

DEPARTMENT OF TAXATION

2011 Fiscal Impact Statement

1. **Patron** Lynwood W. Lewis, Jr.

3. **Committee** House Finance

4. **Title** Income Tax: Agricultural Best Management Practices Tax Credit

2. **Bill Number** HB 2516

House of Origin:

 X **Introduced**

 Substitute

 Engrossed

Second House:

 In Committee

 Substitute

 Enrolled

5. **Summary/Purpose:**

This bill would allow taxpayers to transfer income tax credits earned for agricultural best management practices (BMPs) to another taxpayer. The taxpayer transferring the credit would be required to send a notification to the Department of Taxation pursuant to procedures established by the Tax Commissioner.

The bill includes a provision that would expand the types of taxes against which the credit may be claimed to include corporate income tax.

The bill would also permit a pass-through entity that allocates or transfers credits among taxpayers to designate a general partner, member-manager, or shareholder as the person that the Department would be required to first contact for the collection of taxes in the event any portion of the credit is disallowed in the future.

The bill would prohibit the costs used to determine this credit from being used to claim any other Virginia income tax credit.

The bill would be effective for taxable years beginning on or after January 1, 2011.

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

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

8. **Fiscal implications:**

Administrative Costs

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

Revenue Impact

The negative General Fund revenue impact this bill is not known. Permitting corporate taxpayers to claim the credit would mean more farmers would be eligible for the credit. In addition, allowing individuals to transfer unused credits to individuals or corporations could increase the number of taxpayers willing to invest in BMP projects. Based on the amount of credits approved by the Department of Conservation and Recreation and the amount of credits claimed on individual income tax returns for the past several years, allowing the credit to be transferred could have a significant negative effect on General Fund revenues.

The following table shows the amount of agricultural BMP credits approved by the Department of Conservation and Recreation for the four most recently available program years. Because the program year follows Virginia's fiscal year, credits issued during the 2009 program year could be claimed either on the 2008 or 2009 tax return depending on when the approved project was completed.

<u>Program Year</u>	<u>BMP Tax Credits Issued</u>
2006	\$941,622.92
2007	\$596,635.74
2008	\$1,105,711.17
2009	\$2,401,788.91

The table below shows that amount of BMP credits claimed by both individuals and corporations for the four most recently completed taxable years. The total amount claimed includes credits carried over from previous taxable years.

<u>Tax Year</u>	<u>Taxpayer Returns</u>	<u>Amount Claimed</u>
2006	591	\$460,919.59
2007	559	\$508,690.23
2008	605	\$586,823.07
2009	534	\$498,254.00

Transferability would make the credit available to more taxpayers with an ability to claim it. This could result in a significant negative revenue impact on General Fund revenue.

9. Specific agency or political subdivisions affected:

Department of Taxation
Department of Conservation and Recreation

10. Technical amendment necessary: Yes.

In order to correct a drafting error, the following amendment is suggested:

Page 1, Line 51, after practices by a

Strike: pass-thru

Insert: pass-through

In order to eliminate duplicative language in the *Code of Virginia*, either a technical amendment to remove the corporate income tax language from the bill or an amendment in the nature of a substitute repealing Va. Code § 58.1-439.5 would be needed.

11. Other comments:

Current Law

The Department of Conservation and Recreation administers two programs (The Agricultural BMP Cost-Share Program and the Agricultural BMP Tax Credit Program) through local soil and water conservation districts to improve or maintain water quality in the state's streams, lakes and bays through the installation or implementation of agricultural BMPs.

Agricultural BMP Cost-Share Program

The cost-share program supports using various practices in conservation planning to treat animal waste, cropland, pastureland and forested land. Some payments are made for at a straight per-acre rate. Others are cost-shared on a percentage basis up to 75%. In some cases, the U.S. Department of Agriculture also pays a percentage. The most an individual may receive is \$50,000. In any case, the state cost-share payment, combined with federal payments, may not exceed 75% of the total eligible costs.

Agricultural BMP Tax Credit Program

The tax credit program supports voluntary installation of BMPs that will address Virginia's pollution water quality objectives. Under the credit any individual engaged in agricultural production for market or who has equines that create needs for agricultural best management practices to reduce nonpoint source pollutants, may be allowed a credit against individual income tax of an amount equaling 25% of the first \$70,000 expended for BMPs. The maximum credit allowed cannot exceed \$17,500.

Corporations engaged in agricultural production for market are eligible for the same credit under a separate section of the *Code of Virginia*.

The local soil and water conservation board must certify a practice as approved, completed, and eligible for the credit. The credit is claimed in the taxable year the approved practice is completed. The credit is nonrefundable, but the portion of the credit that exceeds the tax liability may be carried forward for up to five taxable years.

The credit is based on expenditures made from the taxpayer's own funds. For example, expenditures incurred in implementing the soil conservation plan that are paid by funds received from a federal or state cost sharing program or grant are not eligible for this credit.

Proposal

Under this bill, an individual earning an agricultural best management practices credit would be allowed to transfer such credits to other taxpayers. The taxpayer transferring the credit would be required to notify the Department of such transfer. The Department would establish procedures for the notification process.

The bill also includes a provision that would amend *Va. Code* § 58.1-339.3 allow the credit to be claimed against the corporate income tax. This credit, however, is already available to corporations under *Va. Code* § 58.1-439.5. The Department of Taxation is recommending a technical amendment to correct this issue.

Pursuant to the bill, a pass-through entity that allocates or transfers credits among taxpayers would be permitted to designate a general partner, member, or shareholder as primarily responsible for a tax liability resulting from the disallowance of any portion of the credit in the future. If the designated person fails to satisfy the liability, the Department would proceed with collection actions against the persons claiming the credit.

In addition, the bill would prohibit the costs used to determine this credit from being used to claim any other Virginia income tax credit.

This bill would be effective for taxable years beginning on or after January 1, 2011.

Similar Bill

Senate Bill 974 is identical to this bill.

cc : Secretary of Finance

Date: 1/22/2011 dtm
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