

SENATE, No. 512

STATE OF NEW JERSEY 217th LEGISLATURE

PRE-FILED FOR INTRODUCTION IN THE 2016 SESSION

Sponsored by:

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District 29 (Essex)

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District 24 (Morris, Sussex and Warren)

SYNOPSIS

Provides corporation business tax and gross income tax credits for value of certain fruit and vegetable donations made by commercial farm operators.

CURRENT VERSION OF TEXT

Introduced Pending Technical Review by Legislative Counsel.



1 AN ACT providing credits against the corporation business tax and
2 the gross income tax for the value of certain fruit and vegetable
3 donations made by commercial farm operators, supplementing
4 P.L.1945, c.162 (C.54:10A-1 et seq.) and Title 54A of the New
5 Jersey Statutes.

6

7 **BE IT ENACTED** by the Senate and General Assembly of the State
8 of New Jersey:

9

10 1. a. For privilege periods beginning on or after January 1,
11 2016 but before January 1, 2021, a commercial farm operator that
12 makes a donation of fruits or vegetables fit for human consumption
13 to a food bank located in this State shall be allowed credit against
14 the corporation business tax imposed pursuant to section 5 of
15 P.L.1945, c.162 (C.54:10A-5), in an amount equal to 10 percent of
16 the wholesale value of the fruits or vegetables that are donated to
17 the food bank during the privilege period of donation.

18 b. In order to claim the credit allowed pursuant to this section,
19 a commercial farm operator shall obtain a written statement from
20 the food bank substantiating each donation of fruits or vegetables
21 made during the privilege period for which the credit is allowed. At
22 the time a donation is made, the commercial farm operator shall
23 provide to the food bank the wholesale value of the donated fruits
24 or vegetables and information identifying the location where the
25 fruits or vegetables were grown. The food bank, upon receipt of the
26 donated fruits or vegetables, shall issue to the commercial farm
27 operator making the donation a written statement, signed and dated
28 by an individual authorized to accept the donation on behalf of the
29 food bank, that contains the variety, grade, and quantity of the
30 donated fruits or vegetables, the name and address of the
31 commercial farm operator making the donation, the name and
32 address of the food bank, and, as provided by the commercial farm
33 operator, the wholesale value of and the location where the donated
34 fruits or vegetables were grown. When filing a return that includes
35 a claim for the credit allowed pursuant to this section, the
36 commercial farm operator shall include a copy of each written
37 statement issued to the commercial farm operator by a food bank
38 during the privilege period for which the credit is allowed.

39 c. The order of priority of the application of the credit allowed
40 pursuant to this section and any other credits allowed by law shall
41 be as prescribed by the director. The amount of the credit applied
42 under this section against the corporation business tax liability of
43 the taxpayer for a privilege period, together with any other credits
44 allowed by law, shall not exceed 50 percent of the tax liability
45 otherwise due and shall not reduce the tax liability to an amount
46 less than the statutory minimum provided in subsection (e) of
47 section 5 of P.L.1945, c.162 (C.54:10A-5). The amount of the
48 credit allowable under this section which cannot be used to reduce

1 the taxpayer's corporation business tax liability for the privilege
2 period due to the limitations of this section may be carried forward
3 and applied to the earliest available use within the 20 privilege
4 periods immediately following the privilege period for which the
5 credit is allowed. The wholesale value of any donated fruits or
6 vegetables that are included in the calculation of the credit allowed
7 pursuant to this section shall not be allowed as an amount
8 calculated or claimed pursuant to any other deduction or credit
9 allowed under the corporation business tax.

10 d. As used in this section:

11 "Commercial farm" means "commercial farm" as that term is
12 defined by section 3 of P.L.1983, c.31 (C.4:1C-3).

13 "Commercial farm operator" means the taxpayer primarily
14 responsible for the on-site, day-to-day operation of a commercial
15 farm, at which farm fruits or vegetables are planted, managed, and
16 harvested for donation.

17 "Food bank" means "food bank" as that term is defined by
18 subsection g. of section 2 of P.L.1982, c.178 (C.24:4A-2).

19 "Wholesale value" means:

20 the value calculated by using a quantity-weighted average
21 wholesale sales price of the donated fruits or vegetables as
22 determined based on the wholesale sales price paid for each
23 wholesale sale of fruits or vegetables made by the commercial farm
24 operator during the calendar month of the commercial farm
25 operator's donation that are the same variety and grade as the
26 donated fruits or vegetables and the respective weight, volume, or
27 other standard unit of measure of each wholesale sale; or

28 if no wholesale sales of fruits or vegetables that are the same
29 variety and grade as the donated fruits and vegetables are made by
30 the commercial farm operator during the calendar month of the
31 commercial farm operator's donation, the wholesale value shall be
32 equal to the overall average price paid for fruits or vegetables that
33 are the same variety and grade as the donated fruits or vegetables at
34 the nearest terminal market located the fewest miles from the
35 commercial farm operator's commercial farm during the calendar
36 month of the commercial farm operator's donation as determined
37 using the Fruit and Vegetable Market News Custom Average Tool
38 maintained by the United States Department of Agriculture's
39 Agricultural Marketing Service, or another similar source of
40 average price data as may be prescribed by the director.

41

42 2. a. For taxable years beginning on or after January 1, 2016
43 but before January 1, 2021, a commercial farm operator that makes
44 a donation of fruits or vegetables fit for human consumption to a
45 food bank located in this State shall be allowed credit against the
46 tax otherwise due under the "New Jersey Gross Income Tax Act,"
47 N.J.S.54A:1-1 et seq., in an amount equal to 10 percent of the

1 wholesale value of the fruits or vegetables that are donated to the
2 food bank during the taxable year of donation.

3 b. In order to claim the credit allowed pursuant to this section,
4 a commercial farm operator shall obtain a written statement from
5 the food bank substantiating each donation of fruits or vegetables
6 made during the taxable year for which the credit is allowed. At the
7 time a donation is made, the commercial farm operator shall
8 provide to the food bank the wholesale value of the donated fruits
9 or vegetables and information identifying the location where the
10 fruits or vegetables were grown. The food bank, upon receipt of the
11 donated fruits or vegetables, shall issue to the commercial farm
12 operator making the donation a written statement, signed and dated
13 by an individual authorized to accept the donation on behalf of the
14 food bank, that contains the variety, grade, and quantity of the
15 donated fruits or vegetables, the name and address of the
16 commercial farm operator making the donation, the name and
17 address of the food bank, and, as provided by the commercial farm
18 operator, the wholesale value of and the location where the donated
19 fruits or vegetables were grown. When filing a return that includes
20 a claim for the credit allowed pursuant to this section, the
21 commercial farm operator shall include a copy of each written
22 statement issued to the commercial farm operator by a food bank
23 during the taxable year for which the credit is allowed.

24 c. (1) The order of priority of the application of the credit
25 allowed pursuant to this section and any other credits allowed by
26 law shall be as prescribed by the director. The amount of the credit
27 applied under this section against the gross income tax liability of
28 the taxpayer for a taxable year, together with any other credits
29 allowed by law, shall not exceed 50 percent of the tax liability
30 otherwise due. The amount of the credit allowable under this
31 section which cannot be used to reduce the taxpayer's gross income
32 tax liability for the taxable year due to the limitations of this section
33 may be carried forward and applied to the earliest available use
34 within the 20 taxable years immediately following the taxable year
35 for which the credit is allowed. The wholesale value of any donated
36 fruits or vegetables that are included in the calculation of the credit
37 allowed pursuant to this section shall not be allowed as an amount
38 calculated or claimed pursuant to any other deduction or credit
39 allowed under the gross income tax.

40 (2) A business entity classified as a partnership for federal
41 income tax purposes shall not be allowed a credit directly under the
42 gross income tax, but a taxpayer shall be allowed a credit in
43 proportion to the taxpayer's distributive share of the business
44 entity's donation of fruits or vegetables during the taxable year. A
45 New Jersey S corporation shall not be allowed a credit directly
46 under the gross income tax, but a taxpayer shareholder shall be
47 allowed a credit in proportion to the taxpayer's distributive share of

1 the New Jersey S corporation's donation of fruits or vegetables
2 during the taxable year.

3 d. As used in this section:

4 "Commercial farm" means "commercial farm" as that term is
5 defined by section 3 of P.L.1983, c.31 (C.4:1C-3).

6 "Commercial farm operator" means the taxpayer primarily
7 responsible for the on-site, day-to-day operation of a commercial
8 farm, at which farm fruits or vegetables are planted, managed, and
9 harvested for donation.

10 "Food bank" means "food bank" as that term is defined by
11 subsection g. of section 2 of P.L.1982, c.178 (C.24:4A-2).

12 "Wholesale value" means:

13 the value calculated by using quantity-weighted average
14 wholesale sales price of the donated fruits or vegetables as
15 determined based on the wholesale sales price paid for each
16 wholesale sale of fruits or vegetables made by the commercial farm
17 operator during the calendar month of the commercial farm
18 operator's donation that are the same variety and grade as the
19 donated fruits or vegetables and the respective weight, volume, or
20 other standard unit of measure of each wholesale sale; or

21 if no wholesale sales of fruits or vegetables that are the same
22 variety and grade as the donated fruits and vegetables are made by
23 the commercial farm operator during the calendar month of the
24 commercial farm operator's donation, the wholesale value shall be
25 equal to the overall average price paid for fruits or vegetables that
26 are the same variety and grade as the donated fruits or vegetables at
27 the nearest terminal market located the fewest miles from the
28 commercial farm operator's commercial farm during the calendar
29 month of the commercial farm operator's donation as determined
30 using the Fruit and Vegetable Market News Custom Average Tool
31 maintained by the United States Department of Agriculture's
32 Agricultural Marketing Service, or another similar source of
33 average price data as may be prescribed by the director.

34

35 3. a. The Director of the Division of Taxation in the
36 Department of the Treasury shall prepare an annual report regarding
37 the utilization of the tax credits allowed pursuant to section 1 and 2
38 of P.L. , c. (C.) (pending before the Legislature as this
39 bill), on or before December 1, 2017 and on or before that date each
40 year thereafter for each of the four immediately following calendar
41 years.

42 b. The annual report shall be separate and in addition to the
43 report required to be prepared pursuant to section 1 of P.L.2009,
44 c.189 (C.52:27B-20a), and shall, at a minimum, describe the
45 following for tax periods that begin in the calendar year
46 immediately preceding the calendar year in which the report is
47 required to be prepared:

1 the number of taxpayers claiming the tax credits allowed
2 pursuant to section 1 and 2 of P.L. , c. (C.) (pending
3 before the Legislature as this bill),
4 the total dollar value of tax credits claimed by commercial farm
5 operators,
6 the wholesale value of all fruits and vegetables donated to food
7 banks,
8 the counties in which the greatest percentage of donated fruits or
9 vegetables were grown by commercial farm operators,
10 the months in which the greatest percentage of fruits and
11 vegetables were donated to food banks, and
12 the food banks benefiting from the donated fruits and vegetables.
13 c. The annual report shall be submitted to the Governor and the
14 Legislature, pursuant to section 2 of P.L.1991, c.164 (C.52:14-
15 19.1), and shall be made available to the public in electronic form
16 through a link prominently displayed on the official Internet
17 website of the Division of Taxation in the Department of the
18 Treasury, within 10 calendar days of the date the report is required
19 to be prepared.

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21 4. This act shall take immediately.

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STATEMENT

25

26 This bill provides a credit against the corporation business tax
27 and the gross income tax for the value of certain donations of fruits
28 and vegetables that are made to food banks by commercial farm
29 operators over a five-year period beginning January 1, 2016.

30 Under the bill, commercial farm operators who make donations
31 of fruits or vegetables fit for human consumption to a food bank
32 located in this State during tax periods beginning on or after
33 January 1, 2016 but before January 1, 2021 are allowed to claim a
34 credit that can be used to reduce the commercial farm operator's
35 liability for tax. The bill provides that the amount of the credit is
36 equal to 10% of the wholesale value of the fruits or vegetables
37 donated to the food bank during the tax period of the donation, as
38 determined using a quantity-weighted average of comparable
39 wholesale sales of similar fruits or vegetables made by the
40 commercial farm operator during the month of the donation *or*, if no
41 comparable sales are made, the overall average price paid for
42 similar fruits or vegetables at the nearest regional market during the
43 month of the donation.

44 The bill requires commercial farm operators claiming the credit
45 to obtain a written statement from the food bank to substantiate
46 each donation of fruits or vegetables. The bill provides that the
47 statement must include certain information regarding the donated
48 fruits or vegetables, the commercial farm operator making the

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1 donation, and the food bank receiving the donated fruits or
2 vegetables. The bill specifies that commercial farm operators must
3 include a copy of each statement issued by a food bank when filing
4 a return that includes a claim for the credit.

5 The bill requires the Director of the Division of Taxation in the
6 Department of the Treasury to prepare an annual report on the
7 utilization of the credits provided by the bill. The bill provides that
8 the report must be prepared to document the utilization of credits by
9 commercial farm operators in each year of the five-year period for
10 which credits are allowed, and must, at a minimum, describe: the
11 number of taxpayers claiming the tax credits, the total dollar value
12 of tax credits claimed by commercial farm operators, the wholesale
13 value of fruits and vegetables donated, the counties in which the
14 greatest percentage of donated fruits or vegetables were harvested,
15 the months in which the greatest percentage of fruits and vegetables
16 were donated, and the food banks benefiting from the donated fruits
17 and vegetables.

18 The purpose of this bill is to provide an incentive that will
19 encourage operators of commercial farms to donate surplus crops of
20 fruits and vegetables to local area food banks. The surplus produce
21 donated as a result of the bill will increase the amount and diversity
22 of fresh, healthy foods available for distribution in the hunger relief
23 system. Additionally, the donated produce will reduce the current
24 level of unmarketable but perfectly edible produce that goes
25 unharvested or that is harvested but becomes waste because it fails
26 to meet quality or appearance criteria.