

STATE OF NEW YORK

2648

2017-2018 Regular Sessions

IN ASSEMBLY

January 20, 2017

Introduced by M. of A. ORTIZ -- Multi-Sponsored by -- M. of A. COLTON,
LUPARDO -- read once and referred to the Committee on Ways and Means

AN ACT to amend the tax law, in relation to establishing business franchise and personal income tax credits for businesses that donate prepared food

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. Section 210-B of the tax law is amended by adding a new subdivision 52 to read as follows:

52. Prepared food donation credit. (a) A qualifying taxpayer shall be allowed a credit against the tax imposed by this article equal to twenty-five percent of the taxpayer's eligible charitable food donation.

(b) For purposes of this subdivision, the following terms have the meanings given:

(1) "eligible charitable food donation" means a contribution of prepared food allowable as a charitable deduction for the taxable year under section 170(a) of the Internal Revenue Code, subject to the limitations of section 170(b) of the Internal Revenue Code, and determined without regard to whether or not the taxpayer itemizes deductions;

(2) "prepared food" means 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, and includes:

(i) food which is cooked or heated by the qualifying taxpayer;

(ii) two or more ingredients mixed together to be eaten as a single item; or

(iii) any ingredients supplied for ingestion or chewing by humans that are consumed for their taste or nutritional value;

(3) "qualifying taxpayer" means any restaurant making a charitable food donation in New York; and

(4) "restaurant" means any facility:

EXPLANATION--Matter in italics (underscored) is new; matter in brackets [-] is old law to be omitted.

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1 (i) which is operated for profit;
2 (ii) where the usual and customary business is the serving of meals to
3 consumers;
4 (iii) which has a kitchen within the facility; and
5 (iv) which receives at least fifty percent of its gross receipts from
6 the sale of prepared food.

7 (c) Application of credit. The credit allowed under this subdivision
8 for any taxable year may not reduce the tax due for such year to less
9 than the amount prescribed in paragraph (d) of subdivision one of
10 section two hundred ten of this article. However, if the amount of cred-
11 it allowed under this subdivision for any taxable year reduces the tax
12 to such amount or if the taxpayer otherwise pays tax based on the fixed
13 dollar minimum amount, any amount of credit thus not deductible in such
14 taxable year will be treated as an overpayment of tax to be credited or
15 refunded in accordance with the provisions of section one thousand
16 eighty-six of this chapter. Provided, however, no interest will be paid
17 thereon.

18 § 2. Subparagraph (B) of paragraph 1 of subsection (i) of section 606
19 of the tax law is amended by adding a new clause (xliii) to read as
20 follows:

21 <u>(xliii) Prepared food donation</u>	<u>Amount of credit under</u>
22 <u>credit under</u>	<u>subdivision fifty-two</u>
23 <u>subsection (hhh)</u>	<u>of section two hundred ten-B</u>

24 § 3. Section 606 of the tax law is amended by adding a new subsection
25 (hhh) to read as follows:

26 (hhh) Prepared food donation credit. (1) A qualifying taxpayer is
27 allowed a credit against the tax imposed by this article equal to twen-
28 ty-five percent of the taxpayer's eligible charitable food donation. The
29 credit may not exceed the taxpayer's liability for tax and may not be
30 carried forward to any other taxable year.

31 (2) For purposes of this subdivision, the following terms have the
32 meanings given:

33 (A) "eligible charitable food donation" means a contribution of
34 prepared food allowable as a charitable deduction for the taxable year
35 under section 170(a) of the Internal Revenue Code, subject to the limi-
36 tations of section 170(b) of the Internal Revenue Code, and determined
37 without regard to whether or not the taxpayer itemizes deductions;

38 (B) "prepared food" means food that meets all quality and labeling
39 standards imposed by federal, state, and local laws and regulations even
40 though the food may not be readily marketable due to appearance, age,
41 freshness, grade, size, surplus, or other conditions, and includes:

42 (i) food which is cooked or heated by the qualifying taxpayer;
43 (ii) two or more ingredients mixed together to be eaten as a single
44 item; or

45 (iii) any ingredients supplied for ingestion or chewing by humans that
46 are consumed for their taste or nutritional value;

47 (C) "qualifying taxpayer" means any restaurant making a charitable
48 food donation in New York; and

49 (D) "restaurant" means any facility:

50 (i) which is operated for profit;
51 (ii) where the usual and customary business is the serving of meals to
52 consumers;
53 (iii) which has a kitchen within the facility; and
54 (iv) which receives at least fifty percent of its gross receipts from
55 the sale of prepared food.

1 (3) Credits allowed to a partnership, a limited liability company
2 taxed as a partnership, an S corporation, or multiple owners of property
3 are passed through to the partners, members, shareholders, or owners,
4 respectively, pro rata to each partner, member, shareholder, or owner
5 based on their share of the entity's income for the taxable year.

6 (4) Application of credit. If the amount of the credit allowed under
7 this subsection for any taxable year shall exceed the taxpayer's tax for
8 such year, the excess shall be treated as an overpayment of tax to be
9 credited or refunded in accordance with the provisions of section six
10 hundred eighty-six of this article, provided, however, that no interest
11 shall be paid thereon.

12 § 4. This act shall take effect immediately and shall apply to taxable
13 years beginning on or after January 1, 2018.