
SENATE COMMITTEE ON GOVERNANCE AND FINANCE

Senator Mike McGuire, Chair
2021 - 2022 Regular

Bill No:	SB 240	Hearing Date:	3/25/21
Author:	Eggman	Tax Levy:	Yes
Version:	3/10/21 Amended Click here to enter text.	Fiscal:	Yes
Consultant:	Baker & Deitchman		

INCOME TAX: CREDITS: FOOD BANKS

Extends the sunset on the Donated Fresh Fruits and Vegetables Credit 5 more years until 2027.

Background

California law allows various income tax credits and deductions, as well as sales and use tax exemptions. The Legislature enacts such tax incentives to either compensate taxpayers for incurring certain expenses, such as child adoption, or to influence certain behavior, such as charitable giving. The Legislature uses tax incentives to encourage taxpayers to do something that but for the tax credit, they would otherwise not do. The Department of Finance is required to annually publish a list of tax expenditures, currently totaling around \$74.8 billion per year.

Under current federal law, a taxpayer engaged in a trade or business is eligible to claim an enhanced deduction, which allows taxpayers to deduct up to twice the cost of donated food from federal returns for donations of food inventory to qualifying organizations. In general, the total deduction for donations of food inventory in a taxable year cannot exceed 10-15% of the taxpayer's net income for such taxable year. The enhanced federal deduction for food is available only for food that qualifies as "apparently wholesome food." California's Personal Income Tax Law generally conforms to the federal rules relating to charitable contributions, but specifically does not conform to the enhanced deduction for a contribution of food inventory for any taxpayer. Additionally, California's Corporate Tax Law does not adopt the enhanced deductions for corporate contributions of food inventory.

Donated Fresh Fruits and Vegetables Credit. In 2011, the Legislature approved AB 152 (Fuentes), which established the Donated Fresh Fruit or Vegetables Credit, an income tax credit that allowed a qualified taxpayer to receive a credit equal to 10% of the qualified value of the qualified donation items of fresh fruits or fresh vegetables donated to a California Food Bank. Under current law, a "qualified taxpayer" is defined as the person responsible for planting a crop, managing the crop, and harvesting the crop from the land, or a person responsible for packing or processing a qualified donation item, provided that person is not a retailer. A "qualified donation item" means fresh fruits or fresh vegetables and raw agricultural products or processed foods that are explicitly listed under current law. The "qualified value" is calculated by using the weighted average wholesale price of the donated item sold within the calendar month of the qualified taxpayer's donation. AB 152 (Fuentes, 2011) was effective between the 2012 and 2016 taxable years. In 2016, SB 837 (Committee on Budget) established a new Donated Fresh Fruit or Vegetables Credit, equal to 15% of the qualified value, and that was effective for tax years 2017 through 2021. In 2019, AB 614 (Eggman) expanded the qualified items that qualified taxpayers

could donate to include additional raw agricultural products and some processed foods. The expansion became effective for tax years 2020 through 2021.

Since the enactment of this credit, qualified taxpayers have been required to provide to the food bank the qualified value of the qualified donation items and the information regarding the origin of where the qualified donation items were grown and/or processed. Upon receipt and acceptance of the donation items, the food bank provides a certificate to the qualified taxpayer, which must contain a statement signed and dated by a person authorized by the food bank that the donation items are accepted. The certificate must contain the type and quantity of items donated, the qualified taxpayer's name, the food bank's name and address, the origin of the donated items, and its qualified value. Upon request of the FTB, the qualified taxpayer must provide a copy of the certification to verify any qualified donations. The taxpayer can only claim this credit on a timely filed original return, and can only carry over any excess credit for seven years.

The Franchise Tax Board (FTB) must submit an annual report to the Legislature by December 1, regarding the utilization of the credit, the month donations are made, the estimated value of the fresh fruits and vegetables donated, and the county in which the donated products originated. According to the FTB's two most recent reports covering 2017-2019, 216 taxpayers generated approximately \$4.5 million in Donated Fresh Fruit or Vegetable Credits and nearly \$2.3 million in credits were claimed on 318 tax returns, accounting for credits claimed from multiple partners with one filing entity. Nearly \$8.8 million in donations to California Food Banks were made during the 2017 calendar year, \$8.0 million during 2018, and approximately \$8.3 million during 2019.

Food Insecurity and COVID-19. California's problems with food insecurity have significantly increased during the COVID-19 pandemic. According to the Northwestern Institute of Policy Research and the U.S. Census Household Pulse Survey, which measures weekly rates of food insecurity, California currently has a food insecurity rate of 23.0%, with a total of close to 10 million Californians who are food insecure. California's rate of food insecurity is 1.7 percentage points higher than the national average, and has grown 11.3% since 2016, when 4,574,710 million and 11.7% of Californians were food insecure. California historically, and currently, experiences the greatest rates of food insecurity within Black and Latinx families with children. According to Feeding America, during 2020 food banks nationwide have seen an increase in demand and are serving 55 percent more people now than before the pandemic

The author and the California Association of Food Banks want to extend the Donated Fresh Fruits or Vegetables Credit an additional five years to allow qualified taxpayers to continue to receive a credit for their donation of qualified items to California food banks.

Proposed Law

SB 240 extends the sunset date for the existing Donated Fresh Fruit or Vegetables Credit another five years until January 1, 2027. SB 240 extends the date for the FTB to submit an annual report on the utilization of the credit until January 1, 2026, and makes declarative findings to comply with the reporting requirements of the provisions of Revenue and Taxation Code Section 41. SB 240 also makes legislative findings and declarations supporting its purposes.

SB 240 would be repealed on December 1, 2027.

State Revenue Impact

According to the FTB, SB 240 would result in total revenue losses of approximately \$700,000 for taxable years 2021-2024, with an estimated revenue loss of \$100,000 for 2021-2022, \$250,000 for 2022-2023, and \$350,000 for 2023-2024.

Comments

1. Purpose of the bill. According to the author, “California’s agricultural industry is the leading producer of agricultural products in the United States, and is a major contributing factor to California’s position as the fifth largest economy in the world. However, nearly one in every four Californians currently faces food insecurity. While the San Joaquin Valley produces nearly half of our nation’s fresh produce, it also has some of the highest rates of food insecurity in the country. Since the establishment of the Health Food Donation Tax Credit in 2011 it has proven to be effective, further encouraging those involved in agricultural production to make donations to those in need. The credit results in donations worth millions of dollars to the 41 member food banks of the California Association of Food Banks. The tax credit was expanded to include additional shelf stable items in 2019, and SB 240 will provide needed certainty to food donors and recipients by extending the authorization until January 1, 2027.”

2. Bang for your buck? One of the central questions to consider with any tax credit is whether the tax credit increases participation in a desired behavior. According to the FTB’s two most recent reports, only 216 taxpayers are responsible for generating the qualified donation items and 318 taxpayers claimed the credit, which is a relatively low number of taxpayers participating in this credit. “Qualified taxpayer” is defined to only include farmers, processors, and individuals who raise and harvest products themselves. Although there has been a general increase in the number of taxpayers who claim the credit from year to year, the credit’s relatively small taxpayer base could be viewed as only rewarding a narrow base of taxpayers, rather than a credit that seeks to stimulate donations to food banks with an expansive qualified taxpayer base. Another relevant question when assessing the effectiveness of this credit is whether the tax expenditure is a more effective approach than funding food insecurity programs directly. The Committee may wish to consider whether extending the current credit is the best use of finite resources for reducing food insecurity, and whether there is a need to expand the credit in the future.

3. If it ain’t broke... The Donated Fresh Fruits or Vegetables Credit has been effective since 2011, which the Legislature has renewed or expanded three times. Revenue loss resulting from the credit is relatively small, and the credit supports a much-needed use in California. According to FTB, the California Earned Income Tax Credit results in \$200 million in foregone revenue annually, while the Child and Dependent Care Expenses Credit reduces revenue by around \$80 million annually. As for the Donated Fresh Fruits or Vegetables Credit, the most recent report totaled the cost to California to be \$2.3 million over a two-year period, which amounts to over \$8 million worth of food donations a year. This credit is non-refundable, and only provides a credit for 15% of the qualified value of the items donated. Additionally, insecurity levels have significantly increased during the pandemic and the fresh food donations made with this credit support food banks that serve populations in need of food donations.

4. Section 41. Pursuant to Section 41 of the Revenue and Taxation Code, the bill declares that the FTB is required to submit a report on the utilization of the credit and other important metrics, by December 1 each year, until January 1, 2026.

Support and Opposition 3/22/21

Support: Alameda County Community Food Bank; California Farm Bureau Federation; Californians Against Waste; Community Action Agency of Butte County, Inc.; Food Bank Coalition of San Luis Obispo County; Food for People, the Food Bank for Humboldt County; Hunger Action Los Angeles Inc.; Los Angeles Regional Food Bank; Nonprofit Alliance; Nourish California; Public Health Advocates; Redwood Empire Food Bank; San Francisco-Marin Food Bank; Second Harvest Food Bank of Orange County; Second Harvest of Silicon Valley; Sierra Harvest; St. Anthony Foundation;

Opposition: None received

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