

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.

LBD07261-01-1

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.