

Food Donor Q & A



What is City Harvest?

City Harvest pioneered food rescue in 1982, and this year we will rescue 61 million pounds of excess food to help feed the more than 1.2 million New Yorkers struggling to put meals on their tables. Visit us at www.cityharvest.org to learn more.

What food does City Harvest accept?

City Harvest accepts perishable and non-perishable food prepared by licensed food businesses. See our Donation Guidelines included in this packet for detailed information.

Where does the food go?

The food you donate is collected by City Harvest's fleet of 22 trucks and delivered, free of charge, to hundreds of soup kitchens, food pantries, and other community food programs, where it is then distributed to New Yorkers in need.

Who donates to City Harvest?

Over 2,500 generous businesses across New York City and nationwide donate food – including farms, restaurants, supermarkets, bakeries, manufacturers, Greenmarkets, and corporate cafeterias.

What are the benefits to donating?

There are lots of benefits to donating food to City Harvest! By donating, you can prevent excess food from going to waste, get your employees to participate in a great cause, and give back to your community!

How does it work?

City Harvest will send a truck to pick up donations of at least 100 pounds. Call us to schedule a pick up - if you are able to donate on a consistent basis, we will set up a weekly pick up time. We will provide you with clear, food-grade plastic bags for you to package your donation. You'll receive receipts and annual reports tracking how many pounds you've donated.

What about food safety and liability?

At City Harvest, we take food safety very seriously. We follow standard food safety guidelines and train our staff and partner community food programs to ensure your food is delivered and distributed in safe condition. As a donor, you're protected from liability by federal and state laws. Detailed information on these laws are included in this packet.

How can we get started?

It's easy to become a food donor! Call our Food Sourcing team at [646.412.0758](tel:646.412.0758) or email fooddonations@cityharvest.org. We look forward to teaming up with you to feed our neighbors in need!

Quick Reference

Minimum

If you have collected at least 100 pounds of food, City Harvest can send a truck to pick up your donation. Pickups are generally made Monday through Friday, from 9 am to 5 pm call us to schedule a pick up at [646.412.0758](tel:646.412.0758).

Yes!

City Harvest can safely accept:

- Whole fresh produce without significant decay
- Chopped fresh produce packed separately in food-grade packaging
- Prepared foods chilled to 40°F that have not been served or placed on a buffet
- Chilled perishable packaged foods, such as juice and cheese in original packaging
- Frozen meat, poultry and seafood
- Dairy products at 40°F
- Shelled eggs
- Frozen foods in original packaging
- Baked goods, including day-old bread, bagels, and other bakery items
- Canned and packaged items in original packaging

No!

City Harvest cannot accept:

- Items that have been served or put on a buffet table
- Items that have been previously reheated
- Items that were not kept at the appropriate temperature per the City Harvest Donation Guidelines for more than 2 hours
- Meat that is not fully frozen
- Items with damaged or compromised packaging, resulting in the loss of a sanitary barrier
- Items that contain alcohol
- Items with significant decay
- Items with severe freezer burn
- Food intended for raw consumption (sushi or seafood)
- Canned goods that are open, punctured, bulging or seriously damaged
- Home prepared, home canned or home jarred products
- Food stored in opaque bags or trash bags







Food Donation Guidelines

Thank you for helping to fill City Harvest's trucks with nutritious food to distribute to New Yorkers in need.






We accept non-perishable donations, as well as perishable and prepared foods maintained in safe temperature zones and chilled or frozen before donation. Donated food must be prepared by a regulated or licensed food business, such as a restaurant, caterer, wholesaler, or bakery, and must exclude foods previously served to the public.

By following these guidelines, you will safely prepare, handle and provide delicious items that City Harvest can accept.

Food Product	Packaging	Storage Conditions	Unacceptable Conditions
 <p>Prepared Foods (entrees, starches, vegetables, chilled foods)</p>	<ul style="list-style-type: none"> • Food-grade packaging in direct contact with food, securely closed and separated by food type to avoid cross contamination • Labeled and dated 	<ul style="list-style-type: none"> • Chilled below 40 degrees Fahrenheit or frozen 	<ul style="list-style-type: none"> • Previously reheated foods • Foods kept above 40 degrees Fahrenheit for more than 2 hours • Foods previously served • Foods with a temperature greater than 40 degrees Fahrenheit
 <p>Chilled Perishable Prepackaged Foods</p>	<ul style="list-style-type: none"> • Original packaging or food-grade packaging for all repacked products 	<ul style="list-style-type: none"> • Chilled below 40 degrees Fahrenheit 	<ul style="list-style-type: none"> • Foods kept above 40 degrees Fahrenheit for more than 2 hours • Damaged or compromised packaging, resulting in the loss of sanitary barrier protection
 <p>Meat, Poultry and Fish</p>	<ul style="list-style-type: none"> • Original packaging • Food-grade packaging in direct contact with food • Securely closed and separated by food type (beef, pork, poultry, etc.) to avoid cross-contamination • Labeled and dated as appropriate • Must be processed in a USDA or NY State Department of Agriculture and Markets inspected Facility 	<ul style="list-style-type: none"> • Frozen at 0 degrees Fahrenheit or less • All meat and poultry must be frozen prior to or on the product expiration date 	<ul style="list-style-type: none"> • Non-frozen meat and poultry • Non-food-grade packaging in direct contact with food • Unfrozen meat and poultry past the expiration date • Meat not processed at a USDA or NY State Department of Agriculture and Markets inspected facility
 <p>Dairy Product</p>	<ul style="list-style-type: none"> • Original packaging • Food-grade packaging in direct contact with food 	<ul style="list-style-type: none"> • Chilled below 40 degrees Fahrenheit • Cheese may be frozen • Fluid milk can be accepted up to and including "use by" date 	<ul style="list-style-type: none"> • Dairy products kept above 40 degrees Fahrenheit for more than 2 hours • Damaged or compromised packaging, resulting in the loss of sanitary barrier protection • Leaking packaging



Food Donation Guidelines

Food Product	Packaging	Storage Conditions	Unacceptable Conditions
 <p>Shelled Eggs</p>	<ul style="list-style-type: none"> • Original packaging • Food-grade packaging in direct contact with Food 	<ul style="list-style-type: none"> • Chilled below 40 degrees Fahrenheit 	<ul style="list-style-type: none"> • Damaged or compromised packaging, resulting in the loss of sanitary barrier protection • Cracked or broken eggs
 <p>Fresh Produce (whole and chopped)</p>	<ul style="list-style-type: none"> • Original cartons and bags or food-grade packaging for all repacked product • City Harvest supplied Bags 	<ul style="list-style-type: none"> • Chilled below 40 degrees Fahrenheit • Cool, dry, clean area 	<ul style="list-style-type: none"> • Significant decay
 <p>Frozen Foods (entrees, starches, vegetables, fruit juices, baked goods, meats, and seafood)</p>	<ul style="list-style-type: none"> • Original packaging • City Harvest supplied Bags 	<ul style="list-style-type: none"> • Frozen at 0 degrees Fahrenheit or less 	<ul style="list-style-type: none"> • Defrosted product • Damaged or compromised packaging, resulting in the loss of sanitary barrier protection • Severe freezer burn
 <p>Baked Goods (fresh or day-old bread, bagels, and other bakery items)</p>	<ul style="list-style-type: none"> • Food-grade packaging in direct contact with food • Securely closed bread products separately packaged from other baked foods • City Harvest supplied Bags 	<ul style="list-style-type: none"> • Cool, dry, clean area 	<ul style="list-style-type: none"> • Stale products • Mold • Damaged or compromised packaging, resulting in the loss of sanitary barrier protection • Not packaged in food grade packaging • Food in opaque bags or trash bags
 <p>Prepackaged Foods – Non-perishable (canned, jarred, boxed)</p>	<ul style="list-style-type: none"> • Original packaging, boxes or cases • Food-grade packaging for all bulk foods • Fully intact original cans with labels that must show at a minimum: <ul style="list-style-type: none"> • Contents • Ingredients • Net weight <u>and</u> Distributor 	<ul style="list-style-type: none"> • Cool, dry, clean area 	<ul style="list-style-type: none"> • Opened, punctured, bulging, or serious damage, including evidence of leakage, side-seam dent, top seam dent, and/or significant rust • Home-canned or jarred products • Glass is broken or chipped • Break in seal identified by popped button indicator



Food Safety & Liability



At-a-Glance

Both the federal government and New York State have laws protecting food donors from liability. To ensure the safety of the donation:

- City Harvest provides food safety guidelines to donors
- City Harvest drivers evaluate the donation for food safety
- Recipient agencies evaluate the donation for food safety



Food donors are protected under the following laws

Federal Law: The Bill Emerson Good Samaritan Food Donation Act

New York State Law: Enacted 1981, Article 4-D, Section 71-2 71-Z Liability for canned, perishable food or farm products distributed free of charge

Please see pages 8-12 in this packet for detailed information



City Harvest practices food safety

At City Harvest we take food safety very seriously

- All of our drivers are trained to handle food safely
- Our trucks are refrigerated to keep food at safe temperatures
- We train all recipient community food programs in safe preparation, handling and evaluate them for their food safety practices



Green since 1982

City Harvest is New York City's largest food rescue organization, helping to feed the more than 1.2 million New Yorkers who are struggling to put meals on their tables. We will rescue 61 million pounds of food this year and deliver it, free of charge, to hundreds of food pantries, soup kitchens and other community partners across the five boroughs. Our programs help food-insecure New Yorkers access nutritious food that fits their needs and desires; increase our partners' capacity; and strengthen the local food system, building a path to a food-secure future for all New Yorkers. To learn more about our work, visit cityharvest.org.

Green Fleet

City Harvest established the Green Fleet in 2008 to ensure that our food rescue and delivery operations are executed in the most environmentally responsible way possible. Since then, City Harvest has converted the fleet to consist of clean diesel, hybrid trucks and tractor trailers.

WasteWise/Food Recovery Challenge

City Harvest has partnered with the Environmental Protection Agency's (EPA) WasteWise Initiative and Food Recovery Challenge (FRC): Conserving Resources, Preventing Waste.

Wastewise helps organizations and businesses apply sustainable materials management practices to reduce municipal and select industrial wastes.

*As part of EPA's Food Recovery Challenge, organizations pledge to improve their sustainable food management practices and report their results. The FRC is part of EPA's Sustainable Materials Management Program (SMM). SMM seeks to reduce the environmental impact of materials through their entire life cycle. This includes how they are extracted, manufactured, distributed, used, reused, recycled, and disposed.



Food Sourcing Contact List

Monday – Friday

9:00am – 5:00pm

Telephone:

646.412.0758

Email:

fooddonations@cityharvest.org

fooddrives@cityharvest.org

Need more help?

Lisa Sposato

Director, Food Sourcing

646.412.0751 or lsposato@cityharvest.org

Racine Droz

Associate Director, Food Sourcing & Donor Relations

646.412.0754 or rdroz@cityharvest.org

Matt Lum

Manager, Food Sourcing & Donor Relations

646.412.0723 or mlum@cityharvest.org

Ruth Lindner

Manager, Food Sourcing & Donor Relations

646.412.0755 or rlindner@cityharvest.org

For assistance before 9am or after 5pm Monday – Friday,
please contact a member of Customer Operations at [646.412.0850](tel:646.412.0850)



2016 Changes to Food Donation Tax Incentives

The PATH ACT, passed by Congress December 18, 2015 includes several improvements to the tax incentives allowable for food donation:

1. **Making the extension to non C corporations permanent** & allowing non C Corporations to carry forward the deduction for 5 years (same as c corporations);
2. **Allowing** farmers and other “cash method” accounting taxpayers to consider 25% of the fair market value of the donated food as the cost to produce the food;
3. **Increasing** the 10% cap of allowable charitable contributions to 15% for donated food;
4. **Codifying** an important Tax Court ruling, *Lucky Stores, Inc. v. Commissioner of Internal Revenue*.

Tax Law prior to 2016: Permanence for C corporations only

- Enhanced tax deduction available for donations of fit and wholesome food inventory to qualified 501(c)3 nonprofit organizations serving the poor and needy (Internal Revenue Code 170e3)
- Qualified business taxpayers were able to deduct cost to produce the food and half the difference between the cost and full fair market value of food donated
- Non-C Corporations were allowed enhanced benefits on a temporary basis, subject to Congressional renewal every 2 years which had last expired December 2014.

What does this mean for donation partners?

- As of 2016, deductions now apply to C corporations and non C corporations permanently. Any donations made in 2015 by non C corporations are also eligible for the enhanced tax deduction.
 - This will greatly increase the ability of small and mid-size businesses to donate food (including farmers, retailers, restaurants and food manufacturers).
- NEW in 2016: Donors that use cash basis accounting can estimate their cost to produce the food and take the enhanced tax deduction.
 - This is particularly beneficial to farmers.
- NEW in 2016: Donors who are at the 10% cap on charitable contributions can now enjoy tax benefits for donated food up to 15% of their adjusted gross income.
 - This will be particularly beneficial to companies with low profitability.
- NEW in 2016: Donors have greater certainty in how they value the food donated on an on-going basis.

This last provision, the codification of the *Lucky Stores Inc. v. Commission of Internal Revenue*, is one of the most significant parts of the tax law for farmers, retailers and food service operators as well as manufacturing donors. The impact of the language differs by sector but it opens more opportunities for all.

The language from the Joint Committee on Taxation Technical Explanation states:

“Third, in the case of any contribution of apparently wholesome food which cannot or will not be sold solely by reason of internal standards of the taxpayer, lack of market, or similar circumstances, or by reason of being produced by the taxpayer exclusively for the purposes of transferring the food to an organization described in section 501(c)(3), the fair market value of such contribution shall be determined (1) without regard to such internal standards, such lack of market or similar circumstances, or such exclusive purpose, and (2) by taking into account the price at which the same or substantially the same food items (as to both type and quality) are sold by the taxpayer at the time of the contributions (or, if not so sold at such time, in the recent past).”

For more information on the legislation, please contact Carrie Calvert at ccalvert@feedingamerica.org.

In everyday language, the law outlines:

- A protocol for establishing a Fair Market Value (FMV) for products that are not sold in market. FMV is key to the calculation necessary to calculate tax benefits based on IRS tax code (see below).
- That donations that cannot or will not be sold because the product is out of specification or overproduced, can be valued at the same price as other similar food items sold by the taxpayer at the time of the contributions (or in the recent past).
- A specific protocol for valuing product in circumstances, where FMV is not currently easily valued so companies are able to benefit from the enhanced tax deduction, potentially offsetting incremental costs to donate:
 - Products produced directly for donation, perhaps to utilize excess ingredients or line time
 - Products that are off spec and currently landfilled or sold for animal feed vs donation
 - Bulk product currently going to animal feed or left in field may be packaged in consumer-friendly packs
 - Relabeled product with missing allergens on the label currently going to landfill

How does this impact donations?

Farmers

- Provides a protocol not previously available which establishes a Fair Market Value (FMV) of product donated from the farm or packing sheds by utilizing the selling price of goods moved to market
- Expands applicability of the tax benefits to all farmers and producers and by making it permanent allows farmers to incorporate donation as a regular part of their crop planning, either grown to donate or as an outlet for unmarketable product.

Manufacturers

- Previous legislation placed the burden of establishing the FMV for a donated product on the producer based on a selling price to a customer
- In the case of off spec product or a variation in packaging, size, or formulation variation an established selling price (FMV) wasn't available, negating the producer's ability to calculate enhanced tax benefits
- New law allows for a similar or past item to be used in establishing a FMV for manufacturers
- By establishing a protocol for enhanced tax benefits, this provision now compensates the company in a small way if there needs to be an investment in packaging or labeling to insure the product is able to be distributed

Retailers/Food Service outlets

- It expands the Lucky Store case nationally and establishes that no matter what the age of the product being donated, that the FMV is the same as the original selling pricing of fresh product
- Permanence of this provision allows grocery and food service retailers to invest in permanent donation processes with long term commitments and impact, assured of on-going tax benefits, again partially offsetting any investment required

Sample Enhanced Benefit Calculation:

The sum of one-half of the unrealized appreciation (fair market value minus cost of goods sold = appreciation) plus the taxpayer's cost, but not in excess of twice the cost of the contributed property.

Example:

Selling Price (FMV)	\$2.00
Cost of Goods Sold	\$1.00
Gross Profit	\$1.00

Previous tax benefit for non C corporations: \$1.00 (COGS) = business loss x applicable tax rate

New tax benefit for C and non C Corps **\$1.00 + .50 = \$1.50 (1/2 the difference between FMV and COGS)**

NOTE: The maximum deduction can never exceed 2 x COGS

For more information on the legislation, please contact Carrie Calvert at ccalvert@feedingamerica.org.



Federal Tax Incentives for Produce Donations

Expanded Tax Law as of 2016

- Enhanced tax deduction available for donations of fit and wholesome food inventory to qualified 501(c)3 nonprofit organizations serving the poor and needy (Internal Revenue Code 170e3).
- Qualified business taxpayers can deduct cost to produce the food and half the difference between the cost and full fair market value of food donated.
- Deductions apply to C corporations AND non c corporations as of 2016 with new procedures for growers that are cash basis.
- By expanding applicability of the tax benefits to all farmers and producers and by making it permanent it allows farmers to incorporate donation as a regular part of their crop planning, either grown to donate or as an outlet for unmarketable product.
- Provides a protocol not previously available which establishes a Fair Market Value (FMV) of product donated from the farm or packing sheds by utilizing the selling price of goods moved to market.

Special Consideration for Produce Growers

Farmers that use the cash basis method of accounting must use a different way to calculate the enhanced tax deduction.

- Cash balance = recognizes income when cash is received and expenses when cash is paid;
- Farmers prefer cash balance because it does not require the cost of an accountant like the accrual method and is more flexible for tax planning.
- Accrual method = recognizes income when it is earned (accounts receivable) and expenses when they are incurred (accounts payable)
- Because farmers using cash basis are not tracking cost for specific items closely enough, they must use 25% of the Fair Market Value to calculate their cost and then calculate the enhanced tax deduction.

Liability Protection

The Bill Emerson Good Samaritan Food Donation Act was created to encourage the donation of food and grocery products to 501(c)3 certified nonprofit organizations. Under this Act, as long as the donor has not acted with negligence or intentional misconduct, the company is not liable for damage incurred as the result of illness.





Federal Tax Incentives for Produce Donations

Sample Accrual Accounting Calculation

Your company may take the sum of one-half of the unrealized appreciation (market value minus cost = appreciation) plus the taxpayer's cost, but not in excess of twice the cost of the contributed property.

Example of Zero Cost Donation:

Market Value	\$10.00
Cost to Produce (Estimating a KNOWN cost)	\$ 3.50
Gross Profit equals	\$ 6.50
One-half of \$6.50 equals	\$3.25
The maximum deduction can never exceed 2x cost (\$3.50x2).	
Therefore, gross profit is limited to	\$ 7.00
Total charitable deductions:	\$ 6.75 (doesn't exceed 2x Cost)

Sample Cash Basis Accounting Calculation

Sample Enhanced Benefit Calculation:

The sum of one-half of the unrealized appreciation (fair market value minus cost of goods sold = appreciation) plus the taxpayer's cost, but not in excess of twice the cost of the contributed property. If cost is unknown, taxpayer can use 25% of FMV to calculate it.

Example:

Selling Price (FMV)	\$10.00
Cost of Goods Sold (25% of FMV)	\$ 2.50
Gross Profit	\$ 7.50

Previous tax benefit: None

New tax benefit for all cash basis donors:

- $\$3.75 + \$2.50 = \$6.25$ (1/2 the difference between FMV and COGS + COGS)

NOTE: The maximum deduction can never exceed 2 x COGS. So the \$6.25 donation is adjusted down to \$5.00 (2x COGS).



Good Samaritan Laws

Federal and New York State Laws to Address Food Donation

The Bill Emerson Food Donation Act

PUBLIC LAW 104-210—OCT. 1, 1996

110 STAT. 3011

104th Congress

An Act

To encourage the donation of food and grocery products to nonprofit organizations for distribution to needy individuals by giving the Model Good Samaritan Food Donation Act the full force and effect of law.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

Section 1. CONVERSION TO PERMANENT LAW OF MODEL GOOD SAMARITAN FOOD DONATION ACT AND TRANSFER OF THAT ACT TO CHILD NUTRITION ACT OF 1966.

(a) Conversion to Permanent Law. — Title IV of the National and Community Service Act of 1990 is amended —

1. by striking the title heading and sections 401 and 403 (42 U.S.C. 12671 and 12673); and

2. in section 402 (42 U.S.C. 12672) —

(A) in the section heading, by striking “model” and inserting “bill emerson”

(B) in subsection (a), by striking “Good Samaritan” and inserting “Bill Emerson Good Samaritan:”

(C) in subsection (b)(7), to read as follows:

“(7) GROSS NEGLIGENCE. — The term ‘gross negligence’ means voluntary and conscious conduct (including a failure to act) by a person who, at the time of the conduct, knew that the conduct was likely to be harmful to the health or well-being of another person.”;

(D) by striking subsection (c) and inserting the following:

“(c) LIABILITY FOR DAMAGES FROM DONATED FOOD AND GROCERY PRODUCTS.

“(1) LIABILITY OF PERSON OR GLEANER. — A person or gleaner shall not be subject to civil or criminal liability arising from the nature, age, packaging, or condition of apparently wholesome food or an apparently fit grocery product that the person or gleaner donates in good faith to a nonprofit organization for ultimate distribution to needy individuals.

“(2) LIABILITY OF NONPROFIT ORGANIZATION. — A nonprofit organization shall not be subject to civil or criminal liability arising from the nature, age, packaging, or condition of apparently wholesome food or an apparently fit grocery product that the nonprofit organization received as a donation in good faith from a person or gleaner for ultimate distribution to needy individuals.

“(3) EXCEPTION. — Paragraphs (1) and (2) shall not apply to an injury to or death of an ultimate user or recipient of the food or grocery product that results from an act or omission of the person, gleaner or nonprofit organization, as applicable, constituting gross negligence or intentional misconduct.”; and

(E) in subsection (f), by adding at the end the following: “Nothing in this section shall be construed to supersede State or local health regulations.”.

(b) TRANSFER TO CHILD NUTRITION ACT OF 1966. — Section 402 of the National and Community Service Act of 1990 (42 U.S.C. 12762) (as amended by subsection (a))

1. is transferred from the National and Community Service Act of 1990 to the Child Nutrition Act of 1966;

2. is redesignated as section 22 of the Child Nutrition Act of 1966; and

3. is added at the end of such Act.

(c) CONFORMING AMENDMENT. — The table of contents for the National and Community Service Act of 1990 is amended by striking the items relating to title IV.

Approved October 1, 1996.

New York State Law

Enacted 1981, Article 4-D, Section 71-2

71-Z Liability for canned, perishable food or farm products distributed free of charge

1. Notwithstanding any other provision of law, a good faith donor of any canned or perishable food or farm product, apparently for human consumption, to a bona fide charitable or nonprofit organization, for free distribution shall not be subject to criminal penalty or civil damages arising from the condition of the food, if the said donor reasonably inspects the food at the time of donation and finds the food apparently for human consumption and unless the donor has actual or constructive knowledge that the food is adulterated, tainted, contaminated or harmful to the health or well-being of the person consuming said food.

2. The second section includes the good faith donation of canned or perishable food or farm products not readily marketable due to appearance, freshness, grade, surplus or other consideration, but shall not be deemed or construed to restrict the authority of any lawful agency to otherwise regulate or ban the use of such food for human consumption.