

Chapter 171

(Senate Bill 539)

AN ACT concerning

Income Tax Credit – Food Donation Pilot Program – Extension

FOR the purpose of altering the taxable years for which a qualified farm may claim a certain credit against the State income tax for certain food donations; extending the period of time during which the State Department of Agriculture may issue certain tax credit certificates; extending the period of time for which the Secretary of Agriculture, in consultation with the Comptroller, shall submit a certain report; declaring the intent of the General Assembly with regard to the expenditure of certain funds by the Department for certain purposes; and generally relating to a tax credit for food donations.

BY repealing and reenacting, with amendments,
Article – Tax – General
Section 10–745
Annotated Code of Maryland
(2016 Replacement Volume and 2020 Supplement)

SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND,
That the Laws of Maryland read as follows:

Article – Tax – General

10–745.

(a) (1) In this section the following words have the meanings indicated.

(2) “Certified organic produce” means an eligible food donation that is certified under Title 10, Subtitle 14 of the Agriculture Article as an organically produced commodity.

(3) “Eligible food donation” means fresh farm products for human consumption.

(4) “Qualified farm” means a farm business that is located in the State.

(5) “Secretary” means the Secretary of Agriculture or the Secretary’s designee.

(6) “Tax credit certificate administrator” means a person or an organization that is authorized by the State Department of Agriculture under subsection (e) of this section to receive eligible food donations.

(b) (1) Subject to the limitations of this section, for a taxable year beginning after December 31, 2016, but before January 1, [2022] **2024**, a qualified farm may claim a credit against the State income tax in the amount stated on any tax credit certificates issued to the qualified farm during the taxable year.

(2) (i) Except as provided in subparagraph (ii) of this paragraph, for any taxable year, the aggregate amount of credits authorized under this subsection for a qualified farm may not exceed \$5,000.

(ii) For any taxable year, the Secretary may increase the credit limitation under subparagraph (i) of this paragraph for a qualified farm by an amount not to exceed \$5,000.

(3) If the credit allowed under this section exceeds the State income tax, any unused credit may be carried forward and applied for succeeding taxable years until the earlier of:

(i) the date on which the full amount of the credit is used; or

(ii) the date of the expiration of the 5th year after the taxable year for which the credit was allowed.

(c) (1) A qualified farm that makes an eligible food donation is eligible for a tax credit certificate with a stated tax credit amount equal to 50% of the value of the eligible food donation.

(2) A qualified farm that makes a donation of certified organic produce is eligible for a tax credit certificate with a stated tax credit amount equal to 75% of the value of the donated certified organic produce.

(d) (1) Each week the Secretary shall establish and publish the categories and value of certified organic produce and eligible food donations.

(2) Except as provided in paragraph (3) of this subsection, the value of each category of certified organic produce and eligible food donations is the wholesale value of the category established by the State Department of Agriculture and based on United States Department of Agriculture reports on Maryland products sold at Maryland markets.

(3) If the Secretary determines that the value established under paragraph (2) of this subsection is insufficient to pay for the cost of harvesting a category of certified organic produce or eligible food donation, the Secretary may establish a value in excess of the value under paragraph (2) of this subsection.

(e) (1) The Secretary, in consultation with the Comptroller, shall establish a process to certify a person or an organization to act as a tax credit certificate administrator.

(2) A tax credit certificate administrator that receives a donation of certified organic produce or an eligible food donation from a qualified farm shall issue the qualified farm a tax credit certificate.

(3) The tax credit certificate shall:

- (i) state the date of the donation;
- (ii) identify the qualified farm;
- (iii) describe the type of donation;
- (iv) state the weight of the donation;
- (v) identify the value of the donation;

(vi) state the maximum amount of the tax credit for which the qualified farm is eligible; and

(vii) provide any other information the State Department of Agriculture or Comptroller requires.

(4) The Secretary, in consultation with the Comptroller, shall prepare tax credit certificate forms for the use of the tax credit certificate administrators.

(5) Within 30 days after issuing a tax credit certificate, the tax credit certificate administrator shall provide a copy of the tax credit certificate to the Secretary and the Comptroller.

(6) (i) The Secretary shall notify each tax credit certificate administrator to stop issuing tax credit certificates if the amount of tax credit certificates issued during the fiscal year equals or exceeds the amount of tax credit certificates authorized to be issued during the fiscal year under subsection (f) of this section less \$50,000.

(ii) The Secretary, in consultation with the Comptroller, shall adopt regulations providing procedures to issue the remaining \$50,000 of tax credit certificates under this paragraph.

(f) (1) For each fiscal year, the total amount of tax credit certificates issued under this section may not exceed \$100,000.

(2) If the total amount of tax credit certificates issued during any fiscal year totals less than the maximum amount provided under paragraph (1) of this subsection, any excess amount may be carried forward and issued under tax credit certificates in a

subsequent fiscal year.

(3) A tax credit certificate may not be issued after December 31, [2021] **2023**.

(g) On or before January 1, 2018, and January 1 each year thereafter until January 1, [2023] **2025**, the Secretary, in consultation with the Comptroller, shall submit a report to the Governor and, subject to § 2–1257 of the State Government Article, the General Assembly on the use and impact of the tax credit established under this section.

(h) The Secretary, in consultation with the Comptroller, shall adopt regulations to administer this section.

SECTION 2. AND BE IT FURTHER ENACTED, That it is the intent of the General Assembly that the State Department of Agriculture, in an amount consistent with the amount of funding expended by the Department before the effective date of this Act to administer the tax credit established under § 10–745 of the Tax – General Article, shall continue to fund the marketing of the credit program and facilitate the donation of eligible food donations by qualified farms in accordance with § 10–745 of the Tax – General Article, as enacted by Section 1 of this Act, through the reimbursement of transportation costs or direct assistance with the transportation of eligible food donations.

SECTION 3. AND BE IT FURTHER ENACTED, That this Act shall take effect July 1, 2021.

Approved by the Governor, May 18, 2021.