

**DESCRIPTION OF H.R. 644,
THE “FIGHTING HUNGER INCENTIVE ACT OF 2015”**

Scheduled for Markup
by the
HOUSE COMMITTEE ON WAYS AND MEANS
on February 4, 2015

Prepared by the Staff
of the
JOINT COMMITTEE ON TAXATION



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INTRODUCTION

The House Committee on Ways and Means has scheduled a committee markup of H.R. 644, the “Fighting Hunger Incentive Act of 2015,” on February 4, 2015. This document,¹ prepared by the staff of the Joint Committee on Taxation, provides a description of the bill.

¹ This document may be cited as follows: Joint Committee on Taxation, Description of H.R. 644, the “Fighting Hunger Incentive Act of 2015” (JCX-4-15), February 3, 2015. This document can also be found on the Joint Committee on Taxation website at www.jct.gov.

A. Extension and Expansion of Charitable Deduction for Contributions of Food Inventory (sec. 170 of the Code)

Present Law

Charitable contributions in general

In general, an income tax deduction is permitted for charitable contributions, subject to certain limitations that depend on the type of taxpayer, the property contributed, and the donee organization.² In the case of an individual, the deduction is limited to various percentages of the contribution base, depending on the donee and the property contributed. In the case of a corporation,³ the deduction generally is limited to ten percent of the taxable income (with modifications).⁴ Contributions in excess of these limitations may be carried forward for up to five taxable years.

Charitable contributions of cash are deductible in the amount contributed. Subject to several exceptions, contributions of property are deductible at the fair market value of the property. One exception provides that the amount of the charitable contribution is reduced by the amount of any gain which would not have been long-term capital gain if the property contributed had been sold by the taxpayer at its fair market value at the time of the contribution.⁵

General rules regarding contributions of inventory

As a result of the exception described above, a taxpayer's deduction for charitable contributions of inventory generally is limited to the taxpayer's basis (typically, cost) in the inventory, or, if less, the fair market value of the inventory.

However, for certain contributions of inventory, a C corporation may claim an enhanced deduction equal to the lesser of (1) basis plus one-half of the item's appreciation (*i.e.*, basis plus one-half of fair market value in excess of basis) or (2) two times basis.⁶ To be eligible for the enhanced deduction, the contributed property generally must be inventory of the taxpayer and must be contributed to a charitable organization described in section 501(c)(3) (except for private nonoperating foundations), and the donee must (1) use the property consistent with the donee's exempt purpose solely for the care of the ill, the needy, or infants; (2) not transfer the property in

² Sec. 170.

³ Sec. 170(b)(1). The contribution base is the adjusted gross income determined without regard net operating loss carrybacks.

⁴ Sec. 170(b)(2).

⁵ Sec. 170(e)(1)(A).

⁶ Sec. 170(e)(3).

exchange for money, other property, or services; and (3) provide the taxpayer a written statement that the donee's use of the property will be consistent with such requirements. In the case of contributed property subject to the Federal Food, Drug, and Cosmetic Act, as amended, the property must satisfy the applicable requirements of such Act on the date of transfer and for 180 days prior to the transfer.⁷

To use the enhanced deduction, the taxpayer must establish that the fair market value of the donated item exceeds basis. The valuation of food inventory has been the subject of disputes between taxpayers and the IRS.⁸

Temporary rule expanding and modifying the enhanced deduction for contributions of food inventory

Under a temporary provision, any taxpayer engaged in a trade or business, whether or not a C corporation, is eligible to claim the enhanced deduction for donations of food inventory.⁹ For taxpayers other than C corporations, the total deduction for donations of food inventory in a taxable year generally may not exceed ten percent of the taxpayer's net income for such taxable year from all sole proprietorships, S corporations, or partnerships (or other non C corporations) from which contributions of apparently wholesome food are made. For example, if a taxpayer is a sole proprietor, a shareholder in an S corporation, and a partner in a partnership, and each business makes charitable contributions of food inventory, the taxpayer's deduction for donations of food inventory is limited to ten percent of the taxpayer's net income from the sole proprietorship and the taxpayer's interests in the S corporation and partnership. However, if only the sole proprietorship and the S corporation made charitable contributions of food inventory, the taxpayer's deduction would be limited to ten percent of the net income from the trade or business of the sole proprietorship and the taxpayer's interest in the S corporation, but not the taxpayer's interest in the partnership.¹⁰

⁷ Sec. 170(e)(3)(A)(iv).

⁸ *Lucky Stores Inc. v. Commissioner*, 105 T.C. 420 (1995) (holding that the value of surplus bread inventory donated to charity was the full retail price of the bread rather than half the retail price, as the IRS asserted).

⁹ Sec. 170(e)(3)(C).

¹⁰ The ten-percent limitation does not affect the application of the generally applicable percentage limitations. For example, if ten percent of a sole proprietor's net income from the proprietor's trade or business is greater than 50 percent of the proprietor's contribution base which otherwise limits the deduction, the available deduction for the taxable year (with respect to contributions to public charities) is 50 percent of the proprietor's contribution base. Consistent with present law, these contributions may be carried forward because they exceed the 50-percent limitation. Contributions of food inventory by a taxpayer that is not a C corporation that exceed the ten-percent limitation but do not exceed the 50-percent limitation may not be carried forward.

Under the temporary provision, the enhanced deduction for food is available only for food that qualifies as “apparently wholesome food.” Apparently wholesome food is defined as food intended for human consumption 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.

The provision does not apply to contributions made after December 31, 2014.

Description of Proposal

The provision reinstates and makes permanent the enhanced deduction for contributions of food inventory.

The provision also modifies the enhanced deduction for food inventory contributions by: (1) increasing the charitable percentage limitation for food inventory contributions and clarifying the carryover and coordination rules for these contributions; (2) including a presumption concerning the tax basis of food inventory donated by certain businesses; and (3) including presumptions that may be used when valuing donated food inventory.

First, the ten-percent limitation described above applicable to taxpayers other than C corporations is increased to 15 percent. For C corporations, these contributions are made subject to a limitation of 15 percent of taxable income (as modified). The general ten-percent limitation for a C corporation does not apply to these contributions, but the ten-percent limitation applicable to other contributions is reduced by the amount of these contributions. Qualifying food inventory contributions in excess of these 15-percent limitations may be carried forward and treated as qualifying food inventory contributions in each of the five succeeding years in order of time.

Second, if the taxpayer does not account for inventory under section 471 and is not required to capitalize indirect costs under section 263A, the taxpayer may elect, solely for computing the enhanced deduction for food inventory, to treat the basis of any apparently wholesome food as being equal to 25 percent of the fair market value of such food.

Third, in the case of any contribution of apparently wholesome food which cannot or will not be sold solely by reason of internal standards of the taxpayer, lack of market, or similar circumstances, or by reason of being produced by the taxpayer exclusively for the purposes of transferring the food to an organization described in section 501(c)(3), the fair market value of such contribution shall be determined (1) without regard to such internal standards, such lack of market or similar circumstances, or such exclusive purpose, and (2) by taking into account the price at which the same or substantially the same food items (as to both type and quality) are sold by the taxpayer at the time of the contributions (or, if not so sold at such time, in the recent past).

Effective Date

The proposal is effective for contributions made after the date of enactment.

B. Estimated Revenue Effects

Fiscal Years [Millions of Dollars]												
<u>2015</u>	<u>2016</u>	<u>2017</u>	<u>2018</u>	<u>2019</u>	<u>2020</u>	<u>2021</u>	<u>2022</u>	<u>2023</u>	<u>2024</u>	<u>2025</u>	<u>2015-20</u>	<u>2015-25</u>
-59	-160	-195	-202	-209	-216	-223	-231	-239	-248	-256	-1,041	-2,239

NOTE: Details do not add to totals due to rounding.