

**NOTE: The governor signed this measure on 5/30/2014.**

# An Act

HOUSE BILL 14-1119

BY REPRESENTATIVE(S) McLachlan, Dore, Becker, Duran, Exum, Garcia, Ginal, Hamner, Hullinghorst, Kagan, Kraft-Tharp, Lebsock, Lee, May, Mitsch Bush, Moreno, Pabon, Pettersen, Primavera, Rankin, Rosenthal, Salazar, Schafer, Tyler, Vigil, Williams, Young, Ferrandino, Buckner, Fischer, Melton;  
also SENATOR(S) Hodge and Roberts, Aguilar, Crowder, Guzman, Heath, Herpin, Johnston, Jones, Kefalas, Kerr, King, Newell, Nicholson, Rivera, Schwartz, Steadman, Todd, Ulibarri, Zenzinger.

CONCERNING AN INCOME TAX CREDIT FOR THE DONATION OF FOOD TO A HUNGER-RELIEF CHARITABLE ORGANIZATION.

*Be it enacted by the General Assembly of the State of Colorado:*

**SECTION 1. Legislative declaration.** (1) The general assembly hereby finds and declares that:

(a) Colorado's major food banks are some of the most efficient and effective organizations in the state and distribute food to nearly two thousand nonprofit agencies statewide. In turn, those major food banks provide meals and services to people in need by way of diverse agencies such as food pantries, day care centers, battered women's shelters, soup kitchens, residential treatment centers, and senior and youth programs.

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*Capital letters indicate new material added to existing statutes; dashes through words indicate deletions from existing statutes and such material not part of act.*

Major food banks serve all ages and segments of our community.

(b) Colorado's food banks are experiencing historic demand. Much of this demand has come from families and individuals who have been forced to use this safety net for the first time, including victims of Colorado's recent wild fire and flood disasters.

(c) Food banks from across Colorado have had extreme challenges keeping their shelves stocked and have often been unable to provide the basic necessities to those in need, particularly with respect to fresh produce;

(d) According to a 2013 census bureau survey, almost fourteen percent of the state's population, or almost seven hundred thousand Coloradans, lived in poverty during 2012. This includes eighteen percent of all children under the age of eighteen. More than eight hundred forty thousand Coloradans, or slightly more than sixteen percent of the state's population, faced a time when there was not enough money to buy food for themselves or their family in 2012.

(e) It is in the interest of the state to develop and support programs that promote increased access to healthy food and increased consumption of Colorado-grown products. Such increased access will improve child and adult nutrition, promote a strong and healthy workforce, and help address the obesity problems facing virtually every demographic in the state.

(f) Colorado is home to some of the most productive farmlands and hardest working farmers in the world. These farms and farming families are critical to providing a healthy food supply and ensuring a natural resource for Colorado's future generations.

(g) Colorado's fruit and vegetable growers and Colorado ranchers want to do their part in helping Coloradans in need by helping them gain more access to fresh, healthy food;

(h) Many of the state's farmers and ranchers would benefit from a modest tax credit that would make it easier for them to donate more of their fresh produce and incentivize more local growers to make the financial and labor investment to donate their crops or livestock to emergency food providers; and

(i) It is rare for Colorado's food banks to offer varying products to the families they serve. In many neighboring states, similar tax credits have helped food banks procure more diverse product donations.

**SECTION 2.** In Colorado Revised Statutes, **add** 39-22-536 as follows:

**39-22-536. Credit for food contributed to hunger-relief charitable organizations - definitions - repeal.** (1) AS USED IN THIS SECTION:

(a) "FOOD BANK" MEANS A CHARITABLE ORGANIZATION EXEMPT FROM FEDERAL INCOME TAXATION UNDER THE PROVISIONS OF THE INTERNAL REVENUE CODE THAT ANNUALLY DISTRIBUTES OVER TEN MILLION POUNDS OF FOOD AND NONFOOD ESSENTIALS TO HUNGER-RELIEF PROGRAMS.

(b) "FOOD CONTRIBUTION" MEANS A CONTRIBUTION BY A TAXPAYER OF FOOD USABLE FOR HUMAN BEINGS, SUCH AS LIVESTOCK, BIG GAME AS DEFINED IN SECTION 33-1-102 (2), C.R.S., THAT IS PROCESSED AT A PROCESSING FACILITY CERTIFIED BY THE UNITED STATES DEPARTMENT OF AGRICULTURE, EGGS, MILK, OR AN AGRICULTURAL CROP, INCLUDING BUT NOT LIMITED TO GRAINS, FRUITS, AND VEGETABLES.

(c) "HUNGER-RELIEF CHARITABLE ORGANIZATION" MEANS A CHARITABLE ORGANIZATION EXEMPT FROM FEDERAL INCOME TAXATION UNDER THE PROVISIONS OF THE INTERNAL REVENUE CODE THAT USES FOOD CONTRIBUTIONS FOR HUNGER-RELIEF IN ITS COMMUNITY.

(d) "MOST RECENT SALE PRICE" MEANS AN AMOUNT EQUAL TO THE PRICE THAT A TAXPAYER WOULD HAVE RECEIVED FOR THE FOOD CONTRIBUTION, DETERMINED AS IF THE FOOD CONTRIBUTION HAD BEEN SOLD ON THE DATE OF THE MOST RECENT SALE OF SUCH FOOD AND AT THE SAME PRICE PER UNIT AS SUCH FOOD THAT WAS SOLD ON THAT DATE.

(e) "TAXPAYER" MEANS A RESIDENT INDIVIDUAL OR A DOMESTIC OR FOREIGN CORPORATION SUBJECT TO THE PROVISIONS OF PART 3 OF THIS ARTICLE WHO FILES A SCHEDULE F WITH THEIR FEDERAL INCOME TAX RETURN.

(f) "WHOLESALE MARKET PRICE" MEANS THE AVERAGE WHOLESALE

MARKET PRICE FOR THE FOOD CONTRIBUTION IN THE NEAREST REGIONAL MARKET DURING THE MONTH IN WHICH THE CONTRIBUTION IS MADE, DETERMINED AS IF THE FOOD CONTRIBUTION WERE MARKETABLE.

(2) (a) EXCEPT AS PROVIDED IN SUBSECTION (4) OF THIS SECTION, FOR INCOME TAX YEARS COMMENCING ON OR AFTER JANUARY 1, 2015, BUT BEFORE JANUARY 1, 2020, A TAXPAYER WHO MAKES A FOOD CONTRIBUTION DURING THE TAX YEAR TO A HUNGER-RELIEF CHARITABLE ORGANIZATION AND RECEIVES A CREDIT CERTIFICATE AS DESCRIBED IN PARAGRAPH (b) OF THIS SUBSECTION (2) IS ALLOWED A CREDIT AGAINST THE INCOME TAXES IMPOSED BY THIS ARTICLE IN AN AMOUNT EQUAL TO EITHER TWENTY-FIVE PERCENT, NOT TO EXCEED FIVE THOUSAND DOLLARS, OF THE WHOLESALE MARKET PRICE OR TWENTY-FIVE PERCENT, NOT TO EXCEED FIVE THOUSAND DOLLARS, OF THE MOST RECENT SALE PRICE OF THE FOOD CONTRIBUTION.

(b) (I) A FOOD BANK SHALL ISSUE A CREDIT CERTIFICATE TO THE TAXPAYER THAT:

(A) INDICATES THE FOOD CONTRIBUTION WAS ACCEPTED BY A HUNGER-RELIEF CHARITABLE ORGANIZATION, AND SETS FORTH THE NAME OF THE HUNGER-RELIEF CHARITABLE ORGANIZATION;

(B) CERTIFIES THAT THE USE OF THE FOOD CONTRIBUTION IS RELATED TO THE PURPOSE OR FUNCTION CONSTITUTING THE BASIS FOR THE HUNGER-RELIEF CHARITABLE ORGANIZATION'S TAX EXEMPT STATUS AND THAT THE FOOD CONTRIBUTION WILL NOT BE TRANSFERRED BY THE HUNGER-RELIEF CHARITABLE ORGANIZATION IN EXCHANGE FOR MONEY, OTHER PROPERTY, OR SERVICES;

(C) SETS FORTH THE QUANTITY OF THE FOOD CONTRIBUTION; AND

(D) DETERMINES EITHER THE WHOLESALE MARKET PRICE OR RECENT SALE PRICE OF THE FOOD CONTRIBUTION.

(II) THE TAXPAYER SHALL INCLUDE THE CREDIT CERTIFICATE WITH THE INCOME TAX RETURN FILED WITH THE DEPARTMENT OF REVENUE.

(c) A HUNGER-RELIEF CHARITABLE ORGANIZATION HAS A RIGHT TO REFUSE A FOOD CONTRIBUTION FROM A TAXPAYER IF THE HUNGER-RELIEF CHARITABLE ORGANIZATION BELIEVES THAT THE FOOD CONTRIBUTION IS

NOT USABLE FOR HUMAN BEINGS OR IF THE HUNGER-RELIEF CHARITABLE ORGANIZATION DOES NOT BELIEVE IT WILL BE ABLE TO USE THE FOOD CONTRIBUTION PRIOR TO THE FOOD SPOILING. IF A FOOD CONTRIBUTION IS REFUSED, A CREDIT CERTIFICATE DESCRIBED IN PARAGRAPH (b) OF THIS SUBSECTION (2) MAY NOT BE ISSUED BY A FOOD BANK.

(3) IF THE CREDIT EXCEEDS THE AMOUNT OF INCOME TAX DUE ON THE INCOME OF THE TAXPAYER FOR THE TAX YEAR DURING WHICH THE CONTRIBUTION WAS MADE, THE AMOUNT OF THE TAX CREDIT NOT USED AS AN OFFSET AGAINST INCOME TAXES IN SUCH INCOME TAX YEAR MAY NOT BE ALLOWED AS A REFUND, BUT MAY BE CARRIED FORWARD AND APPLIED AGAINST THE INCOME TAX DUE IN EACH OF THE FIVE SUCCEEDING INCOME TAX YEARS, BUT MUST FIRST BE APPLIED AGAINST THE INCOME TAX DUE FOR THE EARLIEST OF THE INCOME TAX YEARS POSSIBLE.

(4) (a) A TAXPAYER MAY NOT CLAIM THE CREDIT ALLOWED IN THIS SECTION IF THE TAXPAYER CLAIMS A DEDUCTION FOR CHARITABLE CONTRIBUTIONS AS ALLOWED IN SECTION 39-22-104 (4) (m) FOR THE FOOD CONTRIBUTION TO THE HUNGER-RELIEF CHARITABLE ORGANIZATION.

(b) A TAXPAYER MAY NOT CLAIM THE CREDIT ALLOWED IN THIS SECTION IF THE TAXPAYER CLAIMS THE CORPORATE INCOME TAX CREDIT FOR CROP OR LIVESTOCK CONTRIBUTIONS ALLOWED IN SECTION 39-22-301 (3) FOR THE FOOD CONTRIBUTION TO THE HUNGER-RELIEF CHARITABLE ORGANIZATION.

(5) THIS SECTION IS REPEALED, EFFECTIVE JANUARY 1, 2025.

**SECTION 3.** In Colorado Revised Statutes, 39-22-104, **amend** (4) (m) (I); and **add** (3) (j) and (4) (m) (VII) as follows:

**39-22-104. Income tax imposed on individuals, estates, and trusts - single rate - definitions - repeal.** (3) There shall be added to the federal taxable income:

(j) FOR INCOME TAX YEARS COMMENCING ON OR AFTER JANUARY 1, 2015, BUT BEFORE JANUARY 1, 2020, AN AMOUNT EQUAL TO THE CHARITABLE CONTRIBUTION DEDUCTION ALLOWED BY SECTION 170 OF THE INTERNAL REVENUE CODE TO THE EXTENT SUCH DEDUCTION INCLUDES A FOOD CONTRIBUTION DURING THE TAX YEAR TO A HUNGER-RELIEF

CHARITABLE ORGANIZATION FOR WHICH AN INCOME TAX CREDIT IS CLAIMED PURSUANT TO SECTION 39-22-536.

(4) There shall be subtracted from federal taxable income:

(m) (I) EXCEPT AS PROVIDED IN SUBPARAGRAPH (VII) OF THIS PARAGRAPH (m), for any income tax year commencing on or after January 1, 2001, for any individual who claims the basic standard deduction allowed under section 63 (c) (2) of the internal revenue code on the individual's federal return and, therefore, cannot claim an itemized deduction for charitable contributions pursuant to section 170 of the internal revenue code, an amount equal to the amount of any deduction based upon the aggregate amount of charitable contributions in excess of five hundred dollars that the individual could have claimed pursuant to section 170 of the internal revenue code if the individual had not claimed the basic standard deduction.

(VII) FOR ANY INCOME TAX YEAR COMMENCING ON OR AFTER JANUARY 1, 2015, BUT BEFORE JANUARY 1, 2020, ANY INDIVIDUAL WHO CLAIMS AN INCOME TAX CREDIT ALLOWED IN SECTION 39-22-536 MAY NOT CLAIM THE DEDUCTION SET FORTH IN THIS PARAGRAPH (m) FOR THE FOOD CONTRIBUTION TO THE HUNGER-RELIEF CHARITABLE ORGANIZATION.

**SECTION 4. Safety clause.** The general assembly hereby finds,

determines, and declares that this act is necessary for the immediate preservation of the public peace, health, and safety.

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Mark Ferrandino  
SPEAKER OF THE HOUSE  
OF REPRESENTATIVES

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Morgan Carroll  
PRESIDENT OF  
THE SENATE

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Marilyn Eddins  
CHIEF CLERK OF THE HOUSE  
OF REPRESENTATIVES

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Cindi L. Markwell  
SECRETARY OF  
THE SENATE

APPROVED \_\_\_\_\_

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John W. Hickenlooper  
GOVERNOR OF THE STATE OF COLORADO