

## HOUSE BILL NO. 746

INTRODUCED BY R. ERICKSON

A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING A TEMPORARY TAX CREDIT FOR IRREVOCABLE CAPITAL CONSTRUCTION CONTRIBUTIONS BY INDIVIDUALS, CORPORATIONS, SMALL BUSINESSES, AND ESTATES MADE TO A TAX-EXEMPT ORGANIZATION; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE, A RETROACTIVE APPLICABILITY DATE, AND A TERMINATION DATE."

WHEREAS, with few Montana-based major foundations and limited government resources, Montana must turn to individuals and businesses to help provide philanthropic resources for the future of the state; and

WHEREAS, outright gifts might be used more in funding capital construction by charitable organizations in Montana if contributors could offset a significant portion of their gifts against their Montana income tax liabilities; and

WHEREAS, over the long term, contributions for capital construction can help achieve community goals and objectives when current funding from state and local government budgets may be limited; and

WHEREAS, new capital construction or renovation of structures used by Montana charities has long-term potential to benefit all Montana communities by updating or replacing outdated, unsafe, or inefficient buildings to help individual communities meet growing needs; and

WHEREAS, government cannot meet, nor should it be expected to meet, all of the needs of the state's communities because of its limited financial resources and because each community is in a better position to determine its own existing and future needs and opportunities; and

WHEREAS, tax credits provide financial incentives that encourage contributions for the establishment or expansion of charitable endowments in Montana; and

WHEREAS, the Legislature limits the tax credit created by [this act] to outright contributions to tax-exempt organizations.

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

**NEW SECTION.** **Section 1. Credit for contributions to capital construction.** (1) ~~A~~ FOR TAX YEARS BEGINNING AFTER DECEMBER 31, 2006, AND BEFORE JANUARY 1, 2009, A taxpayer is allowed a tax credit against the

1 taxes imposed by 15-30-103 in an amount equal to ~~30%~~ 12% of the charitable ~~value of the CONTRIBUTION, AS~~  
2 DEFINED IN 26 U.S.C. 170(C), FOR A capital construction contribution by the taxpayer during the year to any capital  
3 construction project. The maximum credit that may be claimed by a taxpayer under [~~sections 3 and~~ SECTION 4  
4 and this section] for contributions made from all sources in a year is ~~\$10,000~~ \$3,000. The credit allowed under  
5 this section may not exceed the taxpayer's income tax liability.

6 (2) The credit allowed under this section may not be claimed by an individual taxpayer if the taxpayer  
7 has included the full amount of the contribution upon which the amount of the credit was computed as a deduction  
8 under 15-30-121(1) or 15-30-136(2).

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

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

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

14 (b) increase the amount of tax due under 15-30-103 by the amount of the credit allowed in the tax year  
15 in which the credit was taken.

16 (5) For the purposes of this section, "capital construction contribution" means an irrevocable contribution  
17 for capital construction by a tax-exempt organization, under 26 U.S.C. 501(c)(3), by a donor without any  
18 constraining conditions.

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20 **NEW SECTION. Section 2. Credit for contributions to capital construction.** (1) ~~A~~ FOR TAX YEARS  
21 BEGINNING AFTER DECEMBER 31, 2006, AND BEFORE JANUARY 1, 2009, A corporation is allowed a tax credit in an  
22 amount equal to ~~30%~~ 12% of a charitable gift against the taxes otherwise due under 15-31-101 for a charitable  
23 capital construction contribution to a capital construction project. The maximum credit that may be claimed by  
24 a corporation for contributions made from all sources in a year is \$10,000. The credit allowed under this section  
25 may not exceed the corporation's income tax liability.

26 (2) The credit allowed under this section may not be claimed by a corporation if the corporation has  
27 included the full amount of the contribution upon which the amount of the credit was computed as a deduction  
28 under 15-31-114.

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

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

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

(b) increase the amount of tax due under 15-31-101 by the amount of the credit allowed in the tax year in which the credit was taken.

(5) For the purposes of this section, "capital construction contribution" means an irrevocable contribution for capital construction by a tax-exempt organization, under 26 U.S.C. 501(c)(3), by a donor without any constraining conditions.

**NEW SECTION. Section 3. Small business corporation, partnership, and limited liability company credit for contributions to capital construction.** (1) ~~A~~ FOR TAX YEARS BEGINNING AFTER DECEMBER 31, 2006, AND BEFORE JANUARY 1, 2009, A capital construction contribution to a capital construction project by a small business corporation, as defined in 15-30-1101, a partnership, or a limited liability company, as defined in 35-8-102, carrying on any trade or business for which deductions would be allowed under section 162 of the Internal Revenue Code, 26 U.S.C. 162, or carrying on any rental activity may qualify for the credit allowed in [section 4-2]. The credit must be attributed to shareholders, partners, or members or managers of a limited liability company in the same proportion used to report the corporation's, partnership's, or limited liability company's income or loss for Montana income tax purposes. The maximum credit that a shareholder of a small business corporation, a partner of a partnership, or a member or manager of a limited liability company may claim in a year is \$10,000, SUBJECT TO THE LIMITATIONS IN [SECTION 1(2)].

(2) The credit allowed under this section may not exceed the taxpayer's income tax liability.

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

(4) If during any year a charitable gift is recovered by the small business corporation, partnership, or limited liability company:

(a) the entity shall include as income the amount deducted in any prior year that is attributable to the charitable gift; and

(b) in the tax year that the charitable gift is recovered, each shareholder, partner, or member shall 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 in which the credit was taken.

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2       **NEW SECTION. Section 4. Beneficiaries of estates -- credit for contributions to capital**  
3 **construction.** (1) ~~A~~ FOR TAX YEARS BEGINNING AFTER DECEMBER 31, 2006, AND BEFORE JANUARY 1, 2009, A capital  
4 construction contribution to a capital construction project by an estate may qualify for the credit allowed in [section  
5 1]. A credit not used by the estate may be attributed to each beneficiary of the estate in the same proportion used  
6 to report the beneficiary's income from the estate for Montana income tax purposes. The maximum amount of  
7 credit that a beneficiary may claim in a year is ~~\$10,000~~ \$3,000, SUBJECT TO THE LIMITATION IN [SECTION 1(2)], and  
8 the credit must be claimed in the year in which the contribution is made.

9       (2) There is no carryback or carryforward of the credit.

10       (3) If during any year a charitable gift is recovered by the estate, the entity shall:

11       (a) include as income the amount deducted in any prior year that is attributable to the charitable gift to  
12 the extent that the deduction reduced the estate's tax; and

13       (b) increase the amount of tax due by the amount of the credit allowed in the tax year in which the credit  
14 was taken.

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16       **NEW SECTION. Section 5. Report on income tax credit to committee.** The department of revenue  
17 shall report to the revenue and transportation interim committee at least once each year on the number and type  
18 of taxpayers claiming the credits allowed under [sections 1 through 4], the total amount of the credit claimed, the  
19 total amount of the credit recaptured, and the department's cost associated with administering the credit.

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21       **NEW SECTION. Section 6. Codification instruction.** (1) [Sections 1 and 4] are intended to be codified  
22 as an integral part of Title 15, chapter 30, and the provisions of Title 15, chapter 30, apply to [sections 1 and 4].

23       (2) [Section 2] is intended to be codified as an integral part of Title 15, chapter 31, and the provisions  
24 of Title 15, chapter 31, apply to [section 2].

25       (3) [Section 3] is intended to be codified as an integral part of Title 15, chapter ~~30~~ 31, part ~~44~~ 1, and the  
26 provisions of Title 15, chapter ~~30~~ 31, part ~~44~~ 1, apply to [section 3].

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28       **NEW SECTION. Section 7. Effective date.** [This act] is effective on passage and approval.

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30       **NEW SECTION. Section 8. Retroactive applicability.** [This act] applies retroactively, within the

1 meaning of 1-2-109, to tax periods beginning after December 31, 2006.

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3 NEW SECTION. **Section 9. Termination.** [This act] terminates December 31, ~~2013~~ 2009.

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