

# **Save Good Food Amendment Act of 2017, Bill 22-72**

**Before the**

**Committee on Finance and Revenue  
Council of the District of Columbia  
The Honorable Jack Evans, Chair**

**And the**

**Committee on Health  
Council of the District of Columbia  
The Honorable Vincent C. Gray, Chair**

**March 28, 2016, 11:00 A.M.  
John A. Wilson Building, Room 500**



**Testimony of Elissa F. Borges  
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**Jeffrey S. DeWitt  
Chief Financial Officer  
Government of the District of Columbia**

Good morning, Chairman Evans, Chairman Gray and members of the Committee on Finance and Revenue and Committee on Health. I am Elissa Borges, Assistant General Counsel for the Office of Tax and Revenue of the District of Columbia. I am pleased to present testimony today on Bill 22-72, the “Save Good Food Amendment Act of 2017.”

This bill creates a new nonrefundable tax credit for individual taxpayers, corporations and unincorporated businesses, provides enhanced liability protections for the donation of food, and requires the Department of Health and the Office of Waste Diversion to, among other things, create guidance for safe food donations. My testimony is limited to Section 2 of the bill regarding the tax credits.

Section 2 creates a new tax credit for individual taxpayers, for corporations, and for unincorporated businesses that donate food to tax-exempt 501(c)(3) organizations. The credit is equal to 50% of the value of the food donated with an annual cap of \$2,500 per year for individuals and \$5,000 for businesses. The credit is applied against an individual’s District income tax liability and a business’s District franchise tax liability. If a taxpayer claims the food donation credit, the taxpayer cannot also claim a deduction for that food donation.

If an individual taxpayer’s income tax liability is less than \$2,500 for a tax year, the taxpayer can carry forward the remaining deduction for up to five years.

There is no similar carry forward provision for businesses. Business must be qualified under D.C. Code § 6-1504 in order to claim the credit.

In order for a taxpayer to claim the credit, the food must be vegetables, fruits or other food products donated by a licensed District of Columbia retailer or grown in the District by urban farming or by a community garden, as they are defined by District law. In the alternative, the food may be prepared food that is made in a certified kitchen and stored in conditions that meet District and federal health regulations. Further, the donated food must be fit for human consumption under District or federal laws or regulations.

The Office of the Chief Financial Officer proposes certain technical changes to the amendments that would facilitate administration of the tax credit.

First, under both federal and District law, taxpayers may take a tax deduction for a charitable donation including the donation of food. The IRS has published guidance for such charitable donations regarding the standard for the quality of the food that is eligible for a deduction and non-profit organizations. Tax-exempt organizations that frequently receive food donations provide receipts or other documentation confirming that the donation has been made and that the donated food complies with the standards set forth IRS's guidance. Although the standard for the quality of the food donation in the bill is similar to the IRS's published guidance, it is not identical. Therefore, we suggest that the bill be

amended so that the standard for the quality of the food donation is essentially identical to the standard set forth in the IRS's published guidance. This will reduce any confusion by the taxpayers and the non-profit organizations and will simplify their recordkeeping requirements.

Second, it is not clear whether taxpayers that are married filing jointly or registered domestic partners filing jointly may each claim the credit for a total of \$5,000 per year or are those taxpayers limited to \$2,500 per couple. Whichever may be the case, we suggest that the bill be clarified so that there is no misunderstanding on this issue.

Third, the definition of "food donation" with regard to the sources of the food being donated need to be clarified. In particular, a statutory reference is needed as to what qualifies as a "certified kitchen" for the donation of prepared food.

Fourth, clarification is needed on whether the tax-exempt organization must be located in the District. As the bill is currently drafted, a recipient of the food donation can be a tax-exempt organization anywhere in the United States. For example, a statutory resident who resides outside the District could claim a credit against his or her District income taxes for a food donation made in his or her home state. Likewise, a national grocery chain could claim a credit against its District franchise taxes for a food donation made to a tax-exempt organization in

the state where it is headquartered or anywhere it does business. If it is the Council's intention that the food donation be made to a 501(c)(3) organization recognized as tax-exempt by the District, we suggest making technical changes to clarify this intention.

Finally, there are a few minor drafting suggestions that clarify the bill.

A mark- up of the bill with proposed changes to the bill implementing these suggestions is attached to my testimony.

Thank you, Chairman Evans and Chairman Gray, for the opportunity to comment on this bill. I would be happy to answer any questions at this time.