



Summary Analysis of Amended Bill

Author: Eggman, et al.

Sponsor:

Bill Number: AB 614

Analyst: Davi Milam

Phone: (916) 845-2551

Amended: May 16, 2019

Attorney: Shane Hofeling

Related Bills: See Prior Analysis

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.

Summary of Amendments

The May 16, 2019, amendments added coauthors, modified the defined term qualified taxpayer, clarified the operative date, and made other clarifying and technical changes.

As a result of the amendments, all of the technical considerations discussed in the department's analysis of the bill as introduced February 14, 2019, were resolved, and one new implementation consideration was identified. Except for the "Effective/ Operative Date," "This Bill," "Implementation Considerations," "Technical Considerations," and "Economic Impact" sections, the remainder of the department's analysis of the bill as introduced February 14, 2019, still applies. The "Fiscal Impact" and "Legal Impact" sections have been restated below for convenience.

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, 2020, and before January 1, 2022.

This Bill

This bill would, under the PITL and the CTL, for taxable years beginning on or after January 1, 2020, and before January 1, 2022, 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 who 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 California Food and Agriculture Code ("FAC").
- "Meat food product," as defined in Section 18665 of the FAC.
- "Poultry," as defined in Section 18675 of the FAC.
- "Eggs," as defined in Section 75027 of the FAC.
- "Fish," as defined in Section 58609 of the FAC.

"Qualified donation item" may also be any of the following foods as defined in Section 109935 of the California Health and Safety Code:¹

- 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 FAC.
- 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.

¹ 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."

"Qualified taxpayer" would mean the person responsible for planting a crop, managing the crop, and harvesting the crop from land. "Qualified taxpayer" would also include a person growing or raising a qualified donation item, or harvesting, packing, or processing a qualified donation item, provided that the person is not a retailer or wholesaler.

"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 qualified taxpayer 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.

Upon receipt and acceptance of the donation items, the food bank would provide a certificate to the qualified taxpayer. 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 qualified taxpayer or qualified taxpayers, the name and address of the food bank, and, as provided by the qualified taxpayer, 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, and expand the report to 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.

Consistent with current law, the recast credit would remain in effect only until December 1, 2022, and be repealed as of that date.

Implementation Considerations

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

The defined term "qualified taxpayer" uses the undefined terms "retailer" and "wholesaler." The absence of definitions to clarify these terms could lead to disputes with taxpayers and would complicate the administration of this bill. For clarity and ease of administration, it is recommended that the bill be amended.

Fiscal Impact

This bill would not significantly impact the department's costs.

Economic Impact

Revenue Estimate

This bill would result in the following revenue loss:

Estimated Revenue Impact of AB 614 as Amended May 16, 2019
Assumed Enactment after June 30, 2019

(\$ in Dollars)

Fiscal Year	Revenue
2019-2020	-\$200,000
2020-2021	-\$400,000
2021-2022	-\$200,000

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 \$3.4 million in newly qualified donations will be made in 2020. Applying the credit rate of 15 percent would result in estimated credits generated of \$510,000 in tax year 2020. It is estimated that 80 percent, or \$410,000, would be generated by personal income taxpayers and 20 percent, or \$100,000, would be generated by corporate taxpayers. Using the current Fruits and Vegetables Credit data, it was estimated that 90 percent of taxpayers, including the S corporation adjustment, would have a tax liability to offset with the credit. Of that amount, 80 percent, or \$380,000, would claim the credit

in the year generated and the majority of the remaining credit would be used over subsequent 3 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 \$500,000 in qualified expenses in taxable year 2020. Applying an average tax rate of 6 percent, results in an offsetting revenue gain of approximately \$30,000. The net revenue loss is estimated to be \$350,000 in taxable year 2020.

The tax year estimates are converted to fiscal year revenue 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

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

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