

# STATE OF NEW YORK

2147

2021-2022 Regular Sessions

## IN SENATE

January 20, 2021

Introduced by Sens. SERINO, GALLIVAN, HELMING, O'MARA, ORTT -- read twice and ordered printed, and when printed to be committed to the Committee on Investigations and Government Operations

AN ACT to amend the tax law, in relation to establishing a tax credit for grocery donations to food pantries

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

1 Section 1. Section 210-B of the tax law is amended by adding a new  
2 subdivision 55 to read as follows:

3 55. Credit for grocery donations to food pantries. (a) General. In  
4 the case of an eligible taxpayer there shall be allowed a tax credit to  
5 be computed as hereinafter provided against the tax imposed by this  
6 article for taxable years beginning on and after January first, two  
7 thousand twenty-two. The amount of the tax credit shall be twenty-five  
8 percent of the wholesale value of the eligible taxpayer's qualified  
9 donations made to any eligible food pantry during the taxable year, not  
10 to exceed a cumulative amount of tax credits under this section of five  
11 thousand dollars per taxable year.

12 (b) Qualified donation. For purposes of this subdivision, the term  
13 "qualified donation" means a donation of apparently wholesome food, as  
14 defined in section 170(e)(3)(C)(vi) of the internal revenue code, that  
15 is surplus or about-to-waste food, including, but not limited to,  
16 fruits, vegetables, meats, poultry, eggs, dairy products or other  
17 natural and processed products offered for sale for human or animal  
18 consumption.

19 (c) Eligible taxpayer. For purposes of this subdivision, the term  
20 "eligible taxpayer" means a grocery store, food broker, wholesaler,  
21 restauranteur, or catering service.

22 (d) Eligible food pantry. For purposes of this subdivision, the term  
23 "eligible food pantry" means food pantry, food bank, or other emergency

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

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1 food program operating within this state that has qualified for tax  
2 exemption under section 501(c)(3) of the internal revenue code.

3 (e) Determination of wholesale value. For purposes of this subdivi-  
4 sion, to determine the wholesale value of apparently wholesome food  
5 donated to an eligible food pantry, the standards set forth under  
6 section 170 (e)(3)(C)(v) of the internal revenue code shall apply.

7 (f) Record of donation. To claim a credit under this subdivision, an  
8 eligible taxpayer must get and keep a receipt from the eligible food  
9 pantry showing: (1) the name of the eligible food pantry; (2) the date  
10 and location of the qualified donation; and (3) a reasonably detailed  
11 description of the qualified donation. A letter or other written commu-  
12 nication from the eligible food pantry acknowledging receipt of the  
13 contribution and containing the information in subparagraphs one, two,  
14 and three of this paragraph will serve as a receipt. Any local food  
15 pantry may accept or reject any donation of food made under this section  
16 for any reason. For purposes of this section, any donations of food  
17 accepted by a local food pantry shall be valued at wholesale value.

18 (g) Application of credit. The credit allowed under this subdivision  
19 for any taxable year will not reduce the tax due for such year to less  
20 than the amount prescribed in paragraph (d) of subdivision one of  
21 section two hundred ten of this article. However, if the amount of  
22 credit allowed under this subdivision for any taxable year reduces the  
23 tax to such amount or if the taxpayer otherwise pays tax based on the  
24 fixed dollar minimum amount, any amount of credit thus not deductible in  
25 such taxable year will be treated as an overpayment of tax to be credit-  
26 ed or refunded in accordance with the provisions of section one thousand  
27 eighty-six of this chapter. Provided, however, the provisions of  
28 subsection (c) of section one thousand eighty-eight of this chapter  
29 notwithstanding, no interest will be paid thereon.

30 § 2. Section 606 of the tax law is amended by adding a new subsection  
31 (kkk) to read as follows:

32 (kkk) Credit for grocery donations to food pantries. (a) General. In  
33 the case of an eligible taxpayer there shall be allowed a tax credit to  
34 be computed as hereinafter provided against the tax imposed by this  
35 article for taxable years beginning on and after January first, two  
36 thousand twenty-two. The amount of the tax credit shall be twenty-five  
37 percent of the wholesale value of the eligible taxpayer's qualified  
38 donations made to any eligible food pantry during the taxable year, not  
39 to exceed a cumulative amount of tax credits under this section of five  
40 thousand dollars per taxable year.

41 (b) Qualified donation. For purposes of this subdivision, the term  
42 "qualified donation" means a donation of apparently wholesome food, as  
43 defined in section 170(e)(3)(C)(vi) of the internal revenue code, that  
44 is surplus or about-to-waste food, including, but not limited to,  
45 fruits, vegetables, meats, poultry, eggs, dairy products or other  
46 natural and processed products offered for sale for human or animal  
47 consumption.

48 (c) Eligible taxpayer. For purposes of this subdivision, the term  
49 "eligible taxpayer" means a grocery store, food broker, wholesaler,  
50 restauranteur, or catering service.

51 (d) Eligible food pantry. For purposes of this subdivision, the term  
52 "eligible food pantry" means food pantry, food bank, or other emergency  
53 food program operating within this state that has qualified for tax  
54 exemption under section 501(c)(3) of the internal revenue code.

55 (e) Determination of wholesale value. For purposes of this subdivi-  
56 sion, to determine the wholesale value of apparently wholesome food

1 donated to an eligible food pantry, the standards set forth under  
 2 section 170 (e)(3)(C)(v) of the internal revenue code shall apply.

3 (f) Record of donation. To claim a credit under this subdivision, an  
 4 eligible taxpayer must get and keep a receipt from the eligible food  
 5 pantry showing: (1) the name of the eligible food pantry; (2) the date  
 6 and location of the qualified donation; and (3) a reasonably detailed  
 7 description of the qualified donation. A letter or other written commu-  
 8 nication from the eligible food pantry acknowledging receipt of the  
 9 contribution and containing the information in subparagraphs one, two,  
 10 and three of this paragraph will serve as a receipt. Any local food  
 11 pantry may accept or reject any donation of food made under this section  
 12 for any reason. For purposes of this section, any donations of food  
 13 accepted by a local food pantry shall be at valued wholesale value.

14 (g) Application of credit. The credit allowed under this subdivision  
 15 for any taxable year will not reduce the tax due for such year to less  
 16 than the amount prescribed in paragraph (d) of subdivision one of  
 17 section two hundred ten of this chapter. However, if the amount of  
 18 credit allowed under this subdivision for any taxable year reduces the  
 19 tax to such amount or if the taxpayer otherwise pays tax based on the  
 20 fixed dollar minimum amount, any amount of credit thus not deductible in  
 21 such taxable year will be treated as an overpayment of tax to be credit-  
 22 ed or refunded in accordance with the provisions of section one thousand  
 23 eighty-six of this chapter. Provided, however, the provisions of  
 24 subsection (c) of section one thousand eighty-eight of this chapter  
 25 notwithstanding, no interest will be paid thereon.

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

29 <u>(xlvi) Grocery store donations</u>	<u>Amount of credit under</u>
30 <u>to food pantries credit under</u>	<u>subdivision fifty-five of</u>
31 <u>subsection (kkk)</u>	<u>section two hundred ten-B</u>

32 § 4. This act shall take effect immediately and shall apply to taxable  
 33 years beginning on or after January 1, 2022.