WEST VIRGINIA CODE CHAPTER 11 ARTICLE 13DD

WV Legislature

§11-13DD-1. Findings and purpose.

The Legislature finds that it is an important public policy to promote fresh, healthy and local agricultural products for food banks and to provide an incentive for farmers to donate to food banks in this state by providing a tax credit for their donations.

WV Legislature

§11-13DD-2. Definitions.

As used in this article:

(1) “Department” means the Department of Agriculture;

(2) “Donor” means a qualified taxpayer who provides free of fee or charge edible agricultural products to a nonprofit food program operating in West Virginia;

(3) “Edible agricultural products” means fruits, vegetables, beef, poultry, pork, fish or any other edible product raised or grown in West Virginia that is intended for, and fit for, human consumption;

(4) “Farming taxpayer” means a West Virginia taxpayer responsible for, and deriving income of, at least $1,000 from growing fruits, vegetables or other edible agricultural products or from raising beef, poultry, pork, fish or other edible agricultural products; and

(5) “Nonprofit food program” means a surplus food collection and distribution program operated and established to collect donated food for redistribution to persons in need and is recognized as exempt from federal taxation under Section 501(c)(3) of the Internal Revenue Code.

WV Legislature

§11-13DD-3. Amount of credit; limitation of credit.

(a) There is allowed to farming taxpayers who make donations of edible agricultural products to one or more nonprofit food programs in this state, a credit against taxes imposed by §11-21-1 *et seq*. and §11-24-1 *et seq*. of this code in the amount set forth in this section.

(b) The amount of the credit is equal to 30 percent of the value of the donated edible agricultural products, but not to exceed $5,000 during a taxable year or the total amount of tax imposed by §11-21-1 *et seq*. or §11-24-1 *et seq*. of this code, whichever is less, in the year of donations.

(c) If the amount of the credit exceeds the taxpayer's tax liability for the taxable year, the amount which exceeds the tax liability may be carried over and applied as a credit against the tax liability of the taxpayer pursuant to §11-21-1 *et seq*. or §11-24-1 *et seq*. of this code to each of the next four taxable years unless sooner used.

(d) No more than $200,000 of tax credits may be allocated by the department in any fiscal year. The department shall allocate the tax credits in the order the donation forms are received.

(e) It is the intent of the Legislature in enacting the amendments to this section during the regular session of the Legislature, 2022, that the amendments be applied retroactively to apply to any donations of qualifying edible agricultural products to one or more nonprofit food programs in this state made on or after January 1, 2022.

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§11-13DD-4. Determination of value of credit.

(a) The donor shall determine the value of the donated edible agricultural products as follows:

(1) If there was a previous sale of the edible agricultural products to a buyer, the donor should retain a copy of an invoice or other statement identifying the price received by the donor for the edible agricultural products of comparable grade or quality; or

(2) If there is no previous sale to a buyer, the donor shall on the date of the donation, determine the value of the donated edible agricultural products based on the fair market value as determined by average weekly regional produce auction prices or United States Department of Agriculture prices for meat, fish and dairy products.

(b) At the time of the donation, the donor shall provide to the nonprofit food program the estimated value of the donated edible agricultural products as determined herein. The nonprofit food program shall provide to the donor a signed and dated form prescribed by the department containing at a minimum:

(1) The type and quantity of product donated;

(2) The name, address and taxpayer identification number of the donor or donors;

(3) The name and address of the donee nonprofit food program; and

(4) The estimated value of the donated edible agricultural products, as provided by the donor.

(c) To claim the tax credit, a qualified farming taxpayer shall send the donation form from the nonprofit food program to the department for certification.

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§11-13DD-5. Legislative rules.

(a) The Tax Commissioner shall propose rules for legislative approval in accordance with the provisions of article three, chapter twenty-nine-a of this code as may be necessary to carry out the purposes of this article.

(b) The Commissioner of Agriculture may propose rules for legislative approval in accordance with the provisions of article three, chapter twenty-nine-a of this code as may be necessary to carry out the purposes of this article.

WV Legislature

§11-13DD-6. Tax credit review report.

Beginning on the first day of the second taxable year after the passage of this article and every two years thereafter, the department shall submit to the Governor, the President of the Senate and the Speaker of the House of Delegates a tax credit review and accountability report evaluating the cost effectiveness of the tax credit and donations during the most recent two-year period for which information is available.

WV Legislature

§11-13DD-7. Effective date.

The credit allowed by this article shall be allowed upon donations occurring after December 31, 2017.

WV Legislature