



Instructions for Form IT-649

Farm Donations to Food Pantries Credit

Tax Law – Article 22, Section 606(n-2)

IT-649-I

General information

For tax years beginning on or after January 1, 2018, the farm donations to food pantries credit is available to taxpayers who meet the eligibility requirements.

Eligibility

To be eligible for this credit, you must meet **all** of the following requirements:

- you are subject to tax under Tax Law Article 9-A or 22,
- you are an eligible farmer, **and**
- you made a qualified donation or are the owner of a business entity that made a qualified donation to an eligible food pantry.

Definitions

You are *engaged in the business of farming* if you cultivate, operate, or manage a farm for gain or profit, even though the operation may not produce a profit every year.

You are also engaged in the business of farming if you rent your farm property to another person who uses the property in agricultural production and the rental arrangement meets the conditions in **either** A or B:

- A. The amount of the rental is a crop share (shared rental agreement). That is, the amount of rent is based upon the actual production of the land, whether paid to you in cash or in kind; **or**
- B. You have an arrangement with your tenant for your participation in the farm business and you meet **one** of the following four tests:
 - 1) You do any **three** of the following:
 - pay or stand good for at least half of the direct costs of producing the crop;
 - furnish at least half of the tools, equipment, and livestock used in producing the crop;
 - consult with your tenant; and
 - inspect the production activities periodically.
 - 2) You regularly and frequently make, or take an important part in making, management decisions substantially contributing to or affecting the success of the enterprise.
 - 3) You work 100 hours or more, spread over a period of 5 weeks or more, in activities connected with crop production.
 - 4) You do things that, considered in their total effect, show that you are materially and significantly involved in the production of farm commodities.

Farming includes the operation or management of livestock, dairy, poultry, fish, fruit, fur-bearing animal, and vegetable (commonly referred to as truck) farms. *Farming* also includes the operation or management of plantations, ranches, ranges, and orchards.

For example, *farming* includes, but is not limited to, the raising or production of the following commodities:

- field crops, including corn, wheat, oats, rye, barley, hay, potatoes, and dry beans;
- fruits, including apples, peaches, grapes, cherries, and berries;
- vegetables, whether raised conventionally or hydroponically, including tomatoes, snap beans, cabbage, carrots, beets, and onions;
- horticultural specialties, including nursery stock, ornamental shrubs and ornamental trees, and flowers;
- livestock and livestock products, including cattle, sheep, hogs, goats, horses, poultry, farmed deer, farmed buffalo, ostrich, emus, fur-bearing animals, milk, and eggs;

- aquaculture products, including fish, fish products, water plants, and shellfish (provided the aquaculture products are grown and raised, not merely being harvested or caught); **and**
- honey and beeswax produced from the farmer's own bees.

You are **not** engaged in the business of farming if your principal source of income is from providing agricultural services, such as soil preparation, veterinary services, or farm labor. You are not engaged in the business of farming if you manage or operate a farm for a salary or fee. Furthermore, if you are cultivating or operating a farm for recreation or leisure (such as a hobby farm), you are not engaged in the business of farming. Also, forestry and logging are not farming unless the products are used in the operation of a farm or are connected with an otherwise qualifying farm operation as described above.

An *eligible farmer* is a taxpayer that has at least two-thirds of excess federal gross income from farming in the tax year. You meet this definition if you qualify for the single estimated tax payment for farmers for federal and state income tax purposes.

When determining eligibility for partners, shareholders, or beneficiaries, they **must** include their share of **both** federal gross income **and** federal gross income from farming passed through to them from the partnership, New York S corporation, estate, or trust.

Excess federal gross income is the amount of federal gross income from all sources for the tax year reduced by the sum (not to exceed \$30,000) of earned income, pension payments (including social security payments), interest, and dividends included in federal gross income.

Note: Farmers **must** include payments from the state's Farmland Protection Program administered by the New York State Department of Agriculture and Markets in federal gross income from farming.

Earned income means wages, salaries, tips and other employee compensation, and those items of gross income that are included in the computation of net earnings from self-employment.

Qualified donation means a donation by an eligible farmer (or a partnership, New York S corporation, or estate or trust that has partners, shareholders, or beneficiaries who are eligible farmers) to an eligible food pantry of any apparently wholesome food grown or produced within New York State.

Apparently wholesome food means 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.

Eligible food pantry means any food pantry, food bank, or other emergency food program operating in New York State that has qualified for tax exemption under Internal Revenue Code (IRC) § 501(c)(3).

Credit details

The amount of the credit is equal to 25% of the fair market value of qualified donations made to any eligible food pantry operating in New York during the tax year, not to exceed \$5,000 per tax year.

Example: An individual qualifies as an eligible farmer and makes qualified donations during the tax year that have a fair market value of \$12,000. The eligible farmer would be allowed a credit of \$3,000 calculated as follows:

$\$12,000$ (fair market value of qualified donations) \times 25% = \$3,000.

An eligible farmer that is a partner, shareholder of a New York S corporation, or beneficiary of an estate or trust, may claim their

share of the credit passed through. The \$5,000 limitation is applied at the entity level.

Example: *Partnership ABC has two equal partners and makes qualified donations to an eligible food pantry during the tax year that have a fair market value of \$30,000. Partnership ABC would calculate a credit equal to \$5,000 as follows:*

\$30,000 (fair market value of qualified donations) X 25% = \$7,500

Since the credit is limited to \$5,000 per tax year, each partner may claim \$2,500 of credit if the partner qualifies as an eligible farmer.

The *fair market value* of food donated to an eligible food pantry is determined by considering the price of the same or similar food items (as to both type and quality) that could be sold by the taxpayer at the time of the contribution. For more information, see IRC § 170(e)(3)(C)(v).

A shareholder, partner, or beneficiary of an estate or trust that is taxable under Article 9-A or 22 may be eligible to claim a share of the credit passed through from a New York S corporation, partnership, estate, or trust that made a qualified donation to an eligible food pantry. The credit amount is determined at the entity level. The shareholder, partner, or beneficiary must meet the definition of an eligible farmer to claim their share of the credit.

Any unused amount of credit for the current tax year will be treated as a refund or overpayment of tax to be credited to next year's tax. Interest will not be paid on the refund or overpayment.

New York adjustment: Taxpayers may **not** use the same qualified donation to claim both the credit and a qualified charitable contribution deduction (IRC § 170) for New York tax purposes. Individual taxpayers that claim the credit must not include any qualified donation amounts used to claim the credit as charitable contributions in their New York itemized deductions. For additional information, see the instructions for the New York State personal income tax return you are filing.

Required documentation

To claim the credit, the taxpayer must receive and keep a receipt (or other written communication) from the eligible food pantry showing the following:

- the date and location of the qualified donation,
- a reasonably detailed description of the qualified donation,
- the name of the eligible food pantry, and
- the employer identification number (EIN) of the eligible food pantry.

The taxpayer must keep the receipt from the eligible food pantry as well as proof of how the donation was valued. Acceptable proof of valuation includes U.S. Department of Agriculture (USDA) online price reports and local co-op pricing guidelines for the date the donation was made.

Partnerships, estates, and trusts must provide their partners, and beneficiaries with the following information:

- the pro rata share or distributive share of the credit,
- the share of federal gross income and federal gross income from farming from the entity,
- a copy of the receipt from the eligible food pantry, and
- the means of valuing the donation.

How to claim the credit

File Form IT-649 if you are an individual, a beneficiary or fiduciary of an estate or trust, a partner in a partnership, or a shareholder of an S corporation, and you are claiming the farm donations to food pantries credit.

An estate or trust that divides the credit among itself and its beneficiaries must submit Form IT-649 with Form IT-205, *Fiduciary Income Tax Return*, showing each beneficiary's share of the credit.

A partnership must submit Form IT-649 with Form IT-204, *Partnership Return*, showing the total credit.

An S corporation does not file Form IT-649; it must file Form CT-649, *Farm Donations to Food Pantries Credit*. If you are a shareholder of an S corporation, obtain your share of the S corporation's credit from the S corporation and follow the instructions on this form for claiming your credit on your personal income tax return.

Line instructions

See the instructions for your tax return for the *Privacy notification* or if you need help contacting the Tax Department.

Line A

Mark an **X** in the appropriate box to determine the lines and schedules of this form you need to complete.

If you are claiming this credit **both** as an individual (sole proprietor), partnership, or fiduciary of an estate or trust that earned the credit **and** as a partner, shareholder, or beneficiary receiving a share of the credit, mark an **X** in the **Yes** box and complete all appropriate lines and schedules on one Form IT-649.

A married couple in a business enterprise that made an IRC 761(f) election to file two federal Schedule C forms instead of a partnership return: If you file jointly, compute your credit amount as if you were filing one federal Schedule C for the business (enter the total of all applicable amounts from both federal Schedule C forms). Complete lines A, B, and C, and Schedules A and D.

Partnerships: Do not complete line B. Instead, the partners will compute their own federal gross income from farming to determine if they meet the definition of an eligible farmer to claim this credit.

Fiduciary:

- If the estate or trust distributed all of its income, complete lines A and C and Schedules A, C, and D.
- If the estate or trust retained some of its income and distributed some of its income, complete lines A, B, and C, and Schedules A, C, and D.
- If the estate or trust retained all of its income, complete lines A, B, and C, and Schedules A, C, and D.

Line B

Complete *Worksheet A* or *Worksheet B*, whichever is applicable. If the percentage shown on *Worksheet A* or *Worksheet B*, line 24, is:

- at least 0.6667 (66.67%), mark an **X** in the **Yes** box and continue with line C, **or**
- less than 0.6667 (66.67%), **stop**, you do not qualify for this credit.

Individuals: If you are married, your eligibility for the credit may depend on whether you file a joint or separate New York return. However, in order to file separate New York returns, you generally must file separate federal returns. Since many federal and state tax benefits are eliminated or reduced when separate returns are filed, you may want to compute your federal and state taxes both ways to determine the most beneficial way to file.

Fiduciary:

- If you answered *No* at line B, and the estate or trust retained some of its income and distributed some of its income, **complete** the rest of the form.
Note: Although the estate or trust may not claim its share of the credit, the beneficiaries may still be eligible to claim their share of the credit.
- If you answered *No* at line B, and the estate or trust retained all of its income, **stop**: you do not qualify for this credit.

Worksheet A

Worksheet A: Individuals – 2018 Farming Gross Income

(Form IT-201 and IT-203 filers: Complete this worksheet and keep for your records.)

1	Add the income amounts from federal Form 1040, lines 1, 2b, 3b, 4b, and 5b	1	_____
1a	Add the income (not loss) amounts from federal Form 1040, Schedule 1, lines 10, 11, 19, and 21 (see instructions)	1a	_____
2	Enter the income (not loss) from federal Schedule C, line 7	2	_____
3	Enter the amount from federal Schedule C-EZ, line 1	3	_____
4	Add the gain (not loss) amounts from federal Schedule D, column (h), lines 1a, 1b, 2, 3, 4, 8a, 8b, 9, 10, 11, and 13 (see instructions)	4	_____
5	Enter the amount of capital gain from federal Form 1040, Schedule 1, line 13, if you were not required to file federal Schedule D and have no entry on line 4	5	_____
6	Add the amounts from federal Schedule E, lines 3, 4, 37, and 39	6	_____
7	Enter the income (not loss) from federal Schedule F, line 9	7	_____
8	Add the gain (not loss) amounts from federal Form 4797, column (g), lines 2 through 6, 10, and 13 through 16 (see instructions). If you were not required to file federal Form 4797 and have a gain (not loss) reported on federal Form 1040, Schedule 1, line 14, from federal Form 4684, enter that amount here	8	_____
9	Enter the amount from federal Form 4835, line 7	9	_____
10	Enter the code B and C amounts from all federal Schedule K-1s (Form 1065), box 14 that you received from partnerships that you are a partner in, less any partnership amounts from such partnerships already included on lines 1 through 8 above (If you are a partner in a partnership that files federal Form 1065-B, see instructions.)	10	_____
11	Enter your share of S corporation gross income (see instructions)	11	_____
12	Federal gross income (add lines 1 through 11 above)	12	_____
13	Add the amounts from federal Form 1040, lines 1, 2b, 3b, 4b, and 5b	13	_____
14	Add lines 2, 3, and 7 above	14	_____
15	Certain partnership gross income (see instructions)	15	_____
16	Add lines 13, 14, and 15 above	16	_____
17	Enter the lesser of line 16 above or \$30,000	17	_____
18	Excess federal gross income (subtract line 17 from line 12 above; if line 17 is greater than line 12, enter 0)	18	_____
19	Enter the amount from line 7 above	19	_____
20	Enter the amount from federal Schedule E, line 42 (see instructions)	20	_____
21	Add the amounts on federal Form 4797, column (g) that represent gains from the sale of livestock used for draft, breeding, sport, or dairy purposes (see instructions)	21	_____
22	Gross income from farming (add lines 19, 20, and 21 above)	22	_____
23	Enter the amount from line 18 above	23	_____
24	Divide line 22 by line 23, and round the result to the fourth decimal place (see instructions)	24	_____

Instructions for Worksheet A

Line 1a – If federal Form 1040, Schedule 1, line 21, includes both income and loss items, include **only** the income amounts. For example, on federal Form 1040, Schedule 1, line 21, you report gambling winnings of \$2,000 and a net operating loss carryover of (\$3,000), for a net amount of (\$1,000). Report **only** the gambling winnings of \$2,000.

Line 4 – Include **only** gains used in calculating the amounts reported on federal Schedule D, column (h). Loss transactions cannot be netted against gain transactions. However, do **not** include any gain from federal Form 4797 reported on federal Schedule D, line 11, column (h).

Line 8 – Include **only** gains used in calculating the amounts entered on federal Form 4797, column (g). Loss transactions cannot be netted against gain transactions.

Line 10 – If you are a partner in a partnership that files federal Form 1065-B, include on line 10 the amount of gross **non-farm** income reported on the federal Schedule K-1 (Form 1065-B) in box 9 that you received from the partnership (less any amounts from such partnership included in lines 1 through 8 of Worksheet A).

Line 11 – Obtain this information from the S corporation. Do **not** include on line 11 any S corporation income included in lines 1 through 8 of this worksheet.

Line 15 – If you were a partner in a partnership and your federal Schedule K-1 shows any amount (including a loss) in box 14, under the code A, enter the sum of the code B and C amounts shown in box 14.

Line 20 – Do **not** include gross income from fishing included on federal Schedule E, line 42.

Line 21 – Include on line 21 **only** gains (not losses) reported on federal Form 4797 that represent gains from the sale of livestock used for draft, breeding, sport, or dairy purposes. Do **not** include any other gains or losses reported on federal Form 4797 (such as gains from the sale of farm machinery), even though these gains may be related to your farming business.

Line 24 – If the line 23 amount is 0 and you have an amount (other than zero) on line 22, enter **1.00** (100%).

Worksheet B

Worksheet B: Estates and Trusts – 2018 Farming Gross Income
(Form IT-205 filers: Complete this worksheet and keep for your records.)

1	Add the income (not loss) amounts from federal Form 1041, lines 1, 2a, and 8	1	_____
2	Enter the income (not loss) from federal Schedule C, line 7	2	_____
3	Enter the amount from federal Schedule C-EZ, line 1	3	_____
4	Add the gain (not loss) amounts from federal Schedule D (Form 1041), lines 1a, 1b, 2, 3, 4, 8a, 8b, 9, 10, 11, and 13 (see instructions)	4	_____
5	Add the amounts from federal Schedule E, lines 3, 4, 37, and 39	5	_____
6	Enter the income (not loss) amount from federal Schedule F, line 9	6	_____
7	Add the gain (not loss) amounts from federal Form 4797, column (g), lines 2 through 6, 10, and 13 through 16 (see instructions). If the estate or trust was not required to file federal Form 4797 and has a gain (not loss) reported on federal Form 1041, line 7, from federal Form 4684, enter that amount here ...	7	_____
8	Enter the amount from federal Form 4835, line 7	8	_____
9	Enter the code B and C amounts from all federal Schedule K-1s (Form 1065), box 14 that you received from partnerships that you are a partner in, less any partnership amounts from such partnerships already included on lines 1 through 7 above (If you are a partner in a partnership that files federal Form 1065-B, see instructions.)	9	_____
10	Enter the estate's or trust's share of S corporation gross income (see instructions)	10	_____
11	Federal gross income (add lines 1 through 10 above)	11	_____
12	Add the income amounts on federal Form 1041, lines 1 and 2a	12	_____
13	Enter the amount of any pension payments included on federal Form 1041, line 8	13	_____
14	Add lines 2, 3, and 6 above	14	_____
15	Certain partnership gross income (see instructions)	15	_____
16	Add lines 12 through 15 above	16	_____
17	Enter the lesser of line 16 above or \$30,000	17	_____
18	Excess federal gross income (subtract line 17 from line 11 above; if line 17 is greater than line 11, enter 0)	18	_____
19	Enter the amount from line 6 above	19	_____
20	Enter the amount from federal Schedule E, line 42 (see instructions)	20	_____
21	Add the amounts on federal Form 4797, column (g) that represent gains from the sale of livestock used for draft, breeding, sport, or dairy purposes (see instructions)	21	_____
22	Gross income from farming (add lines 19, 20, and 21 above)	22	_____
23	Enter the amount from line 18 above	23	_____
24	Divide line 22 by line 23, and round the result to the fourth decimal place (see instructions)	24	_____

Instructions for Worksheet B

Line 4 – Include **only** gains used in calculating the amounts reported on federal Schedule D, column (h). Loss transactions cannot be netted against gain transactions.

Line 7 – Include **only** gains used in calculating the amounts entered on federal Form 4797, column (g). Loss transactions cannot be netted against gain transactions.

Line 9 – If you are a partner in a partnership that files federal Form 1065-B, include on line 9 the amount of gross **non-farm** income reported on the federal Schedule K-1 (Form 1065-B) in box 9 that you received from the partnership (less any amounts from such partnership included in lines 1 through 7 of Worksheet B).

Line 10 – Obtain this information from the S corporation. Do **not** include any S corporation income included on lines 1 through 7 above.

Line 15 – If you were a partner in a partnership and your federal Schedule K-1 shows any amount (including a loss) in box 14, under the code A, enter the sum of the code B and C amounts shown in box 14.

Line 20 – Do **not** include any gross income from fishing included on federal Schedule E, line 42.

Line 21 – Include **only** gains (not losses) reported on federal Form 4797 that represent gains from the sale of livestock used for draft, breeding, sport, or dairy purposes. Do **not** include any other gains or losses reported on federal Form 4797 (such as gains from the sale of farm machinery), even though these gains may be related to your farming business.

Line 24 – If the line 23 amount is **0**, and you have an amount (other than zero) on line 22, enter **1.00** (100%).

Additional sheets – If you have more entries than will fit on the lines provided in Schedule A, B, or C, attach additional sheets in the same format as the schedule. Include your name and taxpayer identification number on each sheet and submit them and Form IT-649 with your return.

Schedule A – Qualified donations

Complete this schedule, listing each qualified donation for the tax year. See the definition of *qualified donation*.

Schedule B – Partner’s, shareholder’s or beneficiary’s share of credit

Enter the appropriate information for each partnership, New York S corporation, or estate or trust from which you received a share of the farm donations to food pantries credit. Obtain your share of the credit from your partnership, S corporation, estate or trust.

Schedule C – Beneficiary’s and fiduciary’s share of credit

An estate or trust must complete this schedule. If an estate or trust allocates or assigns the credit to its beneficiaries, base the division on each beneficiary’s proportionate share of the income of the estate or trust. Provide the beneficiaries with their share of the credit.

Schedule D – Computation of credit

Fiduciaries: Do not enter any amounts on lines 8 or 9. Enter the amount from line 10 on line 11.

Line 11 – Enter this amount and code **649** on:

- Form IT-201-ATT, line 12;
- Form IT-203-ATT, line 12; or
- Form IT-204, line 147.

For Form IT-205, include the amount on line 33.
