeds from the sale of a state tax credit.

The federal tax deduction is reduced by the amount of the state tax credit received or expected to be received. For example, a \$1,000,000 easement donation can receive a \$900,000 Colorado state tax credit (90% of the donated conservation easement value). The federal deduction is reduced by \$900,000, providing a \$100,000 deduction.

## IMPORTANT QUESTIONS AND CONSIDERATIONS

- How will a conservation easement impact my property/estate, my family, and my future?
- What are my goals and how might the transfer/sale of my credits affect how I plan for the future?
- Does my accountant have experience with conservation easements, conservation tax credits and tax compliance?
- Do I have or need a financial plan for the tax credit proceeds when I sell my tax credit?
- How can I transfer/sell my tax credit?
- How much do I want to sell?
- Are there pros and cons to how much I sell?
- How will I be taxed on the income from the sale of a tax credit?
- Should I take the full 90% state tax credit? What are my options?
- Do I need the federal deduction? If so, how much?
- How do I take a lesser amount of the state tax credit if I need a larger federal deduction?
- Consider hiring an attorney to help negotiate your conservation easement and protect your interests so there are no surprises after the fact. The conservation easement holder has legal counsel and so should you.
- Ask CTCT, your land trust or easement holder about transaction costs, grants, and if you can obtain a no cost loan to pay transaction costs. Can I pay transaction costs, including legal and appraisal fees from the sale of my tax credit? If costs of an easement are prohibitive, there are options available to help cover or offset these costs.



## IN SUMMARY

The financial incentives to a landowner for donating a conservation easement are greater than ever. It is important to CTCT that landowners have the best resources and information available. We can assist you in finding expert, experienced, and vetted legal, tax, appraisal and financial professionals to help you make the most informed decisions. CTCT does not receive any fees or income from these referrals. We simply assist you in making the best of a forever decision.

For additional information and questions please contact:

Jody Barbour  
Principal Owner  
Conservation Tax Credit Transfer  
303-988-1700

[jody@taxtransfer.net](mailto:jody@taxtransfer.net)  
[www.taxtransfer.net](http://www.taxtransfer.net)

