



WEST VIRGINIA SECRETARY OF STATE

MAC WARNER

ADMINISTRATIVE LAW DIVISION

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Office of West Virginia
Secretary Of State

**NOTICE OF FINAL FILING AND ADOPTION OF A LEGISLATIVE RULE AUTHORIZED
BY THE WEST VIRGINIA LEGISLATURE**

AGENCY: Agriculture

TITLE-SERIES: 61-36

RULE TYPE: Legislative Amendment to Existing Rule: Yes Repeal of existing rule: No

RULE NAME: Farm to Food Bank Tax Credit

CITE STATUTORY AUTHORITY: §11-13DD-5(b)

The above rule has been authorized by the West Virginia Legislature.

Authorization is cited in (house or senate bill number) SB 361

Section 64-9-3 Passed On 3/11/2023 12:00:00 AM

This rule is filed with the Secretary of State. This rule becomes effective on the following date:

May 1, 2023

This rule shall terminate and have no further force or effect from the following date:

August 01, 2033

BY CHOOSING 'YES', I ATTEST THAT THE PREVIOUS STATEMENT IS TRUE AND CORRECT.

Yes

Norman Bailey -- By my signature, I certify that I am the person authorized to file legislative rules, in accordance with West Virginia Code §29A-3-11 and §39A-3-2.

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TITLE 61
LEGISLATIVE RULE
DEPARTMENT OF AGRICULTURE

SERIES 36
FARM TO FOOD BANK TAX CREDIT

§61-36-1. General.

1.1. Scope. -- This legislative rule sets forth the procedures and requirements for the Department of Agriculture's administration of the farm-to-food bank tax credit that is established by W. Va. Code §11-13DD-1, *et seq.*

1.2. Authority. -- W. Va. Code §11-13DD-5(b).

1.3. Filing Date. -- April 24, 2023

1.4. Effective Date. -- May 1, 2023

1.5. Sunset Date. -- This rule shall terminate and have no further force or effect on August 1, 2033.

1.6. Applicability. -- The farm-to-food bank tax credit is available to qualified donors who make eligible and certified donations after December 31, 2017.

§61-36-2. Definitions.

2.1. "Agriculture Commissioner" means the Commissioner of the Department of Agriculture.

2.2. "Donation" means edible agricultural products provided free of charge to a non-profit food program.

2.3. "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;

2.4. "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.

2.5. "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.

2.6. "Tax Commissioner" means the State Tax Commissioner.

2.7. "Tax Credit" means the farm-to-food bank tax credit authorized by W. Va. Code §11-13DD-1, *et seq.*

§61-36-3. Tax Credit Authorized; Effective Date.

3.1. W. Va. Code §11-13DD-1, *et seq.*, authorizes a tax credit for farming taxpayers making donations

of edible agricultural products to nonprofit food programs after December 31, 2017.

§61-36-4. Procedure for Certification.

4.1. Per the definition set forth in W. Va. Code §11-13DD-2(3), “edible agricultural product” shall include the following:

4.1.a. Fruits and vegetables;

4.1.b. Meats, including fish;

4.1.c. Grains;

4.1.d. Dairy products.;

4.2. The Department of Agriculture shall promulgate a receipt form that will be made available to the public.

4.3. A farming taxpayer who wishes to make an eligible donation must take the edible agricultural products to a qualifying nonprofit food program and present the receipt form promulgated by the Department of Agriculture, pursuant to W. Va. Code §11-13DD-4, for completion.

4.4. A representative of the nonprofit food program shall certify that the accepted donated edible agricultural product(s) were fit for human consumption.

4.5. After the receipt form has been completed by the nonprofit food program, the farming taxpayer shall submit the receipt form to the Department of Agriculture for certification.

4.6. After the Department of Agriculture has reviewed the receipt form and chosen to either make certification or deny certification, in whole or in part, the Department of Agriculture shall notify the farming taxpayer of the determination and shall return the receipt form and all submitted supporting documentation.

4.6.a. If denied, either in whole or in part, the Department of Agriculture will also include the reason for denial and notice of the farming taxpayer’s right to request an administrative hearing to review the denial, within ten (10 days) of receipt of the decision, in accordance with W.Va. Code §29A-5.1, Administrative Procedures Act.

4.6.b. The farming taxpayer shall have an opportunity to cure any deficiencies in their receipt form and supporting documentation and resubmit the form for reconsideration.

4.6.c. All corrected and resubmitted receipt forms and supporting documentation shall be considered by the Department of Agriculture on the date of resubmission, and not the date the deficient receipt form was originally submitted, for the purposes of awarding tax credits in the order they are received.

4.7. If certification has been granted, the farming taxpayer shall maintain the certified receipt form with his or her records.

4.8. The donation shall be valued in accordance with the provisions of W. Va. Code §11-13DD-4.

§61-36-5. Application for Tax Credit.

5.1. Farming taxpayers shall make application to the Department for the tax credit as contemplated by W. Va. Code §11-13DD-4(b), by submitting the properly completed receipt form along with any supporting documentation, if applicable.

5.2. The Department of Agriculture shall review the receipt form to ensure that it has been completed in full and signed by the farming taxpayer and a representative of the food program that accepted the donation.

5.2.a. The Department of Agriculture shall check to ensure that the food program listed on the form was 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 at the time of the donation.

5.2.b. The Department of Agriculture shall review the estimated value of the edible agricultural products listed by the farming taxpayer on the receipt form.

5.2.b.1. If the taxpaying farmer includes a copy of an invoice or other statement identifying the price received by the taxpaying farmer for edible agricultural products of comparable grade or quality for a previous sale, then that documentation shall be reviewed for accuracy and completeness. The Department of Agriculture reserves the right to request additional documentation as necessary to support the valuation of the edible agricultural product.

5.2.b.2. If the taxpaying farmer does not include an invoice or other statement identifying the price received by the taxpaying farmer for edible agricultural products of comparable grade or quality for a previous sale, then the Department shall, on the date of the donation, determine if the value listed for the donated edible agricultural products is reasonable 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. This value shall be compared to the value claimed on the receipt form to ensure the value claimed is not higher. If the price of the exact donated product cannot be determined from the average weekly regional produce auction prices or the United States Department of Agriculture prices for meat, fish, and dairy products, then WVDA will compare it to the price of the nearest like commodity. Additional information may be requested from the taxpayer regarding the donated commodity in making this determination.

5.2.b.3. In the event the value of the product claimed on the receipt form does not agree, the Department of Agriculture shall substitute 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, for the edible agricultural products on the receipt form.

5.2.c. The Department of Agriculture shall allocate the tax credits to farming taxpayers in the order the properly completed receipt forms are received. If an incomplete or inaccurate receipt form is submitted to the Department of Agriculture, it shall be returned to the farming taxpayer for correction and will not be considered for tax credits until the date the receipt form is corrected and resubmitted.

5.3. After review of the receipt form and any supporting documentation, and after ensuring that the

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limit of \$200,000 of tax credits per fiscal year has not been exceeded, the Department of Agriculture shall determine the amount, if any, of the tax credit due to the farming taxpayer. 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.

5.4. The amount of the tax credit (if any), certificate number, approval signature (if applicable), and approval date (if applicable) shall be recorded on the receipt form.

5.5. The Department of Agriculture shall provide written notification to the farming taxpayer that the Farm-to-Food Bank Tax Credit that has been approved, along with the amount of credit, or denied, along with the reason(s) for denial.

5.5.a. If denied, either in whole or in part, in addition to the reason for denial, Department of Agriculture will notify the farming taxpayer of the right to request an administrative hearing to review the denial, within ten (10 days) of receipt of the decision, in accordance with W.Va. Code §29A-5-1, State Administrative Procedures Act.

5.5.b. The farming taxpayer shall have an opportunity to cure any deficiencies in their receipt form and supporting documentation and resubmit the form for reconsideration.

5.5.c. All corrected and resubmitted receipt forms and supporting documentation shall be considered by the Department of Agriculture on the date of resubmission, and not the date the deficient receipt form was originally submitted, for the purposes of awarding tax credits in the order they are received.

5.5.d. The receipt form and any supporting documentation provided by the farming taxpayer will be returned with the written notification.

5.6. The Department of Agriculture shall submit to the Tax Commissioner, or his or her designee, the certified value of the tax credit due to the farming taxpayer, based upon the donation of edible agricultural products, along with any other information necessary to administer this credit. The Department of Agriculture shall provide the following so that the Tax Department can administer this credit:

5.6.a. Submission of the certification information by February 10 of the following year, or at other times as requested, in the format requested by the Tax Commissioner.

5.6.b. An identifying number assigned by the Department of Agriculture.

5.7. All applications for tax credits must be received by the Department of Agriculture no later than January 31 of the year following the year in which the donation was made.

§61-36-6. General Procedure and Administration.

6.1. Requirements to Claim the Tax Credit. To claim a tax credit, the farming taxpayer shall comply with the provisions of W. Va. Code §11-13DD-1, *et seq.*, W. Va. C.S.R. §110-13DD-1, *et seq.*, and this rule, and shall timely provide complete and accurate forms, returns, schedules and other information required or requested by the Agriculture Commissioner or Tax Commissioner. Failure to comply with these requirements may result in a denial of the tax credit.

6.2. Maintenance of Records. A farming taxpayer shall maintain the records required to verify the

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validity of its eligibility for the tax credit and the accuracy of the amount of tax credit claimed. The receipt form returned to the farming taxpayer by the Department of Agriculture shall be considered persuasive evidence of eligibility for this credit.