

DESCRIPTION OF S. 1826  
(THE CROP-SHARING HUNGER RELIEF ACT)

Scheduled for a Hearing  
Before the  
SUBCOMMITTEE ON  
ENERGY AND AGRICULTURAL TAXATION  
of the  
SENATE COMMITTEE ON FINANCE  
on October 16, 1991

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of the  
JOINT COMMITTEE ON TAXATION  
October 15, 1991

JCX-20-91

	<u>Page</u>
INTRODUCTION .....	1
I. SUMMARY .....	2
II. PRESENT-LAW TAX RULES .....	4
III. DESCRIPTION OF S. 1826 .....	9
IV. ANALYSIS OF ISSUES .....	11

## INTRODUCTION

The Subcommittee on Energy and Agricultural Taxation of the Senate Committee on Finance has scheduled a public hearing on S. 1826 ("The Crop-Sharing Hunger Relief Act") on October 16, 1991. This document,<sup>1</sup> prepared by the staff of the Joint Committee on Taxation, provides a description of present law and the provisions of S. 1826, as well as a brief analysis of issues related to the bill. S. 1826 would allow individuals an augmented charitable contribution deduction for donations of certain surplus agricultural commodities.

Part I of the document is a summary. Part II is a description of relevant present-law tax rules. Part III is a description of S. 1826, and Part IV discusses certain issues related to the bill.

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<sup>1</sup> This document may be cited as follows: Joint Committee on Taxation, Description of S. 1826 (The Crop-Sharing Hunger Relief Act) (JCX-20-91), October 15, 1991.

## I. SUMMARY

### Charitable contributions

Taxpayers who itemize deductions may claim a charitable contribution deduction for Federal income tax purposes for property donated to certain qualified organizations. A taxpayer generally is allowed to claim a deduction for the fair market value of the donated property at the time of the contribution. However, the amount of the deduction allowable for a taxable year with respect to charitable contribution may be reduced depending on the type of property contributed, the type of charitable organization to which the property is contributed, and the income of the taxpayer.

Contributions made directly to a foreign organization are not deductible for Federal income tax purposes. However, charitable gifts directly made to a qualified domestic entity may be deductible even though the funds or property are turned over to a foreign organization, provided that the domestic entity exercises sufficient control and discretion over the donated property.

### Augmented deductions for corporate contributions of inventory property used for the ill, needy, or infants, and scientific research property

Special rules provide for an augmented charitable contribution deduction for certain contributions made by corporations of inventory property used for the care of the ill, the needy, or infants, and certain scientific research property donated to educational or scientific organizations. The deduction for such donations is equal to the corporation's basis in the property plus one-half of the amount of ordinary income that would have been realized if the property had been sold, but in no event may the deduction exceed twice the basis in the contributed property.

### S. 1826: The Crop-Sharing Hunger Relief Act

S. 1826 would provide an augmented charitable contribution deduction for certain contributions made by individuals of agricultural products included on a surplus commodity list to be established by the Secretary of the Treasury. The donated commodity would have to be used solely for the purpose of feeding individuals in famine, disaster, or economically depressed areas, and certain other requirements would have to be satisfied.

Under the bill, the deduction for a qualified commodity contribution would be equal to the lesser of: (1) the "parity price" of the commodity, or (2) 200 percent of the taxpayer's basis in such property. For purposes of the bill, the

"parity price" would be set by the Department of Agriculture pursuant to the Agricultural Adjustment Act of 1938, and generally is an amount set so that a commodity would have the purchasing power (in terms of goods and services bought by farmers) as prevailed during the period 1910-1914.

The bill would apply to contributions made (or commodities acquired) after December 31, 1991.

## II. PRESENT-LAW TAX RULES

### Charitable contributions: general rules

Taxpayers who itemize deductions are entitled to claim a charitable contribution deduction for Federal income tax purposes for property donated to certain qualified organizations (generally referred to as "charities") (Code sec. 170). The contributed property may be in the form of cash, tangible or intangible personal property, or real property.

Generally, a taxpayer is allowed to claim a deduction for the fair market value of the donated property at the time of the contribution.<sup>2</sup> However, the charitable contribution deduction is limited to the donor's adjusted basis in the case of the following types of gifts: (1) ordinary income (or short-term capital gain) property; (2) tangible personal property, if the use of such property by the donee is unrelated to its exempt purpose; and (3) donations to private foundations (with certain exceptions<sup>3</sup>) (sec. 170(e)).

### Eligible donees

A charitable contribution deduction is allowed for contributions to the following donees: (1) the United States, a State or local government, or possession of the United States; (2) an organization created or organized in the United States that is organized and operated exclusively for religious, charitable, scientific, literary, educational, or similar purposes and that meets certain other requirements; (3) certain war veterans organizations; (4) a domestic fraternal society, provided that the gift is made by an individual and used exclusively for charitable purposes; and (5) certain cemetery companies operated exclusively for the benefit of their members (sec. 170(c)).

Although contributions made directly to a foreign organization are not deductible for Federal income tax purposes, charitable gifts made to a domestic entity described in section 170(c) may be deductible even though all, or some portion, of the funds or property are used in a

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<sup>2</sup> See Treas. Reg. sec. 1.170A-1(c).

<sup>3</sup> A fair market value deduction is allowed for donations to certain private operating foundations (sec. 170(e)(1)(b)(ii)). In addition, a fair market value deduction is allowed for donations to private foundations of stock for which market quotations are readily available on an established securities market (sec. 170(e)(5)).

foreign country for charitable or educational purposes or indirectly turned over to a foreign charitable organization. Deductibility for Federal income tax purposes depends on whether the domestic organization exercises sufficient control and discretion over the donated funds such that it (and not a foreign entity) is considered to be the real beneficiary of the contributed property.<sup>4</sup>

### Augmented deductions for contributions of certain inventory and scientific property

#### Inventory property for the ill, needy, or infants

A special rule adopted by Congress in 1976 permits corporations (other than S corporations) to claim a charitable contribution deduction in excess of the contributed property's adjusted basis if the property is inventory property (or depreciable or real property used in the corporation's business), provided that: (1) the use of the property by the donee is related to its exempt purpose and is to be used solely for the care of the ill, the needy, or infants; (2) the property is not transferred by the donee in exchange for money, property, or services; (3) the donor receives from the donee a written statement that the property will be used for the care of the ill, the needy, or infants; and (4) the property satisfies any relevant requirements under the Federal Food, Drug, and Cosmetic Act (sec. 170(e)(3)).

The amount of the deduction for qualified contributions for the ill, the needy, or infants is equal to the corporation's basis in the property plus one-half of the amount of ordinary income that would have been realized if the property had been sold, but in no event may the deduction exceed twice the basis in the contributed property.<sup>5</sup>

#### Contributions of scientific research property

In 1981, Congress provided for a special rule for corporate contributions of tangible inventory property used for research. Under this rule, a deduction is allowed in excess of the property's basis if: (1) the donation is made

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<sup>4</sup> See Rev. Rul. 66-79, 1966-1 C.B. 48; Rev. Rul. 63-252, 1963-2 C.B. 101. However, certain corporate contributions to a trust, chest, fund, or foundation are deductible under section 170 only if used within the United States or its possessions (sec. 170(c)(2)).

<sup>5</sup> The special provisions of section 170(e)(3) do not apply to amounts treated as ordinary income because of recapture rules (sec. 170(e)(3)(C)).

to certain educational or scientific organizations; (2) the property is donated not later than two years after it is constructed by the corporation; (3) the property is scientific equipment substantially all of the use of which by the donee is for research or experimentation; (4) the original use of the property is by the donee and it is not transferred by the donee in exchange for money, other property, or services; and (5) the donee supplies the donor with a written statement that the property will be used for research (sec. 170(e)(4)).

As with corporate donations of property for the ill, the needy, or infants, the amount of the charitable contribution deduction for corporate donations of research property is equal to the corporation's basis in the property plus one-half of the amount of ordinary income that would have been realized if the property had been sold, but in no event may the deduction exceed twice the basis in the contributed property (sec. 170(e)(4)(A)).

#### Minimum tax treatment of donated appreciated property

For purposes of computing alternative minimum taxable income (AMTI), section 57(a)(6) provides that the deduction for charitable contributions of capital gain property is disallowed to the extent that the fair market value of the property exceeds its adjusted basis.<sup>6</sup> However, a special rule provides that, in the case of any taxable year beginning in 1991, section 57(a)(6) does not apply to charitable contributions of tangible personal property (e.g., artwork).

#### Percentage limitations

##### Individuals

In general.--A charitable contribution deduction claimed by an individual may not exceed a certain percentage of the individual's "contribution base" (defined as adjusted gross income (AGI) computed without regard to any net operating loss carryback to the taxable year). Contributions in any one year in excess of the percentage limitation may be carried forward and deducted over the five succeeding taxable years (subject to percentage limitations in those years').

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<sup>6</sup> Section 57(a)(6) generally does not apply to corporate contributions of inventory or scientific property under sections 170(e)(3) or 170(e)(4). However, a corporate donation under section 170(e)(3) of certain depreciable or real property used in a trade or business could be reduced by the amount of built-in appreciation for purposes of computing AMTI (secs. 57(a)(6)(B), 170(b)(1)(C)(iv), 170(e)(3)(A), 1221, and 1231(b)(1)).

The applicable percentage limitation depends on both the characteristics of the donee organization and the type of property contributed.

50-percent limitation.--Contributions to public charities<sup>8</sup> (and certain private operating foundations) of non-appreciated property (e.g., cash or ordinary income property) are subject to the 50-percent limitation (sec. 170(b)(1)(A)).

30-percent limitation.--Contributions to public charities of appreciated property (meaning capital gain property as to which a fair market value deduction is allowed for regular tax purposes<sup>9</sup>) are subject to the 30-percent limitation.<sup>10</sup> The 30-percent limitation also applies to gifts to private foundations of non-appreciated property and gifts of certain income interests "for the use of" a charitable organization.

20-percent limitation.--Contributions of appreciated property to private foundations are subject to the 20-percent limitation (sec. 170(b)(1)(D)(i)).

### Corporations

The maximum charitable contribution deduction which may be claimed by a corporation for any one taxable year is

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<sup>7</sup> See sections 170(b)(1)(C)(ii), 170(b)(1)(D)(ii), and 170(d)(1).

<sup>8</sup> A tax-exempt organization described in section 501(c)(3) is characterized as a "private foundation" unless it specifically qualifies as a "public charity" under section 509(a). Examples of public charities include: churches, schools, hospitals, and organizations which normally receive a substantial part of their support from governmental units or contributions from the general public.

<sup>9</sup> The 30-percent limitation applies to a gift to a public charity of appreciated property only if the donor wished to deduct the fair market value of the property when computing regular tax. Alternatively, the donor may elect to deduct only his basis in the property, in which case the 50-percent limitation applies (sec. 170(b)(1)(C)(iii)).

<sup>10</sup> The maximum deduction allowed for such contributions is equal to the lesser of (1) 30 percent of the taxpayer's contribution base, or (2) the amount of the taxpayer's 50-percent limitation remaining after the taxpayer's contributions of non-appreciated property to public charities are considered (sec. 170(b)(1)(B)).

limited to 10 percent of the corporation's taxable income (disregarding charitable contributions and with certain other modifications) (sec. 170(b)(2)).<sup>11</sup>

### Substantiation requirements

In 1984, Congress directed the Treasury Department to issue regulations requiring substantiation of certain non-cash charitable contributions. Pursuant to this directive, Treasury Department issued regulations that require taxpayers to provide information to the IRS (by filing Form 8283) about noncash charitable contributions and obtain a qualified written appraisal for items or groups of similar items (other than certain securities) for which a deduction is claimed of more than \$5,000 per item or group (Treas. Reg. sec. 1.170A-13(b)).<sup>12</sup>

Also as part of the 1984 Act, Congress required that if, within two years after a charity receives certain contributed property, the charity sells, exchanges, or otherwise disposes of the property, then the charity must file an information return with the IRS (and furnish a copy to the donor) showing the name of the donor, the amount received on the disposition, and certain other information about the disposed property (sec. 6050L). This information reporting requirement applies to property (other than publicly traded securities) for which a charitable contribution deduction was claimed under section 170 if the claimed value of such property (plus the claimed value of all similar items of property donated by the donor to one or more donees) exceeds \$5,000. However, the information reporting requirement of section 6050L does not apply if the consumption or distribution of the donated items is in furtherance of the charity's exempt purpose (e.g., medical supplies distributed by a relief organization) (Treas. Reg. sec. 1.6050L-1(a)(3)).

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<sup>11</sup> A transfer of property qualifies as either a charitable contribution or a deductible business expense, but not both. No deduction is allowed as a business expense under section 162 for any contribution that would be deductible as a charitable gift under section 170 were it not for the percentage limitations contained in section 170 (sec. 162(b)). Likewise, a business transfer made with a reasonable expectation of financial return commensurate with the amount of the transfer is deductible only as a business expense under section 162 (Treas. Reg. sec. 1.170A-1(c)(5)).

<sup>12</sup> Special substantiation rules apply to inventory and research property for which the augmented deduction is claimed under section 170(e)(3) or 170(e)(4) (Treas. Reg. sec. 1.170A-13(c)(1)(ii)).

III. DESCRIPTION OF S. 1826  
(The Crop-Sharing Hunger Relief Act)<sup>13</sup>

Augmented deduction for qualified commodity contributions

S. 1826 would provide an augmented charitable contribution deduction for certain qualified commodity contributions. The augmented deduction would be available only to individuals (and not corporations, estates, or trusts). The augmented deduction would apply to contributions of agricultural commodities which, at the time of purchase (or, if not purchased by the taxpayer, at the time of the contribution) are on a surplus commodity list established by the Secretary of the Treasury in consultation with the Secretary of Agriculture.<sup>14</sup>

The commodity would have to be contributed to a tax-exempt public charity described in section 501(c)(3) and would have to be used by the recipient organization solely for the purpose of feeding individuals in famine, disaster, or economically depressed areas. In addition, the following requirements would apply: (1) the property could not be transferred by the donee in exchange for money, other property, or services; (2) the donor receives a written statement that the commodity would be used to feed individuals in famine, disaster, or economically depressed areas; and (3) the commodity satisfies relevant requirements under the Federal Food, Drug, and Cosmetic Act.

Computation of augmented deduction

Under the bill, the deduction for a qualified commodity contribution would be equal to the lesser of: (1) the "parity price" of the commodity, or (2) 200 percent of the taxpayer's basis in such property.

For purposes of the bill, the "parity price" for an agricultural commodity would be determined under section 301(a)(1) of the Agricultural Adjustment Act of 1938 (7 U.S.C. 1301(a)(1)). The parity price generally is an amount set by the Department of Agriculture to give a unit of a commodity the same purchasing power (in terms of goods and services bought by farmers) as prevailed during the period 1910-1914.

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<sup>13</sup> S. 1826 was introduced on October 8, 1991, by Senators Daschle, Boren, Pryor, and Exon.

<sup>14</sup> The list periodically would be revised to reflect any changes in the availability of a commodity.

The augmented deduction would be available for any taxable year only to the extent that the taxpayer's aggregate basis in the commodities contributed did not exceed \$10,000. Thus, the maximum deduction that an individual could claim under the bill for any taxable year would be \$20,000 (200 percent of \$10,000).

Exemption from alternative minimum tax

Qualified commodity contributions under the bill would not be treated as a preference item for purposes of computing alternative minimum tax (i.e., the full augmented deduction would apply in calculating AMTI).

Effective date

The bill would apply to contributions made (or commodities acquired) after December 31, 1991.

IV. ANALYSIS OF ISSUES

Rationale for 200-percent limitation

The bill provides that the qualified commodity contribution deduction claimed may not exceed twice the taxpayer's basis in the contributed property. Consequently, provided that a taxpayer's combined Federal, State, and local marginal tax rate is less than 50 percent, the tax benefit of the augmented deduction would be less than the amount spent by the donor to produce or acquire the donated commodity.<sup>15</sup>

Economic effects of the proposal

Effects on charitable donations

The augmented value of the deduction for qualified commodity contributions should provide an incentive for such donations. The effect on other types of charitable donations is uncertain because of two counteracting effects. Because a dollar donated in the form of qualified commodity contributions would have a larger tax benefit than a dollar donated in an alternative form, donors may be induced to substitute qualified commodity contributions for other forms of donations. At the same time, the augmented value of the deduction for qualified commodity contributions would result in a lower cost of this form of donation: each dollar of tax benefit would require a smaller outlay. Making some donations through the lower-cost form of qualified commodity contributions could free up more resources for all types of donations as well as for consumption of other goods. The net effect on the amount of any type of donation other than of qualified commodities would depend upon which of the two effects described above would predominate.

Effects on markets for eligible commodities

Eligible commodities for donations would be those on a list of surplus commodities prepared by the Secretaries of the Treasury and Agriculture. Surpluses of commodities can arise when government price support or loan programs result in a price paid to farmers above the market-clearing price of the commodity.<sup>16</sup>

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<sup>15</sup> There may be situations under the bill, however, where it is more advantageous for a taxpayer to donate a commodity rather than to sell it, if the market price has fallen below the taxpayer's basis.

<sup>16</sup> The "market-clearing price" is the price for a commodity  
(Footnote continued)

By encouraging the demand for eligible commodities, the bill should have effects of both reducing the size of existing surpluses of the commodities and of increasing the market-clearing price of the commodities. To the extent surpluses are reduced, total Federal spending on farm support programs would be reduced.

Whether the price paid by the commodities' consumers is affected by the proposal would depend upon the type of government program that applies to the commodity. If the price of the commodity is supported above the market-clearing price, so that consumers face the support price for their purchases of the commodity, then any increase in the market-clearing price caused by this proposal should have no direct effect on consumers. In contrast, if the price of the commodity is set by the market and the government pays producers deficiency payments equal to the difference between the market-clearing price and a target price, then any increase in the market-clearing price caused by this proposal should increase the price to consumers. For consumers not receiving donated commodities in famine, disaster, or other economically depressed areas, such an increase in the price of the commodity may lead to a reduction in well-being.<sup>17</sup>

#### Duplicate distribution networks

Concerns have been expressed that the bill could result in a duplication of current government efforts directed at distributing surplus commodities to relieve hunger and could foster a new industry of food brokers, processors, and distributors, which may not be as efficient as the current distribution network.

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<sup>16</sup>(continued)

which induces farmers to produce an amount of the commodity equal to the amount which consumers are willing to purchase at that price.

<sup>17</sup> To the extent that there are savings in farm support program costs that exceed reduced tax revenues from the augmented charitable contribution deduction under the bill, those net savings could be used to benefit some individuals.