BILL ANALYSIS

Department, Board, Or Commission	Author	Bill Number
Franchise Tax Board	**Fuentes**	**AB 152**

SUBJECT

Donations Of Fresh Fruits Or Fresh Vegetables To Food Bank Credit/ Emergency Food Assistance Program Fund/ FTB To Report Credit Utilization To Legislature

SUMMARY

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

PURPOSE OF BILL

According to the author's office, the purpose of this bill is to increase access to fresh produce for families that are "food insecure."[1]

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.

ANALYSIS

FEDERAL/STATE LAW

Under current federal law, in general, a deduction is permitted for charitable contributions, subject to certain limitations that depend on the type of taxpayer, the property contributed, and the donee organization. The amount of any deduction generally equals the fair market value of the contributed property on the date of the contribution.

[1] Food insecurity is strongly associated with household income. It is, by definition, a condition that arises from a lack of enough income and other resources for food. Thirty-five percent of poor households had difficulty putting enough food on the table at times during the year compared with 8 percent of households with incomes above the poverty line. Source: U.S. Dept. of Agriculture Economic Research Service at <http://www.ers.usda.gov/AmberWaves/April05/DataFeature/> [as of August 31, 2011].

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Under a federal special temporary provision,[2] for charitable contributions of food inventory made after December 31, 2009, and before January 1, 2012, a taxpayer engaged in a trade or business is eligible to claim an enhanced deduction for donations of food inventory.[3] In general, the total deduction for donations of food inventory in a taxable year may not exceed 10 percent of the taxpayer's net income for such taxable year.

The enhanced federal deduction for food is available only for food that qualifies as "apparently wholesome food." Apparently wholesome food is defined as food intended for human consumption that meets all quality and labeling standards imposed by federal, state, and local laws and regulations even though the food may not be readily marketable due to appearance, age, freshness, grade, size, surplus, or other conditions.

A donor making a charitable contribution of inventory must make a corresponding adjustment to the cost of goods sold by decreasing the cost of goods sold by the lesser of the fair market value of the property or the donor's basis with respect to the inventory. Accordingly, if the allowable charitable deduction for inventory is the fair market value of the inventory, the donor reduces its cost of goods sold by such value, with the result that the difference between the fair market value and the donor's basis may still be recovered by the donor as a business deduction other than as a charitable contribution.

To use the enhanced deduction, the taxpayer must establish that the fair market value of the donated item exceeds basis. The valuation of food inventory has been the subject of disputes between taxpayers and the IRS.

California's Personal Income Tax Law (PITL) generally conforms to the federal rules relating to charitable contributions as of the specified date of January 1, 2009,[4] but specifically does not conform to the enhanced deduction for a contribution of food inventory.[5] The deduction under the PITL for charitable contributions of inventory is limited to the taxpayer's basis in the inventory, generally its cost. Additionally, the state's Corporation Tax Law (CTL) does not adopt the general federal rules that allow enhanced deductions for C-corporation contributions of inventory, and does not adopt the enhanced deduction for a contribution of food inventory.

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[2] TAX RELIEF, UNEMPLOYMENT INSURANCE REAUTHORIZATION, AND JOB CREATION ACT OF 2010 Public Law 111-312, Sec.740, December 17, 2010.

[3] To be eligible for the enhanced deduction, the contributed property generally must be inventory of the taxpayer, contributed to a charitable organization described in IRC section 501(c)(3) (except for private non-operating foundations), and the donee must: (1) use the property consistent with the donee's exempt purpose solely for the care of the ill, the needy, or infants; (2) not transfer the property in exchange for money, other property, or services; and (3) provide the taxpayer a written statement that the donee's use of the property will be consistent with such requirements. In the case of contributed property subject to the Federal Food, Drug, and Cosmetic Act, as amended, the property must satisfy the applicable requirements of such Act on the date of transfer and for 180 days prior to the transfer. The enhanced deduction is equal to the lesser of: (1) basis plus one-half of the item's appreciation (i.e., basis plus one-half of fair market value in excess of basis); or (2) two times basis. IRC section 170(e)(3)(C).

[4] For taxable years beginning on or after January 1, 2010, Revenue and Taxation Code (R&TC) section 17201 conforms to IRC section 170, relating to charitable contributions and gifts, as of the specified date of January 1, 2009, with modifications.

[5] R&TC section 17275.2.

The deduction under the CTL for contributions of inventory is limited to the taxpayer's basis in the inventory (generally its cost), and may not exceed ten percent of the corporation's net income. Any excess may be carried forward for up to five years. [6]

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.[7]

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 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 estimated value of the fresh fruits and fresh vegetables donated, the county in which the products originated, 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.

LEGISLATIVE HISTORY

AB 727 (Correa, et al., 2001/2002) would have created a tax credit equal to 10 percent of the normal inventory costs for the donation of an agricultural product made to a food bank located in Fresno County, Orange County, or Santa Cruz County. This bill would allow a similar credit for donations made to a food bank located in California. AB 727 failed to pass out of the Senate Revenue and Taxation Committee by the Constitutional deadline.

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[6] R&TC sections 24357–24359.1.
[7] 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…"

AB 287 (Strickland, 1999/2000) would have created a tax credit equal to 10 percent of the wholesale value of agricultural products donated by a taxpayer to a nonprofit charitable organization or food bank. AB 287 failed to pass out of its house of origin by the Constitutional deadline.

AB 196 (Thomson, 1997/1998) would have created a tax credit equal to 20 percent of the cost of agricultural products donated to a nonprofit charitable organization. AB 196 failed passage out of the Senate Appropriations Committee.

AB 364 (Cannella, 1995/1996) would have, among other things, created a tax credit equal to 10 percent of the cost of food donated to nonprofit charitable organizations. AB 364 failed passage out of the Senate Appropriations Committee.

AB 2346 (Kelley, Stats. 1989, Ch. 1248) created a tax credit for the donation of agricultural products to certain nonprofit charitable organizations. The credit this bill would create is substantially similar to the credit authorized by AB 2346. AB 2346 was repealed by its own terms effective December 1, 1992.

OTHER STATES' INFORMATION

The states surveyed include *Florida, Illinois, Massachusetts, Michigan, Minnesota,* and *New York.* These states do not offer a credit similar to the credit proposed in this bill. These states were selected due to their similarities to California's economy, business entity types, and tax laws.

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.

ECONOMIC IMPACT

Estimated Revenue Impact of AB 152 As Amended August 30, 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.

APPOINTMENTS

None.

SUPPORT/OPPOSITION[8]

Support: Alameda County Community Food Bank;
American Federation of State, County and Municipal Employees, AFL-CIO;
California Association of Food Banks; California Catholic Conference;
California Communities United Institute; California Food Policy Advocates;
California Hunger Action Coalition; California State PTA;
Community Action Agency of Butte County, Inc.; Community Food Bank;
Community Food Bank of San Benito County; County Welfare Directors Association;
Emergency Food Bank and Family Services Stockton/San Joaquin; Feeding America San Diego;
First 5 Association of California; Food Bank for Monterey County;
Food Bank of Contra Costa and Solano; Food for People; FOOD Share;
Foodbank of Santa Barbara County; Fremont Family Resource Center; HMC Farms;
Hunger Action Los Angeles; Imperial County Food Bank;
Interfaith Community Services; Interfaith Council of Amador;
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; Prima Frutta Packing, Inc.; Prime Time International; Quality Packing;
Redwood Empire Food Bank; 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 County; Shasta Senior Nutrition Programs/Food Bank;
Simonian Fruit Company; St. Anthony's of San Francisco; T.D. Produce Sales;
The Resource Connection; Tradition One-Alcohol/Drug Rehabilitation Program;
Tri-City Volunteers; Van Groningen and Sons, Inc.; Vessey & Company, Inc.; Western Growers.

[8] As reported by the Senate Floor Analysis dated August 30, 2011 at <http://www.leginfo.ca.gov/pub/11-12/bill/asm/ab_0151-0200/ab_152_cfa_20110830_121252_sen_floor.html> [as of August 31, 2011].

Opposition: None provided.

VOTES

Concurrence	09/08/11	Y: 78	N: 0
Senate Floor	09/06/11	Y: 40	N: 0
Assembly Floor	06/01/11	Y: 76	N: 0

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