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HOUSE BILL NO. 1652

Offered January 17, 2020

A BILL to amend and reenact §§ 58.1-339.3 and 58.1-439.5 of the Code of Virginia, relating to tax credit; agricultural best management practices.

Patrons—Wilt and Bulova

Referred to Committee on Finance

Be it enacted by the General Assembly of Virginia:

1. That §§ 58.1-339.3 and 58.1-439.5 of the Code of Virginia are amended and reenacted as follows:

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

A. 1. For all taxable years beginning on and after January 1, 1998, any individual who is engaged in agricultural production for market, or who 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~~ in an amount equaling 25 percent of the first \$70,000 \$100,000 expended for agricultural best management practices by the individual.

As used in this ~~section~~ subdivision, "agricultural best management practice" means a practice approved by the Virginia Soil and Water Conservation Board (VSWCB) ~~which~~ that 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. a. Livestock-waste and poultry-waste management;
2. b. Soil erosion control;
3. c. Nutrient and sediment filtration and detention;
4. ~~Nutrient management;~~ and
5. d. 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.

2. For taxable years beginning on and after January 1, 2020, any individual who is engaged in agricultural production for market or who has equines that create needs for certain 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 an enhanced credit against the tax imposed by § 58.1-320 in an amount equaling 75 percent of the first \$100,000 expended for certain agricultural best management practices by the individual required as part of a resource management plan that is certified as having been implemented by the Department of Conservation or by the local Soil and Water Conservation District Board. The amount of eligible enhanced credit for certain agricultural best management practices shall be consistent with the cost-share rate offered for each individual best management practice under the Virginia Agricultural Best Management Practices Cost-Share Program pursuant to § 10.1-2128; however, in no case shall the enhanced credit amount exceed 75 percent of the total cost of certain agricultural best management practices expended by the individual.

As used in this subdivision, "certain agricultural best management practice" means a practice eligible for the enhanced credit in this subdivision, approved by the Virginia Soil and Water Conservation Board (VSWCB), that will provide an enhanced improvement to water quality in the state's streams and rivers and the Chesapeake Bay; is consistent with other state and federal programs that address agricultural, nonpoint-source pollution management; and excludes eligible practices in subdivision 1. "Certain agricultural best management practice" includes any of the following that are a required component of a resource management plan that is certified as having been implemented by the Department of Conservation or by the local Soil and Water Conservation District Board:

- a. Development and implementation of a nutrient management plan developed and approved by a certified nutrient management planner pursuant to § 10.1-104.2;
- b. Installation of 35-foot forestry or vegetative buffers to perennial streams;
- c. Livestock stream exclusion;
- d. Livestock watering systems; and
- e. Hardened stream crossings.

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

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

68 C. 1. ~~The amount of such credit~~ *aggregate amount of credit claimed under subdivisions A 1 and 2*
69 *shall not exceed \$17,500 \$75,000 or the total amount of the tax imposed by this chapter, whichever is*
70 *less, in the year the project was completed, as certified by the Board. Any taxpayer claiming a tax credit*
71 *under this section shall not claim a credit under any similar Virginia law for costs related to the same*
72 *eligible practices. A taxpayer may not claim credit for the same practice under both subdivisions A 1*
73 *and 2. Any taxpayer claiming the enhanced tax credit in subdivision A 2 shall neither be eligible nor*
74 *seek funding for the same agricultural best management practices under the Virginia Agricultural Best*
75 *Management Practices Cost-Share Program pursuant to § 10.1-2128.*

76 2. If the amount of the credit exceeds the taxpayer's liability for such taxable year, the excess may be
77 refunded by the Tax Commissioner. Tax credits shall be refunded by the Tax Commissioner on behalf
78 of the Commonwealth for 100 percent of face value. Tax credits shall be refunded within 90 days after
79 the filing date of the income tax return on which the individual applies for the refund.

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

84 E. A pass-through tax entity, such as a partnership, limited liability company or electing small
85 business corporation (S corporation), may appoint a tax matters representative, who shall be a general
86 partner, member-manager or shareholder, and register that representative with the Tax Commissioner.
87 The Tax Commissioner shall be entitled to deal with the tax matters representative as representative of
88 the taxpayers to whom credits have been allocated by the entity under this article with respect to those
89 credits. In the event a pass-through tax entity allocates tax credits arising under this article to its
90 partners, members or shareholders and the allocated credits shall be disallowed, in whole or in part, such
91 that an assessment of additional tax against a taxpayer shall be made, the Tax Commissioner shall first
92 make written demand for payment of any additional tax, together with interest and penalties, from the
93 tax matters representative. In the event such payment demand is not satisfied, the Tax Commissioner
94 shall proceed to collection against the taxpayers in accordance with the provisions of Chapter 18 (§
95 58.1-1800 et seq.).

96 **§ 58.1-439.5. Agricultural best management practices tax credits.**

97 A. 1. For all taxable years beginning on and after January 1, 1998, any corporation engaged in
98 agricultural production for market who has in place a soil conservation plan approved by the local Soil
99 and Water Conservation District (SWCD) shall be allowed a credit against the tax imposed by
100 § 58.1-400 of an amount equaling ~~twenty-five~~ 25 percent of the first ~~\$70,000~~ \$100,000 expended for
101 agricultural best management practices by the corporation. As used in this ~~section~~ subdivision,
102 "agricultural best management practice" means a practice approved by the Virginia Soil and Water
103 Conservation Board (VSWCB) which will provide a significant improvement to water quality in the
104 state's streams and rivers and the Chesapeake Bay and is consistent with other state and federal
105 programs that address agricultural, nonpoint-source-pollution management. Eligible practices shall
106 include; ~~but are not limited to~~, the following:

- 107 1. ~~a.~~ Livestock-waste and poultry-waste management;
- 108 2. ~~b.~~ Soil erosion control;
- 109 3. ~~c.~~ Nutrient and sediment filtration and detention;
- 110 4. ~~Nutrient management~~; and
- 111 5. ~~d.~~ Pest management and pesticide handling.

112 A detailed list of the standards and criteria for practices eligible for credit shall be found in the most
113 recently approved "Virginia Agricultural BMP Implementation Manual" published by the Department of
114 Conservation and Recreation.

115 2. *For all taxable years beginning on and after January 1, 2020, any corporation engaged in*
116 *agricultural production for market that has in place a soil conservation plan approved by the local Soil*
117 *and Water Conservation District (SWCD) shall be allowed an enhanced credit against the tax imposed*
118 *by § 58.1-400 in an amount equaling 75 percent of the first \$100,000 expended for certain agricultural*
119 *best management practices by the corporation required as part of a resource management plan that is*
120 *certified as having been implemented by the Department of Conservation or by the local Soil and Water*

Conservation District Board. The amount of eligible enhanced credit for certain agricultural best management practices shall be consistent with the cost-share rate offered for each individual best management practice under the Virginia Agricultural Best Management Practices Cost-Share Program pursuant to § 10.1-2128; however, in no case shall the enhanced credit amount exceed 75 percent of the total cost of certain agricultural best management practices expended by the corporation.

As used in this subdivision, "certain agricultural best management practice" means a practice eligible for the enhanced credit in this subdivision, approved by the Virginia Soil and Water Conservation Board (VSWCB), that will provide an enhanced improvement to water quality in the state's streams and rivers and the Chesapeake Bay; is consistent with other state and federal programs that address agricultural, nonpoint-source-pollution management; and excludes eligible practices in subdivision A 1. "Certain agricultural best management practices" includes any of the following that are a required component of a resource management plan that is certified as having been implemented by the Department of Conservation or by the local Soil and Water Conservation District Board:

- a. Development and implementation of a nutrient management plan developed and approved by a certified nutrient management planner pursuant to § 10.1-104.2;
- b. Installation of 35-foot forestry or vegetative buffers to perennial streams;
- c. Livestock stream exclusion;
- d. Livestock watering systems; and
- e. Hardened stream crossings.

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

B. Any eligible 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~~ aggregate amount of credit claimed under subdivisions A 1 and 2 shall not exceed ~~\$17,500~~ \$75,000 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. A taxpayer may not claim credit for the same practice under both subdivisions A 1 and 2. Any taxpayer claiming the enhanced tax credit in subdivision A 2 shall neither be eligible nor seek funding for the same agricultural best management practices under the Virginia Agricultural Best Management Practices Cost-Share Program pursuant to § 10.1-2128.

2. If the amount of the credit exceeds the taxpayer's liability for such taxable year, the excess shall be 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 taxpayer applies for the refund.

D. For purposes of this section, the amount of any credit attributable to agricultural best management practices by a partnership or electing small business corporation (S Corporation) shall be allocated to the individual partners or shareholders in proportion to their ownership or interest in the partnership or S Corporation.