

HOUSE BILL NO. 377

INTRODUCED BY R. SOMERVILLE, STORY

A BILL FOR AN ACT ENTITLED: "AN ACT REVISING THE TAX CREDIT FOR CONTRIBUTIONS TO QUALIFIED ENDOWMENTS; ESTABLISHING LIMITATIONS FOR CERTAIN TECHNIQUES USED FOR PLANNED GIFTS TO QUALIFIED ENDOWMENTS; REDUCING THE AMOUNT OF THE CREDIT FOR PLANNED GIFTS AND FOR CHARITABLE GIFTS; EXTENDING THE TERMINATION DATE FOR 6 YEARS; ~~AND~~ AMENDING SECTIONS 15-30-165, 15-30-166, AND 15-31-161, AND 15-31-162, MCA, AND SECTION 9, CHAPTER 537, LAWS OF 1997; AND PROVIDING EFFECTIVE DATES AND AN APPLICABILITY DATE."

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

SECTION 1. SECTION 15-30-165, MCA, IS AMENDED TO READ:

"15-30-165. (Temporary) Qualified endowments credit -- definitions -- RULES. For the purposes of 15-30-166, the following definitions apply:

(1) ~~"Planned gift"~~ Subject to subsection (3), "planned gift" means an irrevocable contribution to a permanent endowment held by a tax-exempt organization, or for a tax-exempt organization, when the contribution uses any of the following techniques that are authorized under the Internal Revenue Code:

- (a) charitable remainder unitrusts, as defined by 26 U.S.C. 664;
- (b) charitable remainder annuity trusts, as defined by 26 U.S.C. 664;
- (c) pooled income fund trusts, as defined by 26 U.S.C. 642(c)(5);
- (d) charitable lead unitrusts qualifying under 26 U.S.C. 170(f)(2)(B);
- (e) charitable lead annuity trusts qualifying under 26 U.S.C. 170(f)(2)(B);
- (f) charitable gift annuities undertaken pursuant to 26 U.S.C. 1011(b);
- (g) deferred charitable gift annuities undertaken pursuant to 26 U.S.C. 1011(b);
- (h) charitable life estate agreements qualifying under 26 U.S.C. 170(f)(3)(B);
- (i) paid-up life insurance policies meeting the requirements of 26 U.S.C. 170.

(2) "Qualified endowment" means a permanent, irrevocable fund that is held by a Montana incorporated or established organization that:

- (a) is a tax-exempt organization under 26 U.S.C. 501(c)(3); or
- (b) is a bank or trust company, as defined in Title 32, chapter 1, part 1, that is holding the fund on behalf

of a tax-exempt organization. (~~Terminates December 31, 2001--sec. 9, Ch. 537, L. 1997.~~)

(3) (a) A contribution using a technique described in subsection (1)(a) or (1)(b) is not a planned gift unless the trust agreement provides that the trust may not terminate and the beneficiaries' interest in the trust may not be assigned or contributed to the qualified endowment sooner than the earlier of:

- (i) the date of death of the beneficiaries; or
- (ii) 5 years from the date of the contribution.

(b) A contribution using the technique described in subsection (1)(g) is not a planned gift unless the payment of the annuity is required to begin within the life expectancy of the annuitant or of the joint life expectancies of the annuitants, if more than one annuitant, as determined using the actuarial tables described in section 72 of the Internal Revenue Code, 26 U.S.C. 72; ADOPTED BY RULE BY THE DEPARTMENT in effect on the date of the contribution.

(c) A contribution using a technique described in subsection (1)(f) or (1)(g) is not a planned gift unless the annuity agreement provides that the beneficiaries' interest OF THE ANNUITANT OR ANNUITANTS in the deferred gift annuity may not be assigned to the qualified endowment sooner than the earlier of:

- (i) the date of death of the beneficiaries ANNUITANT OR ANNUITANTS; or
- (ii) 5 years after the date of the contribution.

4) THE DEPARTMENT SHALL ADOPT RULES TO PREPARE LIFE EXPECTANCY TABLES THAT ARE DERIVED FROM THE ACTUARIAL TABLES CONTAINED IN THE MOST RECENT PUBLICATION 1457 BY THE INTERNAL REVENUE SERVICE. (TERMINATES DECEMBER 31, 2004 2007--SEC. 9, CH. 537, L. 1997.)"

SECTION 2. SECTION 15-30-166, MCA, IS AMENDED TO READ:

"15-30-166. (Temporary) Credit for contributions to qualified endowment. (1) A taxpayer is allowed a tax credit against the taxes imposed by 15-30-103 or 15-31-101 in an amount equal to ~~50%~~ 40% of the present value of the aggregate amount of the charitable gift portion of a planned gift made by the taxpayer during the year to any qualified endowment. The maximum credit that may be claimed by a taxpayer for contributions made from all sources in a year is \$10,000. The credit allowed under this section may not exceed the taxpayer's income tax liability.

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

(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. (Terminates December 31, ~~2004~~ 2007--sec. 9, Ch. 537, L. 1997.)"

SECTION 3. SECTION 15-31-161, MCA, IS AMENDED TO READ:

"15-31-161. (Temporary) Credit for contribution by corporations to qualified endowment. A corporation is allowed a credit in an amount equal to ~~50%~~ 20% of a charitable gift against the taxes otherwise due under 15-31-101 for charitable contributions made to a qualified endowment, as defined in 15-30-165. The maximum credit that may be claimed by a corporation for contributions made from all sources in a year under this section is \$10,000. The credit allowed under this section may not exceed the corporate taxpayer's income tax liability. The credit allowed under this section may not be claimed by a corporation if the taxpayer has included the full amount of the contribution upon which the amount of the credit was computed as a deduction under 15-31-114. 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. (Terminates December 31, ~~2004~~ 2007--sec. 9, Ch. 537, L. 1997.)"

SECTION 4. SECTION 15-31-162, MCA, IS AMENDED TO READ:

"15-31-162. (Temporary) Small business corporation, partnership, and limited liability company credit for contribution to qualified endowment. A contribution to a qualified endowment, as defined in 15-30-165, by a small business corporation, as defined in 15-31-201, 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 qualifies for the credit provided in 15-31-161. 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 15-30-166(2). The credit allowed under this section may not exceed the taxpayer's income tax liability. 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. (Terminates December 31, ~~2004~~ 2007--sec. 9, Ch. 537, L. 1997.)"

Section 5. Section 9, Chapter 537, Laws of 1997, is amended to read:

"Section 9. Termination. [This act] terminates December 31, ~~2004~~ 2007."

NEW SECTION. SECTION 6. COORDINATION INSTRUCTION. IF HOUSE BILL NO. 143 AND [THIS ACT] ARE BOTH PASSED AND APPROVED AND IF HOUSE BILL NO. 143 INCLUDES A SECTION THAT AMENDS 15-31-162, THEN [SECTION 12] OF HOUSE BILL NO. 143, AMENDING 15-31-162, IS VOID.

NEW SECTION. SECTION 7. EFFECTIVE DATES. (1) EXCEPT AS PROVIDED IN SUBSECTION (2), [THIS ACT] IS EFFECTIVE OCTOBER 1, 2001.

(2) FOR THE PURPOSES OF PROMULGATING ADMINISTRATIVE RULES, [SECTION 1(4) AND THIS SECTION] ARE EFFECTIVE ON PASSAGE AND APPROVAL.

NEW SECTION. SECTION 8. APPLICABILITY. [THIS ACT] APPLIES TO TAX YEARS BEGINNING AFTER DECEMBER 31, 2001, AND TO CONTRIBUTIONS TO QUALIFIED ENDOWMENTS MADE AFTER DECEMBER 31, 2001.

- END -