

SUMMARY ANALYSIS OF AMENDED BILL

Author: Fuentes, et al. Analyst: Jahna Alvarado Bill Number: AB 152
 Related Bills: See Prior Analysis Telephone: 845-5683 Amended Dates: July 12 & 14, 2011
 Attorney: Patrick Kusiak Sponsor: _____

SUBJECT: Donations of Fresh Fruits Or Fresh Vegetables To Food Bank Credit/Emergency Food Assistance Program Fund/FTB Report To Legislature

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 July 12, 2011, amendments modified the donee's and the Franchise Tax Board's (FTB's) reporting requirements with regard to the credit this bill would create.

The July 14, 2011, amendments made technical changes to the bill's tax credit provisions that would allow the credit regardless of a taxpayer's method of accounting.

As a result of the July 12, and July 14, 2011 amendments, the "This Bill," "Implementation Considerations," "Technical Considerations," "Fiscal Impact," and "Legal Impact" sections have been revised. The "Economic Impact" section was unaffected by the amendments and is provided for convenience.

The remainder of the department's analysis of the bill as amended April 14, 2011, still applies, with the exception of the "Federal/State Law" section. The "Federal/State Law" section of the department's analysis of the bill as amended May 27, 2011, still applies.

Summary of Suggested Amendments

Amendments 1, 3, and 4 are provided to eliminate inconsistent use of terms and phrases.

Amendment 2 is provided to correct a spacing error.

Board Position:

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|-----------------------------|------------------------------|--|
| <input type="checkbox"/> S | <input type="checkbox"/> NA | <input checked="" type="checkbox"/> NP |
| <input type="checkbox"/> SA | <input type="checkbox"/> O | <input type="checkbox"/> NAR |
| <input type="checkbox"/> N | <input type="checkbox"/> OUA | |

Asst. Legislative Director

Date

Patrice Gau-Johnson

8/08/11

Amendment 5 is suggested to provide appropriation language to fund the departmental costs associated with administering this bill.

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. The credit would be allowed regardless of the taxpayer's method of accounting.

A "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 otherwise be included or 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 recipient of a donation of fresh fruits or fresh vegetables would be required to provide to the donor certification of the type and quantity of the products donated, the name of the donor or donors, the name and address of the donee non-profit organization, and, as provided by the donor, the estimated value of the donated products and the location where the donated product was grown. The donor would be required to provide the certification to the FTB upon request.

Using the information available on the certifications, the FTB would be required to provide an annual report to the Legislature that would include the utilization of the credit, the type and quantity of products donated, the estimated value of the donated products, the county in which the products originated, the county in which the product was donated, and the month the donations were made. Under the terms of the bill, two reports would be required; the first would be due on or before December 1, 2014, with the second report being due by December 1, 2015.

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.

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..."

This bill uses the undefined terms, “fresh fruits or fresh vegetables” and “type and quantity of fresh fruits or fresh vegetables donated.” The absence of a definition to clarify these terms 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? As to the “type and quantity,” would donations be quantified by weight (in pounds)? By volume, (a flat of strawberries)? The author may wish to amend this bill to specify the measure to be used to report the amount of donated products.

The bill is silent on who is responsible for creating the required certificates. This could lead to multiple and inconsistent certification forms that would complicate the data gathering needed to provide the required reports. Amending the bill to assign responsibility for creating one standard certification template would ease administration of this bill for donors, donee organizations, and the department.

This bill would require the FTB to report a number of details with regard to donations of fresh fruits or fresh vegetables that could allow for the identification of a taxpayer if the number of taxpayers reporting the credit is minimal. For example, if one taxpayer in a given county makes a donation, it could be possible to identify that taxpayer based on the type and amount of the fresh fruits or fresh vegetables donated combined with the county of origination of the donated products and the county of the donation. The department would safeguard taxpayer confidentiality in these situations by omitting statistically small populations from the required report and flagging the item as “omitted to preserve taxpayer confidentiality.”

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 CONSIDERATIONS

The bill uses the terms and phrases “fresh fruits or fresh vegetables,” “fruits or vegetables,” and “products” interchangeably. Amendments 1, 3, and 4 are provided to eliminate inconsistent references.

Amendment 2 is provided to insert a space between two sentences that was inadvertently omitted.

FISCAL IMPACT

Staff estimates one-time costs of approximately \$66,000 in fiscal year 2011/2012 to develop, program, and test system changes in order to implement the credit that this bill would create. Staff estimates that the on-going costs to provide the required report would be minor and absorbable.

Historically, the estimated implementation costs would be included as part of the department’s annual change process. Due to the current fiscal environment and the redirection of resources to implement priority technology infrastructure projects, these costs are unable to be included in the normal annual change process. Accordingly, suggested language is provided in Amendment 5 to fund the department’s implementation costs for this bill.

If this bill is enacted without appropriation language, the department would pursue a budget augmentation (“legislative budget change proposal”) through the normal budgetary processes and if necessary, would redirect resources from other revenue producing activities to implement this bill. Redirection of resources could negatively impact existing revenue producing activities.

ECONOMIC IMPACT

| Estimated Revenue Impact of AB 152 As Amended July 14, 2011 For Taxable Years Beginning On or After January 1, 2012 Enactment Assumed After June 30, 2011 (\$ in Millions) | | | |
|---|-----------|-----------|-----------|
| 2011/2012 | 2012/2013 | 2013/2014 | 2014/2015 |
| -\$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.

SUPPORT/OPPOSITION

Support: Alameda County Community Food Bank;
American Federation of State, County and Municipal Employees;
California Association of Food Banks; California Catholic Conference;
California Food Policy Advocates; California Hunger Action Coalition; California State PTA;
Community Action Agency of Butte County, Inc.; Community Food Bank;
County Welfare Directors Association of California;
Emergency Food Bank and Family Services Stockton/San Joaquin; Feeding America San Diego;
Food Bank of Contra Costa and Solano; Food for People; FOOD Share;
Fremont Family Resource Center; HMC Farms; Imperial Valley Food Bank;
Interfaith Community Services; Interfaith Food Bank of Amador County;
Los Angeles Regional Food Bank; Mariposa Wellness Center;
Mendocino Food and Nutrition Program; Meyers Farms Family Trust; Ocean Mist Farms;
Ola mo Keriso Church; Orange County Food Bank; Pacific International Marketing;

Podesta Packing; Prime Time International; Quality Packing; The Resource Connection;
San Francisco Food Bank; San Joaquin Tomato Growers;
Second Harvest Food Bank of Orange County;
Second Harvest Food Bank of Santa Clara and San Mateo Counties;
Second Harvest Food Bank of Santa Cruz; Shasta Senior Nutrition Programs/Food Bank;
St. Anthony's of San Francisco; Tri-City Volunteers; Van Groningen and Sons, Inc.;
Vessey & Company, Inc.; Western Growers.

Opposition: None provided.

LEGISLATIVE STAFF CONTACT

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

AMENDMENT 1

On page 5, line 39-40, strikeout "fruits or vegetables" and insert:

fresh fruits or fresh vegetables

AMENDMENT 2

On page 6, line 23, strikeout "23688.The" and insert:

23688. The

AMENDMENT 3

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

donated, the estimated value of the donated fresh fruits or fresh vegetables, the county in which the fresh fruits or fresh vegetables originated, the county in which the donation was made, and the month the donation was made.

AMENDMENT 4

On page 7, strikeout lines 22 and 23, and insert:

information regarding the origin of where the donated fresh fruits or fresh vegetables were grown, and upon receipt of the donated fresh fruits

AMENDMENT 5

On page 8, after line 28, insert:

SEC. 6 The sum of sixty six thousand dollars (\$66,000) is hereby appropriated to the Franchise Tax Board in augmentation of item 1730-001-0001 of the Governor's Budget, Chapter 33, Statutes of 2011.