Food Donation Tax Incentives

The PATH ACT, passed by Congress December 18, 2015 includes several improvements to the tax incentives allowable for food donation:

1. **Making the extension to non C corporations permanent** & allowing non C Corporations to carry forward the deduction for 5 years (same as c corporations);
2. **Allowing** farmers and other "cash method" accounting taxpayers to consider 25% of the fair market value of the donated food as the cost to produce the food;
3. **Increasing** the 10% cap of allowable charitable contributions to 15% for donated food;
4. **Codifying** an important Tax Court ruling, *Lucky Stores, Inc. v. Commissioner of Internal Revenue.*

Tax Law prior to 2016: Permanence for C corporations only

- Enhanced tax deduction available for donations of fit and wholesome food inventory to qualified 501(c)3 nonprofit organizations serving the poor and needy (Internal Revenue Code 170e3)
- Qualified business taxpayers were able to deduct cost to produce the food and half the difference between the cost and full fair market value of food donated
- Non-C Corporations were allowed enhanced benefits on a temporary basis, subject to Congressional renewal every 2 years which had last expired December 2014.

What does this mean for donation partners?

- As of 2016, deductions now apply to C corporations and non C corporations permanently. Any donations made in 2015 by non C corporations are also eligible for the enhanced tax deduction.
    - This will greatly increase the ability of small and mid-size businesses to donate food (including farmers, retailers, restaurants and food manufacturers).
- NEW in 2016: Donors that use cash basis accounting can estimate their cost to produce the food and take the enhanced tax deduction.
    - This is particularly beneficial to farmers.
- NEW in 2016: Donors who are at the 10% cap on charitable contributions can now enjoy tax benefits for donated food up to 15% of their adjusted gross income.
    - This will be particularly beneficial to companies with low profitability.
- NEW in 2016: Donors have greater certainty in how they value the food donated on an on-going basis.

This last provision, the codification of the Lucky Stores Inc. v. Commission of Internal Revenue, is one of the most significant parts of the tax law for farmers, retailers and food service operators as well as manufacturing donors. The impact of the language differs by sector but it opens more opportunities for all.

The language from the Joint Committee on Taxation Technical Explanation states:

"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)."

In everyday language, the law outlines:

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- A protocol for establishing a Fair Market Value (FMV) for products that are not sold in market. FMV is key to the calculation necessary to calculate tax benefits based on IRS tax code (see below).

- That donations that cannot or will not be sold because the product is out of specification or overproduced, can be valued at the same price as other similar food items sold by the taxpayer at the time of the contributions (or in the recent past).

- A specific protocol for valuing product in circumstances, where FMV is not currently easily valued so companies are able to benefit from the enhanced tax deduction, potentially offsetting incremental costs to donate:
  - Products produced directly for donation, perhaps to utilize excess ingredients or line time
  - Products that are off spec and currently landfilled or sold for animal feed vs donation
  - Bulk product currently going to animal feed or left in field may be packaged in consumer-friendly packs
  - Relabeled product with missing allergens on the label currently going to landfill

How does this impact donations?

Farmers

- Provides a protocol not previously available which establishes a Fair Market Value (FMV) of product donated from the farm or packing sheds by utilizing the selling price of goods moved to market
- Expands applicability of the tax benefits to all farmers and producers and by making it permanent allows farmers to incorporate donation as a regular part of their crop planning, either grown to donate or as an outlet for unmarketable product.

Manufacturers

- Previous legislation placed the burden of establishing the FMV for a donated product on the producer based on a selling price to a customer
- In the case of off spec product or a variation in packaging, size, or formulation variation an established selling price (FMV) wasn't available, negating the producer's ability to calculated enhanced tax benefits
- New law allows for a similar or past item to be used in establishing a FMV for manufacturers
- By establishing a protocol for enhanced tax benefits, this provision now compensates the company in a small way if there needs to be an investment in packaging or labeling to insure the product is able to be distributed

Retailers/Food Service outlets

- It expands the Lucky Store case nationally and establishes that no matter what the age of the product being donated, that the FMV is the same as the original selling pricing of fresh product
- Permanence of this provision allows grocery and food service retailers to invest in permanent donation processes with long term commitments and impact, assured of on-going tax benefits, again partially offsetting any investment required

Sample Enhanced Benefit Calculation:

The sum of one-half of the unrealized appreciation (fair market value minus cost of goods sold = appreciation) plus the taxpayer's cost, but not in excess of twice the cost of the contributed property.

Example:

Selling Price (FMV)	$2.00
Cost of Goods Sold	$1.00
Gross Profit	$1.00

Previous tax benefit for non C corporations: $1.00 (COGS) = business loss x applicable tax rate

New tax benefit for C and non C Corps	**$1.00 + .50 = $1.50 (1/2 the difference between FMV and COGS)**
	NOTE: The maximum deduction can never exceed 2 x COGS

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