Statement for the Record

Tax Reform Working Group

Small Business/Pass Throughs

Committee on Ways and Means
U.S. House of Representatives

April 15, 2013

By

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Chairman Camp, Ranking Member Levin, Small Business /Pass Throughs Tax Reform Working Group Chair Buchanan and Vice Chair Schwartz, thank you for the opportunity to share the reasons why Tax Reform discussions should include the tax incentives found in IRC 170(e)(3) that encourage food donations. I submit this statement for the record on behalf of Food Donation Connection (FDC), the industry leader in coordinating prepared food donation programs. Since FDC is uniquely positioned to serve both food donors and charities, we see the benefit of properly planned and executed tax policies.

Since 1992, FDC has assisted companies nationwide in establishing programs to safely donate surplus food to local hunger relief agencies. FDC's vision is to "let nothing be wasted," and the company has coordinated the donation of more than 265 million pounds of wholesome prepared food from 15,000 locations to over 8,000 non-profits that help people in need. We currently partner with a wide range of companies and organizations including Darden Restaurants (Red Lobster, Olive Garden, LongHorn, Seasons 52, Capital Grille, etc.), Yum! Brands (Pizza Hut, KFC, Taco Bell), The Cheesecake Factory, Chipotle Mexican Grill, Bob Evans, Mimi's Café, HMSHost, Papa John's, ARAMARK, St Jude Children's Hospital, Starbucks Coffee Company, and many others.

<u>Enhanced Charitable Deduction for Food Inventory</u>

The *enhanced charitable deduction for food inventory*[1] encourages the donation of surplus food from restaurants, universities, hospitals, airports, motorways and other foodservice locations to food banks and hunger relief organizations that serve those in need. By reducing donor's taxable income, the enhanced charitable deduction provides an incentive to foodservice companies for donations of surplus food inventory. This tax incentive serves to offset the time and expense required to safely save and donate surplus food to non-profit organizations.

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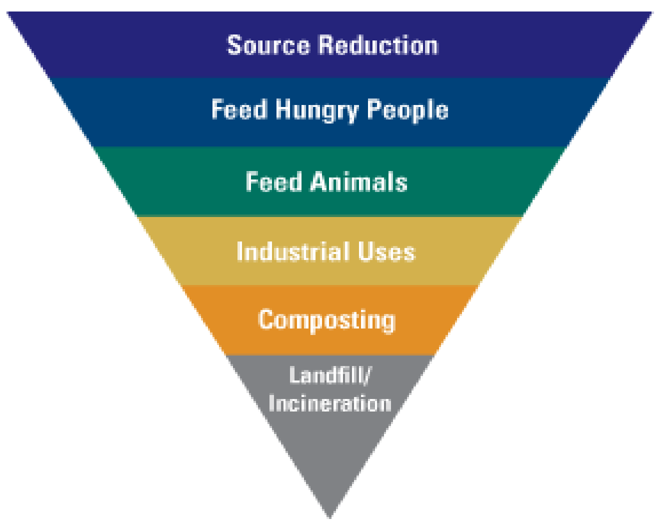
[1] Federal Tax Code 170(e)(3) provides that wholesome food that is properly saved, donated to an approved agency and properly receipted may be eligible for an enhanced tax deduction. The enhanced deduction for "the charitable contribution of food inventory is the lesser of (a) the basis of the donated food plus one-half of the appreciation (gain if the donated food were sold at fair market value on the date of the gift) or (b) twice the basis of the donated food." Since 1976, the tax law has been permanent for C corporations. The tax law for non-C corporations is temporary and must be extended every two years. The current law for non-C corporations was extended to December 31, 2013, retroactive from January 1, 2012.

With the current economic slowdown, the needs of charities seeking to feed the nation's hungry have expanded. Feeding America® reports that the demand for food assistance in their national network of food banks increased 46% between 2006 and 2010. At the same time, a tremendous amount of good food goes to waste daily in America. Despite the efforts of restaurants and food service providers to reduce food waste at the source and use food surplus internally, a significant amount of wholesome food is thrown out due to overproduction, mistake orders, and stringent internal hold time quality standards.

One solution to this dilemma is to redirect surplus, wholesome food to meet the needs of non-profit agencies that feed the hungry, thereby also reducing waste at the source. For example, receiving donated food enables an afterschool program or a women's shelter to focus their limited resources on their core mission, whether that mission is to launch a young person on a positive trajectory or restore a person's dignity through job support services.

In addition, when surplus food is donated rather than discarded it benefits the environment. Wholesome food that is re-directed from the dumpster to local hunger relief organizations not only feeds hungry people, it also reduces the amount of organic waste that contributes to greenhouse gases. This approach aligns with the EPA's food waste recovery hierarchy.



What does the Food Donation Tax Incentive do for American Businesses?

The charitable deduction for food inventory motivates businesses by allowing them to reduce their taxable income. In most cases it is cheaper to throw away un-served food than it is to donate it. The financial offset is just enough to motivate some food service businesses to take the necessary steps to donate and not dump wholesome food. The current incentive found in IRC 170(e)(3) is designed so that a company will never make a profit by solely donating surplus food. JAK Foods, Inc. (KFC franchise) owner John Kleban says,

> "Whatever you can do to increase the incentive for folks to give will increase the number of folks who will give and the amount they will give. My guess is that most operators don't give, and that is likely because they haven't found it to be financially

> worthwhile, and therefore not worth the hassle. Increasing the incentives will have a big impact. In particular, the ability to allow non-C corporations to carry-forward the deduction for 5 years really helps."

Why Should Congress make the Food Donation Incentive Permanent for Non-C corporations?
Tax law permanency equals predictability for non-C corporations and allows them to engage in proper tax planning which in turn provides stability for a huge segment of the American economy. For eight years, a similar, *temporary* tax incentive has encouraged these food donations[2]. While these temporary measures have helped to meet the needs of hungry individuals, this bi-annual, postponed, retroactive tax extender approach makes it difficult for potential food donors to undertake adequate tax planning. Making this charitable food donation incentive *permanent* is good tax policy. CFL Pizza, LLC (Pizza Hut franchisee) CFO Vikki Hodgkins told me,

> "It is particularly important to make the provision permanent, as our tax planning is not accurate when we have to wait until the end of the year each year to see if it is approved."

Permanent Food Donation Incentive is Cost Effective and Fair
A permanent incentive would promote efficient use of public funds. For example, a donated $10.00 pizza results in a $1.17 tax savings for the donor (33 1/3% food cost and 35% marginal tax rate), which results in $1.17 lost revenue for the government. An analysis of the cost to the Government for the food donation incremental deduction reveals that providing food to people in need this way is considerably less expensive than providing food through programs that pay for products at full retail price.

An economic incentive to *donate rather than dump* surplus food would offset the costs incurred by donors, thus promoting the policy goal of encouraging food donations. Greg Malone, CPA, Manager at Lindsay & Brownell, LLP says,

> "I think it makes sense for Non-C Corp's to have the same permanent rules as C-Corp's do to support the food donation program. In addition if the 10% limitation was increased to 15% it would make a tremendous difference in the amount of food donation from the food industry."

A permanent incentive would allow the same tax provision for small businesses as for large businesses, resulting in tax fairness. This results in an impartial tax code since non-C corporations would be allowed the same treatment as C corporations.

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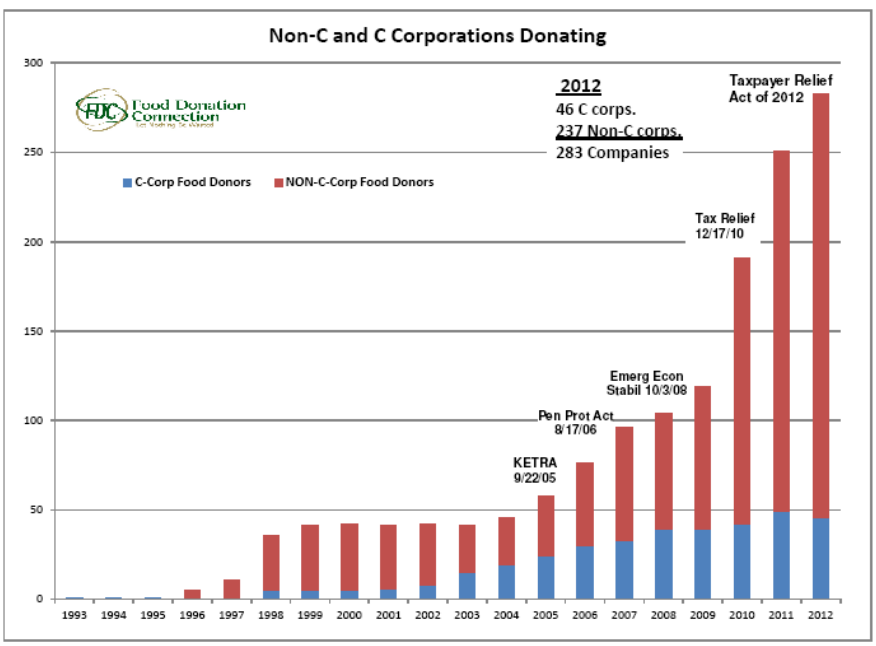
[2] When Hurricane Katrina devastated the Gulf Coast in late August, 2005, Congress passed the Katrina Emergency Tax Relief Act (KETRA) to make it possible for all business entities to take the enhanced tax deduction allowed by Section 170(e)(3). This meant that non-C corporations, including S corporations, Partnerships, and Sole Proprietorships, could take the same enhanced deduction as C corporations. The law has previously been extended on four occasions, most recently with the American Taxpayer Relief Act of 2012.

How have Retroactive Temporary Extenders Discouraged Food Donations?
The uncertainty of incentive longevity and lapses in the charitable deduction provision increase the difficulty of convincing non-C corporation business owners to donate food. The situation resulting from Congress' previous handling of Tax Incentive Extension Acts has been aptly described by Stacey Van Zuiden (2012), of the Drake University Law School:

> "This rather bizarre process of incrementally extending the enhanced deduction seems inefficient when one considers that there have been several efforts over the last eleven years to permanently change this portion of the U.S. Tax Code" (p. 237).[3]

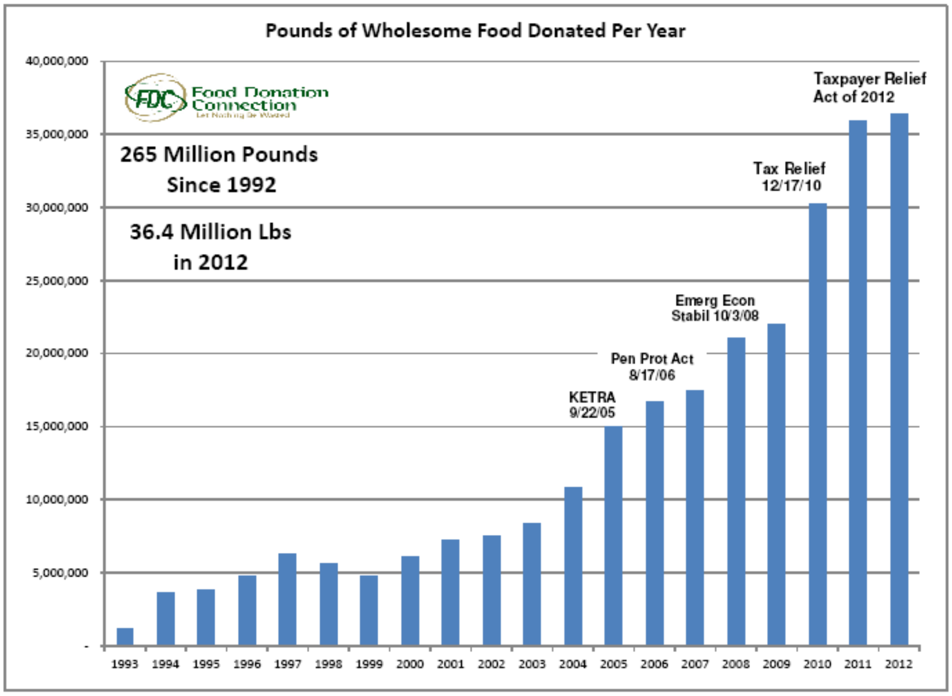
Many things compete for the attention of business managers and as an unfortunate result wholesome food continues to be sent to landfills from any foodservice locations. FDC supports the *permanent* expansion of Section 170(e)(3) to *all* food industry businesses as proposed in HR 3729, introduced by Representatives Sander Levin and Geoff Davis of the 112th Congress.

Tax Law Impact
FDC is uniquely positioned to examine the effect of expanding Section 170(e)(3) to all business taxpayers in the foodservice industry. We track the donations of 15,000 foodservice locations, both C corporations and non-C corporations. Our role in coordinating food donation programs allows us to measure the impact with data that is not collected on tax returns. Over the last 20 years we have seen an increase in the amount of food donated, in large part due to the tax policies that have been enacted. The following charts illustrate the benefit of expanding Section 170(e)(3) to non-C corporations.

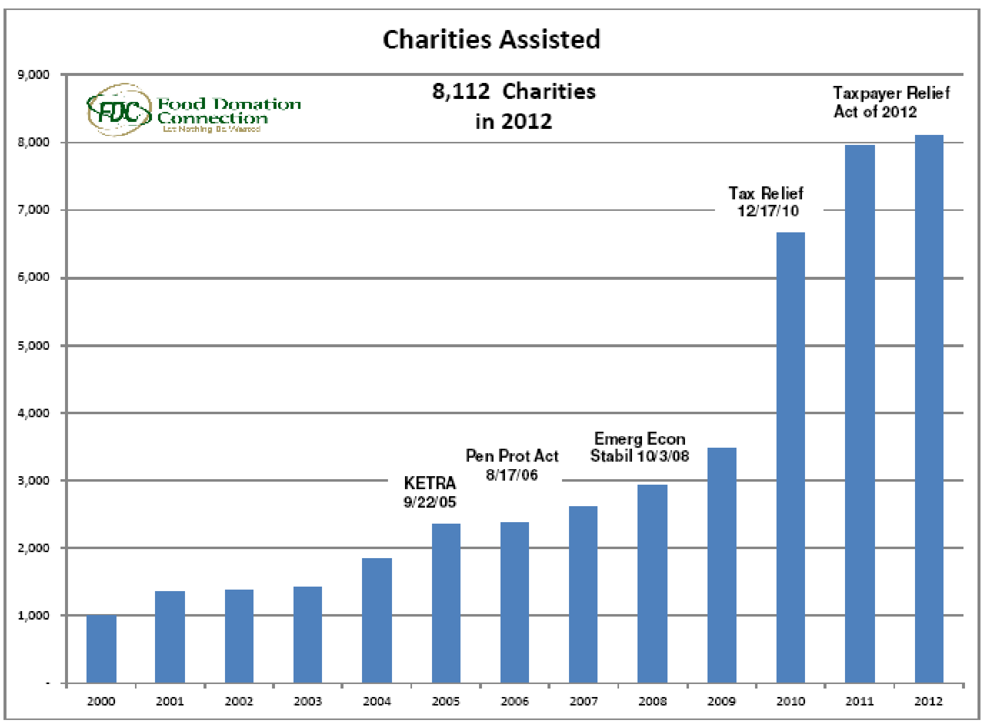


The first chart, ***Non-C and C Corporations Donating***, illustrates the increase in the number of non-C corporations participating in FDC's food donation program when the tax law was extended to non-C corporations.

[3] Van Zuiden, S.H. (March 2012) The good food fight for good Samaritans: The history of alleviating liability and equalizing tax incentives for food donors. *Drake Journal of Agricultural Law, 17*(1), 237.



The second chart, ***Pounds Donated***, graphically illustrates the increase in pounds of food donated in conjunction with the KETRA extensions.



The third chart, ***Charities Assisted***, illustrates the increased number of organizations helped as a result of the KETRA and subsequent extensions.

All three charts illustrate the growth in donations from companies involved in FDC's Harvest Program, in part due to the expansion of Section 170(e)(3) in 2005 and subsequent extensions. A permanent measure would discourage waste and promote food rescue efforts by encouraging the donation of surplus, wholesome food by non-C corporations.

Pertinent History

The fundamental features of HR 3729 of the 112th congress have been previously examined and agreed upon in bipartisan bills designed to expand the capacity of individuals and organizations to serve those in need - the Charitable Giving Act, HR 7 and the CARE Act, S. 476.

> *"In the 108th Congress, the CARE Act, S.476, passed the Senate by a vote of 95-5. The House of Representatives passed companion legislation, the Charitable Giving Act, H.R. 7 by a vote of 408-13. Tragically for those in need, the bill was chosen as the first bill to not be allowed to go to conference after passage by both chambers and thus prevented from becoming law in the last Congress."* [1]
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> [1] Senator Rick Santorum, Chairman of the Subcommittee on Social Security and Family Policy, Senate Finance Committee, September 13, 2005.

Stephanie Paine, Director of Food Service for the San Diego Rescue Mission writes:

> ...The donations of pizza from Pizza Hut and chicken wings, rice, mashed potatoes, corn on the cob and macaroni &cheese from KFC have increased … the food we had available and the men, women and children that receive these meals have been so grateful to have more variety in the weekly menus. We collect enough of the Pizza Hut and KFC items to serve three meals a week! And we serve 500 people at each meal. That is 1,500 free meals that would otherwise be thrown away if these restaurants didn't donate to our organization...

Summary

As you consider the best ways to address tax reform, lessen environmental impacts, and help end hunger throughout the United States of America, please remember that food donation programs provide free prepared food to non-profit organizations in local communities, resulting in an immediate impact on the lives of less fortunate individuals in need of food. Surplus food donations re-direct wholesome food – otherwise destined for a landfill – to the stomachs of hungry people.

Creating permanent tax law as outlined in HR 3729 of the 112th Congress would fulfill the original intent of the Section 170(e)(3) legislation by allowing non-C corporations to take advantage of a charitable deduction for their contributions of food inventory. The provision makes efficient use of public funds for a valid policy goal while creating tax code parity for non-C corporations and C corporations.

Thank you for your efforts to make a difference in the lives of thousands of people with your work on tax reform and making permanent the enhanced charitable deduction for food inventory.

Sincerely,
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