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SENATE BILL NO. 974

Senate Amendments in [] — January 31, 2011

A *BILL to amend and reenact § 58.1-339.3 of the Code of Virginia, relating to agricultural best management practices tax credit.*

Patron Prior to Engrossment—Senator Whipple

Referred to Committee on Finance

Be it enacted by the General Assembly of Virginia:

1. That § 58.1-339.3 of the Code of Virginia is amended and reenacted as follows:

§ 58.1-339.3. Agricultural best management practices tax credit.

A. For all taxable years beginning on and after January 1, 1998, any individual who is engaged in agricultural production for market, or has equines that create needs for agricultural best management practices to reduce nonpoint source pollutants, and has in place a soil conservation plan approved by the local Soil And Water Conservation District (SWCD), shall be allowed a credit against the tax imposed by § 58.1-320 of an amount equaling 25% percent of the first \$70,000 expended for agricultural best management practices by the individual.

[*For all taxable years beginning on or after January 1, 2011, such credit also shall be allowed against the tax liability imposed by § 58.1-400.*]

As used in this section, "agricultural best management practice" means a practice approved by the Virginia Soil and Water Conservation Board (VSWCB) which will provide a significant improvement to water quality in the state's streams and rivers and the Chesapeake Bay and is consistent with other state and federal programs that address agricultural, nonpoint-source-pollution management. Eligible practices shall include, but are not limited to, the following:

1. Livestock-waste and poultry-waste management;
2. Soil erosion control;
3. Nutrient and sediment filtration and detention;
4. Nutrient management; and
5. Pest management and pesticide handling.

A detailed list of the standards and criteria for practices eligible for credit shall be found in the most recently approved "Virginia Agricultural BMP Manual" published annually prior to July 1 by the Department of Conservation and Recreation.

B. Any practice approved by the local Soil and Water Conservation District Board shall be completed within the taxable year in which the credit is claimed. After the practice installation has been completed, the local SWCD Board shall certify the practice as approved and completed, and eligible for credit. The applicant shall forward the certification to the Department of Taxation on forms provided by the Department. The credit shall be allowed only for expenditures made by the taxpayer from funds of his own sources.

C. 1. The amount of such credit shall not exceed \$17,500 or the total amount of the tax imposed by this chapter, whichever is less, in the year the project was completed, as certified by the Board. Any taxpayer claiming a tax credit under this section shall not claim a credit under any similar Virginia law for costs related to the same eligible practices.

2. If the amount of the credit exceeds the taxpayer's liability for such taxable year, the excess may be [~~carried over for credit against income taxes in the next five taxable years until the total amount of the tax credit has been taken. In addition, any taxpayer holding a credit under this section may transfer unused but otherwise allowable credit for use by another taxpayer on Virginia income tax returns. A taxpayer who transfers any amount of credit under this article shall file a notification of such transfer with the Department of Taxation in accordance with procedures and forms prescribed by the Tax Commissioner refunded by the Tax Commissioner.~~ Tax credits shall be refunded by the Tax Commissioner on behalf of the Commonwealth for 100 percent of face value. Tax credits shall be refunded within 90 days after the filing date of the income tax return on which the individual applies for the refund] .

D. For purposes of this section, the amount of any credit attributable to agricultural best management practices by [~~a pass-thru entity~~ a pass-through entity] such as a partnership, limited liability company, or electing small business corporation (S Corporation) shall be allocated to the individual partners, members, or shareholders in proportion to their ownership or interest in the partnership or S Corporation such entity.

E. A pass-through tax entity, such as a partnership, limited liability company or electing small

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60 *business corporation (S corporation), may appoint a tax matters representative, who shall be a general*
61 *partner, member-manager or shareholder, and register that representative with the Tax Commissioner.*
62 *The Tax Commissioner shall be entitled to deal with the tax matters representative as representative of*
63 *the taxpayers to whom credits have been allocated [~~or transferred~~] by the entity under this article with*
64 *respect to those credits. In the event a pass-through tax entity allocates [~~or transfers~~] tax credits*
65 *arising under this article to its partners, members or shareholders and the allocated [~~or transferred~~]*
66 *credits shall be disallowed, in whole or in part, such that an assessment of additional tax against a*
67 *taxpayer shall be made, the Tax Commissioner shall first make written demand for payment of any*
68 *additional tax, together with interest and penalties, from the tax matters representative. In the event*
69 *such payment demand is not satisfied, the Tax Commissioner shall proceed to collection against the*
70 *taxpayers in accordance with the provisions of Chapter 18 (§ 58.1-1800 et seq.).*