

ANALYSIS OF AMENDED BILL

Author: Eggman, et al. Analyst: Jessica Deitchman Bill Number: AB 1577
 Related Bills: See Legislative History Telephone: 845-6310 Introduced and Amended Date: January 4, 2016 and February 3, 2016
 Attorney: Bruce Langston Sponsor _____

SUBJECT:	Agriculture Product Donations to Food Bank Credit
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SUMMARY

This bill would, under the Personal Income Tax Law (PITL) and Corporation Tax Law (CTL), recast the existing Donated Fresh Fruits or Vegetables Credit (Fruits and Vegetables Credit) as an Agriculture Product Donation to Food Bank Credit (Agriculture Product Donation Credit).

This analysis only addresses the provisions of the bill that impact the department’s programs and operations.

RECOMMENDATION

No position.

Summary of Amendments

The bill as introduced on January 4, 2016 would recast the existing fresh fruit and vegetable donation credit as an agriculture product donation credit.

The February 3, 2016 amendments added a number of coauthors, made several non-substantive changes, and modified provisions of the credit discussed below.

This is the department’s first analysis of the bill.

REASON FOR THE BILL

The reason for the bill is to encourage additional donations to food banks by expanding the taxpayers and products that would be eligible for the credit.

EFFECTIVE/OPERATIVE DATE

This bill would become effective on January 1, 2017, and would be operative for qualified donation items that are accepted by a food bank located in California for taxable years beginning on or after January 1, 2017, and before January 1, 2022.

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.

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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, 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 PITL generally conforms to the federal rules relating to charitable contributions as of the specified date of January 1, 2009, but specifically does not conform to the enhanced deduction for a contribution of food inventory. 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 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. 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.

Current state law allows a credit of 10 percent¹ of the qualified donation of fresh fruits and vegetables made to a qualified nonprofit made by a qualified taxpayer,² as defined.

THIS BILL

This bill would, under the PITL and the CTL, recast the existing Fruits and Vegetables Credit as an Agriculture Product Donation Credit.

This Agriculture Product Donation Credit would be allowed to a qualified taxpayer that donates to a food bank any qualified donation items that are accepted by that food bank located in California.³ The credit would be equal to 15 percent of the qualified value of the qualified donation items, but in no event would this amount be less than the amount that otherwise would have been calculated under the Fruits and Vegetables Credit (Chapter 503 of the statutes of 2011).

¹ Of the cost that would otherwise be included in inventory costs under Section 263A of the Internal Revenue Code, or that would be required to be included in inventory costs under Section 263A of the Internal Revenue Code.

² Qualified taxpayer means the person responsible for planting a crop, managing a crop, and harvesting the crop from the land.

³ Under Chapter 5 (Commencing with Section 58501) of Part 1 of Division 21 of the Food and Agricultural Code.

“Qualified donation item” would mean fresh fruits or fresh vegetables and the following raw agricultural products or processed foods:

- “Fruits,” nuts or vegetables, as defined in Section 42510 of the Food and Agriculture (F & A) Code.
- “Meat food product,” as defined in Section 18665 of the F & A Code.
- “Poultry,” as defined in Section 18675 of the F & A Code.
- “Eggs,” as defined in Section 75027 of the F & A Code.
- “Fish,” as defined in Section 58609 of the F & A Code.

“Qualified donation item” may also be any of the following foods as defined in Section 109935 of the Health and Safety Code:⁴

- Rice.
- Beans.
- Fruit, nuts, and vegetables in canned, frozen, dried, dehydrated, and 100 percent juice forms.
- Any cheese, milk, yogurt, butter, and dehydrated milk, meeting the requirements of Division 15 (commencing with Section 32501) of the F & A Code.
- Infant formula, subject to Section 114094.5 of the Health and Safety Code.
- Vegetable oil and olive oil.
- Soup, pasta sauce, and salsa.
- Bread and pasta.
- Canned meats and canned seafood.

“Qualified taxpayer” would mean the person responsible for planting a crop, managing the crop, harvesting the crop from land, growing or raising a qualified donation item, or harvesting, packing or processing a qualified donation item.

“Qualified value” would mean either of the following:

- The qualified value calculated by using the weighted average wholesale sale price based on the qualified taxpayer’s total like grade wholesale sales of the donated item sold within the calendar month of the qualified taxpayer’s donation.
- If no wholesale sales of the donated item have occurred in the calendar month of the qualified taxpayer’s donation, the qualified value would be equal to the nearest regional wholesale market price for the calendar month of the donation based upon the same grade products as published by the United States Department of Agriculture’s Agricultural Marketing Service, or its successor.

⁴ Which defines “food as “any article used or intended for use for food, drink, confection, condiment, or chewing gum by man or other animal, or any article used or intended for use as a component of any of the items previously listed.”

If the credit allowed by this bill is claimed by the qualified taxpayer, any deduction otherwise allowed would be reduced by the amount of the credit.

The donor would provide to the food bank the qualified value of the donation items and information regarding the origin of where the donations items were grown, processed, or both grown and processed.

Upon receipt and acceptance of the donation items, the food bank would provide a certificate to the donor. The certificate would contain a statement signed and dated by a person authorized by the food bank that the donation items are accepted, as specified. The certificate would also contain the type, grade, and quantity of items donated, the name of the donor or donors, the name and address of the food bank, and, as provided by the donor, the origin of the donated items, and the qualified value of the donated items.

Upon request of the Franchise Tax Board (FTB), the qualified taxpayer would be required to provide a copy of the certification to the FTB.

The credit could be carried over for up to seven years or until exhausted.

The credit allowed by this section must be claimed only on a timely filed return.

The FTB would continue to report to the Legislature on or before December 1, 2014, and each December 1 thereafter until January 1, 2021, but the report would now include the estimated value of the qualified donated items and the origin of the qualified donation items.

This credit would be repealed on December 1, 2022.

IMPLEMENTATION CONSIDERATIONS

Implementing this bill would require some changes to existing tax forms and instructions and information systems, which could be accomplished during the normal annual update.

LEGISLATIVE HISTORY

AB 515 (Eggman, et al., 2015/2016) substantially similar to this bill, would have recast the existing Donated Fresh Fruits or Vegetables Credit as an Agriculture Product Donation to Food Bank Credit. AB 515 was vetoed by Governor Brown on October 10, 2015, because “despite strong revenue performance over the past few years, the states’ budget has remained precariously balanced due to unexpected costs and the provision of new services. Now, without the extension of the managed care organization tax that I called for in special session, the next year’s budget faces the prospect of over \$1 billion in cuts. Given these financial uncertainties, I cannot support providing additional tax credits that will make balancing the state’s budget even more difficult. Tax credits, like new spending on programs, need to be considered comprehensively as part of the budget deliberations.”

AB 152 (Fuentes, et al., Chapter 503, Statutes of 2011) created the Donated Fresh Fruits or Vegetables Credit under the PITL and the CTL. This credit allows a 10 percent credit for donations of fresh fruits and vegetables made to a qualified nonprofit entity.

OTHER STATES' INFORMATION

The states surveyed include *Florida, Illinois, Massachusetts, Michigan, Minnesota, and New York*. These states lack 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

This bill would not impact the department's costs.

ECONOMIC IMPACT

This bill would result in the following revenue loss:

Estimated Revenue Impact of AB 1577 As Amended February 3, 2016 Assumed Enactment After June 30, 2016 (\$ in Millions)		
2016-17	2017-18	2018-19
- \$0.6	- \$1.3	- \$1.6

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

Revenue Discussion

Using data on food bank donations, it was estimated that qualified taxpayers would have made \$9 million in qualified donations in 2014. This was grown by the Department of Finance growth rate and results in an estimated \$10 million of food donations in 2017. The estimate assumes the expanded credit would increase donations by 10 percent bringing total donations to \$11 million in 2017. Applying the credit rate of 15 percent results in estimated credits generated of \$2 million. Using the current Fruits and Vegetables Credit data, it is estimated that 75 percent of the credit would be used in the year generated and the remaining 25 percent would be used over the next five years. Because taxpayers must reduce the deduction for qualified donations by the credit amount, an offsetting gain is applied to account for the decrease in reported deductions. Lastly, the estimate is adjusted to subtract the loss attributable to the current Fruits and Vegetable Credit, resulting in a net \$1.2 million loss for taxable year 2017.

The tax year estimates are split between personal income taxpayers and corporate taxpayers, converted to fiscal year estimates, and then rounded to arrive at the estimates shown in the table above.

SUPPORT/OPPOSITION

Support: None provided.

Opposition: None provided.

ARGUMENTS

Proponents: Some may argue that this bill would encourage businesses to make much needed donations to California food banks.

Opponents: Some may argue that this bill is overly broad and would offer a credit for items that food banks would not necessarily use in their normal operations.

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