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The Federal Enhanced Tax Deduction for Food Donations

A Guide for Farmers and Gleaning Organizations

Photo Credit: Salvation Farms

As part of its 2016 budget, Congress made the enhanced federal tax deduction for food donations permanent for all businesses. But, how does the deduction work? How does it apply to farm businesses who donate surplus food?

KEY FEATURES UNDER THE NEW LAW

1. PERMANENT EXTENSION FOR FOOD DONATIONS
2. INCREASE IN DONATION CAP TO 15% OF DONOR'S NET INCOME
3. NEW OPTIONAL FORMULA FOR TAXPAYERS USING CASH BASED ACCOUNTING TO CALCULATE THE DEDUCTION
4. PROVIDES A FORMULA FOR DETERMINING THE FAIR MARKET VALUE

THE NATIONAL GLEANING PROJECT

This guide is brought to you by the National Gleaning Project,

a multi-year initiative of the Center for Agriculture and Food Systems at Vermont Law School funded by the National Agricultural Library of the United States Department of Agriculture.

The Project seeks to address some of the legal issues associated with gleaning and gleaning related activities while providing resources to food donors, advocates, organizations, and individuals involved in gleaning or seeking to develop such programs.

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This fall, the Harvard Food Law and Policy Clinic and the Food Recovery Project at the University of Arkansas released a handy legal guide to the enhanced federal tax deduction for food donations, as well as an explanation of Congress' extension of the deduction on their blog. This guide is based on that work. Its purpose is to help farm businesses donating food understand how to use the deduction.


Photo Credit: Salvation Farms

Who is Eligible for the Deduction?

Any business, including farms, that donates apparently wholesome food[1] for a charitable purpose to a qualified organization[2] can claim the enhanced federal tax deduction.

How is the Deduction Calculated?

The deduction allows businesses to deduct the lesser of either: (a) twice the basis of the donated food; or (b) the basis value of the donated food plus one half of the food's expected profit margin, if it were sold at fair market value. For farm businesses that use a cash balance accounting method (tracking cash in and out), the **basis value** is 25% of the products' fair market value. The **fair market value** is calculated by using the price of the same or substantially similar food items sold by the farm business.

Example: A farmer donates ten pounds of apples to a charitable organization that the farm normally sells for $2.50 per pound of $25.00. The expected profit margin is the fair market value minus the basis value ($25 -$6.25), which is $19. Under the enhanced tax deduction, the farm can deduct the smaller of: (a) Basis Value x 2 = $6.25 x 2 = $12.50 or (b) Basis Value + (Expected Profit Margin/2) = $6.25 + ($19/2) = $15.75. The enhanced deduction is higher than the general deduction which is limited to the basis value (in this case $6.25). ***Example adapted from: the Harvard Food Law and Policy Clinic and the Food Recovery Project at the University of Arkansas, Legal Guide to the Enhanced Federal Tax Deduction for For Donations.***

Deductions are capped at 15% of the farm business' annual income. After 2015, however, farm businesses can carry forward any excess deductions beyond the 15% income limitation for up to five years.

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[1] The Bill Emerson Good Samaritan Food Donation Act defines this as "food that meets all quality and labeling standards imposed by federal, state, and local laws and regulations even though the food may not be readily marketable due to appearance, age, freshness, grade, size, surplus, or other conditions." 42 U.S.C. § 1791(b)(2).

[2] Under the Internal Revenue Code, "a 501(c)(3) organization in the United States that uses the food solely to care for the ill, the needy, or infants." 26 U.S.C. § 170(e)(3)(A).