



## **Analysis of Original Bill**

Author: Eggman, et al.

Sponsor:

Bill Number: AB 614

Analyst: Davi Milam

Phone: (916) 845-2551

Introduced: February 14, 2019

Attorney: Shane Hofeling

Related Bills: See Legislative  
History

**Subject:** Agriculture Product Donations to Food Bank Credit

### **Summary**

This bill would, under the Personal Income Tax Law (PITL) and the 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 would impact the department's programs and operations.

**Recommendation – No position.**

### **Reason for the Bill**

The reason for the bill is to encourage additional donations to food banks by expanding the list of food items eligible for the donation credit thereby increasing access to food-insecure Californians.

### **Effective/Operative Date**

As a tax levy, this bill would be effective immediately upon enactment and operative for taxable years beginning on or after January 1, 2019, and before January 1, 2022.

### **Federal/State Law**

Under current federal law, in general, a deduction is permitted for charitable contributions, subject to limitations dependent upon the type of taxpayer, the property contributed, and the donee organization.<sup>1</sup> The amount of any deduction generally equals the fair market value of the contributed property on the date of the contribution.

---

<sup>1</sup> For tax years 2018 through 2025, the total deduction for certain charitable contributions is limited to 60 percent rather than 50 percent.

California's PITL generally conforms to the federal rules relating to charitable contributions as of the specified date of January 1, 2015, but specifically does not conform to the enhanced deduction for a contribution of food inventory.<sup>2</sup> 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.

For taxable years beginning on or after January 1, 2017, and before January 1, 2022, current state law allows a credit of 15 percent of the qualified donation of fresh fruits and vegetables made to a qualified nonprofit by a qualified taxpayer.

### **This Bill**

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

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. The credit would be equal to 15 percent of the qualified value of the qualified donation items. "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.

---

<sup>2</sup> California does not conform to the federal percentage change to 60 percent for tax years 2018 through 2025.

“Qualified donation item” may also be any of the following foods as defined in Section 109935 of the Health and Safety Code:<sup>3</sup>

- 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 114904.5 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 price based on the qualified taxpayer’s total 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.

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 qualified donation items and information regarding the origin of where the qualified donations items were grown, processed, or both grown and processed.

---

<sup>3</sup> 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.”

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. The certificate would also contain the type 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 provide a copy of the certification to the FTB.

The credit could be claimed only on a timely filed original return.

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

The FTB would continue to report to the Legislature on or before December 1, 2019, and each December 1 thereafter until January 1, 2021, but the report would now include the qualified value of the qualified donated items, the county in which the qualified donation items originated, and the month the donation was made.

This credit would remain in effect only until December 1, 2022, and as of that date would be repealed.

### **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.

### **Technical Considerations**

For consistency, replace the words “donor” or “donors” with “qualified taxpayer” throughout the bill.

To clarify the operative date, the following amendments are recommended:

On page 4, between line 36 and line 37, insert:

(i) The amendments to this section made by the act adding this subdivision shall apply to taxable years beginning on or after January 1, 2019.

On page 7, between line 5 and line 6, insert:

(g) The amendments to this section made by the act adding this subdivision shall apply to taxable years beginning on or after January 1, 2019.

### Legislative History

AB 515 (Eggman, et al., 2015/2016), substantially similar to this bill, would have recast the Donated Fresh Fruits or Vegetables Credit as the Agriculture Product Donation to Food Bank Credit. AB 515 was vetoed by the Governor, along with other tax credit bills, due to concerns related to the state's budget.

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

A review of *Florida, Illinois, Massachusetts, Michigan, and Minnesota* tax laws found no comparable credit to the credit proposed in this bill. *New York* tax law, for taxable years beginning on or after 2018, allows a maximum credit of \$5,000 for an eligible farmer who donates to an eligible food pantry. These states were selected due to their similarities to California's economy, business entity types, and tax laws.

### Fiscal Impact

The department's costs to implement this bill have yet to be determined. As the bill moves through the legislative process, costs will be identified.

### Economic Impact

Revenue Estimate

This bill would result in the following revenue loss:

Estimated Revenue Impact of AB 614 as Introduced February 14, 2019  
Assumed Enactment after June 30, 2019

(\$ in Dollars)

<b>Fiscal Year</b>	<b>Revenue</b>
2019-2020	-\$600,000
2020-2021	-\$450,000
2021-2022	-\$250,000

This analysis does not account for changes in employment, personal income, or gross state product that could result from this bill or for the net final payment method of accrual.

## Revenue Discussion

Based on data from the California Association of Food Banks, it is estimated that \$3.5 million in newly qualified donations will be made in 2019. Applying the credit rate of 15 percent would result in estimated credits generated of \$530,000 in tax year 2019. It is estimated that 80 percent, or \$420,000, would be generated by personal income taxpayers and 20 percent, or \$110,000, would be generated by corporate taxpayers. Using the current Fresh Fruits and Vegetables Credit data, it was estimated that 90 percent of qualified taxpayers, including the S corporation pass through income adjustment, would have a tax liability to offset with the credit. Of that amount, \$390,000, would claim the credit in the year generated and the majority of the remaining credit would be used over the subsequent 5 years.

To arrive at the offsetting tax effect of the expense deduction that would otherwise be allowed under current law, it is estimated that qualified taxpayers would be unable to deduct approximately \$400,000 in qualified expenses in taxable year 2019. Applying an average tax rate of 8 percent, results in an offsetting revenue gain of \$30,000. The net revenue loss is estimated to be \$360,000 for taxable year 2019.

The tax-year estimates are converted to fiscal-year estimates and then rounded to arrive at the amounts shown in the above table.

## Legal Impact

This bill would restrict the tax credit to donations to California food banks. This bill could be considered discriminatory because it could appear to improperly favor in-state activity over out-of-state activity.

## Legislative Staff Contact

Davi Milam  
Legislative Analyst, FTB  
(916) 845-2551  
[davi.milam@ftb.ca.gov](mailto:davi.milam@ftb.ca.gov)

Jame Eiserman  
Revenue Manager, FTB  
(916) 845-7484  
[jame.eiserman@ftb.ca.gov](mailto:jame.eiserman@ftb.ca.gov)

Jahna Carlson  
Acting Legislative Director, FTB  
(916) 845-5683  
[jahna.carlson@ftb.ca.gov](mailto:jahna.carlson@ftb.ca.gov)