Legal Fact Sheet

Mississippi Food Donation: Tax Incentives

Created by the Harvard Law School Food Law and Policy Clinic, November 2020

Federal tax incentives provide important financial incentives that make food donation more cost-effective and economically beneficial. These tax incentives have been extraordinarily successful in motivating food donation. In the past, federal tax incentives for donations were limited to C-corporations[1]. Tax incentives for donations were temporarily expanded to cover more businesses in 2005. Following a series of temporary extensions, Congress subsequently made the expansion permanent in 2015,[2] providing all businesses with added incentive to increase food donations and prevent food waste. At the federal level, tax incentives are available in the form of general or enhanced deductions, each of which are discussed in this fact sheet.

Mississippi has adopted most of the current Internal Revenue Code, but does have several state-specific calculations for determining corporate income tax deductions; as such, the Mississippi Code does not include the portion of the I.R.C. that covers federal food donation tax deductions, meaning that these federal deductions cannot be applied against state income tax.[3] The Mississippi Code does have a general provision that allows for tax deductions at the state level for contributions and gifts made to charities,[4] but does not offer any further tax incentives specific to food donation at this time.[5]

Federal Tax Incentives

How are the tax incentives calculated?
General (non-enhanced) tax deduction: Businesses that donate inventory may claim a tax deduction in the amount of the property's basis,[6] which is usually the value of the property's cost to the business, and is often lower than the fair market value (the value at which goods can be sold). Businesses other than C-corporations–including S-corporations,[7] sole proprietorships,[8] and some LLCs[9] – cannot deduct more than 30% or 50% of the business' total taxable income each year, depending on the type of organization to which the business is donating.[10] C-corporations generally cannot deduct more than 10% of their taxable income each year.[11]

Enhanced tax deduction: The enhanced tax deduction provides an extra incentive for donation by allowing the donating business to deduct the lesser of (a) twice the basis value of the donated food or (b) the basis value of the

---

[1] *See* I.R.C. § 170(e)(3)(C) (2017).
[2] *See* I.R.C. § 170(e)(3)(C) (2017); Protecting Americans Against Tax Hikes (PATH) Act of 2015, H.R. 2029, 114th Cong. § 113(a) (2015).
[3] *Mississippi issues guidance on federal tax reform provisions*, GRANT THORNTON (Fed. 18, 2019), https://www.grantthornton.com/library/alerts/tax/2019/SALT/K-O/MS-issues-guidance-federal-tax-reform-provisions-02-18.aspx.
[4] *See* MISS. CODE ANN. § 27-7-17(1)(h)(1972 & supp. 2011).
[5] See U.S. Food Waste Policy Finder, REFED, https://www.refed.com/tools/food-waste-policy-finder/mississippi (last visited on Sept. 21, 2020).
[6] I.R.C. § 170(e)(1); Treas. Reg. § 1.170A–4(a)(1) (2018); Charitable Contributions: For Use in Preparing 2017 Tax Returns, I.R.S., DEP'T OF THE TREASURY 11, (Jan. 24, 2018), http://www.irs.gov/pub/irs-pdf/p526.pdf (noting the amount of the deduction is the fair market value minus the amount of income gained had the product been sold at fair market value).
[7] I.R.C. § 170(b)(1)(B)(i); I.R.C. § 1363(b).
[8] I.R.C. § 170(b)(1)(B)(i); Sole Proprietorships, I.R.S., https://www.irs.gov/Businesses/Small-Businesses-&-Self-Employed/Sole-Proprietorships (last visited Oct. 29, 2018).
[9] I.R.C. § 170(b)(1)(B)(i); Single Member Limited Liability Companies, I.R.S., https://www.irs.gov/businesses/small-businesses-self-employed/single-member- limited-liability-companies (last visited Oct. 29, 2018). Whether an LLC will be treated as an individual for tax purposes—and hence be subject to the 30% total charitable contribution cap—depends on the number of members in the LLC. Id.
[10] I.R.C. § 170(b)(1)(A).
[11] I.R.C. § 170(b)(2)(A).

donated food plus one-half of the food's expected profit margin (if the food were to be sold at fair market value).[12] Under the enhanced deduction, all businesses may deduct up to 15% of their taxable income for food donations.[13]

> *Example: A grocery store donates potatoes with a fair market value of $100. The basis value of these potatoes was $30. The expected profit margin is the fair market value minus the basis value ($100 - $30), which is $70. Under the enhanced deduction, the grocery store is eligible to deduct the smaller of:*
>
> *(a) Basis Value x 2 = $30 x 2 = $60, or (b) Basis Value + (expected profit margin / 2) = $30 + ($70 / 2) = $65*
>
> *The enhanced deduction would be $60, which is substantially higher than the general deduction (the $30 basis value).*

Businesses that do not account for inventories and are not required to capitalize indirect costs will have the option to calculate the basis value at 25% of the products' fair market value.[14] Businesses also have the option to calculate the fair market value of products that cannot be sold because of failure to meet internal standards, lack of a market, or similar reasons by using the price of the same or substantially similar, saleable food items.[15]

How can a donating business know if they are eligible for a tax deduction?

General tax deduction requirements: In order for a charitable contribution to qualify for a federal tax deduction, the donation must be used for charitable purposes and given to a qualified organization as laid out under section 170 of the Internal Revenue Code (IRC).[16]

Enhanced tax deduction requirements: In order to qualify for the enhanced tax deduction, a business must donate to a recipient organization that meets several criteria. First, the recipient must be a qualified 501(c)(3) not-for-profit as defined by the IRC.[17] Additionally, the donor and recipient must meet the following requirements:[18]

> (A) The recipient must use the donated food in a manner consistent with the purpose constituting that organization's exempt status under IRC 501(c)(3), which means that the donated food must be used exclusively for charitable purposes;
>
> (B) The food must be used for the care of the ill, needy, or infants;
>
> (C) The food may not be transferred by the recipient organization in exchange for money, other property, or services; however, the recipient organization may charge another organization a nominal amount for "administrative, warehousing, or other similar costs."
>
> *Example: If a business donates food to a food bank (the recipient organization), the food bank may not charge a soup kitchen for the donated food, and the soup kitchen may not charge the individuals eating at the soup kitchen. The food bank can, however, charge the soup kitchen a nominal fee for reimbursement of the costs of storing the food in a warehouse;*

---

[12] *See* I.R.C. § 170(e)(3)(B); Treas. Reg. § 1.170A-4A(b)(4) (2017).
[13] *See* I.R.C. § 170(e)(3)(C)(ii).
[14] *See* I.R.C. § 170(e)(3)(C)(iv).
[15] *See* I.R.C. § 170(e)(3)(C)(v).
[16] *See* I.R.C. § 170(b),(c), (e)(3)(c).
[17] *See* I.R.C. § 170(e)(3)(A).
[18] I.R.C. § 170(e)(3)(A); Treas. Reg. § 1.170A-4A(b).

(D) The donating business must receive a written statement from the recipient organization. The statement must describe the contributed property and represent that the property will be used in compliance with the requirements outlined above; and

(E) The donated property must satisfy the requirements of the Federal Food, Drug, and Cosmetic Act (FDCA) at the time of donation and for the preceding 180 days. For food that did not exist for 180 days prior to donation, this requirement is satisfied if the food was in compliance with the FDCA for the period of its existence and at donation, and any similar property held by the donor during the 180 days prior to donation was also held in compliance with the FDCA.

Most states with corporate income tax conform to the Internal Revenue Code calculation of corporate income tax in lines 1 through 28 of IRS Form 1120.[19] Mississippi, however, is not one of these states. Mississippi instead chooses to use their own state-specific calculations in determining deductions, meaning that businesses are not eligible to count the federal food donation tax deduction in the calculation of their state income tax.[20]

Mississippi Tax Incentives

Over ten states currently offer state level tax incentives specifically for food donations, but this does not include Mississippi at this time.[21] However, eligible businesses could obtain state level tax deductions from food donations under a general deduction provision.[22]

Although it is not specific to food donations, Mississippi does allow deductions for charitable contributions and gifts of up to 20% of a corporation's net income in a given tax year, where non-cash donation value is determined based on the actual market value of the contribution at the time it is made and consummated.[23] Determination as to whether a contribution or gift is deductible is subject to rules and regulations set forth by the commissioner and approved by the Governor.[24] When making a contribution or gift, corporations should charge the contribution or gift to the corporation's operating expenses.[25] Donations that are applicable for the deduction include those made to "corporations, organizations, associations or institutions, including Community Chest funds, foundations and trusts created solely and exclusively for religious, charitable, scientific or educational purposes, or for the prevention of cruelty to children or animals."[26]

Additionally, Mississippi also has a Charitable Contribution Tax Credit for individuals[27] and for businesses,[28] but this currently applies to voluntary cash donations only and not for donations of food or other items.

---

[19] Federal Tax Reform and the States, NATIONAL CONFERENCE OF STATE LEGISLATURES (Apr. 1, 2018), http://www.ncsl.org/research/fiscal-policy/federal-tax- reform-and-the-states.aspx. Arkansas, Mississippi, and New Jersey do not conform to federal income tax calculations.

[20] Jared Walczak, *Toward a State Conformity: State Tax Codes a Year After Federal Tax Reform*, TAX FOUNDATION (Jan, 28, 2019), https://taxfoundation.org/state-conformity-one-year-after-tcja/ (stating that Mississippi uses state-specific calculations).

[21] These include Arizona, see Ariz. Rev. Stat. Ann. §§ 42-5074, 43-1025 (West 2016); California, see Cal. Rev. & Tax Code §§ 17053.12, 17053.88 (West 2016); Colorado, see Colo. Rev. Stat. Ann. § 39-22-301 (West 2016); Iowa, see Iowa Code §§ 190B.101–190B.106, 422.11E, 422.33(30) (West 2016); Maryland, see Md. Tax-Gen. Code Ann. § 10-745 (West 2018); Missouri, see Mo. Rev. Stat. § 135.647 (West 2016); New York, see N.Y. Tax § 210-B(52) (McKinney 2018); Oregon, see Or . Rev. Stat. §§ 315. 154, 315. 156 (W est 2016); South Carolina, see S. C. Code Ann. § 12-6-3750 (W est. 2016); Virginia, see Va. Code Ann. § 58.1-439.12:12 (West 2016); and West Virginia, see W. Va. Code § 11-13DD-1:7 (West 2017).

[22] *See* MISS. CODE ANN. § 27-7-17(1)(h)(1972 & supp. 2011).

[23] *See* MISS. CODE ANN. § 27-7-17(1)(h)(1972 & supp. 2011).

[24] *See* MISS. CODE ANN. § 27-7-17(1)(h)(1972 & supp. 2011).

[25] *See* MISS. CODE ANN. § 79-1-3(1972 & supp. 2013).

[26] *See* MISS. CODE ANN. § 27-7-17(1)(h)(1972 & supp. 2011).

[27] *See* MISS. CODE ANN. § 27-7-22.39(1972 & supp. 2020).

[28] *See* MISS. CODE ANN. § 27-7-22.41(1972 & supp. 2020).

Conclusion

In sum, businesses in the state of Mississippi may claim the general or enhanced federal tax deduction for food donations. Additionally, eligible business may also claim deductions under Mississippi's provision for donations of contributions and gifts to charities when calculating their state level taxes.

FLPC FOOD LAW and POLICY CLINIC HARVARD LAW SCHOOL