



## **YOU CAN DONATE EDIBLE FOOD!**

Permitted food facilities such as restaurants, hotels, grocery stores, food processing facilities, food distributors, and caterers can donate prepared foods and meals (e.g. hot trays that remained back-of-house) to non-profit charitable organizations or individuals directly. Foods that have been previously served to a consumer cannot be donated.

## **CA AB 1219 - CALIFORNIA GOOD SAMARITAN FOOD DONATION ACT**

The California Good Samaritan Food Donation Act provides liability protections for entities that make good faith donations of surplus food.

AB 1219 clarifies and expands liability protections for donated surplus food by:  
Creating a more comprehensive list of entities covered by law

- Explicitly states that donation of past-date food is subject to liability protection
- Expands liability protection to donations made by food facilities, which are subject to food safety regulations and inspections, directly to individuals for consumption (direct donation).

## **FEDERAL GOOD SAMARITAN FOOD DONATION ACT**

Donors are also protected under the Federal Bill Emerson Good Samaritan Food Donation Act: “a person or gleaner shall not be subject to civil or criminal liability arising from the nature, age, packaging, or condition or apparently wholesome food or an apparently fit grocery product that the person or gleaner donated in good faith to a nonprofit organization for ultimate distribution to needy individuals.”

## **ENHANCED TAX DEDUCTION:**

If you meet the following criteria, you may be eligible for the federal enhanced tax deduction which allows you to deduct the smaller of the following two: (a) twice the basis value of the donated food or (b) the basis value of the donated food plus one-half of the food’s expected profit margin.

**\*\*Always contact a tax preparer for questions and guidance.**

## **TAX DEDUCTION CRITERIA**

1. The recipient food recovery organization or donee must be an IRC 501(c)(3) organization and a public charity or a private operating foundation
2. The donee must give the donated food solely to the ill, the needy, or infants

3. The donee may not use or transfer the food in exchange for money, other property, or services
4. The donee must provide a written statement to donor stating that all requirements of IRC 170 (e)(3) have been met
5. The donated food must be in compliance with the Food, Drug, and Cosmetic Act (FDCA) and California Health and Safety Code (CHSC)

FROM: **THE SAFE SURPLUS FOOD DONATION TOOLKIT**

Guidance for Food Facilities (2018)

(Public Health Alliance of Southern California and the Center for Climate Change & Health)

**EXAMPLE TAX DEDUCTION CALCULATION**

A grocery store donated 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:

1. Basis value x 2 =  $\$30 \times 2 = \$60$  OR
2. Basis value + (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 basis value of \$30

For more information on the Enhanced Tax Deduction:

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\*\*\* In the State of California, businesses that are engaged in the processing, distribution or selling of agricultural products can earn a tax credit on 50% of their transportation costs. Find out more information:

[http://leginfo.legislature.ca.gov/faces/codes\\_displaySection.xhtml?lawCode=RTC&sectionNum=17053.1](http://leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?lawCode=RTC&sectionNum=17053.1)  
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