

ANALYSIS OF AMENDED BILL

Author:	<u>Eggman</u>	Analyst:	<u>Jessica Deitchman</u>	Bill Number:	<u>AB 515</u>
Related Bills:	<u>See Legislative History</u>	Amended		March 26, 2015 and	
		Telephone:	<u>845-6310</u>	Dates:	<u>April 7, 2015</u>
		Attorney:	<u>Bruce Langston</u>	Sponsor	

SUBJECT:	Agriculture Product Donation 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 March 26, 2015, and April 7, 2015, amendments recast the existing fresh fruit and vegetable donation credit as an agriculture product donation credit.

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 provisions of the fresh fruit and vegetable donation credit to allow for additional items and taxpayers to qualify.

EFFECTIVE/OPERATIVE DATE

This bill would become effective on January 1, 2016, and operative for taxable years beginning on or after January 1, 2016 and before January 1, 2024.

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, 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 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 Fruit and Vegetables Credit to an Agriculture Product Donation Credit for taxable years beginning on or after January 1, 2016, and before January 1, 2024.

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 shall be equal to 20 percent of the qualified value of the qualified donation items, but in no event would this amount be less than the amount that would otherwise be available 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 or processed agricultural products:

- “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 food 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 114904.5 of the Health and Safety Code
- Vegetable oil and olive oil
- Shelf stable ready-to-eat products, limited to soup, pasta sauce, ketchup, salsa, and salad dressings
- Bread, pasta or cereal
- 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 would be calculated by using the weighted average wholesale sale 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.

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. 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 provide a copy of the certification to the FTB.

The credit may 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, 2014, and each December 1 thereafter until January 1, 2023, 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 remain in effect only until December 1, 2024, and as of that date is 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, within the bill, replace the words “donor” or “donors” with “qualified taxpayer” throughout the bill.

To clarify the operative date language, the following amendment is recommended:

The amendments to this section added by the act adding this subdivision shall apply to taxable years beginning on or after January 1, 2016.

LEGISLATIVE HISTORY

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.

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.

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, Chapter 1248, Statutes of 1989) 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 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

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 and an appropriation will be requested, if necessary.

ECONOMIC IMPACT

This bill would result in the following revenue loss:

Estimated Revenue Impact of AB 515 As Amended April 7, 2015 Assumed Enactment After June 30, 2015 (\$ in Millions)		
2015-16	2016-17	2017-18
- \$0.6	- \$1.5	- \$2

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 is estimated that qualified taxpayers would have made \$9 million in qualified donations in 2014. This amount was grown by the Department of Finance growth rate and results in an estimated \$10 million of food donations in 2016. The estimate assumes the expanded credit would increase donations by 10 percent bringing the total donations to \$11 million in 2016. Applying the credit rate of 20 percent results in estimated credits generated of \$2.2 million. Using the current Donated Fresh Fruits or 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 5 years. Since taxpayers must reduce the deduction for qualified donations by the credit amount, an offsetting gain is applied to account for the decrease in the taxpayers' deductions. Lastly, the estimate is adjusted to eliminate the loss attributable to the current Donated Fresh Fruits or Vegetables Credit, resulting in an estimated revenue loss of \$1.3 million for taxable year 2016. 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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