

# DEPARTMENT OF TAXATION

## 2017 Fiscal Impact Statement

1. **Patron** Charles W. Carrico, Sr.
2. **Bill Number** SB 1361  
**House of Origin:**  
           **Introduced**  
           **Substitute**  
           **Engrossed**
3. **Committee** House Finance
4. **Title** Income Tax; Food Crop Donation Tax Credit
- Second House:**  
  X   **In Committee**  
           **Substitute**  
           **Enrolled**

**5. Summary/Purpose:**

This bill would allow restaurants that donate prepared food or meals to a nonprofit food bank to claim the Food Crop Donation Tax Credit. Under current law, only persons engaged in the business of farming as defined under federal law that donate food crops to a nonprofit food bank are eligible for this credit.

The effective date of this bill is not specified.

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

**7. No Fiscal Impact.** (See Line 8.)

**8. Fiscal implications:**

Administrative Costs

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

Revenue Impact

This bill would have no General Fund revenue impact. During the 2016 Session, the Virginia General Assembly enacted House Bill 1093 (2016 *Acts of Assembly*, Chapter 391) and Senate Bill 580 (2016 *Acts of Assembly*, Chapter 304), establishing the Food Crop Donation Tax Credit and imposing a \$250,000 annual cap. As a result, the official General Fund revenue forecast assumes an annual negative revenue impact of \$250,000 for this tax credit. Because this bill would not change the annual cap, no budget amendment would be required for this bill.

Although this bill would not increase the overall revenue impact due to the annual cap, it would likely increase the number of donations that qualify for the credit. As a result, farmers who qualify for this credit may receive smaller credit amounts.

According to the National Restaurant Association there were 14,859 eating and drinking place locations in Virginia in 2015 and the projected sales in Virginia's restaurants were \$16.3 billion in 2016. It is unknown what amount of food is donated by such restaurants to nonprofit food banks, as well as the amount of such donations that would qualify for the Food Crop Donation Tax Credit under this bill.

**9. Specific agency or political subdivisions affected:**

Department of Taxation

**10. Technical amendment necessary:** No.

**11. Other comments:**

Current Law

During the 2016 Session, the Virginia General Assembly enacted House Bill 1093 (2016 *Acts of Assembly*, Chapter 391) and Senate Bill 580 (2016 *Acts of Assembly*, Chapter 304), which established the Food Crop Donation Tax Credit. This is an individual and corporate income tax credit for certain persons engaged in the business of farming as defined under federal law for growing food crops in the Commonwealth and donating such crops to a nonprofit food bank. The amount of the credit is equal 30 percent of the fair market value of such crops. No taxpayer is permitted to claim more than \$5,000 in credits for a taxable year.

"Food crops" is defined as grains, fruits, nuts, or vegetables.

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

The Food Crop Donation Tax Credit is allowed only if

- 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.

The Tax Commissioner is prohibited from issuing more than \$250,000 in tax credits in any fiscal year. Taxpayers are required to submit an application to the Department of Taxation 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 is required to attach to the

person's income tax return a written certification prepared by the donee nonprofit food bank. The written certification prepared by the donee nonprofit food bank must identify the donee nonprofit food bank, the person donating food crops to it, the date of the donation, the number of pounds of food crops donated, and the fair market value of the food crops donated.

The Food Crop Donation Tax Credit was effective for taxable years beginning on or after January 1, 2016, but before January 1, 2022.

### Proposed Legislation

This bill would allow restaurants that donate prepared food or meals to a nonprofit food bank to claim the Food Crop Donation Tax Credit. Under current law, only persons engaged in the business of farming as defined under federal law that donate food crops to a nonprofit food bank are eligible for this credit.

“Restaurant” would be defined as any one of the following:

- Any place where food is prepared for service to the public on or off the premises, or any place where food is served. Examples of such places include but are not limited to lunchrooms, short order places, cafeterias, coffee shops, cafes, taverns, delicatessens, dining accommodations of public or private clubs, kitchen facilities of hospitals and nursing homes, dining accommodations of public and private schools and colleges, and kitchen areas of local correctional facilities subject to standards adopted under Virginia law regarding correction facilities. Excluded from the definition are places manufacturing packaged or canned foods which are distributed to grocery stores or other similar food retailers for sale to the public.
- Any place or operation which prepares or stores food for distribution to persons of the same business operation or of a related business operation for service to the public. Examples of such places or operations include but are not limited to operations preparing or storing food for catering services, push cart operations, hotdog stands, and other mobile points of service. Such mobile points of service are also deemed to be restaurants unless the point of service and of consumption is in a private residence.

Under current law, the person making the donation is required to attach to the person's income tax return a written certification prepared by the donee nonprofit food bank. The written certification prepared by the donee nonprofit food bank must contain certain information. This bill would specify that, for a donation of prepared food or the number of prepared meals by a restaurant, the written certification would be required to identify:

- The donee nonprofit food bank,
- The taxpayer donating food to it,
- The date of the donation,

- The number of pounds of prepared food or the number of prepared meals donated, and
- The fair market value of the food donated.

This bill would also change references in the current statute from “food crops” to the broader term “food,” which would be defined as food crops or prepared food or meals.

The effective date of this bill is not specified.

cc : Secretary of Finance

Date: 2/9/2017 JJS  
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