

SUMMARY ANALYSIS OF AMENDED BILL

Author: Thurmond, et al. Analyst: Jessica Deitchman Bill Number: AB 2768
Related Bills: See Legislative History Telephone: 845-6310 Amended Date May 16, 2016
Attorney: Bruce Langston Sponsor: _____

SUBJECT: Prepackaged Food, Unspoiled Fruit & Vegetable Donations of Trade or Business to Exempt Organization Credit

SUMMARY

This bill would, under the Personal Income Tax Law (PITL) and the Corporation Tax Law (CTL), create a tax credit for food donations made to nonprofit entities.

RECOMMENDATION

No position.

SUMMARY OF AMENDMENTS

The May 16, 2016, amendments removed the carryover provision, added a requirement that the credit be claimed on a timely filed original return, reduced the CTL credit percentage to 10 percent, and made other technical changes. As a result of the amendments, the “This Bill,” and “Economic Impact,” sections of the department’s analysis of the bill as introduced February 19, 2016, have been revised and a “Policy Concern” has been created. The remainder of that analysis still applies. The “Implementation Considerations,” Technical Concerns,” and “Fiscal Impact” sections have been restated for convenience.

THIS BILL

For taxable years beginning on or after January 1, 2017, and before January 1, 2023, this bill would, under the PITL and the CTL, allow a tax credit for a taxpayer who donates qualified food of its trade or business to an organization located in California that is exempt from federal income taxation as an organization described in Section 501(c)(3) of the Internal Revenue Code.

The credit would be equal to 10 percent of the fair market value of the contribution. “Qualified food” would mean prepackaged food, as defined in Section 113876 of Health and Safety Code,¹ or food prepared for immediate human consumption, including unspoiled fruits and vegetables.

¹ “Prepackaged food” means any properly labeled processed food, prepackaged to prevent any direct human contact with the food product upon distribution from the manufacturer, a food facility, or other approved source.

No deduction or credit would be allowed for amounts taken into account in calculating the credit.

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

This credit would be repealed on December 1, 2023.

IMPLEMENTATION CONSIDERATIONS

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

The definition of "qualified food" is very broad, and would include the donation of almost any food product that is packaged. If this is contrary to the author's intent, this bill should be amended.

The bill would allow a credit for donated food valued at "fair market value." However, the bill fails to specify how the fair market value of the contribution would be determined. To avoid disputes between taxpayers and the department, it is recommended the bill be amended to specify how fair market value should be calculated.

For clarity and ease of administration, it is recommended that the bill be amended to provide a definition for the phrases, "food prepared for immediate human consumption," and food "of its trade or business." The absence of definitions to clarify these terms could lead to disputes with taxpayers and would complicate the administration of this bill.

The bill lacks language that would require the donee organization to accept, confirm, and certify receipt of these products, which would make it difficult for the department to verify the date, amount, and types of food products donated. It is recommended the bill be amended to require the non-profit to provide a receipt to the taxpayer specifying the date of donation, a description of the products donated, and the value of products.

TECHNICAL CONSIDERATIONS

This bill uses the phrase "for amounts taken into account", however, "reduced by the amount of credit allowed" or similar wording is the customary phrase used within a franchise or income tax credit statute. This phrase has the benefit of past usage and common understanding within the context of a tax credit statute and for consistency and harmony with other tax credit language should be used in this bill. It is recommended that this bill be amended to reference the correct phrase for franchise and income tax purposes.

FISCAL IMPACT

The department's costs to implement this bill have yet to be determined. As the bill moves through the legislative process and the implementation concerns are resolved, 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 2768 As Amended May 16, 2016 Assumed Enactment After June 30, 2016 (\$ in Millions)		
2016-17	2017-18	2018-19
- \$42	- \$110	- \$130

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 donations to food banks, soup kitchens and other charitable organizations, it was estimated that qualified taxpayers made \$1 billion in qualified donations in 2015. This amount was increased to bring the wholesale value up to the fair market value, and account for the additional incentive to donate because taxpayers would receive a tax credit. This amount was adjusted to reflect changes in the economy over time to arrive at an estimated \$1.5 billion in qualified donations in 2017. It is estimated that 30 percent of this value would be made by personal income taxpayers and 70 percent by corporate taxpayers. Applying the 10 percent credit rate results in estimated credits generated of \$150 million. Because the bill would disallow a deduction for qualified donations used to generate the credit, an offsetting gain is applied to account for the decrease in the taxpayer's deductions. It is estimated that 75 percent of the credit would be used in the year generated resulting in a \$110 million loss in 2017. Because the bill lacks carry over provisions, the remaining 25 percent would be unused. The tax year estimates are converted to fiscal year estimates, and then rounded to arrive at the amounts reflected in the above table.

SUPPORT/OPPOSITION

Support: None provided.

Opposition: None provided.

POLICY CONCERNS

This bill lacks carryover language. As a result, any unused credit would be lost if the taxpayer is unable to use the entire credit amount in the year claimed. If this is not the author's intent, the bill should be amended to add language allowing a limited carryover period.

LEGISLATIVE STAFF CONTACT

Jessica Deitchman
Legislative Analyst, FTB
(916) 845-6310

jessica.deitchman@ftb.ca.gov

Jame Eiserman
Revenue Manager, FTB
(916) 845-7484

jame.eiserman@ftb.ca.gov

Gail Hall
Legislative Director, FTB
(916) 845-6333

gail.hall@ftb.ca.gov