



HARVEST SUPPORT NETWORK

Tax Benefits of Donating Surplus Prepared, Perishable Food

The following information is presented for general information only. Consult with your Attorney or Tax Consultant to determine its application to your specific organization and situation.

Current U.S. Tax Law (as of April, 2012)

U.S. Congress enacted [Section 170](#) of the Internal Revenue Code in 1976 to encourage donations by allowing C corporations to earn an enhanced tax deduction for donating selected surplus property, including food.

The Code provides that wholesome food that is properly saved, donated to an approved agency and properly receipted is eligible for an enhanced tax deduction. This enhanced deduction is equal to ½ of the donated food's appreciated value, with the limitation that the total deduction cannot exceed twice the donated food's basis cost. This incremental tax deduction is calculated from the donated food's fair market value and basis food and labor cost. The IRS may challenge the value of donated food.

The **Katrina Emergency Tax Relief Act (KETRA) (H.R. 3768)** passed by Congress on September 22, 2005 extended this enhanced tax deduction of Section 170 to all business entities. This extension applies to all qualifying donations made between August 28 and December 31, 2005. (Additional [explanation](#) from the Joint Committee on Taxation (JCT))

The **Pension Protection Act of 2006 (PPA) (H.R. 4)** signed by President Bush on August 17, 2006 [extended](#) the provisions of KETRA through December 31, 2007.

The **Emergency Economic Stabilization Act of 2008 (H.R. 1424)** signed by President Bush on October 3, 2008 [extended](#) the provisions of KETRA through December 31, 2009.

The **Tax Relief, Unemployment Insurance Reauthorization, and Job Creation Act of 2010 (H.R.4853, Public Law 111-312)** signed on December 17, 2010 extended the **enhanced charitable deduction for contributions of food inventory** provisions of KETRA. This provision provides a [two-year extension](#) for [non-C corps](#), retro-active to January 1, 2010, extended to December 31, 2011.

Fair market value (FMV) continues to be [evaluated by the IRS](#) on a company by company basis. Congress' intention to encourage this type of donation would be enhanced by codifying an important Tax Court ruling regarding FMV determinations.

Other Important Potential Tax Legislation

The **Good Samaritan Hunger Relief Tax Incentive Extension Act of 2011 (S. 166)** was introduced on January 25, 2011 by Senator Lugar (R-IN) and Senator Patrick Leahy (D-

VT). This legislation amends the Internal Revenue Code of 1986 to permanently extend the charitable deduction for contributions of food inventory from non-C corporations.

An ***Extension and Expansion of Charitable Deduction of Contributions of Food Inventory*** was announced by Representative Geoff Davis (R-KY) and Representative Sander Levin (D-MI) on December 20, 2011 ([Press Release](#)). The legislation ([H.R. 3729](#)) permanently extends the current tax deduction so that all business taxpayers are eligible.

Wholesome Surplus Food Feeds People

Food donation and rescue programs that redirect surplus, wholesome prepared, perishable food support local non-profits that feed the hungry in communities all over the U.S. and abroad. If you would like to know more about the potential tax benefits of donating your surplus food, contact the Harvest Support Network (HSN) at www.harvestsupportnetwork.org We can connect you to organizations that assess potential tax savings for surplus food donations.