

Date of Hearing: June 23, 2025

ASSEMBLY COMMITTEE ON REVENUE AND TAXATION

Mike Gipson, Chair

SB 353 (Alvarado-Gil) – As Amended June 16, 2025

Majority vote. Tax levy. Fiscal committee.

SENATE VOTE: 38-0

SUBJECT: Income tax: credits: food banks

SUMMARY: Extends the sunset date of the Donated Fresh Fruits and Vegetables Credit by 5 years, from taxable years beginning before January 1, 2027, to taxable years beginning before January 1, 2032.

EXISTING LAW:

- 1) Allows various tax credits, which are generally designed to encourage socially beneficial behavior or to provide relief to taxpayers who incur specified expenses.
- 2) Conforms generally to federal law regarding the deduction of all ordinary and necessary expenses of a trade or business. (Revenue and Taxation Code (R&TC) Section 17201 *et seq.*)
- 3) Conforms generally to federal law regarding deductions for charitable contributions, but does not conform to an enhanced deduction for donations of food inventory that federal law provides.¹ (R&TC Section 17275.2.)
- 4) Allows taxpayers to claim a deduction for charitable contributions made to qualified organizations. For corporations, the deduction is generally limited to 10% of net income. (R&TC Sections 17201 and 24358.)
- 5) Allows a 50% tax credit for costs to transport donated agricultural products to nonprofit charitable organizations. (R&TC Sections 17053.12 and 23608.)
- 6) Allows a tax credit, under the Personal Income Tax (PIT) Law and the Corporation Tax (CT) Laws, to "qualified taxpayers" equal to 15% of the "qualified value" of "qualified donation items" donated to food banks located in California. (R&TC Sections 17053.88.5 and 23688.5.) Specifically, these credits do all of the following:
 - a) Define a "qualified taxpayer" as the person responsible for planting a crop, managing the crop, and harvesting the crop from the land, as well as the person responsible for growing or raising a qualified donation item, or harvesting, packing, or processing a qualified

¹ The federal enhanced deduction is provided by Internal Revenue Code (IRC) Section 170(e)(3)(C).

donation item, provided that person is not a retailer. For these purposes, "retailer" is a person primarily engaged in the business of making retail sales directly to the public.

- b) Define "qualified donation item" as fresh fruits or fresh vegetables and includes all of the following raw agricultural products or processed foods:
 - i) "Fruits, nuts, or vegetables" as defined in Food and Agricultural Code (F&AC) Section 42510;
 - ii) "Meat food product" as defined in F&AC Section 18665;
 - iii) "Poultry" as defined in F&AC Section 18675;
 - iv) "Eggs" as defined in F&AC Section 75027;
 - v) "Fish" as defined in F&AC Section 58609; and,
 - vi) All of the following as defined in Health and Safety Code (H&SC) Section 109935:
 - 1) Rice;
 - 2) Beans;
 - 3) Fruits, nuts, and vegetables in canned, frozen, dried, dehydrated, and 100% juice forms;
 - 4) Any cheese, milk, yogurt, butter, and dehydrated milk meeting the requirements of F&AC Section 32501 *et seq.*;
 - 5) Infant formula subject to H&SC Section 114094.5;
 - 6) Vegetable oil and olive oil;
 - 7) Soup, pasta sauce, and salsa;
 - 8) Bread and pasta; and,
 - 9) Canned meats and seafood.
 - c) Specify the calculation of "qualified value" by using:
 - i) The weighted average wholesale price based on the taxpayer's total like grade wholesale sales of the donated items sold within the same month as the donation; or, if no wholesale sales occurred in the same month as the donation,
 - ii) The nearest regional wholesale market price based upon the same grade products for the same month as the donation, as published by U.S. Department of Agriculture's Agricultural Marketing Service.
- 7) Requires the credit for donated fresh fruits and vegetables to be claimed on a timely filed original return.

- 8) Reduces any deduction otherwise allowed under the PIT or CT Law for that amount of cost paid or incurred by the qualified taxpayer for the fresh fruits and vegetables by the credit amount provided.
- 9) Provides that any unused credit amounts may be carried over for up to 7 years if necessary, until the credit is exhausted.
- 10) Requires the Franchise Tax Board (FTB) to produce an annual report to the Legislature on or before December 1 regarding the utilization of the credit, including the qualified value of the qualified donation items, the county in which the qualified donation items originated, and the month the donation was made.

FISCAL EFFECT: The FTB estimates General Fund revenue losses of \$400,000 in fiscal year (FY) 2026-27 and \$1 million in FY 2027-28.

COMMENTS:

- 1) The author has provided the following statement in support of this bill:

The Farm to Food Bank Tax Credit, also known as the Donated Fresh Fruits and Vegetables Credit, was first enacted in 2012 under AB 152 (Fuentes). This credit allows a qualified taxpayer to receive a credit for qualified donation items to a California food bank. Qualified taxpayers can receive a credit of 15% of the qualified value of the donation. Donations can include fresh fruits and vegetables, eggs, meat products, dairy products and grains. The current program is set to sunset in 2027. Many farmers have taken part in this program with the most recent numbers showing that \$8.2 million in donations were made in 2023, and \$769,499 in tax credits were given. The credit should be extended for another 5 years in order to continue to encourage farmers to donate fresh fruits and vegetables as well as other agricultural products to local California food banks in order for recipients to have access to healthy foods. Extending the sunset out will ensure farmers will continue to provide fresh produce, dairy, eggs and meat products to food banks to provide healthy foods to their clients.

- 2) This bill is supported by the California Farm Bureau Federation, which notes, in part:

Farm Bureau is committed to addressing food insecurity in our state, we believe this bill is a critical step in encouraging more donations to food banks, ensuring that individuals and families in need continue to have access to healthy, nutritious food. Moreover, our members face uncertainty in accessing open export markets, increasing financial pressures on California's farmers and ranchers. SB 353 ensures an important pathway for managing yields – that food has a place to go – so that the economics of production agriculture work. The Farm to Food Bank Tax Credit, also known as the Donated Fresh Fruits and Vegetables Credit, was first enacted in 2012 under AB 152 (Fuentes) and will expire in 2027. The law allows a qualified taxpayer to receive a 15% tax credit for qualified donation items, such as fresh fruits and vegetables, eggs, meat products, dairy products and grains. In 2023 alone, over \$8m in donations were made to local California food banks and \$769,000.00 in tax credits were allowed.

- 3) Committee Staff Comments:

- a) *What is a "tax expenditure"?* Existing law provides various credits, deductions, exclusions, and exemptions for particular taxpayer groups. In the late 1960s, U.S. Treasury officials began arguing that these features of the tax law should be referred to as "expenditures" since they are generally enacted to accomplish some governmental purpose and there is a determinable cost associated with each (in the form of foregone revenues).

As the Department of Finance notes in its annual Tax Expenditure Report, there are several key differences between tax expenditures and direct expenditures. First, tax expenditures are typically reviewed less frequently than direct expenditures. Second, there is generally no control over the amount of revenue losses associated with any given tax expenditure. Finally, it should also be noted that, once enacted, it takes a two-thirds vote to rescind an existing tax expenditure absent a sunset date. This effectively results in a "one-way ratchet" whereby tax expenditures can be conferred by majority vote, but cannot be rescinded, irrespective of their efficacy or cost, without a supermajority vote.

- b) *Prior iterations:* The Donated Fresh Fruits or Vegetables Tax Credit was created in 2011 when the Legislature passed AB 152 (Fuentes), Chapter 503, Statutes of 2011. This credit was available under the PIT and CT Laws for tax years beginning on January 1, 2012, and before January 1, 2017. The credit was equal to 10% of the inventory cost of fresh fruits or vegetables donated by a qualified taxpayer to a California food bank. To be eligible for the credit, the qualified taxpayer was required to be the person responsible for planting the crop, managing the crop, and harvesting the crop from the land. In other words, the qualified taxpayer had a direct role in growing and cultivating the fruits and vegetables that were donated.

To claim the credit, a food bank was required to provide a certificate to the qualified taxpayer that verified the donation was made in accordance with the Food and Agricultural Code and the type and quantity of fresh fruits or vegetables donated. The credit also required taxpayers to provide the FTB with the estimated value of the donated fresh fruits or vegetables and information regarding the origin of where the donated fruits or vegetables were grown. Upon request of the FTB, a taxpayer claiming the credit was required to provide a copy of the certificate provided by the food bank that received the donation.

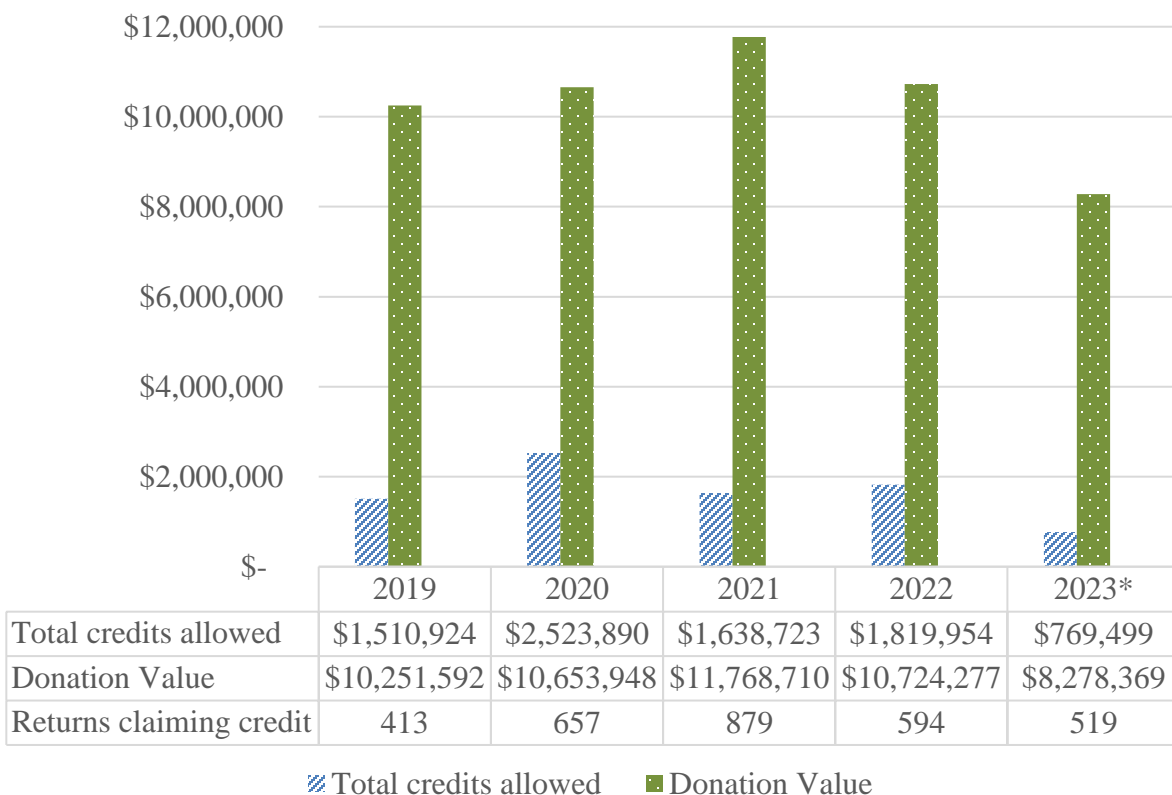
In response to the credit's expiration, the Legislature enacted a new Donated Fresh Fruit or Vegetables Credit as part of SB 837 (Committee on Budget & Fiscal Review), Chapter 32, Statutes of 2016. The revised Donated Fresh Fruit or Vegetables Credit was similar to the prior credits, but it increased the credit's amount from 10% of the cost of fresh fruits or vegetables donated by the taxpayer to 15%. Additionally, instead of the credit amount being calculated on an inventory cost basis – which can raise questions about indirect costs – SB 837 provided that the credit amount must be calculated using the weighted average of the wholesale price.

- c) *Sunset extension and expansion:* The Donated Fresh Fruits or Vegetables Tax Credit was significantly expanded by AB 614 (Eggman), Chapter 431, Statutes of 2019. First, AB 614 expanded the types of food products eligible for the credit beyond fresh fruit and vegetables to include donations of specified food items such as soup, bread, and canned

meats; processed foods such as infant formula and olive oil; and raw agricultural products such as rice, beans, nuts, and various dairy items.

Additionally, AB 614 expanded the definition of a qualified taxpayer to include those harvesting, packing, or processing a qualified donation item. This change made additional taxpayers involved in the food supply chain eligible for the credit. AB 150 (Committee on Budget), Chapter 82, Statutes of 2021, extended the credit from January 1, 2022, to January 1, 2027.

- d) *Steady flow of donations*: The below chart summarizes the total amount of credits allowed, the value of the donated items, and the number of returns claiming the credit by tax year:



* Not all timely 2023 tax year returns had been processed as of report publishing.

Source: Donated Fresh Fruit or Vegetables Annual Reports 2019-2023, FTB Economic and Statistical Research Bureau. <https://www.ftb.ca.gov/about-ftb/data-reports-plans/index.html>.

Existing law also requires the FTB's annual report to include monthly breakdowns of when donations were made and the estimated market value of those donations. Committee staff's review of this data finds that donations are at their highest during the summer harvesting season and winter holiday season.

Additionally, the FTB must provide information regarding the counties in which the donated items originated. However, the FTB's data privacy policies do not allow for the release of statistical summaries when the underlying data is the result of fewer than 20 returns. Thus, county-level totals are not available for the large majority of counties.

Only three counties exceeded the disclosure restrictions across a multi-year window:

- Tax year 2021: County of Fresno, \$543,789;
- Tax year 2022: County of Fresno, \$698,748; and,
- Tax year 2023: County of Los Angeles, \$130,350.

Given these considerations, the Committee may wish to consider amending the performance indicators that are required to be included in the FTB's annual report.

- e) *Committee's tax expenditure policy:* Both R&TC Section 41 and Committee policy require any tax expenditure bill to outline specific goals, purposes, and objectives that the tax expenditure will achieve, along with detailed performance indicators for the Legislature to use when measuring whether the tax expenditure meets those stated goals, purposes, and objectives. A tax expenditure bill will not be eligible for a Committee vote unless it has complied with these requirements.

In addition to the R&TC Section 41 requirements, this Committee's policy also requires that all tax expenditure proposals contain an appropriate sunset provision to be eligible for a vote. According to this policy, an "appropriate sunset provision" means five years, except in the case of a tax expenditure measure providing relief to California veterans, in which case "appropriate sunset provision" means ten years.

Absent a sunset date, tax expenditure programs cannot be revoked without a supermajority vote. Thus, this Committee has a longstanding practice of including sunset dates in tax expenditure bills to allow the Legislature periodically to review the cost and efficacy of such expenditures, as well as whether technical changes are needed due to evolving circumstances. As recently amended, this bill complies with the Committee's sunset policy.

- f) *Prior legislation:*

- i) AB 150 (Committee on Budget), Chapter 82, Statutes of 2021, extended the credit from January 1, 2022, to January 1, 2027.
- ii) AB 614 (Eggman), Chapter 431, Statutes of 2019, expanded the types of food products that qualified as contributions for purposes of the Donated Fresh Fruit or Vegetables Credit.
- iii) SB 837 (Committee on Budget & Fiscal Review), Chapter 32, Statutes of 2016, established the fresh fruit and vegetable tax credit for taxable years beginning on or after January 1, 2017, and before January 1, 2022.
- iv) AB 152 (Fuentes), Chapter 503, Statutes of 2011, created a 10% tax credit for fresh fruit and fresh vegetables for taxable years beginning on January 1, 2012, and before January 1, 2017. This credit sunset on December 1, 2017.

REGISTERED SUPPORT / OPPOSITION:

Support

350 Humboldt
Berkeley Food Network
California Association of Food Banks
California Farm Bureau Federation
Californians Against Waste
City of Woodland
Climate Reality Project - Silicon Valley Chapter
Community Action Partnership of Orange County
Ecology Center
Foodcycle
Franciscan Workers of Junipero Serra, Db a Dorothy's Place
Gaia
Howard Jarvis Taxpayers Association (HJTA)
Los Angeles Regional Food Bank
Replate
Roots of Change
Salinas Valley Recycles
San Diego Food System Alliance
Santa Cruz Climate Action Network
Second Harvest Food Bank of Orange County
Second Harvest of Silicon Valley
Sierra Harvest
Sierra Orchards
Stopwaste

Opposition

None on file

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