



This note provides a brief introduction, for taxpayers that are not C corporations, to the enhanced federal income tax deduction for businesses that donate food to a food bank or other charitable organization.

CAN MY BUSINESS BENEFIT?

Sole proprietorships, partnerships, S corporations, and limited liability companies (LLCs) can all benefit. If your business donates food to a charitable organization and expects to owe taxes in the following five years, you can potentially claim a deduction. To claim a deduction, your business must generate taxable income, and you must retain a donation record from the charitable organization.

HOW DO I CALCULATE MY DEDUCTION?

Your deduction is the *lesser* of:

- i. your tax basis for the donated food (generally, your cost) plus one-half of the profit margin (fair market value minus the tax basis), or
- ii. twice your tax basis.

Fair market value is your normal selling price—what you charge for food of the same type and quality. The food must be “apparently wholesome.”²

LET'S GO THROUGH THE CALCULATION:

1. **Determine your tax basis**—the amount it cost to produce the food you donated. Smaller businesses that don't use inventory tax accounting and aren't required to capitalize indirect costs can generally use 25 percent of the fair market value of the donated food as their tax basis.
2. **Subtract your tax basis from the fair market value** to find the amount of profit margin—meaning the profit you would have made from selling the food.
3. **Calculate your deduction.** Double the tax basis, or divide the profit margin in half and add the tax basis—the lesser of the two equals your deduction.

EXAMPLE: A restaurant donates surplus entrees with a fair market value of \$100. The tax basis of these entrees was \$30. The expected profit margin is the fair market value minus the tax basis (\$100-\$30), which is \$70. Under the enhanced deduction, the restaurant is eligible to deduct the smaller of:

Tax basis X 2 = \$30 X 2 = \$60

or

Tax basis + (expected profit margin / 2)
= \$30 + (\$70/2) = \$65

The enhanced deduction would be **\$60**. The enhanced deduction is substantially higher than the general deduction, which is limited to the tax basis of \$30.¹

ARE THERE LIMITS TO HOW MUCH I CAN DEDUCT?

Yes. Your deduction cannot exceed 15 percent of your business' net income. Also, your charitable contributions cannot offset more than 50 percent of your adjusted gross income. If you donate food in excess of the 15 percent or 50 percent limits, you can carry the deduction over to each of the following five years. You will apply the 15 percent and 50 percent limits until the deduction is used up or five years expire.

HOW CAN I FIND MORE INFORMATION?

Download the free “Federal Enhanced Tax Deduction for Food Donation: A Legal Guide” by the Harvard Food Law & Policy Clinic and the University of Arkansas School of Law's Food Recovery Project.

This document is only a brief summary of the deduction. It does not seek to provide legal or tax advice and does not address C corporations. You should speak to your accountant or lawyer to learn more about the federal deduction.

¹ *Federal Enhanced Tax Deduction for Food Donation: A Legal Guide*, Harvard Food Law & Policy Clinic and the University of Arkansas School of Law's Food Recovery Project (2016), p. 4, available at <https://www.chlpi.org/wp-content/uploads/2013/12/Food-Donation-Fed-Tax-Guide-for-Pub-2.pdf>.

² The Emerson Act defines “apparently wholesome” donations as “food 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.” 42 U.S.C. § 1791(b)(2).