

1 SENATE BILL NO. 108

2 INTRODUCED BY T. BROWN

3
4 A BILL FOR AN ACT ENTITLED: "AN ACT REVISING LAWS RELATED TO THE TAX CREDIT FOR
5 CONTRIBUTIONS TO A QUALIFIED ENDOWMENT; EXTENDING THE TERMINATION DATE OF THE TAX
6 CREDIT; SPECIFYING THE MINIMUM ANNUITY RATE FOR DEFERRED CHARITABLE GIFT ANNUITIES;
7 CLARIFYING THE REQUIRED TIMING OF PAYMENTS FOR DEFERRED CHARITABLE GIFT ANNUITIES;
8 APPLYING THE PROVISIONS OF THE UNIFORM PRUDENT MANAGEMENT OF INSTITUTIONAL FUNDS
9 ACT TO THE DEFINITION OF "PERMANENT, IRREVOCABLE FUND"; AMENDING SECTION 15-30-2327,
10 MCA; AMENDING SECTION 9, CHAPTER 537, LAWS OF 1997, SECTION 5, CHAPTER 226, LAWS OF 2001,
11 SECTION 7, CHAPTER 4, LAWS OF 2005, AND SECTIONS 2, 3, 4, AND 7, CHAPTER 208, LAWS OF 2007;
12 AND PROVIDING AN IMMEDIATE EFFECTIVE DATE, AN APPLICABILITY DATE, AND A TERMINATION
13 DATE."

14
15 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

16
17 **Section 1.** Section 15-30-2327, MCA, is amended to read:

18 **"15-30-2327. (Temporary) Qualified endowments credit -- definitions -- rules.** (1) For the purposes
19 of 15-30-2328 and this section, the following definitions apply:

20 (a) (i) "Permanent, irrevocable fund" means a fund comprising cash, securities, mutual funds, or other
21 investment assets established for a specific charitable, religious, educational, or eleemosynary purpose and
22 managed, invested, for the production or growth of income, or both, that may either be added to principal or
23 expended and appropriated pursuant to the Uniform Prudent Management of Institutional Funds Act provided for
24 in Title 72, chapter 30.

25 (ii) The term does not include a fund held by or for a tax-exempt organization to accomplish a charitable,
26 religious, educational, or eleemosynary purpose from which contributions are expended directly for constructing,
27 renovating, or purchasing operational assets, such as buildings or equipment.

28 (b) Subject to subsection ~~(2)~~ (3), "planned gift" means an irrevocable contribution to a permanent
29 endowment held by or for a tax-exempt organization when the contribution uses any of the following techniques
30 that are authorized under the Internal Revenue Code:

- 1 (i) charitable remainder unitrusts, as defined by 26 U.S.C. 664;
 2 (ii) charitable remainder annuity trusts, as defined by 26 U.S.C. 664;
 3 (iii) pooled income fund trusts, as defined by 26 U.S.C. 642(c)(5);
 4 (iv) charitable lead unitrusts qualifying under 26 U.S.C. 170(f)(2)(B);
 5 (v) charitable lead annuity trusts qualifying under 26 U.S.C. 170(f)(2)(B);
 6 (vi) charitable gift annuities undertaken pursuant to 26 U.S.C. 1011(b);
 7 (vii) deferred charitable gift annuities undertaken pursuant to 26 U.S.C. 1011(b);
 8 (viii) charitable life estate agreements qualifying under 26 U.S.C. 170(f)(3)(B);
 9 (ix) paid-up life insurance policies meeting the requirements of 26 U.S.C. 170.

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

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

15 (2) (a) Terms in a document creating a donor restriction, such as those provided for in subsection (2)(b),
 16 intending to qualify a gift for the tax credit referenced in 15-30-2328, 15-30-2329, 15-31-161, 15-31-162, and this
 17 section, require that the gift satisfy the current definition of permanent, irrevocable fund and not any previous
 18 definition unless other language in the document demonstrates a different intent.

19 (b) The restrictions referenced in subsection (2)(a) include but are not limited to a requirement that the
 20 contribution be held in a "qualified endowment" or "permanent, irrevocable fund" or that the "present value of the
 21 fund at the time of the planned gift or outright contribution" not be expendable.

22 (c) Subsections (2)(a) and (2)(b) apply to funds and terms existing on or established on [the effective
 23 date of this act]. As applied to permanent, irrevocable funds existing on [the effective date of this act], this
 24 subsection (2) governs only decisions made or actions taken on or after that date.

25 ~~(2)(3)~~ (a) A contribution using a technique described in subsection (1)(b)(i) or (1)(b)(ii) is not a planned
 26 gift unless the trust agreement provides that the trust may not terminate and the beneficiaries' interest in the trust
 27 may not be assigned or contributed to the qualified endowment sooner than the earlier of:

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

30 (b) A contribution using the technique described in subsection (1)(b)(vii) is not a planned gift unless the

1 first partial or full-year payment of the annuity is required to begin within the life expectancy of the annuitant or
 2 of the joint life expectancies of the annuitants, if more than one annuitant, as determined using the actuarial tables
 3 adopted by rule by the department in effect on the date of the contribution.

4 (c) A contribution using a technique described in subsection (1)(b)(vi) or (1)(b)(vii) is not a planned gift
 5 unless the annuity agreement provides that the interest of the annuitant or annuitants in the gift annuity may not
 6 be assigned to the qualified endowment sooner than the earlier of:

7 (i) the date of death of the annuitant or annuitants; or

8 (ii) 5 years after the date of the contribution.

9 (d) A contribution using a technique described in subsection (1)(b)(vi) or (1)(b)(vii) is not a planned gift
 10 unless the annuity is a qualified charitable gift annuity as defined in 33-20-701.

11 (e) A contribution using a technique described in subsection (1)(b)(vii) is not a planned gift unless the
 12 annuity rate to be paid is at least 5%.

13 ~~(3)(4)~~ The department shall adopt rules to prepare life expectancy tables that are derived from the
 14 actuarial tables contained in the most recent Publication 1457 by the internal revenue service. (Terminates
 15 December 31, 2013 2019--secs. 2, 3, 7, Ch. 208, L. 2007.)"

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17 **Section 2.** Section 9, Chapter 537, Laws of 1997, is amended to read:

18 "**Section 9. Termination.** [This act] terminates December 31, ~~2004~~ 2019."

19

20 **Section 3.** Section 5, Chapter 226, Laws of 2001, is amended to read:

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

22 "**Section 9. Termination.** [This act] terminates December 31, ~~2004~~ 2007 2019.""

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24 **Section 4.** Section 7, Chapter 4, Laws of 2005, is amended to read:

25 "**Section 7. Termination.** [This act] terminates December 31, ~~2007~~ 2019."

26

27 **Section 5.** Section 2, Chapter 208, Laws of 2007, is amended to read:

28 "**Section 2.** Section 9, Chapter 537, Laws of 1997, is amended to read:

29 "**Section 9. Termination.** [This act] terminates December 31, ~~2004~~ 2013 2019.""

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1 **Section 6.** Section 3, Chapter 208, Laws of 2007, is amended to read:

2 **"Section 3.** Section 5, Chapter 226, Laws of 2001, is amended to read:

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

4 **"Section 9. Termination.** [This act] terminates December 31, ~~2004~~ 2007 ~~2013~~ 2019."

5

6 **Section 7.** Section 4, Chapter 208, Laws of 2007, is amended to read:

7 **"Section 4.** Section 7, Chapter 4, Laws of 2005, is amended to read:

8 **"Section 7. Termination.** [This act] terminates December 31, ~~2007~~ 2013 2019."

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10 **Section 8.** Section 7, Chapter 208, Laws of 2007, is amended to read:

11 **"Section 7. Termination.** (1) [Section 1] terminates December 31, ~~2013~~ 2019.

12 (2) Sections 1 through 4, Chapter 226, Laws of 2001, terminate December 31, ~~2013~~ 2019.

13 (3) Section 7, Chapter 482, Laws of 2003, terminates December 31, ~~2013~~ 2019."

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15 NEW SECTION. **Section 9. Effective date.** [This act] is effective on passage and approval.

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17 NEW SECTION. **Section 10. Applicability.** [This act] applies to charitable contributions made on or
18 after [the effective date of this act].

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20 NEW SECTION. **Section 11. Termination.** [Section 1] terminates December 31, 2019.

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