



## United States Tax Benefits

The following information is presented for general information only. Consult with your Attorney or Tax Consultant to determine its application to your specific organization and situation.

### Current Tax Law

**Tax Cuts and Jobs Act (H.R. 1)**, passed by Congress on Dec 20, 2017, does not change the ability for a company to take the enhanced deduction for the donation of surplus food. Based on this Act, the following information is still accurate.

U.S. Congress enacted [Section 170](#) of the Internal Revenue Code in 1976 to encourage donations by allowing C corporations to earn an enhanced tax deduction for donating selected surplus property, including food. In 2015, Congress passed the PATH Act as Division Q of the [Consolidated Appropriations Act, 2016](#), which modified Section 170 of the Internal Revenue Code to allow all companies to earn an enhanced tax deduction for donating selected surplus property, including food.

This encourages food donations by:

1. Making the enhanced tax deduction permanently available for Non-C corporations – retroactive for contributions made after December 31, 2014.
2. Increasing the charitable contributions cap from 10% to 15% of net income for Non-C corporations or taxable income for C corporations - applicable to taxable years beginning after December 31, 2015. The additional 5% is specifically for food donations.
3. Allowing Non-C corporations, a tax deduction carry forward of 5 years, mirroring the treatment of C corporations - applicable to taxable years beginning after December 31, 2015.
4. Defining the Fair Market Value for donated food by taking into account the price for which the item is sold at the time of the contribution without regard to lack of market, internal standards - applicable to taxable years beginning after December 31, 2015.
5. Providing basis for food donations from businesses using the cash method of accounting (typically identified as “farmers and ranchers”) as 25% of the fair market value - applicable to taxable years beginning after December 31, 2015.

See an explanation of how this enhanced tax deduction applies to [donation of wholesome food](#).

### Technical Tax Correction for S Corporations

Prior to December of 2007, S corporations with limited shareholder basis faced a [dilemma](#) regarding their ability to take the enhanced tax deduction for donating food inventory. FDC submitted a technical correction to the House Committee on Ways and Means in 2007 which was integrated into The Tax Technical Corrections Act of 2007 ([HR 4839 and Public Law](#)



[110-172](#)). This made a technical correction to the provision relating to contributions of appreciated property by an S corporation.

The technical correction provides that the present-law basis limitation on the deduction of S corporation items does not apply to a contribution of appreciated property to the extent the shareholder's pro rata share of the contribution exceeds the shareholder's pro rata share of the adjusted basis of the property. **This means that S corporation shareholders can take the enhanced deduction regardless of their basis in the corporation.**