The Food Bank Charitable Donation Tax Credit: Frequently Asked Questions

Where is the tax credit currently located in legislation?

The existing 2011 credit is located in the state individual income tax Act 281 of 1967, MCL section 206.261. This section has been repealed. The food bank and homeless shelter tax credit has changed over time and is in the same MCL section as the Community Foundation credit.

When was the tax credit eliminated?

PA 38 of 2011 (HB 4361) was signed into law May 25, 2011. PA 38 of 2011 repealed Sec. 206.261 effective January 1, 2012.

How long may charitable donors still receive the credit?

They can still receive the state tax credit for donations made on or before December 31, 2011 (the end of the tax year).

When does the elimination go into effect?

Since section 206.261 is repealed effective January 1, 2012, taxpayers making donations to food banks or homeless shelters on or after January 1, 2012 will not receive a tax credit for these donations.

What has been the impact of the tax-credit elimination?

The elimination of the credit has not yet taken effect. Therefore, the impact is not yet known.

Sources and Additional Information

State of Michigan Department of Treasury: "Michigan's Individual Income Tax 2009", http://www.michigan.gov/documents/treasury/IIT_2009_359461_7.pdf, pp. 30, 50, 84, 92

State of Michigan Department of Treasury: "Income Tax Changes for Individuals and Trusts Effective Tax Year 2012 (For Returns Filed In 2013) http://www.michigan.gov/documents/taxes/Tax_Change_Summaries_-_Individual_Income_Tax_359807_7.pdf, p. 3

House Fiscal Agency Legislative Analysis: http://www.legislature.mi.gov/documents/2011-2012/billanalysis/House/pdf/2011-HLA-4361-6.pdf pp. 8 & 11

INCOME TAX ACT OF 1967 (EXCERPT)[i]
Act 281 of 1967

***** 206.261 THIS SECTION IS REPEALED BY ACT 38 OF 2011 EFFECTIVE JANUARY 1, 2012 *****

206.261 Tax credit for 50% of contribution to endowment fund of community foundation or other entity providing overnight accommodation, food, or meals to indigents; limitations; cash contribution; credits nonrefundable; "community foundation" defined; other entities qualifying for credit; endowment value; report.

Sec. 261.

(1) For the 1989 tax year and each tax year after 1989 and subject to the applicable limitations in this section, a taxpayer may credit against the tax imposed by this act 50% of the amount the taxpayer contributes during the tax year to an endowment fund of a community foundation or for the 1992 tax year and each tax year after 1992 and subject to the applicable limitations in this section, a taxpayer may credit against the tax imposed by this act 50% of the sum of the cash amount and, for the 2008 tax year and each tax year after 2008, if the food items are contributed in conjunction with a program in which a vendor makes a matching contribution of similar items, the value of those food items the taxpayer contributes during the tax year to a shelter for homeless persons, food kitchen, food bank, or other entity located in this state, the primary purpose of which is to provide overnight accommodation, food, or meals to persons who are indigent if a contribution to that entity is tax deductible for the donor under the internal revenue code.

(2) For a taxpayer other than a resident estate or trust, the credit allowed by this section for a contribution to a community foundation shall not exceed $100.00, or $200.00 for a husband and wife filing a joint return for tax years before the 2000 tax year and $100.00 or $200.00 for a husband and wife filing a joint return for tax years after the 1999 tax year. For the 1992 tax year and each tax year after 1992, a taxpayer may claim an additional credit under this section not to exceed $100.00, or $200.00 for a husband and wife filing a joint return, for total cash contributions made and, for the 2008 tax year and each tax year after 2008, including the value of food items contributed as described in subsection (1) in the tax year to shelters for homeless persons, food kitchens, food banks, and, except for community foundations, other entities allowed under subsection (1). For a resident estate or trust, the credit allowed by this section for a contribution to a community foundation shall not exceed 10% of the taxpayer's tax liability for the tax year before claiming any credits allowed by this act or $5,000.00, whichever is less. For the 1992 tax year and each tax year after 1992, a resident estate or trust may claim an additional credit under this

section not to exceed 10% of the taxpayer's tax liability for the tax year before claiming any credits allowed by this act or $5,000.00, whichever is less, for total cash contributions made and, for the 2008 tax year and each tax year after 2008, including the value of food items contributed as described in subsection (1) in the tax year to shelters for homeless persons, food kitchens, food banks, and, except for community foundations, other entities allowed under subsection (1). For a resident estate or trust, the amount used to calculate the credits under this section shall not have been deducted in arriving at federal taxable income.

(3) For the 2008 tax year and each tax year after 2008 and subject to the applicable limitations in this section, when calculating the amount of the credit allowed under this section a taxpayer may include as a cash contribution an amount equal to the value of food items contributed as described in subsection (1) in the tax year to a shelter for homeless persons, food kitchen, food bank, or other entity located in this state as described in subsection (1).

(4) The credits allowed under this section are nonrefundable so that a taxpayer shall not claim under this section a total credit amount that reduces the taxpayer's tax liability to less than zero.

(5) As used in this section, "community foundation" means an organization that applies for certification on or before May 15 of the tax year for which the taxpayer is claiming the credit and that the department certifies for that tax year as meeting all of the following requirements:

(a) Qualifies for exemption from federal income taxation under section 501(c)(3) of the internal revenue code.

(b) Supports a broad range of charitable activities within the specific geographic area of this state that it serves, such as a municipality or county.

(c) Maintains an ongoing program to attract new endowment funds by seeking gifts and bequests from a wide range of potential donors in the community or area served.

(d) Is publicly supported as defined by the regulations of the United States department of treasury, 26 CFR 1.170A-9(e)(10). To maintain certification, the community foundation shall submit documentation to the department annually that demonstrates compliance with this subdivision.

(e) Is not a supporting organization as an organization is described in section 509(a)(3) of the internal revenue code and the regulations of the United States department of treasury, 26 CFR 1.509(a)-4 and 1.509(a)-5.

(f) Meets the requirements for treatment as a single entity contained in the regulations of the United States department of treasury, 26 CFR 1.170A-9(e)(11).

(g) Except as provided in subsection (7), is incorporated or established as a trust at least 6 months before the beginning of the tax year for which the credit under this section is claimed and that has an endowment value of at least $100,000.00 before the expiration of 18 months after the community foundation is incorporated or established.

(h) Has an independent governing body representing the general public's interest and that is not appointed by a single outside entity.

(i) Provides evidence to the department that the community foundation has, before the expiration of 6 months after the community foundation is incorporated or established, and maintains continually during the tax year for which the credit under this section is claimed, at least 1 part-time or full-time employee.

(j) For community foundations that have an endowment value of $1,000,000.00 or more only, the community foundation is subject to an annual independent financial audit and provides copies of that audit to the department not more than 3 months after the completion of the audit. For community foundations that have an endowment value of less than $1,000,000.00, the community foundation is subject to an annual review and an audit every third year.

(k) In addition to all other criteria listed in this subsection for a community foundation that is incorporated or established after June 22, 2000, operates in a county of this state that was not served by a community foundation when the community foundation was incorporated or established or operates as a geographic component of an existing certified community foundation.

(6) An entity other than a community foundation may request that the department determine if a contribution to that entity qualifies for the credit under this section. The department shall make a determination and respond to a request no later than 30 days after the department receives the request.

(7) A taxpayer may claim a credit under this section for contributions to a community foundation made before the expiration of the 18-month period after a community foundation was incorporated or established during which the community foundation must build an endowment value of $100,000.00 as provided in subsection (5)(g). If the community foundation does not reach the required $100,000.00 endowment value during that 18-month period, contributions to the community foundation made after the date on which the 18-month period expires shall not be used to calculate a credit under this section. At any time after the expiration of the 18-month period under subsection (5)(g) that the community foundation has an endowment value of

$100,000.00, the community foundation may apply to the department for certification under this section.

(8) On or before July 1 of each year, the department shall report to the house committee on tax policy and the senate finance committee the total amount of tax credits claimed under this section and under section 38c of the former single business tax act, 1975 PA 228, or section 425 of the Michigan business tax act, 2007 PA 36, MCL 208.1425, for the immediately preceding tax year.

History: Add. 1988, Act 515, Imd. Eff. Dec. 29, 1988 ;-- Am. 1990, Act 136, Imd. Eff. June 26, 1990 ;-- Am. 1991, Act 171, Imd. Eff. Dec. 20, 1991 ;-- Am. 1993, Act 315, Imd. Eff. Dec. 29, 1993 ;-- Am. 1994, Act 256, Imd. Eff. July 5, 1994 ;-- Am. 1996, Act 484, Eff. Jan. 1, 1997 ;-- Am. 2000, Act 195, Imd. Eff. June 22, 2000 ;-- Am. 2007, Act 94, Imd. Eff. Oct. 1, 2007 ;-- Am. 2008, Act 207, Imd. Eff. July 11, 2008
Compiler's Notes: Section 2 of Act 136 of 1990 provides: "This amendatory act shall apply to tax years after 1989."Section 2 of Act 171 of 1991 provides: "Section 2. Not later than June 30, 1993, the department shall issue to the house committee on taxation and the senate committee on finance a comprehensive report and make recommendations regarding the reform of tax laws that will stimulate charitable giving and be equitable to all community charities."

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[i] http://www.legislature.mi.gov/(S(2r4phqz2tbpfop55rj0b3wmo))/mileg.aspx?page=getObject&objectName=mcl-206-261