

112TH CONGRESS  
1ST SESSION

# H. R. 3729

To amend the Internal Revenue Code of 1986 to permanently extend and expand the charitable deduction for contributions of food inventory.

---

IN THE HOUSE OF REPRESENTATIVES

DECEMBER 19, 2011

Mr. DAVIS of Kentucky (for himself and Mr. LEVIN) introduced the following bill; which was referred to the Committee on Ways and Means

---

## A BILL

To amend the Internal Revenue Code of 1986 to permanently extend and expand the charitable deduction for contributions of food inventory.

1 *Be it enacted by the Senate and House of Representa-*  
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. EXTENSION AND EXPANSION OF CHARITABLE**  
4 **DEDUCTION FOR CONTRIBUTIONS OF FOOD**  
5 **INVENTORY.**

6 (a) PERMANENT EXTENSION.—Subparagraph (C) of  
7 section 170(e)(3) of the Internal Revenue Code of 1986  
8 is amended by striking clause (iv).

9 (b) DETERMINATION OF BASIS FOR TAXPAYERS  
10 OTHER THAN C CORPORATIONS.—Subparagraph (C) of

1 section 170(e)(3) of such Code, as amended by subsection  
 2 (a), is amended by adding at the end the following new  
 3 clause:

4 “(iv) DETERMINATION OF BASIS FOR  
 5 TAXPAYERS OTHER THAN C CORPORA-  
 6 TIONS.—If a taxpayer—

7 “(I) does not account for inven-  
 8 tories under section 471, and

9 “(II) is not required to capitalize  
 10 indirect costs under section 263A,  
 11 the taxpayer may elect, solely for purposes  
 12 of subparagraph (B), to treat the basis of  
 13 any apparently wholesome food as being  
 14 equal to 25 percent of the fair market  
 15 value of such food.”.

16 (c) DETERMINATION OF FAIR MARKET VALUE.—  
 17 Subparagraph (C) of section 170(e)(3) of such Code, as  
 18 amended by subsections (a) and (b), is amended by adding  
 19 at the end the following new clause:

20 “(v) DETERMINATION OF FAIR MAR-  
 21 KET VALUE.—In the case of any such con-  
 22 tribution of apparently wholesome food  
 23 which, solely by reason of internal stand-  
 24 ards of the taxpayer, lack of market, or  
 25 similar circumstances, or which is pro-

1           duced by the taxpayer exclusively for the  
2           purposes of transferring the food to an or-  
3           ganization described in subparagraph (A),  
4           cannot or will not be sold, the fair market  
5           value of such contribution shall be deter-  
6           mined—

7                       “(I) without regard to such inter-  
8                       nal standards, such lack of market,  
9                       such circumstances, or such exclusive  
10                      purpose, and

11                     “(II) by taking into account the  
12                     price at which the same or substan-  
13                     tially the same food items (as to both  
14                     type and quality) are sold by the tax-  
15                     payer at the time of the contribution  
16                     (or, if not so sold at such time, in the  
17                     recent past).”.

18       (d) LIMITATION.—

19               (1) INCREASE IN PERCENTAGE.—Clause (ii) of  
20               section 170(e)(3)(C) of such Code is amended by  
21               striking “10 percent” and inserting “15 percent”.

22               (2) APPLICABILITY TO C CORPORATIONS.—

23                   (A) IN GENERAL.—Clause (ii) of section  
24                   170(e)(3)(C) of such Code is amended by strik-

1 ing “In the case of a taxpayer other than a C  
2 corporation, the” and inserting “The”.

3 (B) COORDINATION WITH LIMITATION.—

4 Paragraph (3) of section 170(b) of such Code  
5 is amended to read as follows:

6 “(3) CHARITABLE CONTRIBUTIONS OF FOOD.—

7 For purposes of paragraph (2)(A)—

8 “(A) IN GENERAL.—Any charitable con-  
9 tribution of food to which subsection (e)(3)(C)  
10 applies shall be allowed to the extent the aggre-  
11 gate of such contributions does not exceed the  
12 limitation under subsection (e)(3)(C)(ii).

13 “(B) CARRYOVER.—If the aggregate  
14 amount of contributions described in subpara-  
15 graph (A) exceeds such limitation, such excess  
16 shall be treated (in a manner consistent with  
17 the rules of subsection (d)) as a charitable con-  
18 tribution to which subparagraph (A) applies in  
19 each of the 5 succeeding years in order of  
20 time.”.

21 (e) EFFECTIVE DATES.—The amendments made by  
22 this section shall apply to contributions made after the  
23 date of the enactment of this Act, in taxable years ending  
24 after such date.

○