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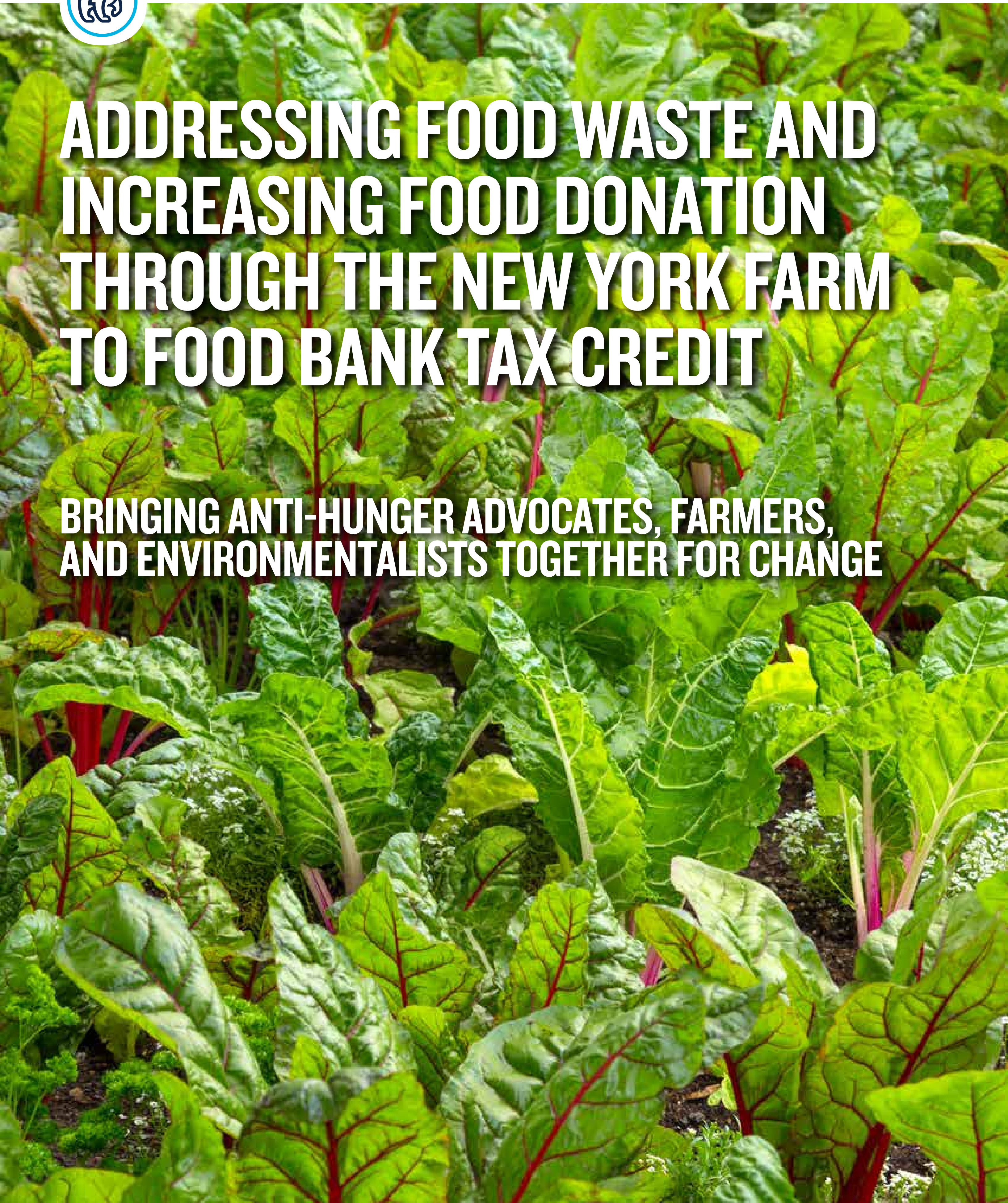
ADDRESSING FOOD WASTE AND INCREASING FOOD DONATION THROUGH THE NEW YORK FARM TO FOOD BANK TAX CREDIT

BRINGING ANTI-HUNGER ADVOCATES, FARMERS, AND ENVIRONMENTALISTS TOGETHER FOR CHANGE



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About NRDC

The Natural Resources Defense Council is an international nonprofit environmental organization with more than 3 million members and online activists. Since 1970, our lawyers, scientists, and other environmental specialists have worked to protect the world's natural resources, public health, and the environment. NRDC has offices in New York City, Washington, D.C., Los Angeles, San Francisco, Chicago, Montana, and Beijing. Visit us at nrdc.org.

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I. Introduction

Each year, approximately 20 billion pounds of fresh fruits and vegetables in the United States go unharvested or otherwise never enter the food supply. This produce is often perfectly good to eat but is never sold because of aesthetic imperfections or other market factors. For example, when crop prices fall, farmers may not be able to sell their product for enough to cover picking, packing, and transportation costs. Unfortunately, these same up-front costs often make it too expensive for farmers to donate the fresh fruits and vegetables they cannot sell.

This lost harvest represents an enormous opportunity. In response, the number of "farm to food bank" programs has grown rapidly over the past decade.[1] These programs connect food banks—and other parts of the food rescue system—to local farmers, ensuring that food that would otherwise be wasted goes to those in need. In at least seven states, policymakers have passed legislation designed to reduce donation costs and support the expansion of farm to food bank efforts.[2] These states recognize that by helping farmers cover the harvesting and transportation costs incurred when they donate agricultural products, the government can increase access to healthy fresh food; reduce food waste; and help local farmers.

To address these issues, the Natural Resources Defense Council (NRDC) has launched a campaign to dramatically increase the recovery of food across the state of New York and redirect this fresh and wholesome food to the citizens who need it most. With this campaign—which is part of our larger regional and food equity work—NRDC has been able to not only help address a pressing public health and environmental need in New York, but also create model policies that can be replicated in other areas of the country.

As a result of this farm to food bank advocacy work—and partnering closely with a wide range of stakeholders—the state of New York recently enacted a tax credit for donations of agricultural products to the food recovery system to address the costs of donation. This tax credit allows farmers to claim 25 percent of the fair market value of qualified donations, with a maximum benefit of $5,000 per year, thus incentivizing them to donate their unsold products to those in need.

The potential return on investment is considerable. Every $1,000 spent through the tax credit brings in a $4,000 donation in wholesale-valued crops. For example, a donation of over 14,000 pounds of onions (a $4,000 value at present wholesale prices[3]) is worth more than $17,000 at current retail prices.[4] Thus, a state investment of $1,000 could bring food insecure New York families more than $17,000 worth of local, healthy food.

The following case study provides a detailed overview of a policy campaign NRDC and our allies ran from 2015 to 2017 to enact this farm to food bank tax credit in New York. In doing so, we hope to help advocates in other states who are considering—or currently engaged in—efforts to pass similar legislation.

It begins with a brief overview of farm to food bank programs and the benefits of such programs for food security, regional food systems, and the environment. It continues with a review of the recently enacted New York farm to food bank tax credit and a discussion of federal tax benefits, liability protections, and legislation affecting food donations. This is followed by a detailed look at the coalition that advocated for the tax credit and its three-year campaign to pass it into law. Finally, we offer recommendations of steps advocates can take to strengthen tax credit campaigns in their own states.

II. Overview of Farm to Food Bank Programs

The term "farm to food bank" generally refers to any program that connects farmers to local food recovery programs. While food rescue organizations have long worked with local farms, they have increasingly sought to purchase produce or receive donations from local growers due to demand from their clients and the growing awareness of the health benefits of fresh produce. The California Association of Food Banks' Farm to Family program, for example, partners with more than 160 farmers to bring over 50 varieties of local fruits and vegetables to state food banks.[5] Started in the late 1990s, the program now rescues and redistributes more than 160 million pounds of produce annually.[6] Food banks operate similar programs in Florida, Louisiana, Minnesota, Texas, and elsewhere throughout the country.

Unfortunately, unfunded farm to food bank programs have run into significant barriers as they have started to expand. While food banks sometimes purchase produce directly from local farmers, often at below-market rates, they lack the funds and infrastructure to buy the majority of unsold produce. As a result, programs often depend on donations for a large share of their locally procured food. At the same time, farmers often face much more significant costs than other businesses when donating food. A supermarket's inventory, for example, is already boxed, easily transportable, and often located in an urban area close to a food bank. In contrast, farmers must often harvest, wash, sort and package their products and then transport them over long distances.

To incentivize farmers to go through this added work and expense, several states have provided tax benefits to farmers who donate to food recovery programs. A wide range of advocates, including farmer, environmental, and anti-hunger organizations, have supported these tax benefits. Below we outline how these changes to the tax code enhance food equity, regional food systems, and the environment.

A. INCREASING FOOD DONATION

Millions of Americans suffer from hunger every year. More than 12 percent of all households in the United States—almost 16 million—were food insecure at some point in 2016, the most recent year for which data are available.[7] Households with children had even higher rates of food insecurity: more than 16 percent of such households, or nearly 1 in 7, lacked food security in 2016.[8] Food-insecure households often have to compromise on food quality.[9] They may not be able to get or prepare fresh produce, for example, because they live too far from retail markets, have irregular work schedules, or are concerned about the produce going bad. As a result, food-insecure families tend to eat fewer servings of fruits and vegetables than families who are not food insecure.[10]

Food security requires the availability and access "at all times" to "safe, nutritious food," according to the United Nation's World Food Programme.[11] Without ready access to fruits and vegetables, families cannot achieve food security, even if they have access to plentiful amounts of other foods. Traditionally, food pantries often have not carried perishable items and have distributed only small amounts of fruits and vegetables, often frozen or canned.[12] This has started to change in recent years, however, as food banks have attempted to provide more nutritious food for their clients and donations of nonperishable dry foods from the food industry have declined.[13] Increasing their offerings of fresh produce, however, typically requires new procurement and distribution methods and frequent contact with donors.[14]

Farm to food bank programs help address these barriers by making it easier for food banks to obtain fresh produce. They also make it easier for food-insecure families to enjoy healthy food by increasing their access to high-quality local products. By giving families in need an opportunity to enjoy healthy local food that they otherwise might not be able to purchase, these programs can play a critical role in getting healthy food to those in need.

B. STRENGTHENING REGIONAL FOOD SYSTEMS

Farm to food bank programs help build ties between communities and local farmers. By increasing the number of people who are able to enjoy healthy local food, they build goodwill for regional farms and food systems. Research also indicates that consumers who try local products often prize them for their taste and freshness and are more likely to seek them out in the future; it follows that food bank clients who receive local food can become long-term customers.[15,16] Most people receiving food assistance do so temporarily: about 65 percent of food pantry clients receive emergency food assistance for less than 12 consecutive months.[17]

Additionally, a 2016 study found that consumers were willing to pay a 20 percent price premium for local food when their purchase was coupled with a donation to a local food bank.[18] This suggests that consumers are eager to support farmers who donate to food recovery systems. Farmers can also build relationships with the food banks themselves as potential institutional purchasers.[19] Food banks often buy products with superficial imperfections that have not traditionally been sold through conventional markets, providing farmers with a completely new revenue stream. By creating a market for products that might otherwise go unharvested, farm to food bank programs also allow farmers to employ their workers for a longer period during the harvesting season, which benefits farmworkers and the communities in which they live.

C. PROTECTING THE ENVIRONMENT

Over the past 15 years, environmental organizations have become increasingly concerned with preserving farmland and strengthening regional food systems due to their environmental benefits.[20] Environmental advocates have also become increasingly focused on reducing food waste. Up to 50 percent of fruits and vegetables in the United States are never consumed, leading to an immense loss of resources and helping to drive higher greenhouse gas emissions.[21]

Alarming amounts of cereals, dairy, and meat are also wasted, contributing to the food system's massive carbon footprint.[22] Food waste is responsible for almost 3 percent of greenhouse gas emissions, 21 percent of agricultural water usage, and 18 percent of all farming fertilizer in the country.[23] Globally, wasted food is responsible for 3.3 gigatons of CO_2 equivalent annually—more than the populations of India and Brazil combined—and agricultural production is the single largest source of wasted food in the food supply chain. [24] Reducing farm-level food losses would lower emissions by reducing agricultural production requirements and decreasing organic matter waste, which is a major source of methane emissions.[25]

In 2015 NRDC conducted a limited survey of New York fruit and vegetable producers to better understand on-farm food loss and to gauge those farmers' interest in programs designed to find alternatives for unsold product, such as farm to food bank initiatives. The survey found that most New York fruit and vegetable farmers grew large amounts of produce that they could not sell, but which they were also unable to consistently donate because of picking, packing, and transportation costs. The large majority of these farmers (84 percent) reported that they would be interested in donating more of their products if such barriers were addressed. By doing so, whether through purchasing agreements, logistical coordination, or a tax credit, farm to food bank programs significantly ensure that healthy produce is re-directed to people in need.

III. Legal and Policy Background

In addition to New York, at least seven states, including California, Iowa, and Kentucky, offer state tax incentives to farmers who donate their products to food recovery programs.[26] When the coalition began working to implement a tax credit in New York, advocates had a number of conversations with farmers, food banks, and other stakeholders within the state to ensure that a tax incentive would reflect their needs.

Before introducing similar programs in other states, advocates should encourage feedback from farmers and other stakeholders who would be affected by the legislation. Their needs and concerns may differ from those of stakeholders in New York. New York's tax credit, however, may be a useful starting point for discussion. Below is an outline of how it works, followed by an overview of current federal tax incentives, liability protections, and legislation designed to encourage food donations.

A. HOW THE NEW YORK STATE TAX CREDIT WORKS

The New York tax credit is equal to 25 percent of the fair market value of the donation, but the benefit is limited to $5,000 annually.[27] The fair market value of a product is its normal selling price—what a farmer would expect to receive for a product of the same type and quality. The farmer does not need to factor in whether the donated product meets normal size and shape standards as long as the food is "apparently wholesome."[28] A farmer who produces apples for the wholesale market, for example, can claim $500 through the tax credit if she or he donates a load of apples worth $2,000 wholesale. The farmer would not need to have a buyer on the wholesale market in order to be eligible, nor would the apples need to meet the size and shape standards of wholesale purchasers.

The fair market value depends on whether the farmer intended to sell the product on the wholesale or retail market. Vegetable producers who intend to sell their products directly to consumers at farmers' markets would use prices at those farmers' markets to determine the fair market value of their produce. But a grower who intended to sell at a wholesale market would use the values on that market instead.

Farmers may receive credit for the donation of any apparently wholesome food they have produced, including animal products such as beef or yogurt.[29] In addition to being wholesome, the donation must be grown or produced within New York and given to a New York food bank, food pantry, or other food recovery program with a federal tax exemption.[30] The donor must also be an "eligible farmer," defined as one whose gross income from farming is at least two-thirds of the farmer's excess federal gross income (EFGI).[31] EFGI is one's total income, including wages, pensions, Social Security payments, interest, and dividends, minus $30,000.[32]

If Joanne, for example, earns $50,000 from the operation of her farm, $35,000 in salary from a nonfarm job, and $10,000 in interest and dividends, her total gross income is $95,000. Her income from farming is just a little over 50 percent of her gross income. To calculate her EFGI, however, Joanne subtracts $30,000 from her gross income, giving her an EFGI of $65,000. Since her farm income is more than two-thirds of her EFGI (77 percent, to be more precise), Joanne is eligible for the tax credit.

B. FEDERAL TAX BENEFITS

Federal law offers businesses a special tax deduction for food donations to nonprofit organizations. Put simply, a deduction reduces a taxpayer's taxable income, while a credit is directly subtracted from the amount of taxes owed. More significantly, the New York State tax credit, unlike the federal tax deduction, is refundable, meaning that a New York farmer who does not have a New York State income tax liability can nevertheless benefit from the state tax credit. Many farms in New York generate little or no net farm income. Since such farms do not have significant tax liabilities, a deduction does not help these farmers cover donation expenses.[33] A credit, in contrast, applies to a much wider range of farms.

Under federal tax law, a taxpayer can qualify for a charitable contribution deduction if the taxpayer makes a donation to a qualified charitable organization.[34] C-corporations can claim annual charitable contribution deductions of up to 10 percent of their taxable income, while individuals can deduct contributions of up to 50 percent of their annual adjusted gross income.[35,36] However, when a taxpayer donates inventory—goods originally acquired or produced in order to sell—the taxpayer generally can deduct only the cost of producing or acquiring the contributed inventory (referred to as the "tax basis" for the inventory).[37] For a fruit or vegetable farmer, the tax basis of the product includes the cost of the inputs, such as seed, fertilizer, and pesticides, as well as the costs required to plant, pick, and pack it.

In 2015, Congress permanently extended an "enhanced" deduction—so called because it offers more benefits to taxpayers than a normal charitable contribution deduction—for contributions of food to a food bank or similar charitable organization.[38] The enhanced deduction allows farmers to deduct an amount equal to the taxpayer's tax basis for the donated inventory plus 50 percent of the expected profit margin. The expected profit margin is the inventory's fair market value minus its tax basis.[39] The deduction cannot exceed twice the tax basis.[40] But this is nonetheless a substantial ceiling: The enhanced deduction can be twice as large as a regular charitable contribution deduction would be. The enhanced deduction is limited to 15 percent of the individual's net income from the farm, subject also to the 50 percent overall limitation discussed in the prior paragraph. If the farm is owned by a C-corporation, the enhanced deduction is limited to 15 percent of the corporation's taxable income, allowing a deduction in excess of the 10 percent limitation described in the prior paragraph.[41]

The federal enhanced deduction can provide important benefits to farms that donate their products to food banks. As discussed above, however, many farms generate little to no net farm income and therefore do not meaningfully benefit from the enhanced deduction. The deduction's strength is also diluted by the fact that even highly profitable farms often have small profit margins and the size of the enhancement is tied to the expected profit margin of the donated agricultural product.[42] State tax incentives for agricultural donations can fill these gaps by offering tax benefits to a wider range of farms.

C. LIABILITY PROTECTION

In 1996 Congress passed the Bill Emerson Good Samaritan Food Donation Act, which provides liability protection to food donors including farmers and the nonprofit food recovery organizations that receive the donations.[43] The law ensures that donors and nonprofits are not held liable if recipients get ill from donated food, unless the illness resulted from intentional misconduct or gross negligence. The following four requirements must be met in order to be eligible for the act's protection:

1. The donated food must be either "apparently wholesome" or an "apparently fit grocery product."
2. It must be donated to a nonprofit organization in good faith, meaning that it is donated with the belief that it is safe to eat.
3. The nonprofit that receives it must distribute it to needy individuals.
4. The ultimate recipient must not pay for the donated food.[44]

For more information about liability protection, see *Don't Waste, Donate*, a report produced by NRDC and the Harvard Food Law and Policy Clinic on federal laws and regulations relevant to food donations.

D. FEDERAL FARM TO FOOD BANK LEGISLATION

In 2018, after significant interest among federal policymakers, Congress passed legislation designed to boost farm to food bank efforts. The 2018 Farm Bill allocates $20 million over the next five years for "harvesting, processing, packaging, or transportation of unharvested, unprocessed, or unpackaged commodities donated by agricultural producers, processors, or distributors for use by emergency feeding organizations."[45] As announced by Senator Stabenow, Ranking Member on the Senate Agriculture, Nutrition and Forestry Committee, this "Farm to Food Bank" initiative is established to "provide healthy, local foods to families in need while reducing food waste."[46]

This new initiative is an important federal contribution to the issue but the appropriations will not be enough to cover picking, packing, and transportation costs for all eligible farmers— or even the majority of them.[47] As a result, state-level tax incentives will still be necessary to make donations financially feasible for many farmers. Nonetheless, federal support for farmer donations could provide farm to food bank efforts a major boost, giving initiatives across the country much-needed funds to start or expand.

IV. The Campaign

The success of the New York farm to food bank campaign was due in large part to the diversity and breadth of the coalition that developed to advocate for the tax credit. The tax credit began as an initiative of the New York Farm Bureau and upstate legislators whose districts encompassed large stretches of farmland but was eventually championed by anti-hunger advocates, environmentalists, and representatives throughout the state.[48] The diversity of the coalition's advocates, both in terms of geography and the issues they focused on, helped the group address many of challenges it faced in trying to bring the tax credit to fruition.

Before the tax credit campaign began, a number of organizations in New York were already involved in farm to food bank programs. The state Farm Bureau and New York members of Feeding America, a national network of food banks, had organized the largest initiative, partnering to facilitate donations from New York farmers to food banks within the state. In 2014, farmers donated almost 10 million pounds of agricultural products through the program.[49]

Some individual food banks had also developed close ties with farmers in their regions and created programs to increase access to local fruits and vegetables for their clients. The Regional Food Bank of Northeastern New York, for example, received donated produce from more than 60 local farmers in 2010.[50] Foodlink, a food bank that serves a 10-county area in the Genesee Valley and Finger Lakes region, created a mobile farmers' market, called Curbside Market, that brings fresh and affordable local produce to low-income communities throughout its operating area.[51] Cornell Cooperative Extension ran a successful gleaning program in the Hudson Valley that brought fresh produce to local food banks.[52] Many of the people involved in these initiatives advocated for the farm to food bank tax credit, using their experience and expertise to influence policymakers.

The coalition began to come together in early 2015 when NRDC joined the Farm Bureau in its campaign to enact a tax credit. farm to food bank tax credit bills had been introduced in the New York State Legislature in earlier legislative sessions, but they never advanced beyond initial committees.[53] Among other key steps in the new campaign, the Farm Bureau worked with lawmakers to introduce new tax credit legislation in the New York State Legislature, while NRDC devoted staff time to the effort and drafted a letter of support that was eventually signed by dozens of agricultural, environmental, and anti-hunger organizations. While some groups did not have the resources to do more than sign the letter, the broad support for the bill caught the attention of many legislators. Other organizations also made important contributions to the advocacy effort, including encouraging members to contact state legislators and the governor's office, directly lobbying on behalf of the tax credit in Albany, and helping to develop a media and messaging strategy. As a result of this work, a farm to food bank tax credit passed unanimously in both the Assembly and the Senate in 2015.

But despite the coalition's advocacy efforts, Governor Andrew Cuomo vetoed the bill. His letter announcing the veto gave four reasons: (1) The bill would have been duplicative of existing tax benefits, (2) it would have been difficult to establish a valuation for donated food, (3) the credit would have extended to out-of-state farmers, and (4) it would have imposed "a significant cost to the State."[54]

The coalition addressed the third concern, regarding out-of-state farmers, by amending the tax credit legislation the following year to ensure that it applied only to New York residents. With respect to the other three concerns, NRDC and our allies believed they were unfounded. Working with our partners, NRDC drafted an extensive memorandum addressing each of the governor's reservations. The coalition also gathered data on the cost of similar tax credit programs in other states, which showed that the credit would cost much less than anticipated.[55] Coalition members then arranged meetings with members of the governor's staff to dispel their concerns and explain how the tax credit would operate.

The bill was reintroduced in 2016 with even greater support due to the outreach efforts of coalition members.[56] Anti-hunger organizations played a leading role in the campaign. At the community level, food banks and anti-hunger organizations expressed their support for the legislation to local media and their legislative representatives, while the Food Bank Association of New York and the Hunger Action Network of New York were instrumental in organizing the statewide advocacy effort.

These organizations, along with the Farm Bureau and NRDC, organized lobbying days that brought farmers, food banks, and other supporters from across the state to advocate for the tax credit in Albany. These lobbying days not only gave the coalition an opportunity to make its case to policymakers, but also generated press interest and helped strengthen the coalition by bringing relevant parties together, in person, for the first time.

As in 2015, the New York State Legislature again passed the statute. By this time, the coalition had more than 150 members, and it had organized a coordinated effort to lobby the governor's office with weekly calls and strategy sessions.[57] Legislators within the New York State Black, Puerto Rican, Hispanic, and Asian Legislative Caucus also played a critical role in conveying to the media and the governor's staff that the legislation would help low-income families and consumers. Nonetheless, Governor Cuomo again vetoed the bill. To the surprise of the coalition members, his second veto letter provided the same justifications for the veto as his first one.

Coalition members were dispirited by the governor's response but redoubled their efforts to communicate with the governor's staff and state agencies under his direction. Instead of focusing on passing new, stand-alone legislation, however, they worked to include the tax credit in the state's 2017–2018 budget bill, which is generally passed earlier in the annual legislative process. The primary reason for this change of tactic was that Governor Cuomo and his staff were known to be disinclined to pass legislation with fiscal implications outside of the budget process.

Additionally, members of the coalition had several meetings and phone calls with members of the governor's senior staff to assuage their concerns about the bill and to convince them of its merits. Despite vetoing the bill two years in a row, Governor Cuomo and his staff provided the coalition with significant access and gave them several opportunities to advocate for the tax credit. Unlike typical meetings with state legislators, these discussions often became quite technical, and the coalition benefited considerably from its members' extensively researched response to the governor's vetoes and their research on hunger and agriculture in New York. A tax attorney providing pro bono assistance to NRDC played a particularly important role in many of the calls with the governor's staff, since he was able to respond to sophisticated questions regarding the bill and the state's tax laws.

In the end, the farm to food bank tax credit was added to the final budget bill—the creation of which is a months-long process—only hours before its passage. The governor signed the budget on April 10, 2017 and the tax credit went into effect on January 1, 2018.

VI. Recommendations

We interviewed several of the leading advocates involved with the New York effort to better understand the campaign's challenges, successes, and strategies. We have distilled their comments and advice into a series of recommendations for similar campaigns in other states. The tax credit did well in New York among all types of legislators—urban and rural, conservative and liberal—and while the recommendations may need to be adjusted to local circumstances, they are designed to be useful throughout the country.

BRING TOGETHER A DIVERSE COALITION AROUND SHARED INTERESTS

The tax credit campaign brought together farmers, food system reformers, environmentalists, and advocates representing food assistance recipients. As a result, the coalition developed sophisticated arguments for the bill from a variety of perspectives, enabling it to reach policymakers throughout the state. New York's legislature voted unanimously for the final version of the bill in 2016. This impressive tally would not have been possible if the coalition had not ensured the active participation of such a diverse range of people and organizations.

BUILD A CORE TEAM OF ADVOCATES

While support for the bill was widespread, the campaign often relied on a relatively small group of people to maintain its momentum. They came from a variety of organizations and performed several key functions, including researching, lobbying, and organizing. Not every group was able to, or needed to, devote significant staff time, but having people consistently available to contribute was crucial to the effort. During key periods of the campaign, such as when the bill needed to move through committees in order to come to a floor vote, or when the bill reached the governor's office, regular phone calls ensured that coalition members would act in a coordinated manner. These phone calls were sometimes held twice a week during the most intense advocacy periods.

FIND PARTNERS WITH LEGAL, TAX, AND POLICY EXPERTISE

Throughout the process, legislators and Governor Cuomo's staff had sophisticated questions and concerns that needed to be addressed. The coalition's core advocacy team included experienced lawyers and governmental affairs staff who were able to draft well-informed and well-researched responses. To bolster their case, members of the coalition analyzed agricultural census data and conducted a study of New York fruit and vegetable producers, providing strong empirical evidence that the tax credit would address a real problem.When the coalition did not have in-house expertise, it found outside experts who were willing to help. The Harvard Food Law and Policy Clinic, for example, drafted a fact sheet for the coalition. An experienced tax attorney from Shearman & Sterling also reviewed documents and advised the coalition on tax law.

GIVE EVERYONE A CHANCE TO PARTICIPATE

The campaign effectively used experts and professional organizers to convey its message, but it also ensured that everyone who supported the bill had opportunities to contribute to the campaign. Coalition groups encouraged their members to email, call, or write letters to their representatives. They also organized lobbying days on which their staff, farmers, activists, food bank clients, and others could advocate for the tax credit. Organizations that were not able to devote significant resources to the campaign also played an important role by contacting legislators representing their area. Local food banks, for example, often helped persuade legislators to support the tax credit due to their positive reputations in their communities and relationships with their representatives.

DEVELOP TARGETED MESSAGES FOR POLICYMAKERS

The coalition's diversity proved to be a significant asset. Regardless of each policymaker's chief interest—whether bringing fresh food into low-income communities, supporting local farmers, or preserving farmland—the coalition had organizations and experts that could explain how the tax credit would serve that interest. And this messaging does not need to be expensive. While additional funding for polling, focus groups, or events with celebrities might have been helpful, the coalition was able to give policymakers a persuasive pitch on a remarkably low budget. Expenses were generally limited to staff time, which organizations handled internally, and handouts and flyers on lobbying days, which were produced in-house.

PLAN FOR THE SUCCESS

While the tax credit created a lot of buzz about farm to food bank programs in the state, many farmers still do not know how to take advantage of the credit now that it has gone into effect. Members of the coalition are now focused on ensuring that farmers have heard about the tax credit and know how to donate. NRDC, for example, created a guide to the credit for farmers (included in this report's appendix), while food banks around the state are developing informational materials and reaching out to local farmers.

VII. Conclusion

Farm to food bank legislative campaigns face a number of obstacles. Without conducting in-depth research, advocates may find it difficult to persuade policymakers of a proposal's benefits or fiscal feasibility. If a broad coalition is assembled, it may be composed of groups that do not have a long history of collaborating together. But without a broad coalition, legislators may think the initiative lacks substantial public support.

At the same time, the wide reach of a farm to food bank program makes it incredibly appealing to policymakers when advocates have researched its potential impact in their communities, built a cross-sector coalition that works well together, and reached out to policymakers in order to understand their priorities and concerns. Anti-hunger advocates, farmers, and environmentalists may be a rare coalition, but they're also a powerful one.

Appendix

A Farmer's Guide to the New York State "Farm to Food Bank" Tax Credit

In April 2017, New York State enacted a tax credit of up to $5,000 per year for food donations by farmers to food pantries or food banks. This "Farm to Food Bank" tax credit was intended to increase food donation, strengthen regional food systems, and reduce food waste.

Can my farm benefit?

Beginning with the 2018 tax year, the credit will be available to sole proprietorships, corporations, limited liability companies, and partnerships.

To claim the credit, you must be an "eligible farmer," meaning you derive most of your income from farming, as calculated under the following formula:

- First, calculate your total federal gross income.
- Second, reduce your federal gross income by up to $30,000 of wages, salaries, pensions, social security payments, interest, and dividends. Let's call the result "B."
- Third, calculate your federal gross income from farming. Let's call this "A."
- Fourth, divide A by B. If the resulting sum is at least 2/3 or 0.666..., you are eligible for the credit.

One shortcut: if your non-farm federal gross income (total federal gross income minus federal gross income from farming) consists of $30,000 or less of wages, salaries, pensions, social security payments, interest, and dividends, then you are eligible for the credit.

Example A: Robin owns a farm. She earns $40,000 from the operation of the farm, $35,000 in salary from a non-farm job, and $10,000 in interest and dividends. Her income is $85,000.

Let's apply the formula:

1. Robin's federal gross income is $85,000 ($40,000 farm income plus $35,000 non-farm salary plus $10,000 interest and dividends).
2. Robin reduces her $85,000 of federal gross income by $30,000 (taken from the $45,000 of non-farm income), yielding "B" of $55,000.
3. Her gross income from farming is $40,000, so "A" is $40,000.
4. A/B is $40,000/$55,000, or 0.7272... Since this is greater than 2/3, Robin is eligible for the credit.

Example B: If, instead, Robin's non-farm salary were $50,000, "B" would equal $70,000 ($40,000 + $50,000 + $10,000 - $30,000). Then A/B would be $40,000/$70,000 or about 0.5714... Since this is less than 2/3, Robin is not eligible for the credit.

What donations qualify for the tax credit?

The tax credit is available for a donation:

- of "apparently wholesome food;"[a]
- grown or produced within New York State;
- to a food pantry, food bank, or other emergency food program operating within New York State that has a federal tax exemption.

To claim the credit, you must obtain a letter or other receipt from the receiving organization showing the organization's name, the date and location of the donation, and a reasonably detailed description of the donation.

How is the tax credit calculated?

The tax credit is equal to 25 percent of the fair market value of the food donated, up to $5,000 per year.[b]

Fair market value is your normal selling price—what your farm charges for food of the same type and quality. You don't have to factor in whether you had a buyer or whether the food meets normal standards for size, shape, etc., as long as the food is "apparently wholesome." The fair market value will vary depending on whether you intended to sell on the wholesale or retail market.

What if the credit is more than I owe in New York State taxes?

If your tax credit is more than the New York State tax that you owe for the year, you can receive a tax refund equal to the excess. For example, if your tax credit for the year is $3,000 but your New York State tax for the year is $2,000, then you can use the credit to reduce your tax bill to zero and you can apply for a tax refund of $1,000. Likewise, if your tax credit for the year is $3,000 but your New York State tax for the year is $0, you can apply for a tax refund of $3,000.

a For this purpose "apparently wholesome" donations are "food that meets all quality and labeling standards imposed by Federal, State and local laws and regulations even though the food may not be readily marketable due to appearance, age, freshness, grade size, surplus or other conditions." See the Emerson Act, 42 U.S.C. Section 1791(b)(2), applicable by cross reference from Internal Revenue Code 170(e)(3)(C)(vi).

b If the donation is made by a partnership, limited liability company, or New York subchapter S corporation, then the $5,000 cap is applied at the entity level, so that aggregate credit to all partners, members, or shareholders does not exceed $5,000 for the year.

Can I also claim a federal tax deduction?

Your food donation may also qualify for a federal tax deduction. However, the rules for the federal deduction are different than those for the New York State credit, so you should consult your tax adviser about it. The most significant difference is that a deduction reduces a taxpayer's taxable income, while a credit reduces the amount of taxes owed. As a result, the federal deduction requires you to have a certain amount of taxable income to benefit, unlike the refundable NYS tax credit which does not require any taxable income. [A Farmer's Guide to the Enhanced Federal Tax Deduction for Food Donation]() is a brief description of the federal deduction.

This document is only a brief summary of the tax credit and does not seek to provide legal or tax advice. You should speak to your accountant or lawyer to learn more about the New York State tax credit.

ENDNOTES

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