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SENATE BILL NO. 1162

Offered January 13, 2021

Prefiled January 8, 2021

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—Hanger, Lewis and Mason; Delegate: Avoli

Referred to Committee on Finance and Appropriations

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 credit.

A. *1. As used in this section, "agricultural best management practice" means a practice approved by the Virginia Soil and Water Conservation Board 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. A detailed list of the standards and criteria for agricultural best management 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 all taxable years beginning on and after January 1, 1998, any individual who is engaged in agricultural production for market, or 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 *refundable* 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, "agricultural best management practice" means a practice approved by the Virginia Soil and Water Conservation Board (VSWCB) which 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. Livestock-waste and poultry-waste management;~~

~~2. Soil erosion control;~~

~~3. Nutrient and sediment filtration and detention;~~

~~4. Nutrient management; and~~

~~5. 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.~~

3. For all taxable years beginning on and after January 1, 2021, 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 resource management plan approved by the local SWCD shall be allowed a refundable credit against the tax imposed by § 58.1-320 in an amount equaling 75 percent of the first $100,000 expended for agricultural best management practices implemented by the individual on the acreage included in the resource management plan.

B. *1.* 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.

2. To the extent that a taxpayer participates in the Virginia Agricultural Best Management Practices Cost-Share Program, the taxpayer may claim the credit under subdivision A 2 for any remaining liability after such cost-share, but may not claim the credit under subdivision A 3 for any such remaining liability, subject to the other provisions of this section.

C. 1. The *aggregate* amount of such credit *claimed under subdivisions A 2 and 3* 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 in the same management area under both subdivisions A 2 and A 3.*

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

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

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

§ 58.1-439.5. Agricultural best management practices tax credit.

A. ~~For all taxable years beginning on and after January 1, 1998, any corporation engaged in agricultural production for market who 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 § 58.1-400 of an amount equaling twenty-five percent of the first $70,000 expended for agricultural best management practices by the corporation.~~ *1.* As used in this section, "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~~ *nonpoint source pollution* management. ~~Eligible practices shall include, but are not limited to, the following:~~

~~1. Livestock-waste and poultry-waste management;~~

~~2. Soil erosion control;~~

~~3. Nutrient and sediment filtration and detention;~~

~~4. Nutrient management; and~~

~~5. Pest management and pesticide handling.~~

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

2. For all taxable years beginning on and after January 1, 1998, any corporation engaged in agricultural production for market that has in place a soil conservation plan approved by the local Soil and Water Conservation District (SWCD) shall be allowed a refundable credit against the tax imposed by § 58.1-400 of an amount equaling 25 percent of the first $100,000 expended for agricultural best management practices by the corporation.

3. For all taxable years beginning on and after January 1, 2021, any corporation that is engaged in agricultural production for market, or that has equines that create needs for agricultural best management practices to reduce nonpoint source pollutants, and has in place a resource management plan approved by the local SWCD, shall be allowed a refundable credit against the tax imposed by § 58.1-400 in an amount equaling 75 percent of the first $100,000 expended for agricultural best management practices implemented by the corporation on the acreage included in the resource management plan.

B. *1.* 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.

2. To the extent that a taxpayer participates in the Virginia Agricultural Best Management Practices

Cost-Share Program, the taxpayer may claim the credit under subdivision A 2 for any remaining liability after such cost-share, but may not claim the credit under subdivision A 3 for any such remaining liability, subject to the other provisions of this section.

C. 1. The *aggregate* amount of such credit *claimed under subdivisions A 2 and 3* 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 in the same management area under both subdivisions A 2 and A 3.*

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.

2. That the provisions of the first enactment of this act shall apply only to taxable years beginning on and after January 1, 2021, and shall not modify any other provisions for prior taxable years.