

WEST VIRGINIA LEGISLATURE

2016 REGULAR SESSION

Committee Substitute

for

Senate Bill 399

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[Originating in the Committee on Agriculture and
Rural Development; reported on February 23, 2016]

1 A BILL to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article,
2 designated §11-13DD-1, §11-13DD-2, §11-13DD-3, §11-13DD-4, §11-13DD-5, §11-
3 13DD-6 and §11-13DD-7, all relating to creation of farm-to-food bank tax credit; defining
4 terms; providing method for calculation of value of tax credit; limiting tax credit; providing
5 for certification by Department of Agriculture; allowing carryover of unused tax credits for
6 four years; providing for rulemaking; and establishing effective date of tax credit.

Be it enacted by the Legislature of West Virginia:

1 That the Code of West Virginia, 1931, as amended, be amended by adding thereto a new
2 article, designated §11-13DD-1, §11-13DD-2, §11-13DD-3, §11-13DD-4, §11-13DD-5, §11-
3 13DD-6 and §11-13DD-7, all to read as follows:

ARTICLE 13DD. WEST VIRGINIA FARM TO FOOD BANK TAX CREDIT.

§11-13DD-1. Findings and purpose.

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

§11-13DD-2. Definitions.

1 As used in this article:

2 (1) "Department" means the Department of Agriculture;

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

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

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

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

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

1 (a) There is allowed to farming taxpayers who make donations of edible agricultural
2 products to one or more nonprofit food programs in this state a credit against taxes imposed by
3 articles twenty-one (personal income tax) and twenty-four (corporate income tax) of this chapter
4 in the amount set forth in subsection (b) of this section.

5 (b) The amount of the credit is equal to ten percent of the value of the donated edible
6 agricultural products, but not to exceed \$2,500 during a taxable year or the total amount of tax
7 imposed by article twenty-one or twenty-four of this chapter, whichever is less, in the year of
8 donations.

9 (c) If the amount of the credit exceeds the taxpayer's tax liability for the taxable year, the
10 amount which exceeds the tax liability may be carried over and applied as a credit against the tax
11 liability of the taxpayer pursuant to article twenty-one or twenty-four of this chapter to each of the
12 next four taxable years unless sooner used.

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

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

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

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

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

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

14 (1) The type and quantity of product donated;

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

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

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

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

§11-13DD-5. Legislative rules.

1 (a) The Tax Commissioner shall propose for promulgation rules pursuant to article three,
2 chapter twenty-nine-a of this code as may be necessary to carry out the purposes of this article.

3 (b) The Commissioner of Agriculture may propose for promulgation rules pursuant to
4 article three, chapter twenty-nine-a of this code as may be necessary to carry out the purposes
5 of this article.

§11-13DD-6. Tax credit review report.

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

§11-13DD-7. Effective date.

- 1 The credit allowed by this article shall be allowed upon donations occurring after
- 2 December 31, 2016.

NOTE: The purpose of this bill is to establish a credit against personal and corporate income taxes for farmers who donate edible agricultural products to food banks and other nonprofit food programs serving needy persons.

Strike-throughs indicate language that would be stricken from a heading or the present law and underscoring indicates new language that would be added.