

DEPARTMENT OF TAXATION

2011 Fiscal Impact Statement

1. **Patron** Mary Margaret Whipple

2. **Bill Number** SB 974

3. **Committee** House Finance

House of Origin:

 Introduced

 Substitute

 Engrossed

4. **Title** Individual Income Tax: Agricultural Best
Management Practices Tax Credit

Second House:

 X **In Committee**

 Substitute

 Enrolled

5. **Summary/Purpose:**

This bill would amend the individual income tax credits allowed for agricultural best management practices (BMPs) to make such credits refundable.

The bill would also permit a pass-through entity that allocates credits among taxpayers to designate a general partner, member-manager, or shareholder as the person that the Department would be required to first contact for the collection of taxes in the event any portion of the credit is disallowed in the future.

The bill would also prohibit the costs used to determine this credit from being used to claim any other Virginia income tax credit.

The bill effective date of this bill is not specified.

6. **Budget amendment necessary:** No.

7. **Fiscal Impact Estimates are:** Not available. (See Line 8.)

8. **Fiscal implications:**

Administrative Costs

The Department of Taxation considers implementation of this bill as "routine," and does not require additional funding.

Revenue Impact

The negative General Fund revenue impact this bill is not known. Allowing credits to be refundable could increase the number of taxpayers willing to invest in BMP projects. Based on the amount of credits approved by the Department of Conservation and Recreation and the amount of credits claimed on individual income tax returns for the past several years, allowing the credit to be refundable could have a significant negative effect on General Fund revenues. The bill would not prohibit taxpayers that have previously

earned the credit, but are carrying forward unused credits, from claiming a refund for the amount of unused carry over credits.

The following table shows the amount of agricultural BMP credits approved by the Department of Conservation and Recreation for the four most recently available program years. Because the program year follows Virginia's fiscal year, credits issued during the 2009 program year could be claimed either on the 2008 or 2009 tax return depending on when the approved project was completed.

| <u>Program Year</u> | <u>BMP Tax Credits Issued</u> |
|---------------------|-------------------------------|
| 2006 | \$941,622.92 |
| 2007 | \$596,635.74 |
| 2008 | \$1,105,711.17 |
| 2009 | \$2,401,788.91 |

The table below shows that amount of BMP credits claimed by both individuals and corporations for the four most recently completed taxable years. The total amount claimed includes credits carried over from previous taxable years.

| <u>Tax Year</u> | <u>Taxpayer Returns</u> | <u>Amount Claimed</u> |
|-----------------|-------------------------|-----------------------|
| 2006 | 591 | \$460,919.59 |
| 2007 | 559 | \$508,690.23 |
| 2008 | 605 | \$586,823.07 |
| 2009 | 534 | \$498,254.00 |

If the credit were to be made refundable, more taxpayers would be able to claim the entire amount of the credit. This could result in a significant negative revenue impact on General Fund revenue. The revenue loss would be approximately equal to the difference between the value of the amount of credits issued and the amount of credits claimed.

9. Specific agency or political subdivisions affected:

Department of Taxation
Department of Conservation and Recreation

10. Technical amendment necessary: No.

11. Other comments:

Current Law

The Department of Conservation and Recreation administers two programs (The Agricultural BMP Cost-Share Program and the Agricultural BMP Tax Credit Program) through local soil and water conservation districts to improve or maintain water quality in the state's streams, lakes and bays through the installation or implementation of agricultural BMPs.

Agricultural BMP Cost-Share Program

The cost-share program supports using various practices in conservation planning to treat animal waste, cropland, pastureland and forested land. Some payments are made for at a straight per-acre rate. Others are cost-shared on a percentage basis up to 75%. In some cases, the U.S. Department of Agriculture also pays a percentage. The most an individual may receive is \$50,000. In any case, the state cost-share payment, combined with federal payments, may not exceed 75% of the total eligible costs.

Agricultural BMP Tax Credit Program

The tax credit program supports voluntary installation of BMPs that will address Virginia's pollution water quality objectives. Under the credit any individual engaged in agricultural production for market or who has equines that create needs for agricultural best management practices to reduce nonpoint source pollutants, may be allowed a credit against individual income tax of an amount equaling 25% of the first \$70,000 expended for BMPs. The maximum credit allowed cannot exceed \$17,500.

Corporations engaged in agricultural production for market are eligible for the same credit under a separate section of the *Code of Virginia*.

The local soil and water conservation board must certify a practice as approved, completed, and eligible for the credit. The credit is claimed in the taxable year the approved practice is completed. The credit is nonrefundable, but the portion of the credit that exceeds the tax liability may be carried forward for up to five taxable years.

The credit is based on expenditures made from the taxpayer's own funds. For example, expenditures incurred in implementing the soil conservation plan that are paid by funds received from a federal or state cost sharing program or grant are not eligible for this credit.

Proposal

Under this bill, an individual earning an agricultural best management practices credit would be able to receive a refund for 100 percent of the credit amount. The Department of Taxation would be required to issue the requested refund within 90 days of the filing date of the return claiming the refund.

Pursuant to the bill, a pass-through entity that allocates credits among taxpayers would be permitted to designate a general partner, member, or shareholder as primarily responsible for a tax liability resulting from the disallowance of any portion of the credit in the future. If the designated person fails to satisfy the liability, the Department of Taxation would proceed with collection actions against the persons claiming the credit.

In addition, the bill would prohibit the costs used to determine this credit from being used to claim any other Virginia income tax credit.

The bill effective date of this bill is not specified.

cc : Secretary of Finance

Date: 2/10/2011 TG
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