

FIGHTING HUNGER INCENTIVE ACT OF 2014

JUNE 26, 2014.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. CAMP, from the Committee on Ways and Means,  
 submitted the following

R E P O R T

together with

DISSENTING VIEWS

[To accompany H.R. 4719]

[Including cost estimate of the Congressional Budget Office]

The Committee on Ways and Means, to whom was referred the bill (H.R. 4719) to amend the Internal Revenue Code of 1986 to permanently extend and expand the charitable deduction for contributions of food inventory, having considered the same, report favorably thereon with an amendment and recommend that the bill as amended do pass.

CONTENTS

	Page
I. SUMMARY AND BACKGROUND .....	3
A. Purpose and Summary .....	3
B. Background and Need for Legislation .....	3
C. Legislative History .....	4
II. EXPLANATION OF THE BILL .....	4
A. Extension and Expansion of Charitable Deduction for Contributions of Food Inventory (sec. 170 of the Code) .....	4
III. VOTES OF THE COMMITTEE .....	7
IV. BUDGET EFFECTS OF THE BILL .....	7
A. Committee Estimate of Budgetary Effects .....	7
B. Statement Regarding New Budget Authority and Tax Expenditures Budget Authority .....	8
C. Cost Estimate Prepared by the Congressional Budget Office .....	8
D. Macroeconomic Impact Analysis .....	9
V. OTHER MATTERS TO BE DISCUSSED UNDER THE RULES OF THE HOUSE .....	9
A. Committee Oversight Findings and Recommendations .....	9

B. Statement of General Performance Goals and Objectives .....	9
C. Information Relating to Unfunded Mandates .....	10
D. Applicability of House Rule XXI 5(b) .....	10
E. Tax Complexity Analysis .....	10
F. Congressional Earmarks, Limited Tax Benefits, and Limited Tariff Benefits .....	10
G. Duplication of Federal Programs .....	10
H. Disclosure of Directed Rule Makings .....	11
VI. CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED	11
VII. DISSENTING VIEWS .....	14

The amendment is as follows:

Strike all after the enacting clause and insert the following:

**SECTION 1. SHORT TITLE.**

This Act may be cited as the “Fighting Hunger Incentive Act of 2014”.

**SEC. 2. EXTENSION AND EXPANSION OF CHARITABLE DEDUCTION FOR CONTRIBUTIONS OF FOOD INVENTORY.**

(a) **PERMANENT EXTENSION.**—Section 170(e)(3)(C) of the Internal Revenue Code of 1986 is amended by striking clause (iv).

(b) **INCREASE IN LIMITATION.**—Section 170(e)(3)(C) of such Code, as amended by subsection (a), is amended by striking clause (ii), by redesignating clause (iii) as clause (iv), and by inserting after clause (i) the following new clauses:

“(ii) **LIMITATION.**—The aggregate amount of such contributions for any taxable year which may be taken into account under this section shall not exceed—

“(I) in the case of any taxpayer other than a C corporation, 15 percent of the taxpayer’s aggregate net income for such taxable year from all trades or businesses from which such contributions were made for such year, computed without regard to this section, and

“(II) in the case of a C corporation, 15 percent of taxable income (as defined in subsection (b)(2)(C)).

“(iii) **RULES RELATED TO LIMITATION.**—

“(I) **CARRYOVER.**—If such aggregate amount exceeds the limitation imposed under clause (ii), such excess shall be treated (in a manner consistent with the rules of subsection (d)) as a charitable contribution described in clause (i) in each of the 5 succeeding years in order of time.

“(II) **COORDINATION WITH OVERALL CORPORATE LIMITATION.**—In the case of any charitable contribution allowable under clause (ii)(II), subsection (b)(2)(A) shall not apply to such contribution, but the limitation imposed by such subsection shall be reduced (but not below zero) by the aggregate amount of such contributions. For purposes of subsection (b)(2)(B), such contributions shall be treated as allowable under subsection (b)(2)(A).”.

(c) **DETERMINATION OF BASIS FOR CERTAIN TAXPAYERS.**—Section 170(e)(3)(C) of such Code, as amended by subsections (a) and (b), is amended by adding at the end the following new clause:

“(v) **DETERMINATION OF BASIS FOR CERTAIN TAXPAYERS.**—If a taxpayer—

“(I) does not account for inventories under section 471, and

“(II) is not required to capitalize indirect costs under section 263A,

the taxpayer may elect, solely for purposes of subparagraph (B), to treat the basis of any apparently wholesome food as being equal to 25 percent of the fair market value of such food.”.

(d) **DETERMINATION OF FAIR MARKET VALUE.**—Section 170(e)(3)(C) of such Code, as amended by subsections (a), (b), and (c), is amended by adding at the end the following new clause:

“(vi) **DETERMINATION OF FAIR MARKET VALUE.**—In the case of any such 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 subparagraph (A), the fair market value of such contribution shall be determined—

“(I) without regard to such internal standards, such lack of market, such circumstances, or such exclusive purpose, and

“(II) 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 contribution (or, if not so sold at such time, in the recent past).”.

(e) EFFECTIVE DATE.—

(1) IN GENERAL.—Except as otherwise provided in this subsection, the amendments made by this section shall apply to contributions made after December 31, 2013, in taxable years ending after such date.

(2) LIMITATION; APPLICABILITY TO C CORPORATIONS.—The amendments made by subsection (b) shall apply to contributions made in taxable years beginning after December 31, 2013.

## I. SUMMARY AND BACKGROUND

### A. PURPOSE AND SUMMARY

H.R. 4719, reported by the Committee on Ways and Means, provides that contributions of food inventory by pass-through businesses may qualify for an enhanced deduction, which is currently available to C corporations. A similar temporary provision expired for taxable years beginning after December 31, 2013. H.R. 4719 increases the limitation on deductible contributions of food inventory to 15 percent of the taxpayer’s adjusted gross income (15 percent of taxable income in the case of a C corporation) per year.

In addition, H.R. 4719 provides a special basis rule for pass-through businesses that do not maintain inventories, under which such businesses could treat their basis in the contributed food as equal to 25 percent of the fair market value of such food. H.R. 4719 establishes a rule to determine the fair market value of contributed food inventory that cannot or will not be sold by the business because of internal standards, lack of market or similar circumstances or because it was produced exclusively for the purpose of transferring it to a charitable organization.

### B. BACKGROUND AND NEED FOR LEGISLATION

While the Committee continues actively to pursue comprehensive tax reform as a critical means of promoting economic growth and job creation, the Committee also believes that it is important to provide individuals and small businesses permanent, immediate tax relief to encourage faster economic growth and job creation, while fostering charitable giving. By restoring and making permanent the enhanced deduction for donations of food inventory by pass-through businesses, like S corporations, H.R. 4719 makes the enhanced deduction available to all types of businesses, not just C corporations. Accordingly, H.R. 4719 provides an important incentive for food-service companies like restaurants to donate, rather than discard, surplus wholesome food inventory to charitable organizations that help children and families in need. Recognizing that donated food inventory must be properly saved, packaged, labeled and kept refrigerated or frozen until it is delivered to the charitable organization, H.R. 4719 encourages food-service companies to incur and offset these costs through the enhanced deduction. According to testimony received by the Committee, the enhanced deduction for food inventory has been a vital incentive to support community food pantries and other tax-exempt organizations that work to fight hunger in local communities across the nation.

## C. LEGISLATIVE HISTORY

### *Background*

H.R. 4719 was introduced on May 22, 2014, and was referred to the Committee on Ways and Means.

### *Committee action*

The Committee on Ways and Means marked up H.R. 4719, the Fighting Hunger Incentive Act of 2014, on May 29, 2014, and ordered the bill, as amended, favorably reported (with a quorum being present).

### *Committee hearings*

The need for permanent rules regarding the charitable deduction for contributions of food inventory was discussed at no fewer than two hearings during the 112th and 113th Congresses:

- Select Revenue Measures Subcommittee Hearing on Certain Expiring Tax Provisions (April 26, 2012); and
- Full Committee Hearing on Tax Reform and Charitable Contributions (February 14, 2013).

## II. EXPLANATION OF THE BILL

### A. EXTENSION AND EXPANSION OF CHARITABLE DEDUCTION FOR CONTRIBUTIONS OF FOOD INVENTORY (SEC. 170 OF THE CODE)

#### PRESENT LAW

#### *Charitable contributions in general*

In general, an income tax deduction is permitted for charitable contributions, subject to certain limitations that depend on the type of taxpayer, the property contributed, and the donee organization.<sup>1</sup> In the case of an individual, the deduction is limited to various percentages of the contribution base, depending on the donee and the property contributed. In the case of a corporation,<sup>2</sup> the deduction generally is limited to ten percent of the taxable income (with modifications).<sup>3</sup> Contributions in excess of these limitations may be carried forward for up to five taxable years.

Charitable contributions of cash are deductible in the amount contributed. Subject to several exceptions, contributions of property are deductible at the fair market value of the property. One exception provides that the amount of the charitable contribution is reduced by the amount of any gain which would not have been long-term capital gain if the property contributed had been sold by the taxpayer at its fair market value at the time of the contribution.<sup>4</sup>

#### *General rules regarding contributions of inventory*

As a result of the exception described above, a taxpayer's deduction for charitable contributions of inventory generally is limited to the taxpayer's basis (typically, cost) in the inventory, or, if less, the fair market value of the inventory.

<sup>1</sup>Sec. 170.

<sup>2</sup>Sec. 170(b)(1). The contribution base is the adjusted gross income determined without regard net operating loss carrybacks.

<sup>3</sup>Sec. 170(b)(2).

<sup>4</sup>Sec. 170(e)(1)(A).

However, for certain contributions of inventory, a C corporation may claim an enhanced deduction equal to the lesser of (1) basis plus one-half of the item's appreciation (*i.e.*, basis plus one-half of fair market value in excess of basis) or (2) two times basis.<sup>5</sup> To be eligible for the enhanced deduction, the contributed property generally must be inventory of the taxpayer and must be contributed to a charitable organization described in section 501(c)(3) (except for private nonoperating foundations), and the donee must (1) use the property consistent with the donee's exempt purpose solely for the care of the ill, the needy, or infants; (2) not transfer the property in exchange for money, other property, or services; and (3) provide the taxpayer a written statement that the donee's use of the property will be consistent with such requirements. In the case of contributed property subject to the Federal Food, Drug, and Cosmetic Act, as amended, the property must satisfy the applicable requirements of such Act on the date of transfer and for 180 days prior to the transfer.<sup>6</sup>

To claim the enhanced deduction, the taxpayer must establish that the fair market value of the donated item exceeds basis. The valuation of food inventory has been the subject of disputes between taxpayers and the IRS.<sup>7</sup>

*Temporary rule expanding and modifying the enhanced deduction for contributions of food inventory*

Under a temporary provision, any taxpayer engaged in a trade or business, whether or not a C corporation, is eligible to claim the enhanced deduction for donations of food inventory.<sup>8</sup> For taxpayers other than C corporations, the total deduction for donations of food inventory in a taxable year generally may not exceed ten percent of the taxpayer's net income for such taxable year from all sole proprietorships, S corporations, or partnerships (or other non C corporations) from which contributions of apparently wholesome food are made. For example, if a taxpayer is a sole proprietor, a shareholder in an S corporation, and a partner in a partnership, and each business makes charitable contributions of food inventory, the taxpayer's deduction for donations of food inventory is limited to ten percent of the taxpayer's net income from the sole proprietorship and the taxpayer's interests in the S corporation and partnership. However, if only the sole proprietorship and the S corporation made charitable contributions of food inventory, the taxpayer's deduction would be limited to ten percent of the net income from the trade or business of the sole proprietorship and the taxpayer's interest in the S corporation, but not the taxpayer's interest in the partnership.<sup>9</sup>

<sup>5</sup>Sec. 170(e)(3).

<sup>6</sup>Sec. 170(e)(3)(A)(iv).

<sup>7</sup>*Lucky Stores Inc. v. Commissioner*, 105 T.C. 420 (1995) (holding that the value of surplus bread inventory donated to charity was the full retail price of the bread rather than half the retail price, as the IRS asserted).

<sup>8</sup>Sec. 170(e)(3)(C).

<sup>9</sup>The ten-percent limitation does not affect the application of the generally applicable percentage limitations. For example, if ten percent of a sole proprietor's net income from the proprietor's trade or business is greater than 50 percent of the proprietor's contribution base which otherwise limits the deduction, the available deduction for the taxable year (with respect to contributions to public charities) is 50 percent of the proprietor's contribution base. Consistent with present law, these contributions may be carried forward because they exceed the 50 percent limitation. Contributions of food inventory by a taxpayer that is not a C corporation that exceed

Under the temporary provision, the enhanced deduction for food is available only for food that qualifies as “apparently wholesome food.” Apparently wholesome food is defined as food intended for human consumption 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.

The provision does not apply to contributions made after December 31, 2013.

#### REASONS FOR CHANGE

The Committee believes that charitable organizations benefit from charitable contributions of food inventory by non C corporations and that the enhanced deduction is a useful incentive for the making of such contributions. Accordingly, the Committee believes it is appropriate to make permanent the special rule for charitable contributions of food inventory by all taxpayers engaged in a trade or business.

#### EXPLANATION OF PROVISION

The provision reinstates and makes permanent the enhanced deduction for contributions of food inventory.

The provision also modifies the enhanced deduction for food inventory contributions by: (1) increasing the charitable percentage limitation for food inventory contributions and clarifying the carry-over and coordination rules for these contributions; (2) including a presumption concerning the tax basis of food inventory donated by certain businesses; and (3) including presumptions that may be used when valuing donated food inventory.

First, the ten-percent limitation described above applicable to taxpayers other than C corporations is increased to 15 percent. For C corporations, these contributions are made subject to a limitation of 15 percent of taxable income (as modified). The general ten-percent limitation for a C corporation does not apply to these contributions, but the ten-percent limitation applicable to other contributions is reduced by the amount of these contributions. Qualifying food inventory contributions in excess of these 15-percent limitations may be carried forward and treated as qualifying food inventory contributions in each of the five succeeding years in order of time.

Second, if the taxpayer does not account for inventory under section 471 and is not required to capitalize indirect costs under section 263A, the taxpayer may elect, solely for computing the enhanced deduction for food inventory, to treat the basis of any apparently wholesome food as being equal to 25 percent of the fair market value of such food.

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

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the ten-percent limitation but do not exceed the 50 percent limitation may not be carried forward.

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).

#### EFFECTIVE DATE

The provision is generally effective for contributions made after December 31, 2013, in taxable years ending after that date. The increase in the percentage limit and the related carryover and coordination rules are effective for contributions made in taxable years beginning after December 31, 2013.

### III. VOTES OF THE COMMITTEE

In compliance with clause 3(b) of rule XIII of the Rules of the House of Representatives, the following statement is made concerning the vote of the Committee on Ways and Means in its consideration of H.R. 4719, the Fighting Hunger Incentive Act of 2014, on May 29, 2014.

The bill, H.R. 4719, was ordered favorably reported as amended by a roll call vote of 23 yeas to 13 nays (with a quorum being present). The vote was as follows:

Representative	Yea	Nay	Present	Representative	Yea	Nay	Present
Mr. Camp .....	X	.....	.....	Mr. Levin .....	.....	X	.....
Mr. Johnson .....	X	.....	.....	Mr. Rangel .....	.....	X	.....
Mr. Brady .....	X	.....	.....	Mr. McDermott .....	.....	X	.....
Mr. Ryan .....	X	.....	.....	Mr. Lewis .....	.....	.....	.....
Mr. Nunes .....	X	.....	.....	Mr. Neal .....	.....	X	.....
Mr. Tiberi .....	X	.....	.....	Mr. Becerra .....	.....	.....	.....
Mr. Reichert .....	X	.....	.....	Mr. Doggett .....	.....	X	.....
Mr. Boustany .....	X	.....	.....	Mr. Thompson .....	.....	X	.....
Mr. Roskam .....	X	.....	.....	Mr. Larson .....	.....	X	.....
Mr. Gerlach .....	X	.....	.....	Mr. Blumenauer .....	.....	X	.....
Mr. Price .....	X	.....	.....	Mr. Kind .....	.....	X	.....
Mr. Buchanan .....	X	.....	.....	Mr. Pascrell .....	.....	X	.....
Mr. Smith .....	X	.....	.....	Mr. Crowley .....	.....	.....	.....
Mr. Schock .....	X	.....	.....	Ms. Schwartz .....	.....	X	.....
Ms. Jenkins .....	X	.....	.....	Mr. Davis .....	.....	X	.....
Mr. Paulsen .....	X	.....	.....	Ms. Sanchez .....	.....	X	.....
Mr. Marchant .....	X	.....	.....				
Ms. Black .....	X	.....	.....				
Mr. Reed .....	X	.....	.....				
Mr. Young .....	X	.....	.....				
Mr. Kelly .....	X	.....	.....				
Mr. Griffin .....	X	.....	.....				
Mr. Renacci .....	X	.....	.....				

### IV. BUDGET EFFECTS OF THE BILL

#### A. COMMITTEE ESTIMATE OF BUDGETARY EFFECTS

In compliance with clause 3(d) of rule XIII of the Rules of the House of Representatives, the following statement is made concerning the effects on the budget of the bill, H.R. 4719, as reported.

The bill, as reported, is estimated to have the following effect on Federal budget receipts for fiscal years 2014–2024:

FISCAL YEARS  
[Millions of dollars]

2014	2015	2016	2017	2018	2019	2020	2021	2022	2023	2024	2014–19	2014–24
–16	–205	–163	–169	–175	–181	–188	–194	–201	–208	–215	–909	–1,915

**B. STATEMENT REGARDING NEW BUDGET AUTHORITY AND TAX  
EXPENDITURES BUDGET AUTHORITY**

In compliance with clause 3(c)(2) of rule XIII of the Rules of the House of Representatives, the Committee states that the bill involves no new or increased budget authority. The Committee further states that the revenue-reducing tax provisions involve increased tax expenditures. (See amounts in table in Part IV.A., above.)

**C. COST ESTIMATE PREPARED BY THE CONGRESSIONAL BUDGET  
OFFICE**

In compliance with clause 3(c)(3) of rule XIII of the Rules of the House of Representatives, requiring a cost estimate prepared by the CBO, the following statement by CBO is provided.

U.S. CONGRESS,  
CONGRESSIONAL BUDGET OFFICE,  
*Washington, DC, June 5, 2014.*

Hon. DAVE CAMP,  
*Chairman, Committee on Ways and Means,  
House of Representatives, Washington, DC.*

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 4719, the Fighting Hunger Incentive Act of 2014.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Logan Timmerhoff.

Sincerely,

DOUGLAS W. ELMENDORF.

Enclosure.

*H.R. 4719—Fighting Hunger Incentive Act of 2014*

H.R. 4719 would amend the Internal Revenue Code to permanently extend and expand certain expired provisions that provided an enhanced tax deduction for businesses that donated their food inventory to charitable organizations. The enhanced deduction for food inventory contributions expired after December 31, 2013, and applied to sole proprietors, partnerships, and other businesses not organized as C corporations (which are already permanently allowed an enhanced deduction under more general provisions of current law). H.R. 4719 would also expand the maximum deduction for all businesses by allowing deductions of food inventory donations up to 15 percent of the net income of the donating organization, an increase from the 10 percent allowed permanently under current law for C corporations and allowed previously for other businesses. In addition, the bill would allow certain businesses to make alternative assumptions about the cost basis and fair market value of donated food inventory.

The staff of the Joint Committee on Taxation (JCT) estimates that enacting H.R. 4719 would reduce revenues, thus increasing federal budget deficits, by about \$1.9 billion over the 2014–2024 period.

The Statutory Pay-As-You-Go Act of 2010 establishes budget-reporting and enforcement procedures for legislation affecting direct spending and revenues. Enacting H.R. 4719 would result in revenue losses in each year beginning in 2014. The estimated increases in the deficit are shown in the following table.

JCT has determined that the bill contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act.

The CBO staff contact for this estimate is Logan Timmerhoff. The estimate was approved by David Weiner, Assistant Director for Tax Analysis.

CBO ESTIMATE OF PAY-AS-YOU-GO EFFECTS FOR H.R. 4719, AS ORDERED REPORTED BY THE  
HOUSE COMMITTEE ON WAYS AND MEANS ON MAY 29, 2014

	By fiscal year, in millions of dollars—														2014– 2019	2014– 2024
	2014	2015	2016	2017	2018	2019	2020	2021	2022	2023	2024					
NET INCREASE IN THE DEFICIT																
Statutory Pay-As-You-Go Effects	16	205	163	169	175	181	188	194	201	208	215	909	1,915			

Source: Staff of the Joint Committee on Taxation.

#### D. MACROECONOMIC IMPACT ANALYSIS

In compliance with clause 3(h)(2) of rule XIII of the Rules of the House of Representatives, the following statement is made by the Joint Committee on Taxation with respect to the provisions of the bill amending the Internal Revenue Code of 1986: the effects of the bill on economic activity are so small as to be incalculable within the context of a model of the aggregate economy.

### V. OTHER MATTERS TO BE DISCUSSED UNDER THE RULES OF THE HOUSE

#### A. COMMITTEE OVERSIGHT FINDINGS AND RECOMMENDATIONS

With respect to clause 3(c)(1) of rule XIII of the Rules of the House of Representatives (relating to oversight findings), the Committee advises that it was as a result of the Committee’s review of the provisions of H.R. 4719 that the Committee concluded that it is appropriate to report the bill, as amended, favorably to the House of Representatives with the recommendation that the bill do pass.

#### B. STATEMENT OF GENERAL PERFORMANCE GOALS AND OBJECTIVES

With respect to clause 3(c)(4) of rule XIII of the Rules of the House of Representatives, the Committee advises that the bill contains no measure that authorizes funding, so no statement of general performance goals and objectives for which any measure authorizes funding is required.

### C. INFORMATION RELATING TO UNFUNDED MANDATES

This information is provided in accordance with section 423 of the Unfunded Mandates Reform Act of 1995 (Pub. L. No. 104-4).

The Committee has determined that the bill does not contain Federal mandates on the private sector. The Committee has determined that the bill does not impose a Federal intergovernmental mandate on State, local, or tribal governments.

### D. APPLICABILITY OF HOUSE RULE XXI 5(b)

Rule XXI 5(b) of the Rules of the House of Representatives provides, in part, that “A bill or joint resolution, amendment, or conference report carrying a Federal income tax rate increase may not be considered as passed or agreed to unless so determined by a vote of not less than three-fifths of the Members voting, a quorum being present.” The Committee has carefully reviewed the bill, and states that the bill does not involve any Federal income tax rate increases within the meaning of the rule.

### E. TAX COMPLEXITY ANALYSIS

Section 4022(b) of the Internal Revenue Service Restructuring and Reform Act of 1998 (the “IRS Reform Act”) requires the staff of the Joint Committee on Taxation (in consultation with the Internal Revenue Service and the Treasury Department) to provide a tax complexity analysis. The complexity analysis is required for all legislation reported by the Senate Committee on Finance, the House Committee on Ways and Means, or any committee of conference if the legislation includes a provision that directly or indirectly amends the Internal Revenue Code and has widespread applicability to individuals or small businesses.

Pursuant to clause 3(h)(1) of rule XIII of the Rules of the House of Representatives, the staff of the Joint Committee on Taxation has determined that a complexity analysis is not required under section 4022(b) of the IRS Reform Act because the bill contains no provisions that amend the Code and that have “widespread applicability” to individuals or small businesses, within the meaning of the rule.

### F. CONGRESSIONAL EARMARKS, LIMITED TAX BENEFITS, AND LIMITED TARIFF BENEFITS

With respect to clause 9 of rule XXI of the Rules of the House of Representatives, the Committee has carefully reviewed the provisions of the bill, and states that the provisions of the bill do not contain any congressional earmarks, limited tax benefits, or limited tariff benefits within the meaning of the rule.

### G. DUPLICATION OF FEDERAL PROGRAMS

In compliance with Sec. 3(j)(2) of H. Res. 5 (113th Congress), the Committee states that no provision of the bill establishes or reauthorizes: (1) a program of the Federal Government known to be duplicative of another Federal program, (2) a program included in any report from the Government Accountability Office to Congress pursuant to section 21 of Public Law 111-139, or (3) a program related to a program identified in the most recent Catalog of Federal Do-

mestic Assistance, published pursuant to the Federal Program Information Act (Public Law 95-220, as amended by Public Law 98-169).

H. DISCLOSURE OF DIRECTED RULE MAKINGS

In compliance with Sec. 3(k) of H. Res. 5 (113th Congress), the following statement is made concerning directed rule makings: The Committee estimates that the bill requires no directed rule makings within the meaning of such section.

**VI. CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED**

In compliance with clause 3(e) of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman):

**INTERNAL REVENUE CODE OF 1986**

\* \* \* \* \*

**Subtitle A—Income Taxes**

\* \* \* \* \*

**CHAPTER 1—NORMAL TAXES AND SURTAXES**

\* \* \* \* \*

**Subchapter B—Computation of Taxable Income**

\* \* \* \* \*

**PART VI—ITEMIZED DEDUCTIONS FOR INDIVIDUALS AND CORPORATIONS**

\* \* \* \* \*

**SEC. 170. CHARITABLE, ETC., CONTRIBUTIONS AND GIFTS.**

(a) \* \* \*

\* \* \* \* \*

**(e) CERTAIN CONTRIBUTIONS OF ORDINARY INCOME AND CAPITAL GAIN PROPERTY.—**

(1) \* \* \*

\* \* \* \* \*

**(3) SPECIAL RULE FOR CERTAIN CONTRIBUTIONS OF INVENTORY AND OTHER PROPERTY.—**

(A) \* \* \*

\* \* \* \* \*

**(C) SPECIAL RULE FOR CONTRIBUTIONS OF FOOD INVENTORY.—**

(i) \* \* \*

**[(ii) LIMITATION.—**In the case of a taxpayer other than a C corporation, the aggregate amount of such contributions for any taxable year which may be taken into account under this section shall not exceed 10 percent of the taxpayer’s aggregate net income for such taxable year from all trades or businesses from which such contributions were made for such year, computed without regard to this section.]

*(i) LIMITATION.—The aggregate amount of such contributions for any taxable year which may be taken into account under this section shall not exceed—*

*(I) in the case of any taxpayer other than a C corporation, 15 percent of the taxpayer’s aggregate net income for such taxable year from all trades or businesses from which such contributions were made for such year, computed without regard to this section, and*

*(II) in the case of a C corporation, 15 percent of taxable income (as defined in subsection (b)(2)(C)).*

**[(iii) RULES RELATED TO LIMITATION.—**

*(I) CARRYOVER.—If such aggregate amount exceeds the limitation imposed under clause (ii), such excess shall be treated (in a manner consistent with the rules of subsection (d)) as a charitable contribution described in clause (i) in each of the 5 succeeding years in order of time.*

*(II) COORDINATION WITH OVERALL CORPORATE LIMITATION.—In the case of any charitable contribution allowable under clause (ii)(II), subsection (b)(2)(A) shall not apply to such contribution, but the limitation imposed by such subsection shall be reduced (but not below zero) by the aggregate amount of such contributions. For purposes of subsection (b)(2)(B), such contributions shall be treated as allowable under subsection (b)(2)(A).*

**[(iii)] *(iv) APPARENTLY WHOLESOME FOOD.—***For purposes of this subparagraph, the term “apparently wholesome food” has the meaning given to such term by section 22(b)(2) of the Bill Emerson Good Samaritan Food Donation Act (42 U.S.C. 1791(b)(2)), as in effect on the date of the enactment of this subparagraph.

**[(iv) TERMINATION.—**This subparagraph shall not apply to contributions made after December 31, 2013.]

**[(v) DETERMINATION OF BASIS FOR CERTAIN TAXPAYERS.—***If a taxpayer—*

*(I) does not account for inventories under section 471, and*

*(II) is not required to capitalize indirect costs under section 263A,*

*the taxpayer may elect, solely for purposes of subparagraph (B), to treat the basis of any apparently wholesome food as being equal to 25 percent of the fair market value of such food.*

(vi) *DETERMINATION OF FAIR MARKET VALUE.*—*In the case of any such 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 subparagraph (A), the fair market value of such contribution shall be determined—*

*(I) without regard to such internal standards, such lack of market, such circumstances, or such exclusive purpose, and*

*(II) 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 contribution (or, if not so sold at such time, in the recent past).*

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## VII. DISSENTING VIEWS

The six bills approved by the Republicans at the markup would add \$304 billion to the deficit. Combined with the \$310 billion that the six bills approved by Republicans on the Committee in April added to the deficit, Republicans have added \$614 billion to the deficit in two short months—and there does not appear to be an end in sight. Even though some of these bills were introduced individually with some bipartisan support, the opposition to these bills was based on the position that these tax provisions should not be made permanent by adding to the deficit without any revenue offset.

To put the combined cost (\$614 billion) into context, it is 25 percent more than the entire projected federal deficit this year and \$86 billion more than total non-defense domestic discretionary spending (e.g., medical research, education, veterans' pensions and health care, transportation, etc.) will be in 2014. It is almost seven times what we spend annually on education, job training, and social services. It is ten times more than we spend on veterans. And, it is eleven times more than we spend on medical research and public health.

Public charities and private foundations serve an important role in our society. We all support the good works of the charitable community and strive to provide charities with the resources they need to carry out their charitable mission. The markup was not to debate the good works of charities across this country, or the merits of H.R. 4719 which makes permanent the enhanced charitable deduction for contributions of food inventory for non-C corporations.

We found it hypocritical that the Republicans would make permanent a provision that was repealed in Chairman Camp's Tax Reform Act of 2014 discussion draft (the "Republican tax reform plan"). Section 1403 of the Republican tax reform plan repealed the enhanced deduction for charitable contributions of food inventory.

We also found it hypocritical that, four months ago, Republicans let emergency unemployment insurance expire for more than 1.3 million Americans by arguing that an adequate offset had yet to be proposed. In early April, the Senate came to a bipartisan agreement on an offset after months of painstaking negotiations. Yet House Republicans still refuse to act.

Finally, we also opposed the manner in which Republicans were proceeding—selecting 10 to make permanent without any offset from the approximately 60 tax provisions that expired last year. This approach was both fiscally irresponsible and fundamentally hypocritical.

The consideration of this bill should have been part of the consideration of all the expired tax provisions commonly referred to as "tax extenders." The Republicans did not take up other tax extend-

ers that also are important to Democratic Committee Members. Left to an uncertain fate are provisions like the Work Opportunity Tax Credit, the New Markets Tax Credit, and the renewable energy tax credits, as well as the long-term status of the Earned Income Tax Credit, the Child Tax Credit, and the American Opportunity Tax Credit.

SANDER M. LEVIN,  
*Ranking Member.*

