

DOR Rhode Island Department of Revenue
Division of Taxation

Via Electronic Mail

April 10, 2024

The Honorable Marvin L. Abney
Chair, House Committee on Finance
Rhode Island State House
Providence, RI 02903

RE: Letter Regarding House Bill 7995 – An Act Relating to Taxation – Tax Credit for Food Donation

Dear Chair Abney:

I am writing on behalf of the Rhode Island Department of Revenue, Division of Taxation (“Division”), to: i) express concerns regarding issues with proposed House Bill 7995 as currently drafted; ii) explain the background and current statutory context in order to clarify the intended and unintended consequences of this bill; and iii) make recommendations and request your support in implementing those recommendations.

This letter is not intended as a position in support of or opposition to the bill, but only as recommendations on drafting to provide clarity in the bill and to aid tax administration and compliance.

As you know, this bill would amend Title 44 by adding a chapter, 44-33.7, entitled “Tax Credit for Food Donation,” to provide for tax credits for qualified taxpayers that donate “apparently wholesome food” as defined in the bill. Per the Explanation by the Legislative Council, the intent of the bill is to “provide a tax credit for food donations by qualified taxpayers to nonprofit organizations up to five thousand dollars (\$5,000) per year.” The bill provides for two separate tax credits in relation to a qualified food donation: a credit in the amount equal to seventy-five percent (75%) of the fair market value of the donated apparently wholesome food and a credit in the amount equal to fifty percent (50%) of the transportation costs incurred in conveying a qualified donated food item, both of which cannot individually exceed five thousand dollars (\$5,000) per tax year. The bill further adds a Subsection 44-30-28, entitled “Food donation tax credit[,]” which provides for an entitlement to a tax credit against income tax up to five thousand dollars (\$5,000) per tax year pursuant to Chapter 44-33.7.

There are several potential issues with the bill that impact tax administration, including, but not limited to:

- There are several ambiguous terms, including, but not limited to, the definition of “apparently wholesome food[.]” Further, it is unclear if the Division would be required to verify that the donated food meets the “safety and safety-related standards required by federal, state, and local laws” or otherwise meets the definition and requirements as set forth in the bill.
- The provisions allowing credits for partnerships, limited liability companies, or S corporations create ambiguities as to pass-through entities and existing state statutes. Further, § 44-33.7-3(b) provides for these credits to be allocated in proportion to ownership or interest in the business, however, enforceability of this allocation would be difficult.

- “Qualified taxpayer” includes a governmental entity, school food authority, and institute of higher education, but what these entities include and how these entities could use the tax credit are unclear.
- The intent of the bill is identified as allowing a tax credit for qualified taxpayer donations of food to nonprofit organizations; however, there is no explicit requirement in § 44-33.7-2(a) that the food donations be made to nonprofit organizations, which could result in broad application and unintended consequences, although the bill later implies that the donee would be a nonprofit organization.
- The credit allowed for “the conveyance of a donated food, including the coordination or arrangement of transportation services, in connection with the transportation of that qualified donated food item[]” would be difficult to administer, require verification outside of the certification, and is susceptible to potential fraud due to the breadth of the provision.
- Since the credit can be claimed against tax imposed pursuant to Chapter 14 (Taxation of Banks), § 44-33.7-3(c) should include a provision that the credits claimed shall not reduce tax liability below the bank excise minimum tax as well.
- R.I. Gen. Laws § 44-30-2.6 would need to be amended to add the Tax Credit for Food Donation as an allowable credit against personal income tax. While proposed § 44-33.7-3(d) and § 44-30-28 attempts to do that, the bill would need to be redrafted to include a section amending § 44-30-2.6 to include the tax credit as an allowable credit against personal income tax.
- It is unclear what the drafters’ intent was in amending Chapter 44-30 by adding § 44-30-28, entitled “Food donation tax credit” in Section 2 of the bill. It appears to be duplicative.

The Division takes no position with respect to the remainder of the proposed legislation. Rather, the Division is concerned solely with the issues of clarity, tax compliance, and tax administration. As such, the Division respectfully suggests that the bill be redrafted for clarity.

I look forward to working with you to address the issues raised in this letter and appreciate your consideration.

Very truly yours,



Neena S. Savage
Tax Administrator

cc: The Honorable Members of the House Committee on Finance (via: HouseFinance@rilegislature.gov)
The Honorable Carol Hagan McEntee (rep-mcentee@rilegislature.gov)
Nicole McCarty, Esquire, Chief Legal Counsel to the Speaker of the House
Lynne Urbani, Director of House Policy
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