

Legal Questions & Answers

TAX INCENTIVES AND FOOD DONATION FOR GLEANNING ORGANIZATIONS



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The National Gleaning Project was created in response to the need for a national network connecting modern field gleaning and food recovery organizations across the United States. The National Gleaning Project also provides access to related law and policy resources and samples of waivers, handbooks, and other documents to help support the work of these organizations.



The Association of Gleaning Organizations (AGO) works to build the capacity of other food rescue entities to provide healthy food access to vulnerable populations while reducing food waste and connecting communities. Founded in 2019, we are a member-led, member-run association composed of gleaning organizations in North America. Please visit gleaningorgs.com for more information.



The Center for Agriculture and Food Systems (CAFS) uses law and policy to build a more sustainable and just food system. With local, regional, national, and international partners, CAFS addresses food system challenges related to food justice, food security, farmland access, animal welfare, worker protections, the environment, and public health, among others. CAFS works closely with its partners to provide legal services that respond to their needs and develop resources that empower the communities they serve. Through CAFS' Food and Agriculture Clinic and Research Assistant program, students work directly on projects alongside partners nationwide, engaging in innovative work that spans the food system. To learn more, please visit www.vermontlaw.edu/cafs.



INTRODUCTION

Farmers and producers have many reasons to work with gleaning and food recovery organizations. Some farmers may wish to contribute to food security, build community, or provide hands-on experience to volunteers in the work of growing food. Tax incentives provide another potential benefit to farmers working with gleaning organizations. They offer tangible compensation and may recruit more farmers to expand gleaning operations.

Tax incentives are offered by the federal government and some states, and may depend on the business structure of the recipient organization (gleaning and food recovery organization). There are two types of tax incentives for food donation: tax deductions and tax credits. A deduction is subtracted from a taxpayer's taxable income before tax is calculated and thus reduces the amount owed. A credit is so called because it is credited toward the amount of taxes owed and directly reduces the amount that must be paid. Some incentives may be available only for certain types of businesses. For an overview of business structures, please see the [Farmers Market Legal Toolkit](#).

Read on to learn about incentives and whether your state offers a benefit for food donation.

Special thanks to Preston Keres, USDA, for providing many of the photos featured in this factsheet.

GLOSSARY

Adjusted gross income	Total income minus IRS-approved adjustments, such as student loan interest or contributions to approved retirement accounts. A tax deduction is subtracted from this amount.
Basis value	The cost of production for a food or crop.
Fair market value	The price a good would receive if sold to a willing buyer.
Profit margin	The income from sale of a food or crop at fair market value minus its basis value.
Qualified organization	In order to be eligible for federal (and many state) tax incentives, a donation must be made to a qualified organization, as defined in the US Code. A qualified organization must meet some specific requirements, although those requirements encompass many types of 501(c) organizations, such as government entities, philanthropic foundations, veterans' organizations, service organizations, and not-for-profit cemetery companies. Many gleaning and food recovery organizations will fall into the philanthropic or charitable category, if they are structured as a 501(c)(3) organization. To learn more, see US Code section 170(b)(1)(A) ¹ or IRS Publication 526, pages 2-3. ²
Taxable income	Taxable income is the amount of an individual or business's income subject to taxation. Generally, taxable income is adjusted gross income minus any itemized deductions, or the standard deduction.

FEDERAL TAX INCENTIVES

Federal tax deductions are offered to businesses involved in agriculture and food production to incentivize donation of surplus food to nonprofit organizations. These incentives are aimed to make food donation more cost effective and economically beneficial for businesses that choose to participate.

General (Non-Enhanced) Tax Deduction³

The general tax deduction applies to any business that donates surplus inventory (fruits and vegetables, for example). Businesses that donate inventory can claim a tax deduction in the amount of the inventory's basis value, which is usually calculated as a business's cost of production.⁴ This amount is often considerably lower than fair market value. ----->

For example, if a farm donates 100 pounds of potatoes with a fair market value of \$0.45/pound, the basis can in many cases be calculated as 25 percent of the fair market value (see 26 U.S.C. sec. 170(e)(3)(C)(iv)). This means that the amount that can be deducted is based on a basis of \$11.25.

- Farms and food producers organized as C corporations may not deduct more than 10 percent of their adjusted gross income per year.⁵
- Individuals and farms and food producers that are not C corporations (meaning they are structured so that the owners and shareholders are taxed as individuals) cannot deduct more than either 50 percent of the business's adjusted gross income each year for donations to most 501(c) organizations, or 30 percent for donations to other organizations.⁶

Requirements for Eligible Entities

Donations must be used for charitable purposes and given to qualified organizations - see glossary above. Qualified organizations include government entities, philanthropic foundations, veterans' organizations, service organizations, and not-for-profit cemetery companies.⁷



Enhanced Tax Deduction for Food Donations⁸ – expanded by Congress in 2015⁹

The enhanced tax deduction aims to provide an extra incentive for food donation by allowing businesses to deduct the lesser of (a) twice the basis value of the donated food or (b) the basis value of the donated food plus one-half of the food's expected profit margin (if the food were sold at its fair market value).

- How to calculate the enhanced tax deduction: businesses that do not account for inventories and are not required to capitalize indirect costs have the option to calculate the basis value at 25 percent of the product's fair market value.
- Who can claim the enhanced tax deduction, and how much:
 - This enhanced deduction is available to any taxpayers: individuals, S corporations and C corporations, sole proprietorships, partnerships, and LLCs.
 - Under the enhanced tax deduction, all individuals and businesses other than C corporations may deduct up to 15 percent of their aggregate net income (that is, the total net income from all sources, including on- and off-farm income and all businesses they may own) for food donations.¹⁰ C corporations may deduct 15 percent of their taxable income.¹¹

Requirements for Eligible Entities¹²

- Donation recipients must be a qualified 501(c) not-for-profit as defined by the Internal Revenue Code (federal tax law).
- Donations must be used exclusively for charitable purposes.
- The food must be used "for the care of the ill, needy, or infants"—that is, distributed to people experiencing health challenges or food insecurity.¹³
- The donation may not be further transferred between organizations for any monetary gain, other property, or services; however, the recipient organization may charge another organization a nominal amount for "administrative, warehousing, or other similar costs."¹⁴
- The donating business must receive a written statement from the recipient that describes the contributed property, states that the property will be used in compliance with the above requirements, confirms that the recipient is a qualifying 501(c) organization, and states that recipient will maintain records including specified information (for example, the amount of property received) to be made available to the IRS upon request.¹⁵
- The donated food must satisfy the Food, Drug, and Cosmetic Act for the shorter of the preceding 180 days or the period of its existence.



Individuals can only claim a deduction if they itemize, and not if they claim the standard deduction.¹⁶ The 2018 Tax Cuts and Jobs Act raised the standard deduction, which made it less common for taxpayers to itemize their deductions.¹⁷ This means that the enhanced tax deduction is not likely to apply to businesses with “pass through” income, such as sole proprietorships, partnerships, and S corporations, where business income is reported on a personal return, since an estimated 90 percent of households claim the standard deduction.¹⁸ Tax circumstances vary widely, so consulting an accountant is the best way to determine eligibility for the enhanced tax deduction.

STATE TAX INCENTIVES

Beyond federal tax incentives for food donation, some states offer additional tax credits or deductions for food donation. These incentives vary by state and eligibility, and specify what types of organizations donations may be made to in order to qualify for the respective credit or deduction. Below is a list of state laws that offer tax incentives for food donation relevant to farmers and food producers (some states also offer incentives that apply to retail outlets like restaurants and grocery stores, but we have not included those here). In states that do not offer tax incentives, businesses can still take advantage of the federal incentives described above.

STATE	INCENTIVE TYPE	STATUTE	DESCRIPTION
ARIZONA	Tax Deduction	<u>Ariz. Rev. Stat. Ann. § 43-1025 (2016)</u>	Farmers or agricultural processors may deduct the full wholesale market price, or the most recent sale price (whichever is greater) of donated crops.
CALIFORNIA	Tax Credit	<u>CAL. REV. & TAX. CODE § 17053.88.5 (Deering 2019)</u>	Producers engaged in planting, managing, and harvesting crops may receive a credit for 15% of qualified value (with qualified value equal to approximately the wholesale market price).
	Tax Credit	<u>CAL. REV. & TAX. CODE § 17053.12 (Deering 1996)</u>	Producers engaged in the business of processing, distributing or selling agriculture products may receive a credit for 50% of transportation costs incurred for donating such food.
COLORADO	Tax Credit	<u>Colo. Rev. Stat. Ann. § 39-22-301 (2022)</u>	C corporations may receive a credit for 25% of wholesale market price, up to \$1,000 annually. This credit is available for donations made through 2022; unclaimed amounts can be carried forward to future tax years until 2029.
	Tax Credit	<u>Colo. Rev. Stat. Ann. § 39-22-536 (2018)</u>	Any taxpayer may receive 25% of wholesale market price, up to \$5,000 annually. This credit is available for donations made through 2020; unclaimed amounts can be carried forward to future tax years until 2025.

STATE	INCENTIVE TYPE	STATUTE	DESCRIPTION
IOWA	Tax Credit	<u>Iowa Code § 190B.101-06, 422.11E, 422.33(30) (2022)</u>	Producers of a food commodity may receive a credit for 15% of fair market value, up to \$5,000 annually.
MARYLAND	Tax Credit	<u>Md. Code Ann., Tax-Gen. § 10-745 (West 2018)</u>	Farm businesses located in Anne Arundel County, Calvert County, Charles County, Montgomery County, Prince George's County, or St. Mary's County may receive a credit of 50% of the wholesale value of the eligible food donation; 75% of the wholesale value for certified organic food, up to \$5,000.
	Tax Credit	<u>Md. Code Ann., Tax-Gen. § 10-746 (West 2018)</u>	Individual citizens may receive a credit up to \$50 of the expenses incurred to butcher and process venison if venison is donated through a donation program administered by a 501(c)(3) nonprofit.
MISSOURI	Tax Credit	<u>Mo. Rev. Stat. § 135.647 (2007)</u>	All taxpayers may receive a credit for 50% of food (so long as it is not past usage date) or cash donation, up to \$2,500 annually.
NEW YORK	Tax Credit	<u>N.Y. Tax Law § 210-B(52)(e) (McKinney 2021)</u>	Farmers may receive a credit for 25% of the fair market value of donated apparently wholesome food that meets all quality and labeling standards, up to \$5,000 per tax year.
OREGON	Tax Credit	<u>Or. Rev. Stat. § 315.154 (2001) & Or. Rev. Stat. § 315.156 (2014)</u>	Taxpayers or tax-paying corporations that donate crops or livestock may receive a credit for 15% of wholesale market price.
PENNSYLVANIA	Tax Credit	<u>72 Pa. Cons. Stat. § 8904-A (2018)</u>	Businesses that donate food (or cash) to a charitable food program may receive a credit for 55% of the total value contributed.

STATE	INCENTIVE TYPE	STATUTE	DESCRIPTION
SOUTH CAROLINA	Tax Credit	S.C. Code Ann. § 12-6-3750 (2018)	Licensed meat packers, butchers, or processing plants may receive a credit of: \$75 per (ONLY) deer carcass donated to nonprofit organizations for redistribution.
VIRGINIA	Tax Credit	<u>Va. Code Ann. § 58.1-439.12:12 (2016)</u>	Farmers who donate grains, fruits, nuts, or vegetables to nonprofit food banks may receive a credit of 30% of fair market value, up to \$5,000 annually. This credit is available for donations through 2021; unclaimed amounts can be carried forward to future tax years until 2027.
WEST VIRGINIA	Tax Credit	<u>W. Va. Code § 11-13DD-1-7 (2017)</u>	Farmers who donate fruits, vegetables, beef, poultry, pork, or fish raised or grown in West Virginia may receive a credit of 30% of fair market value, up to \$5,000 annually.



ENDNOTES

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- 1 26 U.S.C. § 170(b)(1)(A) (2020).
- 2 INTERNAL REV. SERV., DEPT. OF THE TREASURY, NO. 15050A, CHARITABLE CONTRIBUTIONS (2021).
- 3 26 U.S.C. § 170(e)(1) (2022).
- 4 26 U.S.C. § 170(e)(1); 26 C.F.R. § 1.170A-4(a)(1) (2018); INTERNAL REV. SERV., *supra* note 2, at 11 (noting the amount of the deduction is the fair market value minus the amount of income gained had the product been sold at fair market value).
- 5 26 U.S.C. § 170(b)(2)(A).
- 6 The larger percentage is allowed for donations to churches; schools; hospitals and medical research facilities; foundations that support public colleges and universities; government programs or agencies at any level, or publicly supported organizations; foundations that support “religious, charitable, scientific, literary, . . . educational” or athletic purposes, or to prevent animal or child abuse; organizations largely funded by gifts, membership fees, and sales of tickets or merchandise; and agricultural research organizations. 26 U.S.C. § 170(b)(1)(B).
- 7 26 U.S.C. § 170(b)(1)(A).
- 8 Kellian Blazek et al., *Federal Enhanced Tax Deduction for Food Donation; A Legal Guide*. HARV. FOOD L. & POL’Y CLINIC (Apr. 2016), <https://chlp.org/wp-content/uploads/2013/12/Food-Donation-Fed-Tax-Guide-for-Pub-2.pdf>.
- 9 H.R. 2029, 114th Cong. § 113 (2015).
- 10 26 U.S.C. § 170(e)(3)(C)(ii)(I).
- 11 *Id.*
- 12 26 C.F.R. § 1.170A-4A (1984).
- 13 26 C.F.R. § 1.170A-4A (b)(2)(ii).
- 14 26 U.S.C. § 170(e)(3); *see also* 26 C.F.R. § 1.170A-4A(b)(3)(ii).
- 15 26 C.F.R. 1.170A-4A(b)(4).
- 16 INTERNAL REV. SERV., DEPT. OF THE TREAS., IR-2021-190, EXPANDED TAX BENEFITS HELP INDIVIDUALS AND BUSINESSES GIVE TO CHARITY DURING 2021; DEDUCTIONS UP TO \$600 AVAILABLE FOR CASH DONATIONS BY NON-ITEMIZERS (2021).
- 17 Stephen Fishman, *Should I Itemize or Take the Standard Deduction?*, NOLO, <https://www.nolo.com/legal-encyclopedia/should-you-itemize-take-the-standard-deduction.html> (last visited Feb. 14, 2023).
- 18 *Briefing Book: A Citizen’s Guide to the Fascinating (Though Often Complex) Elements of the US Tax System*, Tax Pol’y Cntr., <https://www.taxpolicycenter.org/briefing-book/what-standard-deduction> (last visited Feb. 14, 2023).



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