

1 HOUSE BILL NO. 2445  
 2 AMENDMENT IN THE NATURE OF A SUBSTITUTE  
 3 (Proposed by the House Committee on Finance  
 4 on \_\_\_\_\_)  
 5 (Patron Prior to Substitute--Delegate Bennett-Parker)  
 6

7 A BILL to amend and reenact § 58.1-439.12:12 of the Code of Virginia, relating to food donation tax  
 8 credit.

9 **Be it enacted by the General Assembly of Virginia:**

10 **1. That § 58.1-439.12:12 of the Code of Virginia is amended and reenacted as follows:**

11 **§ 58.1-439.12:12. Food donation tax credit.**

12 A. As used in this section, unless the context requires a different meaning:

13 "Food crops" means grains, fruits, nuts, or vegetables.

14 "Nonprofit food bank" means an entity located in the Commonwealth that is exempt from taxation  
 15 under § 501(c)(3) of the Internal Revenue Code, as amended or renumbered, and organized with a  
 16 principal purpose of providing food to the needy.

17 "Wholesome food" means food that meets all quality standards imposed by federal, state, and local  
 18 laws or regulations, including food that may not be readily marketable due to appearance, age, freshness,  
 19 grade, surplus, or other condition.

20 B. For taxable years beginning on or after January 1, ~~2016~~ 2023, but before January 1, ~~2022~~ 2028,  
 21 any person engaged in the business of farming as defined under 26 C.F.R. §1.175-3 that donates food  
 22 crops grown or wholesome food produced by the person in the Commonwealth to a nonprofit food bank  
 23 shall be allowed a credit against the tax levied pursuant to § 58.1-320 or 58.1-400 for the taxable year of  
 24 the donation. The person shall be allowed a credit in an amount equal to ~~30~~ 50 percent of the fair market  
 25 value of such food crops or wholesome food donated by the person to a nonprofit food bank during the

26 taxable year but not to exceed an aggregate credit of ~~\$5,000~~ \$10,000 for all such donations made by the  
27 person during such year.

28 C. Credit shall be allowed under this section only if (i) the use of the donated food crops or  
29 wholesome food by the donee nonprofit food bank is related to providing food to the needy, (ii) the  
30 donated food crops or wholesome foods are not transferred for use outside the Commonwealth or used by  
31 the donee nonprofit food bank as consideration for services performed or personal property purchased,  
32 and (iii) the donated food crops and wholesome foods, if sold by the donee nonprofit food bank, are sold  
33 to the needy, other nonprofit food banks, or organizations that intend to use the food crops or wholesome  
34 foods to provide food to the needy.

35 D. The Tax Commissioner shall issue tax credits under this section, and in no case shall the Tax  
36 Commissioner issue more than \$250,000 in tax credits pursuant to this section in any fiscal year of the  
37 Commonwealth. For every taxable year for which a person seeks the tax credit under this section, the  
38 person shall submit an application to the Department in accordance with the forms, instructions, dates,  
39 and procedures prescribed by the Department. In order to claim any credit, for each donation made that is  
40 approved by the Department for tax credit, the person making the donation shall attach to the person's  
41 income tax return a written certification prepared by the donee nonprofit food bank. The written  
42 certification prepared by the donee nonprofit food bank shall identify the donee nonprofit food bank, the  
43 person donating food crops or wholesome food to it, the date of the donation, the number of pounds of  
44 food crops or wholesome food donated, and the fair market value of the food crops or wholesome food  
45 donated. The certification shall also include a statement by the donee nonprofit food bank that its use and  
46 disposition of the food crops or wholesome food complies with the requirements under subsection C.

47 E. The amount of the credit claimed shall not exceed the total amount of tax imposed by this  
48 chapter upon the person for the taxable year. Any credit not usable for the taxable year for which the credit  
49 was first allowed may be carried over for credit against the income taxes of the person in the next five  
50 succeeding taxable years or until the total amount of the tax credit has been taken, whichever is sooner.

51 F. Credits granted to a partnership, limited liability company, or electing small business  
52 corporation (S corporation) shall be allocated to the individual partners, members, or shareholders,  
53 respectively, in proportion to their ownership or interest in such business entities.

54 G. The Tax Commissioner shall develop guidelines implementing the provisions of this section.  
55 The guidelines shall include procedures for the allocation of tax credits among participating taxpayers.  
56 Such guidelines shall be exempt from the provisions of the Administrative Process Act (§ 2.2-4000 et  
57 seq.).

58 **2. That the provisions of this act shall be effective for taxable years beginning on and after January**  
59 **1, 2023.**

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