Anchin Alert

Anchin, Block & Anchin LLP
Accountants and Advisors

March 1, 2016

Congress Enhances Tax Deduction for Donations of Food Inventory

As part of the *Protecting Americans from Tax Hikes (PATH) Act* passed by The House and Senate at the end of 2015, the enhanced deduction for donations of food inventory was retroactively extended and made permanent so that qualifying donations made since January 1, 2015 are eligible. This deduction not only allows individuals and organizations to reduce their tax liability by providing ***qualifying food inventory*** to certain charitable organizations, but will hopefully increase food donations and therefore significantly reduce food waste.

Qualifying Food Inventory

A qualified contribution is a charitable contribution of food inventory to a tax-exempt charitable organization, provided that:

1. The donee's charitable purpose or function results in the food being used for the care of the ill, the needy, or infants;
2. The food is not transferred by the donee in exchange for money, other property, or services;
3. The taxpayer receives from the donee a written statement representing that its use and disposition of the food will be in accordance with the provisions of (1) and (2) above; and
4. The food fully satisfies the requirements of the Federal Food, Drug, and Cosmetic Act (FFDCA) and related regulations on the date of transfer and for the preceding 180 days. This relates primarily to it being suitable for human consumption.

In addition, the food must be "apparently wholesome food" as defined in the statute.

Calculating the Enhanced Deduction

The enhanced deduction is equal to the lesser of:

1. The taxpayer's cost to produce or purchase the inventory plus one-half of the profit that would have been recognized if the inventory had been sold at its fair market value on the date of contribution, or
2. Twice the taxpayer's cost basis in the contributed inventory.

This deduction is limited to 15% of a C Corporation's taxable income, or in the case of all other taxpayers, 15% of the aggregate net income from all businesses which made food donations during the year.

To take advantage of the enhanced deduction under Section 170(e)(3)(C), a taxpayer must be able to qualify, quantify, and appropriately document and support the deduction. The use of statistical sampling may be permitted in order to capture and keep record of this type of information, presuming the applicable procedural requirements are followed.

For more information, please contact your Anchin Relationship Partner, or Greg Wank, Practice Leader, Anchin's Food and Beverage Industry Group, at 212.840.3456.

ANCHIN
Your Expert Partner
Accountants and Advisors

Anchin, Block & Anchin LLP
Accountants and Advisors
212.840.3456 • www.anchin.com