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SENATE BILL NO. 1361

Offered January 11, 2017

Prefiled January 11, 2017

A *BILL to amend and reenact § 58.1-439.12:12 of the Code of Virginia, relating to food donation tax credit; restaurants that donate prepared food or meals to nonprofit food bank.*

Patrons—Carrico and Chafin

Referred to Committee on Finance

Be it enacted by the General Assembly of Virginia:

1. That § 58.1-439.12:12 of the Code of Virginia is amended and reenacted as follows:

§ 58.1-439.12:12. Food donation tax credit.

A. As used in this section, unless the context requires a different meaning:

"Food" means food crops or prepared food or meals.

"Food crops" means grains, fruits, nuts, or vegetables.

"Nonprofit food bank" means an entity located in the Commonwealth that is exempt from taxation under § 501(c)(3) of the Internal Revenue Code, as amended or renumbered, and organized with a principal purpose of providing food to the needy.

B. For taxable years beginning on or after January 1, 2016, but before January 1, 2022, any (i) person engaged in the business of farming as defined under 26 C.F.R. §1.175-3 that donates food crops grown by the person in the Commonwealth or (ii) restaurant, as defined in § 35.1-1, that donates prepared food or meals to a nonprofit food bank shall be allowed a credit against the tax levied pursuant to § 58.1-320 or 58.1-400 for the taxable year of the donation. The ~~person taxpayer~~ shall be allowed a credit in an amount equal to 30 percent of the fair market value of such food ~~erops~~ donated by the ~~person taxpayer~~ to a nonprofit food bank during the taxable year but not to exceed an aggregate credit of \$5,000 for all such donations made by the ~~person taxpayer~~ during such year.

C. Credit shall be allowed under this section only if (i) the use of the donated food ~~erops~~ by the donee nonprofit food bank is related to providing food to the needy, (ii) the donated food ~~erops~~ are is 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 (iii) the donated food ~~erops~~, if sold by the donee nonprofit food bank, are is sold to the needy, other nonprofit food banks, or organizations that intend to use provide the food ~~erops~~ to provide food to the needy.

D. The Tax Commissioner shall issue tax credits under this section, and in no case shall the Tax Commissioner issue more than \$250,000 in tax credits pursuant to this section in any fiscal year of the Commonwealth. For every taxable year for which a ~~person taxpayer~~ seeks the tax credit under this section, the ~~person taxpayer~~ shall submit an application to the Department in accordance with the forms, instructions, dates, and procedures prescribed by the Department. In order to claim any credit, for each donation made that is approved by the Department for tax credit, the ~~person making the donation taxpayer~~ shall attach to the ~~person's~~ his income tax return a written certification prepared by the donee nonprofit food bank. The written certification prepared by the donee nonprofit food bank shall identify the donee nonprofit food bank, the ~~person taxpayer~~ donating food ~~erops~~ to it, the date of the donation, the number of pounds of food crops or prepared food or the number of prepared meals donated, and the fair market value of the food ~~erops~~ donated. The certification shall also include a statement by the donee nonprofit food bank that its use and disposition of the food ~~erops~~ complies with the requirements under subsection C.

E. The amount of the credit claimed shall not exceed the total amount of tax imposed by this chapter upon the ~~person taxpayer~~ for the taxable year. Any credit not usable for the taxable year for which the credit was first allowed may be carried over for credit against the income taxes of the ~~person taxpayer~~ in the next five succeeding taxable years or until the total amount of the tax credit has been taken, whichever is sooner.

F. Credits granted to a partnership, limited liability company, or electing small business corporation (S corporation) shall be allocated to the individual partners, members, or shareholders, respectively, in proportion to their ownership or interest in such business entities.

G. The Tax Commissioner shall develop guidelines implementing the provisions of this section. The guidelines shall include procedures for the allocation of tax credits among participating taxpayers. Such guidelines shall be exempt from the provisions of the Administrative Process Act (§ 2.2-4000 et seq.).

INTRODUCED

SB1361