

1 HOUSE BILL NO. 193

2 INTRODUCED BY K. WAITSCHIES

3 BY REQUEST OF THE DEPARTMENT OF REVENUE

4
 5 A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING FOR THE RECAPTURE OF A QUALIFIED
 6 ENDOWMENT TAX CREDIT IN THE TAX YEAR OF RECOVERY WHEN A CHARITABLE GIFT THAT GAVE
 7 RISE TO THE CREDIT IS RECOVERED BY THE TAXPAYER; INCLUDING AS INCOME IN THE YEAR THAT
 8 A CHARITABLE GIFT IS RECOVERED BY THE TAXPAYER THE AMOUNT DEDUCTED THAT IS
 9 ATTRIBUTABLE TO THE CHARITABLE GIFT; AMENDING SECTIONS 15-1-230, 15-30-166, 15-31-161, AND
 10 15-31-162, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE, A RETROACTIVE APPLICABILITY
 11 DATE, AND A TERMINATION DATE."

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13 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

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15 **Section 1.** Section 15-1-230, MCA, is amended to read:

16 **"15-1-230. (Temporary) Report on income tax credit to committee.** The department shall report to
 17 the revenue and transportation interim committee at least once each year the number and type of taxpayers
 18 claiming the credit under 15-30-166, the total amount of the credit claimed, the total amount of the credit
 19 recaptured, and the department's cost associated with administering the credit. (Terminates December 31,
 20 2007--sec. 5, Ch. 226, L. 2001.)"

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22 **Section 2.** Section 15-30-166, MCA, is amended to read:

23 **"15-30-166. (Temporary) Credit for contributions to qualified endowment -- recapture of credit**
 24 **-- deduction included as income.** (1) A taxpayer is allowed a tax credit against the taxes imposed by 15-30-103
 25 or 15-31-101 in an amount equal to 40% of the present value of the aggregate amount of the charitable gift
 26 portion of a planned gift made by the taxpayer during the year to any qualified endowment. The maximum credit
 27 that may be claimed by a taxpayer for contributions made from all sources in a year is \$10,000. The credit
 28 allowed under this section may not exceed the taxpayer's income tax liability.

29 (2) The credit allowed under this section may not be claimed by an individual taxpayer if the taxpayer
 30 has included the full amount of the contribution upon which the amount of the credit was computed as a

1 deduction under 15-30-121(1) or 15-30-136(2).

2 (3) There is no carryback or carryforward of the credit permitted under this section, and the credit must
3 be applied to the tax year in which the contribution is made.

4 (4) If during any tax year a charitable gift is recovered by the taxpayer, the taxpayer shall:

5 (a) include as income the amount deducted in any prior year that is attributable to the charitable gift to
6 the extent that the deduction reduced the taxpayer's individual income tax or corporation license tax; and

7 (b) increase the amount of tax due under 15-30-103 or 15-31-101 by the amount of the credit allowed
8 in the tax year in which the credit was taken. (Terminates December 31, 2007--sec. 5, Ch. 226, L. 2001.)"

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10 **Section 3.** Section 15-31-161, MCA, is amended to read:

11 **"15-31-161. (Temporary) Credit for contribution by corporations to qualified endowment --**

12 **recapture of credit -- deduction included as income. (1) A corporation is allowed a credit in an amount equal**

13 to 20% of a charitable gift against the taxes otherwise due under 15-31-101 for charitable contributions made

14 to a qualified endowment, as defined in 15-30-165. The maximum credit that may be claimed by a corporation

15 for contributions made from all sources in a year under this section is \$10,000. The credit allowed under this

16 section may not exceed the corporate taxpayer's income tax liability. The credit allowed under this section may

17 not be claimed by a corporation if the taxpayer has included the full amount of the contribution upon which the

18 amount of the credit was computed as a deduction under 15-31-114. There is no carryback or carryforward of

19 the credit permitted under this section, and the credit must be applied to the tax year in which the contribution

20 is made.

21 (2) If during any tax year a charitable gift is recovered by the corporation, the corporation shall:

22 (a) include as income the amount deducted in any prior year that is attributable to the charitable gift to

23 the extent that the deduction reduced the taxpayer's corporation license tax or corporation income tax; and

24 (b) increase the amount of tax due under 15-31-101 by the amount of the credit allowed in the tax year

25 in which the credit was taken. (Terminates December 31, 2007--sec. 5, Ch. 226, L. 2001.)"

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27 **Section 4.** Section 15-31-162, MCA, is amended to read:

28 **"15-31-162. (Temporary) Small business corporation, partnership, and limited liability company**

29 **credit for contribution to qualified endowment -- recapture of credit -- deduction included as income. (1)**

30 A contribution to a qualified endowment, as defined in 15-30-165, by a small business corporation, as defined

1 in 15-30-1101, a partnership, or a limited liability company, as defined in 35-8-102, carrying on any trade or
2 business for which deductions would be allowed under section 162 of the Internal Revenue Code, 26 U.S.C.
3 162, or carrying on any rental activity qualifies for the credit provided in 15-31-161. The credit must be attributed
4 to shareholders, partners, or members ~~or managers~~ of a limited liability company in the same proportion used
5 to report the corporation's, partnership's, or limited liability company's income or loss for Montana income tax
6 purposes. The maximum credit that a shareholder of a small business corporation, a partner of a partnership,
7 or a member ~~or manager~~ of a limited liability company may claim in a year is \$10,000, subject to the limitations
8 in 15-30-166(2). The credit allowed under this section may not exceed the taxpayer's income tax liability. There
9 is no carryback or carryforward of the credit permitted under this section, and the credit must be applied to the
10 tax year in which the contribution is made.

11 (2) (a) If during any tax year a charitable gift is recovered by the small business corporation, partnership,
12 or limited liability company, the entity shall include as income the amount deducted in any prior year that is
13 attributable to the charitable gift.

14 (b) In the tax year that a charitable gift is recovered, each shareholder, partner, or member shall
15 increase the amount of tax due under 15-30-103 or 15-31-101 by the amount of the credit allowed in the tax year
16 in which the credit was taken. (Terminates December 31, 2007--sec. 5, Ch. 226, L. 2001.)"

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18 NEW SECTION. Section 5. Effective date. [This act] is effective on passage and approval.

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20 NEW SECTION. Section 6. Retroactive applicability. [This act] applies retroactively, within the
21 meaning of 1-2-109, to tax years beginning after December 31, 2004.

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23 NEW SECTION. Section 7. Termination. [This act] terminates December 31, 2007.

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