

LEGISLATIVE FISCAL ESTIMATE
ASSEMBLY, No. 2344
STATE OF NEW JERSEY
220th LEGISLATURE

DATED: OCTOBER 12, 2022

SUMMARY

Synopsis: Allows NJ gross income tax deduction for charitable contributions of food made from business inventory.

Type of Impact: Annual loss of State revenue deposited into the Property Tax Relief Fund.

Agencies Affected: Department of the Treasury.

Office of Legislative Services Estimate

Fiscal Impact	<u>FY 2024 & Thereafter</u>
State Revenue Loss	Between \$320,000 and \$625,000

- The Office of Legislative Services estimates this bill may reduce annual gross income tax revenues deposited into the Property Tax Relief Fund by between \$320,000 and \$625,000. To the extent that the tax deduction under the bill induces increased charitable food contributions, future revenue losses would also increase.
- The gross income deduction established by the bill is based on the federal gross income deduction for charitable contributions of food inventory in effect on December 31, 2013. Federal law has since been modified to increase the value of charitable food inventory contributions that may be deducted from gross income. This provision of the bill effectively limits the State revenue loss resulting from the bill.

BILL DESCRIPTION

The bill allows a taxpayer to deduct from gross income the amount of charitable contributions of food made to and accepted by an organization in the tax year from business inventory, as allowed under paragraph (3) of subsection (e) of section 170 of the federal Internal Revenue Code (IRC) of 1986 in effect on December 31, 2013. A provision of the IRC, which was temporary at that time, allowed taxpayers to claim an enhanced deduction from income for contributions of food inventory. The deduction is allowed regardless of whether the federal itemized deduction is taken by the taxpayer. The contribution is required to be made to an organization that is determined by

the Internal Revenue Service to be an organization eligible to receive tax-deductible charitable contributions.

FISCAL ANALYSIS

EXECUTIVE BRANCH

None received.

OFFICE OF LEGISLATIVE SERVICES

The OLS estimates this bill may reduce annual gross income tax revenues deposited into the Property Tax Relief Fund by between \$320,000 and \$625,000 beginning in FY 2024. There will be no revenue loss prior to FY 2024 because the bill provides the tax deduction for taxpayers who make charitable contributions of food inventory in taxable years beginning on or after January 1 next following the bill's date of enactment. If the bill is enacted in calendar year 2022, the deduction will first be available for qualified food donations made in calendar year 2023. Calendar year 2023 tax returns will be due in April of calendar year 2024, or FY 2024.

There are no precise data for State taxpayers subject to the gross income tax who may make charitable food contributions from business inventory. However, Internal Revenue Service reports indicate that from tax years 2015 through 2019, an average of \$137.6 million was annually deducted from federal income tax returns as non-cash food contributions in the United States. Additionally, Internal Revenue Service data show that New Jersey taxpayers account for about 4.2 percent of itemized deductions on annual federal tax returns.

Applying the 4.2 percent proportion to the \$137.6 million yields approximately \$5.8 million in annual non-cash food contributions that may be attributed to New Jersey taxpayers. Assuming this \$5.8 million qualifies for a deduction under the bill, and applying the 5.525 percent and 10.75 percent marginal tax rates as a plausible range for most of these deductions, results in an estimated range of State revenue losses, or taxpayer savings, of between \$320,000 and \$625,000 annually. To the extent that the tax deduction under the bill induces increased charitable contributions, future revenue losses would also increase.

As noted above, the gross income deduction established by the bill is linked to a temporary provision of the IRC that was in effect on December 31, 2013. At that time taxpayers were allowed to claim an enhanced deduction from income for donations of food inventory. A taxpayer's deduction for charitable contributions of inventory is generally limited to the taxpayer's basis (or cost) in the inventory, or if less, the fair market value of the inventory.

However, for certain contributions of inventory, a C corporation is permitted to claim an enhanced deduction to the lesser of: (1) basis plus one-half of the item's appreciation in fair market value in excess of basis; or (2) two times basis. To be eligible for the enhanced deduction, the contributed property generally must have been inventory of the taxpayer and must be contributed to a charitable organization described in section 501(c)(3) of the IRC, and the donee must: (1) use the property consistent with the donee's exempt purpose solely for the care of the ill, needy, or infants; (2) not transfer the property in exchange for money, other property, or services; and (3) provide the taxpayer with a written statement that the donee's use of the property will be consistent with such statements.

Under the temporary IRC provision, any taxpayer engaged in a trade or business was eligible to claim the enhanced deduction for donations of food inventory. For taxpayers other than C corporations, the total deduction was capped at ten percent of the taxpayer's net income for such

taxable year from all sole proprietorships, S corporations, and partnerships from which contributions of apparently wholesome food are made.

The Protecting Americans from Tax Hikes Act of 2015 modified the federal gross income deduction for charitable contributions of food made in the tax year from business inventory in order to provide additional incentives to food-service companies to donate, rather than discard, their surplus wholesome food inventory to charitable organizations. Most notably, the IRC provision allowing an enhanced gross income deduction for charitable contributions of food inventory was made permanent. The amount of charitable contributions of food inventory that a taxpayer may deduct was increased from ten percent to 15 percent of the taxpayer's aggregate net income or taxable income. Qualifying food inventory contributions in excess of the 15 percent limitation may be carried forward for the five succeeding taxable years. Additionally, the Coronavirus Aid, Relief, and Economic Security Act and the Consolidated Appropriations Act, 2021 increased, from 15 percent to 25 percent, the cap on contributions of food inventory made in 2020 or 2021 that may be deducted from aggregate net income or taxable income.

Since the bill provides that the New Jersey gross income tax deduction for charitable contributions of food inventory will be based on the federal IRC provision in effect on December 31, 2013, New Jersey taxpayers will not be able to utilize the increased deduction caps and the five-year carryforward allowance for contributions that are in excess of the 15 percent limitation. However, this provision may also limit the State revenue loss resulting from the bill.

Section: Revenue, Finance, and Appropriations
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This legislative fiscal estimate has been produced by the Office of Legislative Services due to the failure of the Executive Branch to respond to our request for a fiscal note.

This fiscal estimate has been prepared pursuant to P.L.1980, c.67 (C.52:13B-6 et seq.).