DEPARTMENT OF TAXATION
2010 Fiscal Impact Statement

1. Patron L. Kaye Kory

2. Bill Number HB 1046

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

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

3. Committee House Finance

4. Title Income Tax: Nonprofit Charitable Donations for Energy-Star Qualified Products Tax Credit

5. Summary/Purpose:

This bill would create an individual and corporate income tax credit for a taxpayer who makes a donation to a qualified nonprofit organization that is used to construct, purchase, or lease Energy Star qualified products that are used in the headquarters of the nonprofit organization. The credit would be equal to 50% of the qualifying donations made to the qualified nonprofit organization, not to exceed $25,000 annually. This credit would be allowed to be carried forward for up to five years.

If the donations made for the Energy Star qualified products exceeded the cost of the products, the nonprofit organization would be required to prorate each taxpayer's share of the credit.

The credit created by this bill would be effective for taxable years beginning on and after January 1, 2010.

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

7. Budget amendment necessary: No. (See Line 8.)

8. Fiscal implications:

Administrative Costs

TAX has not assigned any administrative costs to this bill because the changes required by a single bill such as this can be implemented as part of the annual changes to our systems and forms. As stand-alone legislation, TAX considers implementation of this bill as "routine," and does not require additional funding.

TAX will provide specific administrative costs on any legislation that is not "routine." Additionally, TAX will review all state tax legislation likely to be enacted prior to the passage by each house. If the aggregate number of routine bills likely to pass either house is unusually large, it is possible that additional resources will be required. If so, TAX will identify the costs at that time.

Revenue Impact

This bill would have an unknown negative impact on General Fund revenue. There are no data sources regarding the donation of Energy Star products for use in a nonprofit's headquarters.

9. Specific agency or political subdivisions affected:

Department of Taxation

10. Technical amendment necessary: Yes.

After consulting the patron for this bill, TAX was informed that this bill was intended to prohibit taxpayers from claiming the tax credit for a donation to a nonprofit organization for Energy Star products if that donation is also claimed as a charitable deduction for federal income tax purposes. TAX suggests the following technical amendments to make this clarification.

Page 1, Line 40, after at the end of the sentence
Insert: F. A tax credit shall only be allowed under this section to the extent that the related donation has not been claimed as a charitable deduction for federal income tax purposes.

Page 2, Line 69, after at the end of the sentence
Insert: F. A tax credit shall only be allowed under this section to the extent that the related donation has not been claimed as a charitable deduction for federal income tax purposes.

11. Other comments:

Federal Law

Under the Internal Revenue Code ("IRC"), taxpayers who itemize deductions are allowed an income tax deduction for charitable donations made to qualifying organizations. Qualified organizations include the following:

- A state or United States possession (or political subdivision thereof), or the United States or the District of Columbia, if made exclusively for public purposes;
- A community chest, corporation, trust, fund, or foundation, organized or created in the United States or its possessions, or under the laws of the United States, any state, the District of Columbia or any possession of the United States, and organized and operated exclusively for charitable, religious, educational, scientific, or literary purposes, or for the prevention of cruelty to children or animals;
- A church, synagogue, or other religious organization;
- A war veterans' organization or its post, auxiliary, trust, or foundation organized in the United States or its possessions;

- A nonprofit volunteer fire company;
- A civil defense organization created under federal, state, or local law (this includes unreimbursed expenses of civil defense volunteers that are directly connected with and solely attributable to their volunteer services);
- A domestic fraternal society , operating under the lodge system, but only if the contribution is to be used exclusively for charitable purposes;
- A nonprofit cemetery company if the funds are irrevocably dedicated to the perpetual care of the cemetery as a whole and not a particular lot or mausoleum crypt.

In general, contributions to IRC § 501(c)(3) organizations are eligible for the charitable deduction, while donations to IRC § 501(c)(4) organizations are not. These organizations include:

- 501(c)(3) – corporations, and any community chest, fund or foundation, organized and operated exclusively for religious, educational, charitable, scientific, literary, or testing for public safety purposes, fostering nation or international amateur sports competition, or for the prevention of cruelty to children or animals

- 501(c)(4) - civic leagues, social welfare organizations, and local associations of employees

North Carolina Law

This bill would provide for an income tax credit similar to the one that exists in North Carolina. Under North Carolina law, a taxpayer who donates money to a tax-exempt § 501(c)3 nonprofit organization, or a unit of State or local government, for the purpose of providing funds for the organization or government unit to construct, purchase, or lease renewable energy property is allowed a tax credit if the donation is used for its intended purpose.

The amount of the credit is a proportion of the tax credit that a nonprofit organization or unit of State or local government could claim if it were subject to tax. The amount of this credit is 35 percent of the cost of the property.

In addition, North Carolina does not allow a taxpayer who claims this credit for his donation to also deduct the donation as a charitable deduction for federal income tax purposes.

Virginia Law

Under current Virginia law, individual income taxpayers may deduct 20% of the amount of sales tax paid for certain energy-efficient equipment or appliances. This deduction is limited to $500 in each taxable year. The following items of tangible personal property qualify for this deduction:

- clothes washers, room air conditioners, dishwashers, and standard size refrigerators that meet or exceed the applicable energy star efficiency requirements;
- a fuel cell that (a) generates electricity using an electrochemical process, (b) has an electricity-only generation efficiency greater than 35%, and (c) has a generating capacity of at least two kilowatts;
- a gas heat pump that has a coefficient of performance of at least 1.25 for heating and at least 0.70 for cooling;
- an electric heat pump hot water heater that yields an energy factor of at least 1.7;
- an electric heat pump that has a heating system performance factor of at least 8.0 and a cooling seasonal energy efficiency ratio of at least 13.0;
- a central air conditioner that has a cooling seasonal energy efficiency ratio of at least 13.5;
- an advanced gas or oil water heater that has an energy factor of at least 0.65;
- an advanced oil-fired boiler with a minimum annual fuel-utilization rating of 85;
- an advanced oil-fired furnace with a minimum annual fuel-utilization rating of 85; and
- programmable thermostats.

Virginia also provides an annual Sales Tax Holiday for the purchase of certain Energy Star qualified products with a maximum sales price of $2,500 per item. An Energy Star qualified product includes any dishwasher, clothes washer, air conditioner, ceiling fan, compact fluorescent light bulb, dehumidifier, programmable thermostat, or refrigerator, the energy efficiency of which has been designated by the United States Environmental Protection Agency and the United States Department of Energy as meeting or exceeding each such agency's requirements under the Energy Star program. The "Energy Star" sales tax holiday was expanded in 2008 to include qualifying "WaterSense" products.

The current sales tax holiday period begins each year on the Friday before the second Monday in October and ends on the second Monday in October. The requirement for an annual Energy Star Sales Tax Holiday is set to expire on July 1, 2012.

Proposed Legislation

This bill would create an individual and corporate income tax credit for a taxpayer who makes a donation to a qualified nonprofit organization that is used to construct, purchase, or lease Energy Star qualified products that are used in the headquarters of the nonprofit organization. The credit would be equal to 50% of the qualifying donations made to the qualified nonprofit organization, not to exceed $25,000 annually. This credit would be allowed to be carried forward for up to five years.

"Energy Star qualified products" would mean products labeled Energy Star that have been designated by the United States Environmental Protection Agency and the United States Department of Energy as meeting or exceeding such agency's requirements under the federal tax credit program for consumer energy efficiency.

"Qualified nonprofit organization" would mean an organization that is exempt from taxation under § 501(c)(3) or § 501(c)(4) of the Internal Revenue Code that maintains complete records, including but not limited to the purpose for which donations are spent.

This bill would require the qualified nonprofit organization to provide the donating taxpayer documentation of the amount of the credit for which the taxpayer qualifies. The documentation should include the following information: (i) a description of the Energy Star qualified products placed in service, (ii) the cost of the products purchased with the donations, and (iii) the amount of the credit.

If the donations exceed the cost of the Energy Star products, the nonprofit organization would be required to prorate each taxpayer's share of the credit. For example, if a qualifying organization received donations of $500 each from four taxpayers, but used a total of $1,000 to purchase Energy Star products, the nonprofit organization would be required to allocate the credit to each taxpayer in the amount of $250. It is likely that the nonprofit organization would then also have to provide documentation regarding the remaining $250 donation so that the taxpayer could claim that as a charitable deduction on his federal income tax return.

Finally, this bill, as amended, would provide that a taxpayer may not claim the individual income tax and the corporate income tax credit in the same taxable year.

The credit created by this bill would be effective for taxable years beginning on and after January 1, 2010.

Impact of the Bill

This bill could encourage people to donate to charitable organizations expressly to benefit the organization, rather than community or the organization's stated mission. In addition to encouraging more people to donate to nonprofit organizations for reasons unrelated to their charitable purposes, this bill would also increase the administrative requirements for charitable organizations. Charities are already required to maintain a considerable amount of documentation regarding charitable giving. This bill will increase that burden, particularly with the pro rata requirements.

Other Legislation

House Bill 1044 would provide an income tax credit individuals and commercial businesses for renewable energy property and residential energy audits.

cc : Secretary of Finance

Date: 1/28/2010 TLG
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