



Charitable contributions of food

A new PATH

A brochure prepared for Feeding America and its
nation-wide network of food banks





Food Donations Benefit Both Donor and Donee

Your company can make a measurable impact through charitable giving of food to hunger-relief organizations. The contribution of food may also result in an enhanced tax deduction for your company, which may change the return on investment analysis for contributions vs. other methods of disposition.

Benefits for Taxpayers that Donate Food

General rule

The Internal Revenue Code ("IRC") generally allows taxpayers a deduction for charitable contributions equal to the lesser of the donor's adjusted tax basis ("ATB") in the food or the fair market value ("FMV") of such food. The ATB is the inventoriable carrying cost assigned to the donated food, generally meaning the direct costs plus any indirect costs required to be allocated to the food. The FMV is generally the price that the taxpayer would have received if the food was sold in the usual market.

Enhanced deduction

A special rule allows an enhanced charitable contribution deduction for donations of food to a qualified organization for the care of the ill, the needy, or infants. The amount of this enhanced deduction is equal to the ATB of the food plus one-half of the built-in gain (i.e., the difference between the ATB and the FMV of the contributed food), but the total deduction may not exceed twice the ATB of the food.

For example, a food manufacturer has excess food with an ATB of \$30 and a FMV of \$50. The manufacturer has the opportunity to donate the food to a qualified domestic charity. The manufacturer would be entitled to an enhanced charitable contribution deduction of \$40 (\$10 of which would be a permanent difference between book and tax), calculated as follows:

Donation of Food

FMV	50
ATB	30
Enhanced Deduction	40
Blended Federal & State Tax Rate	x 40%
After-Tax Value of Charitable Deduction	16

Percentage Limitations

In general, C corporations are allowed to deduct charitable contributions to the extent they do not exceed 10 percent of the corporation's taxable income for the year. Individuals are limited to 50 percent of their adjusted gross income for certain charitable contributions made to qualified public charities during the year.

For tax years beginning after December 31, 2015, charitable contributions of food are subject to an increased limitation of 15 percent of taxable income for C corporations and 15 percent of aggregate net income from all trades or business from which such charitable contributions of food were made for individuals through direct ownership of the trade or business, or through an investment in a partnership and/or S corporations.

The general limitations for contributions of non-food inventory remain unchanged and are reduced by the amount of charitable contributions of food. If the aggregate amount of the charitable contribution exceeds the limitation, the excess is treated as a charitable contribution in each of the five succeeding taxable years.

New Rules Added by the PATH Act

FMV Safe Harbor

If, after December 31, 2015, a taxpayer donates “apparently wholesome food” that it otherwise would not sell by reason of its own internal standards, lack of market, or similar circumstances, the FMV of that food can be determined by taking into account the price at which the same or substantially the same food items are sold by the taxpayer at the time of the contribution (or, if not sold at such time, in the recent past).

ATB Safe Harbor

For charitable contributions made after December 31, 2015, if the taxpayer does not account for inventories under I.R.C. § 471 and is not required to capitalize costs of inventory under I.R.C. § 263A which would otherwise provide the taxpayer with an identifiable ATB, the taxpayer may elect to treat the ATB as 25 percent of the FMV of the “apparently wholesome food.”

Considerations for the Retail/Grocery/ Food Service Industry

Appropriate Valuation of Donated Food

Valuation of food requires special consideration as food may naturally spoil and deteriorate with time. As a general rule, the FMV of donated food is the price that the taxpayer would have received if the food had been sold in the market the taxpayer customarily sells the food (at the time and in the place and quantity contributed). However, if a contribution is made of food that the taxpayer could not reasonably have expected to realize its usual selling price, the donated food must be valued in light of any restriction or conditions limiting its marketability.

Timing Considerations

Consideration should be given to the effect of timing on the FMV of food. A short delay in the timing of a donation could have a substantial impact on after-tax cash value if the FMV of the food declines. It is advantageous for companies to donate in the present food that they know will go unsold, rather than waiting until just before the expiration date, thereby taking advantage of the higher current FMV for purposes of computing their enhanced deduction, rather than the reduced FMV of the food if donated just before expiration.

Other Considerations

In addition, the decision to sell, donate, or dispose of food may be influenced by other factors, including avoiding costs such as:

- **Storage costs:** The occupancy and overhead associated with storing food.
- **Selling costs:** The costs incurred in the process of selling food, including marketing and promotional costs.
- **Transportation costs:** The costs incurred to ship the food to customers. Many charitable organizations are able to pick up donations at the business site.
- **Disposal costs:** The costs incurred to dispose of food, for example, at landfills.

Choice of Charitable Deduction Under General Rules or Enhanced Deduction

There may be circumstances where it is advantageous to apply the general rules for charitable contributions of inventory instead of the special rule for contributions to the ill, the needy, or infants. For example, a corporation donating food produced during the current year with a FMV less than its ATB is allowed to recover the ATB of the food as cost of goods sold under the general rules without regard to the 15 percent limitation. In contrast, under the enhanced deduction rules, the corporation would recover the FMV of the food as a section 170 deduction subject to the 15 percent limitation and would recover the built-in loss as cost of goods sold. IRS Notice 2008-90 allows a taxpayer to choose which set of rules to apply on a contribution-by-contribution basis.

Considerations for the Produce/ Agriculture Industry

Farmers often are on the cash receipts and disbursements method of accounting for tax and therefore do not account for inventories, so previously it was difficult for such farmers to claim the enhanced deduction. Now such farmers can use the ATB Safe Harbor:

Donation by Cash Basis Farmer before 12/31/15

FMV	40
ATB	0
Enhanced Deduction	0
	x40%
After Tax Value of Charitable Deduction	0

Donation by Cash Basis Farmer after 1/1/2016

FMV	40
ATB	10
Enhanced Deduction	20
	x40%
After Tax Value of Charitable Deduction	8

Considerations for the Manufacturing Industry

Enhanced Deduction for Off-Spec Food

Historically, a taxpayer donating “off-spec” food, or food that qualifies as apparently wholesome food but is not held for sale in the ordinary course or business, usually due to internal quality standards, had difficulty determining FMV due to a lack of substantial sales of the product. Further, without a FMV, it was also difficult for the taxpayer to determine ATB. Without FMV or ATB, it was difficult to calculate an enhanced deduction.

Because the new FMV Safe Harbor now provides a method for determining the FMV of off-spec food without needing substantial sales, a taxpayer may now be able to use the joint product method of accounting to attribute an ATB to the food, thereby qualifying the donated food for the enhanced charitable contribution deduction. It is recommended that a taxpayer file a non-automatic consent Form 3115, Application for Change in Accounting Method, to change its method of accounting for inventory to allow for the joint product method.

Charitable Contributions before 12/31/2015			
Primary Product Sold		Byproduct Donated (Off-Spec Food)*	
FMV	100	FMV	0
ATB	(50)	ATB	0
Taxable Income	50	Enhanced Deduction	0
Tax (40% Rate)	(20)	Tax Saved (40% Rate)	0
Income After Taxes	30	Income After Taxes	0
Total Income After Tax = 30			

*Assuming the taxpayer has not otherwise elected a different method of accounting.

Charitable Contributions after 1/1/2016			
Primary Product Sold		Joint Product Donated (Off-Spec Food)*	
FMV	100	FMV	67
ATB	(30)	ATB	(20)
Taxable Income	70	Enhanced Deduction	40
Tax (40% Rate)	(28)	Tax Saved (40% Rate)	16
Income After Taxes	42	Income After Taxes	(4)
Total Income After Tax = 38			

Difference in Income After Tax of 8, from a direct reduction of income taxes (12 vs. 20).

Part Sale & Part Donation

A charity may be willing to pay taxpayers the amount necessary to make up the difference between the revenue that a taxpayer would receive on the secondary market and the value of any tax deduction available to the taxpayer upon the charitable contribution of the food.

The taxpayer will still be eligible for the enhanced charitable contribution deduction in this situation; however, the taxpayer’s charitable contribution deduction would be reduced because a portion of the transaction would be treated as a bargain sale. Effectively, the transaction is treated as two transactions: the sale or exchange of a portion of the food and a charitable contribution of a portion of the food.

Substantiation Requirements

Companies making a donation of food should maintain the following supporting documentation:

- Name and address of donee organization;
- A detailed description of the food;
- Date of charitable contribution;
- FMV of the food on the date the charitable contribution was made;
- The method used in determining FMV; and
- ATB of the food (direct and indirect costs)

To claim the enhanced deduction, taxpayers are required to obtain from the donee organization a written statement representing that the donated food will be used solely for the care of the ill, the needy, or infants. This written statement must be obtained by the donor no later than the date the taxpayer is required to file its federal income tax return for the year in which the contribution is made.



About Feeding America

Feeding America is the nation’s leading domestic hunger-relief organization. Our mission is to feed America’s hungry through a nationwide network of member food banks and engage our country in the fight to end hunger. Each year, the Feeding America network helps provide food to more than 46 million people facing hunger in the United States, including 12 million children and 7 million seniors. Through 200 member food banks and 60,000 food pantries and meal programs, the Feeding America network serves all 50 states, the District of Columbia and Puerto Rico. Together we provide 3.7 billion meals directly to individuals and families in need.

Executive Summary

Key Concept	2005 – 2015	After 2015
Calculation of the enhanced deduction for charitable contributions of food	ATB (defined below) of the food plus one-half of the difference between FMV (defined below) and the ATB; but the total deduction may not exceed twice the ATB of the food.	No change.
Limitation on the enhanced deduction for charitable contributions of food	For C corporations, may not exceed 10% of taxable income. For taxpayers other than a C corporation, may not exceed 10% of aggregate net income.	For C corporations, may not exceed 15% of taxable income. For taxpayers other than a C corporation, may not exceed 15% of aggregate net income.
Fair Market Value ("FMV")	The price that the taxpayer would have received if the food was sold in the usual market. No guidance for determining the FMV of food not sold in the usual market.	The price that the taxpayer would have received if the food was sold in the usual market. For food which is not sold by the taxpayer due to internal standards, the price at which the same or substantially the same food is sold by the taxpayer at the time of the charitable contribution or in the recent past.
Adjusted Tax Basis ("ATB")	The inventoriable carrying cost of the donated food at the time of the charitable contribution. No guidance for cash basis taxpayers, those that do not account for inventories, or off-spec food that does not receive an allocation of carrying costs under the inventory method used by taxpayer.	The inventoriable carrying cost of the donated food at the time of the charitable contribution. If the taxpayer does not account for inventories and is not required to capitalize indirect costs to the food, the taxpayer may elect to treat the ATB of donated food as 25% of the FMV.

Contacts

Michael E. Fincher
Deloitte Tax LLP
+1 612 397 4144
mfincher@deloitte.com

Steve Howard
Deloitte Tax LLP
+1 612 692 7128
stehoward@deloitte.com





This publication contains general information only and was prepared for Feeding America and its nation-wide network of food banks. Deloitte is not, by means of this publication, rendering accounting, business, financial, investment, legal, tax, or other professional advice or services. This publication is not a substitute for such professional advice or services, nor should it be used as a basis for any decision or action that may affect your business. Before making any decision or taking any action that may affect your business, you should consult a qualified professional advisor.

Deloitte shall not be responsible for any loss sustained by any person who relies on this publication.

About Deloitte

Deloitte refers to one or more of Deloitte Touche Tohmatsu Limited, a UK private company limited by guarantee, and its network of member firms, each of which is a legally separate and independent entity. Please see www.deloitte.com/about for a detailed description of the legal structure of Deloitte Touche Tohmatsu Limited and its member firms. Please see www.deloitte.com/us/about for a detailed description of the legal structure of Deloitte LLP and its subsidiaries. Certain services may not be available to attest clients under the rules and regulations of public accounting.