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:

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

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

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

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

(d) Eligible food pantry. For purposes of this subdivision, the term "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.

LBD07261-01-1

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

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

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

(g) Application of credit. The credit allowed under this subdivision for any taxable year will 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, the provisions of subsection (c) of section one thousand eighty-eight of this chapter notwithstanding, no interest will be paid thereon.

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

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

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

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

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

(e) Determination of wholesale value. For purposes of this subdivision, to determine the wholesale value of apparently wholesome food

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

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

(g) Application of credit. The credit allowed under this subdivision for any taxable year will 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 chapter. 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, the provisions of subsection (c) of section one thousand eighty-eight of this chapter notwithstanding, no interest will be paid thereon.

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

(xlvi) Grocery store donations to food pantries credit under subsection (kkk)	Amount of credit under subdivision fifty-five of section two hundred ten-B

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