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July 30, 2019

Research Prompt

The purpose of this memorandum is to summarize Virginia's voluntary agricultural Best Management Practices (BMPs) Tax Credit Program (referred herein at the Tax Credit Program).

Virginia's BMP Tax Credit Overview

In 1998, the state of Virginia created an income Tax Credit Program for farmers who voluntarily implement BMPs with the intention of reducing nonpoint runoff into nearby bodies of water, including the Chesapeake Bay.¹ The overall goal of the Tax Credit Program "is to encourage voluntary installation of BMPs that address Virginia's nonpoint source pollution water quality objectives."² The Tax Credit Program is amended and changed each year; this year the standard has shifted to reflect the Chesapeake Bay Program's goals. The tax credit is taken against the Virginia state income tax and can be as much as 25% of \$70,000 (\$17,500) per year, though increasing that number and/ or percent is currently under consideration.³ Furthermore, Virginia law states that if the tax credit is greater than the tax the farmer owes, the state will write a check for the difference to the farmer.

The Tax Credit Program works alongside the Virginia Agricultural Cost-Share (VACS) Program, a program designed to reduce the financial burden of implementing BMPs on the farmer. With VACS, the state can fund up to \$70,000 to assist in the implementation of a project. The Tax Credit Program and VACS work together to financially incentivize farmers to reduce their nonpoint source runoff into nearby bodies of water.⁴ Both programs have a system to address transfer of land ownership.⁵

¹ Va. Code Ann. §§ 58.1-339.3, 58.1-439.5.

² Program Year 2020 Virginia Agricultural Cost Share Manual, Section IV Page 1: Overview of BMP Tax Credit Program. <http://consapps.dcr.virginia.gov/htdocs/agbmpman/agbmptoc.htm>

³ BMP tax credits: <https://www.dcr.virginia.gov/soil-and-water/costshar3>.

⁴ BMP cost-share program: <https://www.dcr.virginia.gov/soil-and-water/costshar2>

⁵ The Tax Credit Program requires the original owner to fill out a form titled "Agricultural Best Management Practice Maintenance Agreement Transferring Responsibility for Best Management Practice" that shifts the legal responsibility of the land to the new owner. If the BMP is not yet finished, the original owner must fill out a separate form, titled "Agricultural Best Management Practice Maintenance Agreement Transferring AgBMP Contract to a New Participant before Practice Completion," which is intended to ensure the new owner abides by the previous owner's intention of implementing BMPs. The new owner is responsible for completing the BMP and land maintenance in accordance with the original leaseholder's agreement. This is discussed in pages II-33, II-34 of Program Year 2019 Virginia Agricultural Cost-Share (VACS) BMP Manual.

Eligible applicants are individuals (landowner, agent, or operator) in control of a property that produces agricultural products for market or owners of animals that create the need for BMPs to reduce pollutants.⁶ Producers who want to participate in the Tax Credit Program are required to have a soil conservation plan approved by a local Soil and Water Conservation District Board prior to BMP installation.⁷ To apply, the producer must include technical information about the BMP before submitting a request to the District Board for consideration. The final approval is done by the District Board Directors previous to any BMP installment.⁸ Once approved, the District Board sends the applicant an Agriculture Best Management Practices Tax Credit Certificate on letterhead along with a signed copy of contact.⁹ The producer uses the certificate and/or a copy of it when filing a tax return.¹⁰

All approved BMPs for tax credits are subject to compliance inspection during the lifespan of the practice.¹¹ If a participant fails to maintain the practice for the specified lifespan, the participant is required to refund all or part of the tax credit received.¹² However if the BMP fails due to weather or anything beyond the participant's control then the participant may be entitled to additional tax credit for the following year.¹³

Credits are granted based on a Board approved total estimated cost of the BMP before installation.¹⁴ If a calculation of 25% of the participant out of pocket expenditures is less than the approved estimated tax, no further action is required.¹⁵ However, if the requested tax credit amount is larger than the approved estimated tax, the Board must approve of the increase as a separate action.¹⁶ It is possible to have more than one tax credit approved by the District Board, and in that case a second tax credit record should be added instead of modifying the original tax credit record.¹⁷

BMP Tax Credit Success

The Tax Credit Program's yearly success is generally dependent upon the amount of funds allocated by the state General Assembly to the Soil and Water Conservation Districts for cost-share programs. There is usually an inverse relationship between the amount of funds going to cost-share programs and the popularity of the Tax Credit program. For example, in the coming year, Virginia has more funds for cost-sharing than they have in past years and thus expect the Tax Credit Program to be less popular because more farmers will sign up for cost-share and not need tax credits to offset the costs of agriculture practices. Furthermore, the Tax Credit Program

⁶ Program Year 2020 Virginia Agricultural Cost Share Manual, Section IV Page 3-4: Definition of Applicants. <http://consapps.dcr.virginia.gov/htdocs/agbmpman/agbmptoc.htm>

⁷ *Id.* at IV-6: Plan Requirements.

⁸ *Id.* at IV-7: Tax Credit Program; *See also* IV-14 Granting of the Tax Credit.

⁹ *Id.* at IV-15: Granting of the Tax Credit.

¹⁰ *Id.*

¹¹ *Id.* at IV-11: Inspections and Verification.

¹² *Id.*

¹³ *Id.* at IV-12: Practice Failure.

¹⁴ *Id.* at IV-14: *Granting of Tax Credit.*

¹⁵ *Id.*

¹⁶ *Id.* at IV- 15.

¹⁷ *Id.* at IV-11.

is a popular alternative for communities, like the Mennonites of the Shenandoah Valley, who do not receive, nor want, federal funding through the cost-share program.

Unlike VACS, the Tax Credit Program runs on the calendar year instead of the state's fiscal year. In 2018, the State of Virginia gave out \$1.5 million in tax credit dollars to 527 farmers to subtract from their property tax.¹⁸

The BMPs available for the tax credit are diverse in order to include all types of agriculture throughout the state of Virginia. Table A, which starts on page 5, details what BMPs are available for VACS.¹⁹ Note that not all BMPs applicable for the Tax Credit Program are enumerated in the Virginia Agricultural Cost-Share Manual.²⁰ Table B below details the number of participants in the Tax Credit Program from 1998-2018, and the number of tax credits issued with the monetary value.

Virginia BMP Tax Credit Statute Language

58.1-339.3²¹

A. For all taxable years beginning on and after January 1, 1998, any individual who is engaged in agricultural production for market, or has equines that create needs for agricultural best management practices to reduce nonpoint source pollutants, and has in place a soil conservation plan approved by the local Soil and Water Conservation District (SWCD), shall be allowed a credit against the tax imposed by § [58.1-320](#) of an amount equaling 25 percent of the first \$70,000 expended for agricultural best management practices by the individual.

As used in this section, "agricultural best management practice" means a practice approved by the Virginia Soil and Water Conservation Board (VSWCB) which will provide a significant improvement to water quality in the state's streams and rivers and the Chesapeake Bay and is consistent with other state and federal programs that address agricultural, nonpoint-source-pollution management. Eligible practices shall include, but are not limited to, the following:

1. Livestock-waste and poultry-waste management;
2. Soil erosion control;
3. Nutrient and sediment filtration and detention;
4. Nutrient management; and
5. Pest management and pesticide handling.

¹⁸ Roland Owens, Conservation Programs Data Manager, Division of Soil and Water Conservation, Department of Conservation and Recreation - Staunton. roland.owens@dcr.virginia.gov. 540-332-9227. *See Infra*, Table B.

¹⁹ Virginia Agricultural Cost-Share Manual: http://consapps.dcr.virginia.gov/htdocs/agbmpman/BMPtable_2020.pdf

²⁰ Program Year 2020 Virginia Agricultural Cost Share Manual, <http://consapps.dcr.virginia.gov/htdocs/agbmpman/agbmptoc.htm>

²¹ Va Code Ann. § 58.1-339.3 (2018). [For corporate tax credits] *See also* Va Code Ann. §58.1-439.5.

A detailed list of the standards and criteria for practices eligible for credit shall be found in the most recently approved "Virginia Agricultural BMP Manual" published annually prior to July 1 by the Department of Conservation and Recreation.

B. Any practice approved by the local Soil and Water Conservation District Board shall be completed within the taxable year in which the credit is claimed. After the practice installation has been completed, the local SWCD Board shall certify the practice as approved and completed, and eligible for credit. The applicant shall forward the certification to the Department of Taxation on forms provided by the Department. The credit shall be allowed only for expenditures made by the taxpayer from funds of his own sources.

C. 1. The amount of such credit shall not exceed \$17,500 or the total amount of the tax imposed by this chapter, whichever is less, in the year the project was completed, as certified by the Board. Any taxpayer claiming a tax credit under this section shall not claim a credit under any similar Virginia law for costs related to the same eligible practices.

2. If the amount of the credit exceeds the taxpayer's liability for such taxable year, the excess may be refunded by the Tax Commissioner. Tax credits shall be refunded by the Tax Commissioner on behalf of the Commonwealth for 100 percent of face value. Tax credits shall be refunded within 90 days after the filing date of the income tax return on which the individual applies for the refund.

D. For purposes of this section, the amount of any credit attributable to agricultural best management practices by a pass-through entity such as a partnership, limited liability company, or electing small business corporation (S Corporation) shall be allocated to the individual partners, members, or shareholders in proportion to their ownership or interest in such entity.

E. A pass-through tax entity, such as a partnership, limited liability company or electing small business corporation (S corporation), may appoint a tax matters representative, who shall be a general partner, member-manager or shareholder, and register that representative with the Tax Commissioner. The Tax Commissioner shall be entitled to deal with the tax matters representative as representative of the taxpayers to whom credits have been allocated by the entity under this article with respect to those credits. In the event a pass-through tax entity allocates tax credits arising under this article to its partners, members or shareholders and the allocated credits shall be disallowed, in whole or in part, such that an assessment of additional tax against a taxpayer shall be made, the Tax Commissioner shall first make written demand for payment of any additional tax, together with interest and penalties, from the tax matters representative. In the event such payment demand is not satisfied, the Tax Commissioner shall proceed to collection against the taxpayers in accordance with the provisions of Chapter 18 (§ [58.1-1800](#) et seq.).

Tables, Diagrams, Charts, Figures

Table A. 2020 Virginia BMP Agricultural Cost-Share, Tax Credit, and CREP BMPs. http://consapps.dcr.virginia.gov/htdocs/agbmpman_2020/BMPtable_2020.pdf.

Key

^	This BMP is a continuation or extension of an existing practice established by the applicant. The applicant was eligible to receive a tax credit for 25% of the first \$70,000 of the expense of the existing, previously installed BMP for the taxable year in which the practice was completed, pursuant to section 58.1-339.3 (Code of Virginia).
%	This practice does not meet the definition of a tax credit-eligible Agricultural BMP as defined in section 58.1-339.3 (5.B.) (Code of Virginia), as the cost-share rate is provided to acquire a Virginia certified professional nutrient management planner to generate a plan, and not to implement a conservation practice on the ground.
*	The “X” in the “Ag BMP Loan” column denotes BMPs that are eligible for a loan from the Virginia Water Facilities Revolving Fund (VWFRF) administered by the Department of Environmental Quality.
#	The participant must certify in writing that they will not utilize a Tax Credit to receive Cost-Share funding.
@	Only if wetland is constructed to treat animal waste runoff.

Practice name	Tax credit	VACS cost-share	Requires NM (nutrient management) plan	Requires conservation plan	Ag BMP loan	CREP (Conservation Reserve Enhancement Program)
Continuous Conservation Initiative Long Term Continuous No-Till Plantings System	^	X	X			
Continuous Conservation Initiative Forested Riparian Buffer- Maintenance Practice	^	X				
Continuous Conservation Initiative Herbaceous Riparian Buffer – Maintenance Practice	^	X				
Continuous Conservation Initiative Stream Exclusion Maintenance Practice	^	X				

Practice Name	Tax credit	VACS cost-share	Requires NM plan	Requires conservation plan	Ag BMP loan	CREP
Continuous Conservation Initiative Stream Exclusion with Narrow Width Buffer Maintenance Practice	^	X				
Continuous Conservation Initiative Stream Exclusion with Wide Width Buffer Maintenance Practice	^	X				
Continuous Conservation Initiative Stream Protection with Narrow Width Buffer Maintenance Practice	^	X				
Continuous Conservation Initiative Stream Protection with Wide Width Buffer Maintenance Practice	^	X				
CREP Grass Filter Strip				X		X
CREP Riparian Forest Buffer				X		X
CREP Wetland Restoration Rent				X		X
CREP Wildlife Habitat Buffer				X		X
CREP Woodland Buffer Filter Area	X			X		X
CREP Linear Foot of Streambank Protected				X		X
CREP Stream Exclusion with Grazing Land Management	X			X		X
CREP Stream Protection	X			X		X
CREP Herbaceous Riparian Buffers	X			X		X
CREP Wetland Restoration	X			X		X
CREP Agricultural Sinkhole Protection	X			X		X
Afforestation of Crop, Hay and Pasture Land	X	X		X		
Woodland Buffer Filter Area	X	X		X	X	

Practice Name	Tax credit	VACS cost-share	Requires NM plan	Requires conservation plan	Ag BMP loan	CREP
Woodland Erosion Stabilization	X	X		X		
Nutrient Management Plan Writing and Revisions	%	X				
Split Application of Nitrogen on Corn Using Pre-Sidedress Nitrate Test	X	X#	X			
Late Winter Split Application of Nitrogen on Small Grains	X	X#	X			
Precision Nutrient Management on Cropland – Nitrogen Application	X	X#	X			
Precision Nutrient Management on Cropland – Phosphorus Application	X	X#	X			
Manure Injection	X	X	X			
Resource Management Plan Development	%	X	X	X		
Resource Management Plan Implementation	%	X	X	X		
Vegetative Stabilization of Marsh Fringe Areas	X	X		X		
Shoreline Stabilization	X	X		X	X	
Long Term Vegetative Cover on Cropland	X	X	X	X		
Stripcropping Systems	X	X	X	X		
Buffer Stripcropping	X	X	X	X		
Terrace Systems	X	X	X	X	X	
Diversions	X	X		X	X	
Small Acreage Grazing System	X		X	X		
Alternative Water System	X		X	X	X	

Practice Name	Tax credit	VACS cost-share	Requires NM plan	Requires conservation plan	Ag BMP loan	CREP
Stream Exclusion with Narrow Width Buffer and Grazing Land Management	X	X		X	X	
Stream Exclusion with Wide Width Buffer and Grazing Land Management	X	X		X	X	
Extension of Watering Systems	X	X		X		
Protective Cover for Specialty Crops	X	X#				
Small Grain and Mixed Cover Crop for Nutrient Management and Residue Management	X	X#	X			
Harvestable Cover Crop	X	X#	X			
Grazing Land Management	X	X	X	X		
Permanent Vegetative Cover on Critical Areas	X	X		X		
Farm Road, Animal Travel Lane, Heavy Use Area Stabilization	X			X	X	
Continuous High Residue Minimal Soil Disturbance Tillage System	X	X#	X			
Continuous No-Till Forage Production System	X	X#	X			
Sediment Retention, Erosion or Water Control Structures	X	X		X	X	
Streambank Stabilization	X	X		X	X	
Stream Crossings & Hardened Access	X			X	X	
Stream Channel Stabilization	X			X	X	
Maintenance of Stream Exclusion Fencing	X			X		

Practice Name	Tax credit	VACS cost-share	Requires NM plan	Requires conservation plan	Ag BMP loan	CREP
Stream Protection (fencing with narrow width buffer)	X	X		X	X	
Stream Protection (fencing with wide width buffer)	X	X		X	X	
Sod Waterway	X	X		X		
Composter Facilities	X	X	X	X	X	
Soil Test in Support of Nutrient Management Plan	X		X	X		
Animal Waste Structure Pumping Equipment	X			X	X	
Animal Mortality Incinerator Facilities	X	X	X	X	X	
Stormwater Retention Pond	X			X	X	
Agricultural Chemical & Fertilizer Handling Facility	X	X	X	X	X	
Surface Water Runoff Impoundment for Water Quality	X			X	X	
Relocation of Confined Feeding Operations From Environmentally Sensitive Areas	X		X	X	X	
Grass Filter Strips	X	X	X	X		
Legume Based Cover Crop	X	X#	X			
Water Table Control Structures	X	X		X	X	
Constructed Wetlands	X		@	X	X	
Wetland Restoration	X			X	X	
Irrigation Water Recycling System	X			X	X	
Fuel Storage Treatment	X			X	X	

Practice Name	Tax credit	VACS cost-share	Requires NM plan	Requires conservation plan	Ag BMP loan	CREP
Capping/Plugging of Abandoned Wells	X			X		
Integrated Pest Management	X			X		
Agricultural Sinkhole Protection	X	X		X		
Roof Runoff Management System	X	X		X	X	
The Agricultural BMPs below are funded and administered by the Department of Environmental Quality (DEQ) Total Maximum Daily Load (TDML) Program.						
Livestock Exclusion with Riparian Buffers for TMDL Implementation	X			X		
Livestock Exclusion with Reduced Setback for TMDL Implementation	X			X		
Small Acreage Grazing System (TMDL)	X			X		
Stream Exclusion with Grazing Land Management (TMDL)	X			X		
Support for Extension of CREP Watering Systems	X			X		
Pasture Management for TMDL Implementation				X		
Stream Protection (TMDL)	X			X		

Table B. Tax credits issued per year from 1998 to 2018, provided by Roland Owens, Conservation Programs Data Manager, Division of Soil and Water Conservation, Department of Conservation and Recreation - Staunton. roland.owens@dcr.virginia.gov. 540-332-9227.

Tax Credit CY	Number of Participants Receiving Tax Credits	Number of Tax Credits Issued	Amount of Tax Credits Issued
1998	460	636	\$429,483.05
1999	801	1317	\$776,091.80
2000	736	1256	\$719,211.06
2001	688	936	\$880,304.27
2002	854	1277	\$895,602.71
2003	891	1540	\$887,040.39
2004	472	1329	\$497,279.87
2005	678	1857	\$642,111.63
2006	850	2652	\$984,213.68
2007	839	2602	\$948,637.88
2008	982	3097	\$1,236,745.00
2009	816	1981	\$1,114,998.22
2010	675	1532	\$843,663.68
2011	630	2517	\$1,092,768.12
2012	683	2369	\$1,202,802.34
2013	550	2235	\$1,169,675.88
2014	415	1476	\$932,805.12
2015	462	2384	\$1,123,574.45
2016	410	1990	\$966,166.69
2017	387	1096	\$745,400.40
2018	527	2983	\$1,533,057.70

\$19,621,633.94