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SENATE BILL NO. 524

INTRODUCED BY G. HERTZ

A BILL FOR AN ACT ENTITLED: "AN ACT REVISING THE TAXATION OF NONPROFIT CORPORATIONS; REVISING LAWS RELATED TO ~~LEGAL FEES AND LITIGATION~~ COSTS OF NONPROFIT CORPORATIONS CHALLENGING OR SUPPORTING CERTAIN GOVERNMENT ACTIONS; PROVIDING THAT INCOME USED TO SUPPORT CERTAIN ~~LEGAL FEES AND LITIGATION~~ COSTS IS SUBJECT TO TAXATION; AMENDING SECTIONS 15-30-3404 AND 15-31-102, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE."

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

NEW SECTION. Section 1. Nonprofit corporation -- legal fees and costs challenging certain government action. (1) Except as otherwise provided in subsection (2), the payment of ~~legal fees~~ LITIGATION COSTS, INCLUDING ATTORNEY FEES and costs, associated with a nonprofit corporation challenging or supporting a government action IN A JUDICIAL OR ADMINISTRATIVE PROCEEDING is not a charitable purpose under state law, and any income used to support this activity constitutes unrelated business income under 15-31-102 and is subject to taxation as provided in 15-31-121. This requirement applies to any affiliated corporation or entity of the nonprofit corporation organized under ~~26 U.S.C. 501(c)(3)~~ 26 U.S.C. 501 or 26 U.S.C. 527.

(2) This section does not apply:

- (a) to a nonprofit corporation that is defending or prosecuting a government action that involves:
 - (i) property belonging to the nonprofit corporation;
 - (ii) a contract to which the nonprofit corporation is a party;
 - (iii) a permit or license held or owned by the nonprofit corporation; ~~or~~
 - (iv) any professional license associated with an employee of the nonprofit corporation or the

nonprofit corporation; or

(v) litigation that the court determines is not frivolous; or

(b) to a health care facility licensed under Title 50, chapter 5, or other nonprofit corporations

1 providing or advocating for critical health care delivery systems.

2 (3) For the purposes of this section, the following definitions apply:

3 (a) "Government action" means the implementation or application of:

4 (i) the federal Clean Air Act, the federal Clean Water Act, the federal Endangered Species Act,
5 the federal Surface Mining Control and Reclamation Act, the National Environmental Policy Act, or federal oil
6 and coal leasing laws, including but not limited to federal rules, regulations, and policies implementing those
7 laws; or

8 (ii) state law codified in Title 75, 76, 77, 80, 81, 82, or 87, including but not limited to state rules,
9 regulations, and policies implementing those titles.

10 (b) "~~Legal fees and costs~~ LITIGATION COSTS" include but are not limited to:

11 (i) internal lawyer, internal paralegal, internal legal assistant, internal expert witness, and other
12 internal employee fees and costs, including a calculation of employee benefits, associated with employee
13 participation in the challenge or support of a government action; and

14 (ii) external lawyer, external paralegal, external legal assistant, expert witness, and other external
15 resource fees and costs associated with participation in the challenge or support of a government action.

16 (c) "Nonprofit corporation" means a nonprofit corporation exempt from taxation under ~~26 U.S.C.~~
17 ~~501(c)(3)~~ 26 U.S.C. 501 and organized for charitable purposes.

18

19 **Section 2.** Section 15-30-3404, MCA, is amended to read:

20 **"15-30-3404. Election -- partnership pays -- rulemaking.** (1) Subject to the limitations in subsection
21 (2), an audited partnership making an election under this section shall:

22 (a) no later than 90 days after the final determination date, file a completed federal adjustments
23 report, including information required by the department, and notify the department that it is making the election
24 under this section. A partnership that fails to file a timely completed federal adjustments report must be
25 assessed a late file penalty as provided for in 15-30-3302(5)(d).

26 (b) no later than 180 days after the final determination date, pay an amount, determined as
27 follows, in lieu of taxes owed by its direct and indirect partners:

28 (i) exclude from final federal adjustments the distributive share of these adjustments reported to a

1 direct exempt partner not subject to tax under 15-31-102(3)(a);

2 (ii) for the total distributive shares of the remaining final federal adjustments reported to direct
3 corporate partners subject to tax under 15-31-101 and to direct exempt partners subject to tax under 15-31-
4 102(3)(a), apportion and allocate the adjustments as provided in 15-31-301 and multiply the resulting amount
5 by the appropriate tax rate under 15-31-121;

6 (iii) for the total distributive shares of the remaining final federal adjustments reported to
7 nonresident direct partners subject to tax under 15-30-3311 or 15-30-2151, determine the amount of the
8 adjustments that are Montana source income under 15-30-3311 and multiply the resulting amount by the
9 highest tax rate under 15-30-2103; and

10 (iv) for the total distributive shares of the remaining final federal adjustments reported to tiered
11 partners:

12 (A) determine the amount of the adjustments that would be subject to sourcing to Montana under
13 15-30-3302(6) and attributable to nonresident partners;

14 (B) determine the amount of the adjustments not attributable to nonresident partners; and

15 (C) determine the portion of the amount determined in subsection (1)(b)(iv)(B) that can be
16 established, under regulations issued by the department, to be properly allocable to direct or indirect partners
17 not subject to tax on the adjustments or that can be excluded under procedures for modified reporting and
18 payment methods allowed under 15-30-3405;

19 (v) multiply the total of the amounts determined in subsections (1)(b)(iv)(A) and (1)(b)(iv)(B) and
20 reduce by the amount determined in subsection (1)(b)(iv)(C) by the highest tax rate under 15-30-2103 or the
21 appropriate tax rate in 15-31-121;

22 (vi) for the total distributive shares of the remaining final federal adjustments reported to resident
23 direct partners subject to tax under 15-30-3311, multiply that amount by the highest tax rate under 15-30-2103;
24 and

25 (vii) add the amounts determined in subsections (1)(b)(ii) through (1)(b)(vi), including penalty and
26 interest as provided in 15-1-216.

27 (2) Final federal adjustments subject to the election under this section exclude:

28 (a) the distributive share of final audit adjustments that under 15-31-301 must be included in the

1 unitary business income of any direct or indirect corporate partner, provided that the audited partnership can
2 reasonably determine this; and

3 (b) any final federal adjustments resulting from an administrative adjustment request.

4 (3) The direct and indirect partners of an audited partnership that are tiered partners, and all of the
5 partners of those tiered partners that are subject to tax under chapter 30 or 31, are subject to the reporting and
6 payment requirements of 15-30-3403 and the tiered partners are entitled to make the election provided for in
7 this section. The tiered partners or their partners shall make required reports and payments no later than 90
8 days after the time for filing and furnishing statements to tiered partners and their partners as established under
9 26 U.S.C. 6226 and the regulations thereunder. The department may promulgate regulations to establish
10 procedures and interim time periods for the reports and payments required by tiered partners and their partners
11 and for making the election under this section."
12

13 **Section 3.** Section 15-31-102, MCA, is amended to read:

14 **"15-31-102. Organizations exempt from tax -- unrelated business income not exempt.** (1) Except
15 as provided in subsection (3), there may not be taxed under this title any income received by any:

16 (a) labor, agricultural, or horticultural organization;

17 (b) fraternal beneficiary, society, order, or association operating under the lodge system or for the
18 exclusive benefit of the members of a fraternity itself operating under the lodge system and providing for the
19 payment of life, sick, accident, or other benefits to the members of the society, order, or association or their
20 dependents;

21 (c) cemetery company owned and operated exclusively for the benefit of its members;

22 (d) corporation or association organized and operated exclusively for religious, charitable,
23 scientific, or educational purposes, no part of the net income of which inures to the benefit of any private
24 stockholder or individual;

25 (e) business league, chamber of commerce, or board of trade not organized for profit, no part of
26 the net income of which inures to the benefit of any private stockholder or individual;

27 (f) civic league or organization not organized for profit but operated exclusively for the promotion
28 of social welfare;

1 (g) club organized and operated exclusively for pleasure, recreation, and other nonprofitable
2 purposes, no part of the net income of which inures to the benefit of any private stockholder or members;

3 (h) farmers' or other mutual hail, cyclone, or fire insurance company, mutual ditch or irrigation
4 company, mutual or cooperative telephone company, or similar organization of a purely local character, the
5 income of which consists solely of assessments, dues, and fees collected from members for the sole purpose
6 of meeting its expenses;

7 (i) cooperative association or corporation engaged in the business of operating a rural
8 electrification system or systems for the transmission or distribution of electrical energy on a cooperative basis;

9 (j) corporations or associations organized for the exclusive purpose of holding title to property,
10 collecting income from the property, and turning over the entire amount of the income, less expenses, to an
11 organization that itself is exempt from the tax imposed by this title;

12 (k) wool and sheep pool, which is an association owned and operated by agricultural producers
13 organized to market association members' wool and sheep, the income of which consists solely of
14 assessments, dues, and fees collected from members for the sole purpose of meeting its expenses. Income, for
15 this purpose, does not include expenses and money distributed to members contributing wool and sheep.

16 (l) corporation that qualifies as a domestic international sales corporation (DISC) under the
17 provisions of section 991, et seq., of the Internal Revenue Code, 26 U.S.C. 991, et seq., and that has in effect
18 for the entire taxable year a valid election under federal law to be treated as a DISC. If a corporation makes that
19 election under federal law, each person who at any time is a shareholder of the corporation is subject to
20 taxation under Title 15, chapter 30, on the earnings and profits of this DISC in the same manner as provided by
21 federal law for all periods for which the election is effective.

22 (m) farmers' market association not organized for profit, no part of the net income of which inures to
23 the benefit of any member, but that is organized for the sole purpose of providing for retail distribution of
24 homegrown vegetables, handicrafts, and other products either grown or manufactured by the seller;

25 (n) common trust fund as defined in section 584(a) of the Internal Revenue Code, 26 U.S.C.
26 584(a).

27 (2) In determining the corporate income tax imposed under this part, there may not be included
28 any earnings derived from any public utility managed or operated by any subdivision of the state or from the

1 exercise of any governmental function.

2 (3)— ~~(a)Any~~ Except as provided in subsection (3)(b), any unrelated business taxable income, as
3 defined by section 512 of the Internal Revenue Code, 26 U.S.C. 512, as amended, earned by any exempt
4 corporation resulting in a federal unrelated business income tax liability of more than \$100 must be taxed as
5 other corporation income is taxed under this title. An exempt corporation subject to taxation on unrelated
6 business income under this section shall file a copy of its federal exempt organization business income tax
7 return on which it reports its unrelated business income with the department.

8 (b) Income associated with the activities set forth in [section 1] is deemed unrelated business
9 taxable income and taxable under 15-31-121."

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11 NEW SECTION. Section 4. Codification instruction. [Section 1] is intended to be codified as an
12 integral part of Title 25, chapter 10, and the provisions of Title 25, chapter 10, apply to [section 1].

13
14 NEW SECTION. Section 5. Effective date. [This act] is effective on passage and approval.

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16 NEW SECTION. Section 6. Applicability. [This act] applies to any disbursements, contributions,
17 expenditures, and promises associated with the payment of ~~legal fees and costs~~ LITIGATION COSTS, INCLUDING
18 ATTORNEY FEES AND COSTS, pursuant to [section 1] on or after [the effective date of this act], regardless of
19 whether the proceeding associated with the government action has already begun.

20 - END -