

HOUSE BILL NO. 746
INTRODUCED BY R. ERICKSON

A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING A 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used by Montana charities has long-term potential to benefit all Montana communities by updating or replacing outdated, unsafe, or inefficient buildings to help individual communities meet growing needs; and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 taxpayer is allowed a tax credit against the taxes imposed by 15-30-103 in an amount equal to 30% of the charitable value of the capital construction contribution by the taxpayer during the year to any capital construction project. The

maximum credit that may be claimed by a taxpayer under [sections 3 and 4 and this section] 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.

(4) If during any year a charitable gift is recovered by the taxpayer, the taxpayer 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 taxpayer's individual income tax; and

(b) increase the amount of tax due under 15-30-103 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 2. Credit for contributions to capital construction. (1) A corporation is allowed a tax credit in an amount equal to 30% of a charitable gift against the taxes otherwise due under 15-31-101 for a charitable capital construction contribution to a capital construction project. The maximum credit that may be claimed by a corporation for contributions made from all sources in a year is \$10,000. The credit allowed under this section may not exceed the corporation's income tax liability.

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

(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 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 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 1]. 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.

(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 by the amount of the credit allowed in the tax year in which the credit was taken.

NEW SECTION. Section 4. Beneficiaries of estates -- credit for contributions to capital construction. (1) A capital construction contribution to a capital construction project by an estate may qualify for the credit allowed in [section 1]. A credit not used by the estate may be attributed to each beneficiary of the estate in the same proportion used to report the beneficiary's income from the estate for Montana income tax purposes. The maximum amount of credit that a beneficiary may claim in a year is \$10,000, and the credit must be claimed

in the year in which the contribution is made.

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

(3) If during any year a charitable gift is recovered by the estate, the entity 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 estate's tax; and

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

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

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

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

(3) [Section 3] is intended to be codified as an integral part of Title 15, chapter 30, part 11, and the provisions of Title 15, chapter 30, part 11, apply to [section 3].

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

NEW SECTION. Section 8. Retroactive applicability. [This act] applies retroactively, within the meaning of 1-2-109, to tax periods beginning after December 31, 2006.

NEW SECTION. Section 9. Termination. [This act] terminates December 31, 2013.

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