DEPARTMENT OF TAXATION
2016 Fiscal Impact Statement

1. Patron Benjamin L. Cline

2. Bill Number HB 1093

House of Origin:
_____ **Introduced**
_____ **Substitute**
_____ **Engrossed**

3. Committee Senate Finance

4. Title Income Tax Credit; Food Crop Donations to a Food Bank

Second House:
__X__ **In Committee**
_____ **Substitute**
_____ **Enrolled**

5. Summary/Purpose:

This bill would allow an individual or corporate income tax credit to a person engaged in the business of farming for growing food crops in the Commonwealth and donating such crops to a nonprofit food bank. The amount of the credit would equal 30 percent of the fair market value of such crops. No taxpayer would be permitted to claim more than $5,000 in credits for a taxable year.

Under this legislation, the Tax Commissioner would be prohibited from issuing more than $250,000 in tax credits in any fiscal year. Taxpayers would be required to submit an application to the Department of Taxation ("the Department") in accordance with the forms, instructions, dates, and procedures prescribed by the Department.

To the extent a credit is allowed for growing food crops in the Commonwealth and donating such crops to a nonprofit food bank, this bill would require an addition to a taxpayer's federal adjusted gross income for any amount claimed by the taxpayer as a federal income tax deduction for such donation.

The portion of this bill regarding the credit would be effective for taxable years beginning on or after January 1, 2016, but before January 1, 2021. The portion of this bill regarding the Virginia income tax addition would be effective for taxable years beginning on or after January 1, 2016.

6. Budget amendment necessary: No.

7. Fiscal Impact Estimates are: Preliminary. (See Line 8).

8. Fiscal implications:

Administrative Costs

The Department considers implementation of this bill as routine, and is not requesting additional funding.

Revenue Impact

The proposed legislation would have an annual negative General Fund revenue impact of $250,000. No budget amendment is needed because this legislation is assumed in the Introduced Executive Budget.

To receive a tax credit under this bill, a taxpayer must make a donation to a nonprofit entity located in Virginia that is exempt from federal taxes and organized with the principal purpose of providing food to the needy. Of the 43,000 nonprofit organizations in Virginia:

- 58 are food service or free food distribution programs;
- 68 are food banks or food pantries;
- 8 provide congregate meals;
- 4 are organization-sponsored eateries or agencies; and
- 19 are Meals on Wheels.

When the above categories are aggregated, there are a total of approximately 157 nonprofit organizations in Virginia that would qualify to receive donations under this bill. However, several of these organizations fall into two or more of the above categories, and therefore, the actual number of organizations that would qualify to receive donations may be less than 157.

9. Specific agency or political subdivisions affected:

Department of Taxation

10. Technical amendment necessary: No.

11. Other comments:

Other States

Arizona

Arizona allows an individual income tax subtraction for qualified crop contributions to charitable organizations. For purposes of the subtraction, a "qualified crop contribution" means any contribution of a crop or portion of a crop grown in Arizona by a taxpayer engaged in the trade or business of farming or processing of agriculture crops to a tax exempt charitable organization located in Arizona. The amount of the subtraction may not exceed the higher of the wholesale market price or the most recent sale price for the contributed crop, or include any amount claimed by the taxpayer as a federal income tax deduction with respect to a crop contribution that exceeds the cost of producing the contributed crop. Contributions will only qualify for this subtraction if:

- The use of the crop by the donee charitable organization is related to the purpose or function constituting the basis of the organization's tax-exempt status;
- The crop is not transferred by the donee charitable organization in exchange for money, other property, or services; and

- The donee charitable organization provides a written statement to the taxpayer that its use and disposition of the crop will comply with the requirements for the subtraction.

California

California allows qualified taxpayers that donate fresh fruits or fresh vegetables to a food bank located in California to claim a corporation franchise tax or personal income tax credit equal to 10 percent of the cost that would be required to be capitalized inventory costs for federal purposes or that would be required to be capitalized inventory costs for federal purposes, but for the federal exception for farming businesses, with respect to such fresh fruits and vegetables. For purposes of this credit, a “qualified taxpayer” means the person responsible for planting a crop, managing the crop, and harvesting the crop from the land.

To qualify for the credit, a qualified taxpayer must provide the donee food bank the estimated value of the donated fresh fruits or fresh vegetables, and information regarding the origin of where such donated fruits or vegetables were grown. Upon receipt of the fresh fruits or fresh vegetables, the donee food bank must provide a certificate to the donor.

North Carolina

North Carolina allowed a corporate income tax credit to crop growers that permitted the gleaning of a crop equal to 10 percent of the market price of the quantity of the gleaned crop. For purposes of the credit, “gleaning” meant the harvesting of a crop that was donated by the grower to a nonprofit organization that distributed the crop to individuals or other nonprofit organizations it considered appropriate recipients of the food. This tax credit expired on December 31, 2013.

Oregon

Prior to 2012 and for Taxable Years 2014 through 2019, Oregon allows an income tax and excise tax credit to crop growers that made a qualified donation of crops. For Taxable Year 2014 and after, such credit is equal to either 10 percent or 15 percent of the value of the quantity of the crop donated, depending on the type of donation. For purposes of the credit, a “qualified donation” was defined as the harvest or post-harvest contribution in Oregon of a crop or a portion of a crop grown primarily to be sold for cash that is donated by the crop grower to a gleaning cooperative, food bank, or other charitable organization engaged in the distribution of food without charge, at such time that the crop is still useable as food for human consumption. To qualify, a donation was required to meet one of the following requirements:

- The crop grower supplied any crop contract quota with a wholesale or retail buyer (10 percent credit);
- If the crop grower was a party to a contingent supply contract, the wholesale or retail buyer reduced the crop quota that was reasonably anticipated to be supplied by the grower (10 percent credit); or

- The crop grower otherwise determined to make a donation of apparently wholesome food (15 percent credit).

Virginia Qualified Agricultural Contribution Subtraction

During the 1985 Session, the General Assembly enacted Senate Bill 588, which allowed an individual and corporate income tax subtraction for a qualified agricultural contribution. For purposes of the subtraction, a "qualified agricultural contribution" meant any contribution of an agricultural product (crop) by an individual, engaged in the trade or business of growing, or raising such product, to a nonprofit entity that was exempt from federal taxation. To qualify, a donation was required to meet each of the following requirements:

- The product had to be fit for human consumption;
- The use of the product by the donee had to be related to the purpose or function constituting the basis for the donee's exemption from taxation;
- The contribution could not be made in exchange for money, property, or service; and
- The donee provided the individual a written statement representing that the donee's use and disposition of the crop would comply with the requirements for the subtraction.

The amount of the subtraction was the wholesale market price of the agricultural products contributed minus the amount of any other deductions related to qualified agricultural contributions claimed for federal purposes.

This individual and corporate income tax subtraction expired on December 31, 1998.

Proposed Legislation

Food Crop Donation Tax Credit

This bill would allow an individual or corporate income tax credit to a person engaged in the business of farming for growing food crops in the Commonwealth and donating such crops to a nonprofit food bank. The amount of the credit would equal 30 percent of the fair market value of such crops. No taxpayer would be permitted to claim more than $5,000 in credits for a taxable year. The tax credit would be claimed in the taxable year of the donation. Such tax credit would be allowed if all of the following requirements are met:

- The use of the donated food crops by the donee nonprofit food bank is related to providing food to the needy;
- The donated food crops are not transferred for use outside the Commonwealth or used by the donee nonprofit food bank as consideration for services performed or personal property purchased; and
- The donated food crops, if sold by the donee nonprofit food bank, are sold to the needy, other nonprofit food banks, or organizations that intend to use the food crops to provide food to the needy.

For purposes of this bill, “food crops” would be defined as grains, fruits, nuts, or vegetables. “Nonprofit food bank” would mean a nonprofit entity located in the Commonwealth that is exempt from federal taxes and organized with a principal purpose of providing food to the needy.

For purposes of this bill, “a person engaged in the business of farming” would mean the same as defined under federal regulatory guidance, as someone who cultivates, operates, or manages a farm for gain or profit, either as an owner or tenant. Under this definition, the following would qualify as a person engaged in the business of farming:

- A taxpayer who receives a rental (either in cash or in kind) that is based upon farm production;
- A taxpayer who receives a fixed rental, if he participates to a material extent in the operation or management of the farm; and
- A taxpayer who is a member of a partnership engaged in the business of farming.

The following would be excluded from such definition:

- A taxpayer engaged in forestry or the growing of timber;
- A person cultivating or operating a farm for recreation or pleasure rather than a profit; and
- A taxpayer who receives a fixed rental and does not participate to a material extent in the operation or management of the farm.

Under the federal definition, the term “farm” is used in its ordinary, accepted sense and includes stock, dairy, poultry, fish, fruit, and truck farms, and also plantations, ranches, ranges, and orchards. A fish farm is an area where fish are grown or raised, as opposed to merely caught or harvested.

In order to claim the credit, for each donation made, the taxpayer making the donation would be required to attach to its income tax return a written certification prepared by the donee nonprofit food bank. Such written certification would identify the donee nonprofit food bank, the taxpayer donating the food crops, the date of donation, the number of pounds of food crops donated, and the fair market value of the food crops donated. The certification would also include a statement by the donee nonprofit food bank that its use and disposition of the food crops complies with the requirements for the credit.

The amount of credit claimed could not exceed the total amount of tax imposed upon the taxpayer for the taxable year. Any unused tax credits could be carried over for credit against the income taxes of the taxpayer in the next five succeeding taxable years or until the total amount of the credit has been taken, whichever is sooner.

Under this legislation, the Tax Commissioner would be prohibited from issuing more than $250,000 in tax credits in any fiscal year. Taxpayers would be required to submit an application to the Department in accordance with the forms, instructions, dates, and procedures prescribed by the Department.

Any credits granted to a partnership, limited liability company, or electing small business corporation (S corporation) would be allocated to the individual partners, members, or shareholders in proportion to the ownership or interest in such business entities.

The Tax Commissioner would be required to develop guidelines, exempt from the Administrative Process Act, implementing the provisions of this credit. Such guidelines would be required to include procedures for the allocation of tax credits among participating taxpayers.

Virginia Income Tax Addition

To the extent a credit is allowed for growing food crops in the Commonwealth and donating such crops to a nonprofit food bank, this bill would require an addition to a taxpayer's federal adjusted gross income for any amount claimed by the taxpayer as a federal income tax deduction for such donation.

The portion of this bill regarding the credit would be effective for taxable years beginning on or after January 1, 2016, but before January 1, 2021. The portion of this bill regarding the Virginia income tax addition would be effective for taxable years beginning on or after January 1, 2016.

Similar Bills

Senate Bill 580 is identical to this bill except that it would impose a January 1, 2022 sunset date on the credit.

cc : Secretary of Finance

Date: 2/17/2016 MTH
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