

SUMMARY ANALYSIS OF AMENDED BILL

Author: Fuentes Analyst: Jahna Alvarado Bill Number: AB 152
 Related Bills: See Prior Analysis Telephone: 845-5683 Amended Date: April 14, 2011
 Attorney: Patrick Kusiak Sponsor: _____

SUBJECT: Agricultural Product Donation To Food Bank Credit/Emergency Food Assistance Program Fund

SUMMARY

This bill would create an income tax credit for donations of fresh fruits or fresh vegetables to a California food bank.

This analysis will not address the bill's changes to the Health and Safety Code or Welfare and Institutions Code, as they do not impact the department or state income tax revenue.

RECOMMENDATION AND SUPPORTING ARGUMENTS

No position.

SUMMARY OF AMENDMENTS

The April 14, 2011, amendments added language that would modify terms and definitions, and add a sunset date for the credit.

As a result of the amendments, the "Effective/Operative Date," "This Bill," "Implementation Considerations," "Technical Consideration," and "Economic Impact" discussions, as provided in the department's analysis of the bill as introduced January 18, 2011, and amended March 15, 2011, have been revised. The remainder of the department's analysis dated March 31, 2011, still applies.

Summary of Suggested Amendments

Amendments are provided to correct terminology and eliminate unnecessary language.

EFFECTIVE/OPERATIVE DATE

This bill would become effective January 1, 2012. The credit would be specifically operative for taxable years beginning on or after January 1, 2012, and before January 1, 2017.

Board Position:	Asst. Legislative Director	Date
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_____ NAR		
	Patrice Gau-Johnson	04/22/11

ANALYSIS

THIS BILL

This bill would establish a tax credit for taxable years beginning on or after January 1, 2012, and before January 1, 2017, equal to 10 percent of the cost, as specified, of fresh fruits or fresh vegetables donated by a qualified taxpayer to a California food bank, as specified.

Qualified taxpayer would be defined as the person responsible for planting the crop, managing the crop, and harvesting the crop from the land.¹

The cost of donated fresh fruits or fresh vegetables would be the cost of those products that would be included in inventory costs as specified in Internal Revenue Code (IRC) section 263A without regard to the exception for farming businesses. Generally, inventory costs would include both the direct costs and the allocated indirect costs required to produce the fresh fruits or fresh vegetables.

The donee organization would be required to provide a certificate to the donor that would include: (1) a statement signed and dated by an authorized organization representative that the donation is made under the Food and Agricultural Code as specified; (2) the type and quantity of fresh fruits or fresh vegetables donated; (3) the name(s) of the donor(s); and (4) the name and address of the donee. A taxpayer reporting the credit would be required to provide a copy of the certification to the FTB upon request.

This bill would require that any deduction for the cost of donated products otherwise allowed would be reduced by the amount of the credit and any unused credit would be allowed to be carried forward up to seven years.

The FTB would be required to provide a report regarding the utilization of the credit to the Legislature "to the extent that data are available." Reports would be due annually by December 1, with the initial report being due by December 1, 2014. The reporting requirement would become inoperative on January 1, 2016.²

The credit would be repealed by its own terms on December 1, 2017.

¹ This definition is patterned after California Food and Agricultural Code Section 52300(a) that defines "farmer" to mean "the person responsible for planting a crop, managing the crop, and harvesting the crop from land..."

² Government Code section 10231.5 requires the Legislative Counsel include in each bill that imposes a reporting requirement, a provision that repeals or renders inoperative the reporting requirement unless the person requesting the bill directs otherwise.

IMPLEMENTATION CONSIDERATIONS

The department has identified the following implementation concerns. Department staff is working with the author's office to resolve these and other concerns that may be identified.

The definition of a qualified taxpayer as the person that is responsible for planting a crop, managing the crop, and harvesting the crop from land is silent on requiring the person to be engaged in the business of farming and specifying that the crop is the source of the donated fresh fruits or fresh vegetables. As a result, "qualified taxpayer" could be more broadly interpreted than the author intends.

This bill uses the undefined term, "fresh fruits or fresh vegetables." The absence of a definition to clarify this term could lead to disputes with taxpayers and would complicate the administration of this credit. For example would a qualified taxpayer that performed some on-site processing, i.e., washing, pasteurizing, flash freezing, and bagging or boxing fresh fruits or fresh vegetables, be eligible for the credit for donating these items?

Under the terms of this bill, two reports would be required because the initial report on credit utilization would be due in 2014 and the reporting requirement would become inoperative on January 1, 2016. Because of the timing of when returns are filed and processed, the initial report date in 2014 would allow that report to include data on the first year of the credit utilization, taxable year 2012, and the final required report would include complete data on taxable year 2013. If it is the author's intention that a report on credit utilization be required for each year that the credit could be generated, the author may wish to extend the duration of the reporting requirement.

TECHNICAL CONSIDERATION

Sections 17053.88 and 23688 need to be amended where the term "taxpayer" appears, as it should be "qualified taxpayer" to correspond to the definition in subdivision (b) of those sections. Amendments are provided.

Subdivision (f) of Section 17053.88 needs to be amended where the term "operative" appears, as it should be "inoperative" to correspond to the definition in subdivision (g). An amendment is provided to make this correction.

The language that would allow the credit to be carried over after it has been repealed is unnecessary because existing state law provides this general rule. Amendments to remove this language are provided.

ECONOMIC IMPACT

Estimated Revenue Impact of AB 152 As Amended April 14, 2011 For Taxable Years Beginning On or After January 1, 2012 Enactment Assumed After June 30, 2011 (\$ in Millions)			
2011-12	2012-13	2013-14	2014-15
-\$0.2	-\$0.2	-\$0.4	-\$0.4

This analysis does not account for changes in employment, personal income, or gross state product that could result from this bill.

LEGISLATIVE STAFF CONTACT

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FRANCHISE TAX BOARD'S
PROPOSED AMENDMENTS TO AB 152
AS AMENDED ON APRIL 14, 2011

AMENDMENT 1

On page 5, line 35, strikeout "taxpayer", and insert:

qualified taxpayer

AMENDMENT 2

On page 5, line 36, strikeout "taxpayer", and insert:

qualified taxpayer

AMENDMENT 3

On page 6, line 7, strikeout "taxpayer", and insert:

qualified taxpayer

AMENDMENT 4

On page 6, line 15, strikeout "operative", and insert:

inoperative

AMENDMENT 5

On page 6, strikeout lines 25 through 27, inclusive, and insert:

2017, and as of that date is repealed.

AMENDMENT 6

On page 7, line 16, strikeout “taxpayer”, and insert:

qualified taxpayer

AMENDMENT 7

On page 7, line 17, strikeout “taxpayer”, and insert:

qualified taxpayer

AMENDMENT 8

On page 7, line 28, strikeout “taxpayer”, and insert:

qualified taxpayer

AMENDMENT 9

On page 8, strikeout lines 8 through 10, inclusive, and insert:

2017, and as of that date is repealed.