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SENATE BILL NO. 1525

Offered January 20, 2023

A BILL to amend and reenact § 58.1-439.12:12 of the Code of Virginia, relating to wholesome food donation tax credit.

Patrons—Rouse, Deeds, Lewis and Mason

Referred to Committee on Finance and Appropriations

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. Wholesome food donation tax credit.

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

~~"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.

"Wholesome food" means food that meets all quality and labeling standards imposed by federal, state, and local laws or regulations, including food that may not be readily marketable due to appearance, age, freshness, grade, surplus, or other condition.

B. For taxable years beginning on or after January 1, ~~2016~~ *2023*, but before January 1, ~~2022~~ *2028*, any person engaged in the business of farming as defined under 26 C.F.R. §1.175-3 that donates ~~food crops grown~~ *wholesome food produced* by the person in the Commonwealth 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 shall be allowed a credit in an amount equal to ~~30~~ *50* percent of the fair market value of such ~~food crops~~ *wholesome food* donated by the person to a nonprofit food bank during the taxable year but not to exceed an aggregate credit of ~~$5,000~~ *$10,000* for all such donations made by the person during such year.

C. Credit shall be allowed under this section only if (i) the use of the donated ~~food crops~~ *wholesome food* by the donee nonprofit food bank is related to providing food to the needy, (ii) the donated ~~food crops are~~ *wholesome food 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 crops~~ *wholesome food*, if sold by the donee nonprofit food bank, ~~are~~ *is* sold to the needy, other nonprofit food banks, or organizations that intend to use the ~~food crops~~ *wholesome food* 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 seeks the tax credit under this section, the person 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 shall 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 shall identify the donee nonprofit food bank, the person donating ~~food crops~~ *wholesome food* to it, the date of the donation, the number of pounds of ~~food crops~~ *wholesome food* donated, and the fair market value of the ~~food crops~~ *wholesome food* donated. The certification shall also include a statement by the donee nonprofit food bank that its use and disposition of the ~~food crops~~ *wholesome food* 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 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 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.).