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## SENATE COMMITTEE ON APPROPRIATIONS

Senator Anthony Portantino, Chair  
2021 - 2022 Regular Session

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### **SB 240 (Eggman) - Income tax: credits: food banks**

**Version:** March 10, 2021

**Urgency:** No

**Hearing Date:** April 19, 2021

**Policy Vote:** GOV. & F. 5 - 0

**Mandate:** No

**Consultant:** Robert Ingenito

**Bill Summary:** SB 240 would extend the sunset on the Donated Fresh Fruits and Vegetables Credit for five additional years, until January 1, 2027.

**Fiscal Impact:** The Franchise Tax Board (FTB) indicates that this bill would result in General Fund revenue losses of \$100,000 in 2021-22, \$250,000 in 2022-23, and \$350,000 in 2023-24. FTB's implementation costs have yet to be determined.

**Background:** Tax expenditure programs (TEPs) are special tax provisions that reduce the amount of revenues the "basic" tax system would otherwise generate in order to provide (1) benefits to certain groups of taxpayers, and/or (2) incentives to encourage certain types of behavior and activities, such as charitable giving. Specifically, current law provides for, among other things, various income and corporation tax credits and deductions, as well as exemptions from the sales and use tax. The Department of Finance is required to publish a list of TEPs (currently totaling several hundred), which currently total \$75 billion annually. Two common types of TEPs are tax deductions and tax credits. Unlike tax deductions, which reduce the amount of earnings subject to tax, credits reduce (dollar for dollar) the amount of taxes owed.

Under current federal law, a deduction is generally permitted for charitable contributions, subject to limitations dependent upon the type of taxpayer, the property contributed, and the organization receiving the donation. The amount of any charitable contribution deduction usually equals the fair market value of the contributed property on the date the donation was made. The State conforms to the federal rules relating to charitable contributions as of January 1, 2015. However, it does not conform to the enhanced charitable deduction, enacted with the passage of the federal tax changes in 2017. Under current federal law, taxpayers engaged in a trade or business is eligible to claim an enhanced deduction, which allows them 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 up to 15 percent of the taxpayer's net income for such taxable year. The enhanced federal deduction for food is available only for specified items.

In 2011, the Legislature passed AB 152 (Fuentes, 2011), which created the Donated Fresh Fruits or Vegetables Tax Credit. The Credit was equal to 10 percent of the cost of fresh fruits or vegetables, as defined, donated by a qualified taxpayer to a California food bank. To be eligible for the Credit, the taxpayer must be the person responsible for planting the crop, managing it, and harvesting it from the land.

Since the Credit's enactment, 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 donations 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 FTB's request, 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.

FTB must submit an annual report to the Legislature by December 1, regarding (1) the utilization of the credit, (2) the month donations are made, (3) the estimated value of the fresh fruits and vegetables donated, and (4) the county in which the donated products originated.

**Proposed Law:** This bill would, among other things, extend (1) the sunset date for the existing Donated Fresh Fruit or Vegetables Credit another five years until January 1, 2027, and (2) the date for the FTB to submit an annual report on the utilization of the credit until January 1, 2026.

#### **Related Legislation:**

- AB 614 (Eggman, Chapter 431, Statutes of 2019), expanded the existing credit for donations of fruits and vegetables to a credit for donations of agriculture products by expanding the products eligible for the credit.
- SB 837 (Committee on Budget and Fiscal Review, Chapter 32, Statutes of 2016), for taxable years beginning on or after January 1, 2017, and before January 1, 2022, created a credit for donations of fresh fruits and vegetables equal to 15 percent of the value of the products donated.
- AB 152 (Fuentes, et al., Chapter 503, Statutes of 2011), created the donated fresh fruits or vegetables credit under the Personal Income Tax law and the Corporation Income Tax Law. This credit allows a 10 percent credit for donations of fresh fruits and vegetables made to a qualified nonprofit entity.

**Staff Comments:** FTB's revenue estimate assumes (based on data from the California Association of Food Banks) that \$3.6 million in newly qualified donations will occur in 2021. Applying the credit rate of 15 percent would result in \$540,000 of estimated credits for tax year 2021. FTB assumes \$500,000 of estimated credits would be generated in taxable year 2022, the first tax year under the extension proposal. Using current Fruit and Vegetables Credit data, of the new generated amount, FTB estimates that 95 percent of taxpayers, including the S corporation adjustment, would have a tax liability to offset with the Credit. Of that amount, 50 percent, or \$250,000, would claim the credit in the year generated and the remaining credit would be used over subsequent four years.

To arrive at the offsetting tax effect of the expense deduction that would otherwise be

allowed under current law, FTB estimates that qualified taxpayers would be unable to deduct approximately \$500,000 in qualified expenses in taxable year 2022. 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 \$220,000 in taxable year 2022. FTB assumes that 85 percent of the credit would be used by personal income taxpayers and the remaining 15 percent would be used by corporations.

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. About \$9 million in donations to California Food Banks were made during the 2017 calendar year, \$8.0 million during 2018, and \$8.3 million during 2019.

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