

118TH CONGRESS
2D SESSION

S. 5120

To amend the Internal Revenue Code of 1986 to provide tax incentives
for the establishment of grocery stores in certain underserved areas.

IN THE SENATE OF THE UNITED STATES

SEPTEMBER 19, 2024

Mr. OSSOFF introduced the following bill; which was read twice and referred
to the Committee on Finance

A BILL

To amend the Internal Revenue Code of 1986 to provide
tax incentives for the establishment of grocery stores
in certain underserved areas.

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. SHORT TITLE.**

4 This Act may be cited as the “Fresh Food Act”.

5 **SEC. 2. TAX INCENTIVES FOR ESTABLISHMENT OF GRO-**
6 **CERY STORES IN CERTAIN UNDERSERVED**
7 **AREAS.**

8 (a) IN GENERAL.—Chapter 1 of the Internal Rev-
9 enue Code of 1986 is amended by inserting after sub-
10 chapter V the following new subchapter:

1 **“Subchapter W—Tax Incentives for Grocery**
 2 **Stores in Underserved Areas**

“Sec. 1400. Increased work opportunity tax credit.

“Sec. 1400A. Credit for sales of fresh fruits, vegetables, meat, and dairy.

“Sec. 1400B. Definitions.

3 **“SEC. 1400. INCREASED WORK OPPORTUNITY TAX CREDIT.**

4 “(a) IN GENERAL.—In the case of an individual em-
 5 ployed in the trade or business of operating a new under-
 6 served area grocery store (as certified by the designated
 7 local agency (as defined in section 51(d)(12)), the limita-
 8 tion otherwise in effect under section 51(b)(3) with respect
 9 to such individual shall be increased by \$1,000.

10 “(b) ALTERNATIVE CERTIFICATION.—The Secretary
 11 may provide for alternative methods for certification of an
 12 individual described in subsection (a) in such manner as
 13 the Secretary (in coordination with the head of any rel-
 14 evant Federal agency) determines appropriate.

15 “(c) TERMINATION.—Subsection (a) shall only apply
 16 to wages paid in taxable years beginning after December
 17 31, 2024, and before January 1, 2031.

18 **“SEC. 1400A. CREDIT FOR SALES OF FRESH FRUITS, VEGE-**
 19 **TABLES, MEAT, AND DAIRY.**

20 “(a) IN GENERAL.—For purposes of section 38, the
 21 underserved area grocery store fruits, vegetables, meat,
 22 and dairy credit determined under this section for the tax-
 23 able year is an amount equal to the applicable percentage
 24 of the cost of goods sold by the taxpayer with respect to

1 the retail sale of fresh fruits, vegetables, meat, and dairy
 2 in the trade or business of operating a new underserved
 3 area grocery store.

4 “(b) COST OF GOODS SOLD.—For purposes of sub-
 5 section (a), the cost of goods sold with respect to any tax-
 6 able year is the total amount (as determined under the
 7 method of accounting of the taxpayer) of purchases made
 8 by the taxpayer for goods acquired for resale and sold dur-
 9 ing such taxable year.

10 “(c) APPLICABLE PERCENTAGE.—

11 “(1) IN GENERAL.—For purposes of subsection
 12 (a), the applicable percentage shall be—

13 “(A) in the case of any new underserved
 14 area grocery store which is placed in service
 15 during a taxable year which includes the date
 16 on which the Secretary determines (pursuant to
 17 section 1400B(3)(C)) that the area in which
 18 such grocery store is located qualifies as an un-
 19 derserved area, or which is placed in service
 20 during a taxable year beginning after such
 21 date—

22 “(i) with respect to the taxable year in
 23 which such grocery store is placed in serv-
 24 ice, 30 percent,

1 “(ii) with respect to the taxable year
2 subsequent to the taxable year described in
3 clause (i), 30 percent,

4 “(iii) with respect to the taxable year
5 subsequent to the taxable year described in
6 clause (ii), 28 percent,

7 “(iv) with respect to the taxable year
8 subsequent to the taxable year described in
9 clause (iii), 26 percent, and

10 “(v) with respect to any taxable year
11 subsequent to the taxable year described in
12 clause (iv), 0 percent, or

13 “(B) in the case of any new underserved
14 area grocery store which was placed in service
15 during a taxable year which ended prior to the
16 date on which the Secretary determines (pursu-
17 ant to section 1400B(3)(C)) that the area in
18 which such grocery store is located qualifies as
19 an underserved area—

20 “(i) with respect to the taxable year
21 which includes such date, 30 percent,

22 “(ii) with respect to the taxable year
23 subsequent to the taxable year described in
24 clause (i), 28 percent,

1 “(iii) with respect to the taxable year
 2 subsequent to the taxable year described in
 3 clause (ii), 26 percent, and

4 “(iv) with respect to any taxable year
 5 subsequent to the taxable year described in
 6 clause (iii), 0 percent.

7 “(2) BONUS FOR LOCALLY SOURCED FRUITS,
 8 VEGETABLES, MEAT, AND DAIRY.—For purposes of
 9 subsection (a), in the case of any taxable year de-
 10 scribed in paragraph (1) (with the exception of any
 11 taxable year described in subparagraph (A)(v) or
 12 (B)(iv) of such paragraph), the applicable percent-
 13 age for such taxable year shall be increased by 5
 14 percentage points with respect to any fresh fruits,
 15 vegetables, meat, and dairy which are sourced—

16 “(A) from any location within the same
 17 State in which the new underserved area gro-
 18 cery store is located, or

19 “(B) from any location which is within a
 20 100-mile radius of the new underserved area
 21 grocery store.

22 “(d) TERMINATION.—Subsection (a) shall only apply
 23 to taxable years beginning after December 31, 2024, and
 24 before January 1, 2031.

1 **“SEC. 1400B. DEFINITIONS.**

2 “For purposes of this subchapter—

3 “(1) FRESH FRUITS, VEGETABLES, MEAT, AND
4 DAIRY.—

5 “(A) IN GENERAL.—Subject to subpara-
6 graph (B), the term ‘fresh fruits, vegetables,
7 meat, and dairy’ means any product of agri-
8 culture (as defined in section 3 of the Fair
9 Labor Standards Act of 1938 (29 U.S.C.
10 203(f))) which is suitable for human consump-
11 tion.

12 “(B) EXCLUSION OF CANNED OR FROZEN
13 FOODS.—The term ‘fresh fruits, vegetables,
14 meat, and dairy’ shall not include any product
15 described in subparagraph (A) which is canned
16 or frozen.

17 “(2) NEW UNDERSERVED AREA GROCERY
18 STORE.—

19 “(A) IN GENERAL.—The term ‘new under-
20 served area grocery store’ means any building
21 of the taxpayer if—

22 “(i) not more than 80,000 square feet
23 of such building is used for selling items at
24 retail,

25 “(ii) at least 25 percent of the square
26 feet of such building which is used for sell-

ing items at retail is used for selling fresh
fruits, vegetables, meat, and dairy,

“(iii) at least 25 percent of the gross
sales of items sold at retail from such
building are attributable to sales of fresh
fruits, vegetables, meat, and dairy, and

“(iv) such building is located in—

“(I) an underserved area (as de-
termined by the Secretary under para-
graph (3)(C) after December 31,
2024), or

“(II) a rural area (as defined in
section 343(a)(13)(A) of the Consoli-
dated Farm and Rural Development
Act (7 U.S.C. 1991(a)(13)(A)).

“(B) MALLS AND SHOPPING CENTERS.—

“(i) IN GENERAL.—For purposes of
subparagraph (A), the term ‘building’ in-
cludes any portion of a larger building or
structure (such as a mall or shopping cen-
ter)—

“(I) which is owned, leased, or
occupied by the taxpayer, and

“(II) in which the taxpayer, as
part of its trade or business, makes

1 retail sales of fresh fruits, vegetables,
2 meat, and dairy.

3 “(ii) APPLICATION OF REQUIRE-
4 MENTS.—In the case of any portion of a
5 larger building or structure described in
6 clause (i), the requirements under clauses
7 (i) through (iii) of subparagraph (A) shall
8 be applied solely with respect to such por-
9 tion and not with respect to the larger
10 building or structure described in such
11 clause.

12 “(C) DURATION OF STATUS.—

13 “(i) UNDERSERVED AREA.—In the
14 case of any building which is described in
15 clauses (i) through (iii) of subparagraph
16 (A) and is in operation during a period in
17 which the Secretary has determined (pur-
18 suant to paragraph (3)(C)) that the area
19 in which such building is located qualifies
20 as an underserved area, such building shall
21 not fail to satisfy the requirement de-
22 scribed in subparagraph (A)(iv)(I) solely
23 by reason of the area in which such build-
24 ing is located subsequently ceasing to be
25 an underserved area.

1 “(ii) RURAL AREA.—In the case of
 2 any building which is described in clauses
 3 (i) through (iii) of subparagraph (A) and is
 4 in operation during a period in which a de-
 5 termination is made after December 31,
 6 2024, that the area in which such building
 7 is located qualifies as a rural area, such
 8 building shall not fail to satisfy the re-
 9 quirement described in subparagraph
 10 (A)(iv)(II) solely by reason of the area in
 11 which such building is located subsequently
 12 ceasing to be a rural area.

13 “(3) UNDERSERVED AREA.—

14 “(A) IN GENERAL.—The term ‘under-
 15 served area’ means any population census tract
 16 in which—

17 “(i) not less than 500 people, or 33
 18 percent of the population of such tract, re-
 19 side—

20 “(I) in the case of a tract located
 21 within a metropolitan area, more than
 22 1 mile from a building which satisfies
 23 the requirements in clauses (i)
 24 through (iii) of paragraph (2)(A), or

1 “(II) in the case of a tract not lo-
 2 cated within a metropolitan area,
 3 more than 10 miles from a building
 4 which satisfies the requirements in
 5 clauses (i) through (iii) of paragraph
 6 (2)(A),

7 “(ii) the poverty rate for such tract is
 8 at least 20 percent, and

9 “(iii)(I) in the case of a tract not lo-
 10 cated within a metropolitan area, the me-
 11 dian family income for such tract does not
 12 exceed 80 percent of statewide median
 13 family income, or

14 “(II) in the case of a tract located
 15 within a metropolitan area, the median
 16 family income for such tract does not ex-
 17 ceed 80 percent of the greater of statewide
 18 median family income or the metropolitan
 19 area median family income.

20 “(B) AREAS NOT WITHIN CENSUS
 21 TRACTS.—In the case of an area which is not
 22 tracted for population census tracts, the equiva-
 23 lent county divisions (as defined by the Bureau
 24 of the Census) shall be used for purposes of de-

1 terminations of underserved areas under this
2 paragraph.

3 “(C) DETERMINATION OF UNDERSERVED
4 AREA.—For purposes of determining whether a
5 population census tract qualifies as an under-
6 served area for purposes of this paragraph, the
7 Secretary shall make such determinations in co-
8 ordination with the Secretary of Agriculture in
9 such manner as is determined appropriate, in-
10 cluding use of the Food Access Research Atlas
11 established by the Department of Agriculture.

12 “(D) METROPOLITAN AREA.—The term
13 ‘metropolitan area’ has the same meaning given
14 the term ‘metropolitan statistical area’ under
15 section 143(k)(2)(B).

16 “(E) REGULATIONS AND GUIDANCE.—Not
17 later than 6 months after the date of enactment
18 of the Fresh Food Act, the Secretary shall issue
19 such regulations or other guidance as may be
20 necessary or appropriate to carry out the pur-
21 poses of this paragraph.”.

22 (b) CREDIT TO BE PART OF GENERAL BUSINESS
23 CREDIT.—

24 (1) IN GENERAL.—Section 38(b) of the Internal
25 Revenue Code of 1986 is amended by striking

1 “plus” at the end of paragraph (40), by striking the
 2 period at the end of paragraph (41) and inserting “,
 3 plus”, and by adding at the end the following new
 4 paragraph:

5 “(42) the underserved area grocery store fruits,
 6 vegetables, meat, and dairy credit determined under
 7 section 1400A.”.

8 (2) SPECIFIED CREDITS.—Section 38(c)(4)(B)
 9 of such Code is amended—

10 (A) in clause (xi), by striking “and” at the
 11 end,

12 (B) in clause (xii), by striking the period
 13 at the end and inserting “, and”, and

14 (C) by adding at the end the following:

15 “(xiii) the credit determined under
 16 section 1400A.”.

17 (c) CLERICAL AMENDMENT.—The table of sub-
 18 chapters for chapter 1 of the Internal Revenue Code of
 19 1986 is amended by inserting after the item relating to
 20 subchapter V the following new item:

“SUBCHAPTER W. TAX INCENTIVES FOR GROCERY STORES IN UNDERSERVED
 AREAS”.

21 (d) EFFECTIVE DATE.—The amendments made by
 22 this section shall apply to taxable years beginning after
 23 December 31, 2024.

