Office of Legislative Research
Research Report
September 8, 2015
2015-R-0201

# TAX INCENTIVES FOR FOOD DONATIONS

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## ISSUE

What are some policy options for providing tax incentives to businesses that reduce food waste by donating surplus food to charitable organizations?

## SUMMARY

The legislature could provide various tax incentives to businesses (e.g., restaurants, bakeries, grocery stores, and farms) that donate surplus food to charities. The incentives could be in the form of a new or expanded tax credit or tax deduction. Both types of incentives reduce business tax liability, but in different ways. Tax credits directly reduce the amount of taxes a business owes, while tax deductions reduce the amount of the income subject to tax.

Any new state tax incentives would be in addition to existing federal tax incentives for such food donations. Under federal tax law, businesses that donate food inventory to qualified organizations are generally entitled to a tax deduction equal to their basis in the contributed property (i.e., the cost it incurred for the inventory). In addition, businesses that donate certain qualifying foods and meet other criteria may receive an enhanced tax deduction for their contribution (i.e., a deduction that is greater than the basis of the donated food).

Because Connecticut bases its corporation income tax on federal income calculations that include these deductions, these same deductions are already incorporated in state corporation income tax calculations.

## POTENTIAL TAX INCENTIVES FOR FOOD DONATIONS

### *Tax Credits*

The legislature could create a new business tax credit for businesses that donate food to charities. The credit could equal a flat amount or a percentage of the donation's value and apply against specified business taxes (i.e., corporate and personal income tax and sales tax). The credit could apply broadly to all business food donations or be targeted to capture specific types of businesses, charitable organizations, or donations.

Other states have established comparable tax credit programs for these types of food donations. Oregon and Iowa, for example, provide tax credits to farmers who donate qualifying food commodities to food banks and food pantries. To qualify for the credit, farmers must donate food that meets the criteria for the federal tax deduction for charitable food inventory contributions (i.e., "apparently wholesome food," as described below). Oregon's credit is 15% of the donation's value, while Iowa's is the lesser of $5,000 or 15% of donation's value. Missouri, on the other hand, provides a tax credit to individual and business taxpayers that donate money or food supplies to eligible food pantries. The credit is 50% of the donation's value, up to $2,500 per taxpayer and $1.25 million for all taxpayers per year.

A second option would be to expand an existing business tax credit program to include food donations by businesses. One such program is the Neighborhood Assistance Act (NAA), which provides business tax credits to companies that invest at least $250 in eligible community activities and programs. The legislature could amend the NAA program to include food donations to charitable organizations. By law, the credit amounts are (1) 100% for contributions to qualifying energy conservation projects and college loan forgiveness programs, (2) 60% for all other eligible contributions and investments, and (3) generally capped at $150,000 per business and $5 million for all businesses per year (the annual aggregate cap is $10 million per year beginning July 1, 2017).

### *Tax Deductions*

The legislature could also create a personal income tax deduction for food donations by businesses. This would allow the owners, members, shareholders, and partners of pass-through entities doing business in the state (who pay personal income taxes on their share of income the business generates) to deduct the value of the business's food donations from their share of its taxable income. (For businesses organized as c-corporations, the federal tax deductions for charitable food contributions are incorporated in their state corporation income tax calculations.) The deduction could be modeled after the existing federal tax deductions for such donations, as described below.

## FEDERAL TAX DEDUCTIONS FOR CHARITABLE FOOD INVENTORY CONTRIBUTIONS

Food donations by businesses may qualify for two types of federal tax deductions. The first type, which applies to inventory donations generally, allows businesses to deduct from their taxable income the value of their inventory (including food inventory) that they donate to qualified organizations. The deduction is equal to their basis in the contributed property and may not exceed 10% of their net income for the year.

The second type of deduction (i.e., enhanced deduction) applies to c-corporations and pass-through entities that make certain qualifying food donations. Pass-through entities may claim the enhanced deduction for donations made through the end of 2014 (although Congress has consistently extended the incentive). The deduction is permanent for c-corporations.

In order to qualify for the enhanced deduction, the donation must meet the conditions listed below.

1. The business must make a contribution of "apparently wholesome food," meaning that it (a) is intended for human consumption and (b) meets the law's quality and labeling standards even though it may not be readily marketable due to appearance, age, freshness, grade, size, surplus, or other conditions.

2. The food must satisfy any applicable Federal Food, Drug, and Cosmetic Act requirements on the date it is transferred and for the previous 180 days in cases where the donated food is subject to the act.

3. The receiving organization must (a) use the food only to care for the ill, the needy, or infants; (b) use the food in a manner related to its exempt purposes or function; (c) not transfer the food for money, other property, or services; and (d) provide the business with a written statement indicating that it will comply with these requirements. The organization may not be a private nonoperating foundation.

If these conditions are met, the business may deduct from its taxable income its basis for the donated food plus half of the profit it would have realized if the food had been sold at its fair market value on the date of the donation. The deduction for a single donation is capped at twice the business's basis in the donated food, and the aggregate deductions is capped at 10% of its net income for the year (26 U.S.C.A. § 170 (e)(3); Internal Revenue Service, *Charitable Contributions*, Publication 526).

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