STATE OF NEW YORK

3394

2019-2020 Regular Sessions

IN ASSEMBLY

January 29, 2019

Introduced by M. of A. ORTIZ, JONES -- 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 53 to read as follows:

53. 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

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

LBD07078-01-9

(4) "restaurant" means any facility:
(i) which is operated for profit;
(ii) where the usual and customary business is the serving of meals to consumers;
(iii) which has a kitchen within the facility; and
(iv) which receives at least fifty percent of its gross receipts from the sale of prepared food.
(c) Application of credit. The credit allowed under this subdivision for any taxable year may not reduce the tax due for such year to less than the amount prescribed in paragraph (d) of subdivision one of section two hundred ten of this article. However, if the amount of credit allowed under this subdivision for any taxable year reduces the tax to such amount or if the taxpayer otherwise pays tax based on the fixed dollar minimum amount, any amount of credit thus not deductible in such taxable year will be treated as an overpayment of tax to be credited or refunded in accordance with the provisions of section one thousand eighty-six of this chapter. Provided, however, no interest will be paid thereon.

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

(xliv) Prepared food donation credit under subsection (jjj)	Amount of credit under subdivision fifty-three of section two hundred ten-B

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

(jjj) Prepared food donation credit. (1) A qualifying taxpayer is allowed a credit against the tax imposed by this article equal to twenty-five percent of the taxpayer's eligible charitable food donation. The credit may not exceed the taxpayer's liability for tax and may not be carried forward to any other taxable year.
(2) For purposes of this subdivision, the following terms have the meanings given:
(A) "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;
(B) "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;
(C) "qualifying taxpayer" means any restaurant making a charitable food donation in New York; and
(D) "restaurant" means any facility:
(i) which is operated for profit;
(ii) where the usual and customary business is the serving of meals to consumers;
(iii) which has a kitchen within the facility; and
(iv) which receives at least fifty percent of its gross receipts from the sale of prepared food.

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

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

§ 4. This act shall take effect immediately and shall apply to taxable years beginning on or after January 1, 2020.