

STATE OF NEW YORK

1336

2023-2024 Regular Sessions

IN ASSEMBLY

January 17, 2023

Introduced by M. of A. CLARK, KELLER -- read once and referred to the Committee on Ways and Means

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 59 to read as follows:

59. 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-four. 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, restaurateur, 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.

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

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

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

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

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

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

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

46 (c) Eligible taxpayer. For purposes of this subsection, the term
47 "eligible taxpayer" means a grocery store, food broker, wholesaler,
48 restaurant, or catering service.

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

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

(f) Record of donation. To claim a credit under this subsection, 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 subsection 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 subsection 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 (1) to read as follows:

<u>(1) Grocery store donations</u>	<u>Amount of credit under</u>
<u>to food pantries credit under</u>	<u>subdivision fifty-nine of</u>
<u>subsection (ooo)</u>	<u>section two hundred ten-B</u>

§ 4. This act shall take effect immediately and shall apply to taxable years beginning on or after January 1, 2024.