

SENATE BILL NO. 89

INTRODUCED BY G. JERGESON

BY REQUEST OF THE DEPARTMENT OF REVENUE

A BILL FOR AN ACT ENTITLED: "AN ACT ALLOWING FOR THE DISCLOSURE OF APPLICATION MATERIALS AND TAX RETURNS OF ORGANIZATIONS EXEMPT FROM THE CORPORATION LICENSE AND INCOME TAXES; DIRECTING THE DEPARTMENT OF REVENUE TO MAKE A PUBLIC LIST OF EXEMPT ORGANIZATIONS; AND AMENDING SECTIONS 15-31-102 AND 15-31-511, MCA."

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

Section 1. Section 15-31-102, MCA, is amended to read:

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

(a) labor, agricultural, or horticultural organization;

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

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

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

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

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

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

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

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

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

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

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

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

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

24 (2) In determining the license fee to be paid under this part, there may not be included any earnings
25 derived from any public utility managed or operated by any subdivision of the state or from the exercise of any
26 governmental function.

27 (3) Any unrelated business taxable income, as defined by section 512 of the Internal Revenue Code,
28 26 U.S.C. 512, as amended, earned by any exempt corporation resulting in a federal unrelated business income
29 tax liability of more than \$100 must be taxed as other corporation income is taxed under this title. An exempt
30 corporation subject to taxation on unrelated business income under this section shall file a copy of its federal

1 exempt organization business income tax return on which it reports its unrelated business income with the
2 department of revenue.

3 (4) The department shall maintain a list of organizations that are exempt from taxation under this title
4 and make the list available to the public. Upon request and payment of copying fees, the department shall make
5 available to any person information that has been filed with the department by an exempt organization and that
6 is excluded from confidentiality under 15-31-511(3)(g)."

7

8 **Section 2.** Section 15-31-511, MCA, is amended to read:

9 **"15-31-511. Confidentiality of tax records.** (1) Except as provided in this section, in accordance with
10 a proper judicial order, or as otherwise provided by law, it is unlawful to divulge or make known in any manner:

11 (a) the amount of income or any particulars set forth or disclosed in any return or report required under
12 this chapter or any other information relating to taxation secured in the administration of this chapter; or

13 (b) any federal return or information in or disclosed on a federal return or report required by law or rule
14 of the department of revenue under this chapter.

15 (2) (a) An officer or employee charged with custody of returns and reports required by this chapter may
16 not be ordered to produce any of them or evidence of anything contained in them in any administrative
17 proceeding or action or proceeding in any court, except:

18 (i) in an action or proceeding in which the department is a party under the provisions of this chapter; or

19 (ii) in any other tax proceeding or on behalf of a party to an action or proceeding under the provisions of
20 this chapter when the returns or reports or facts shown in them are directly pertinent to the action or proceeding.

21 (b) If the production of a return, report, or information contained in them is ordered, the court shall limit
22 production of and the admission of returns, reports, or facts shown in them to the matters directly pertinent to the
23 action or proceeding.

24 (3) This section does not prohibit:

25 (a) the delivery of a certified copy of any return or report filed in connection with a return to the taxpayer
26 who filed the return or report or to the taxpayer's authorized representative;

27 (b) the publication of statistics prepared in a manner that prevents the identification of particular returns,
28 reports, or items from returns or reports;

29 (c) the inspection of returns and reports by the attorney general or other legal representative of the state
30 in the course of an administrative proceeding or litigation under this chapter;

1 (d) access to information under subsection (4);

2 (e) the director of revenue from permitting a representative of the commissioner of internal revenue of
3 the United States or a representative of a proper officer of any state imposing a tax on the income of a taxpayer
4 to inspect the returns or reports of a corporation. The department may also furnish those persons abstracts of
5 income, returns, and reports; information concerning any item in a return or report; and any item disclosed by an
6 investigation of the income or return of a corporation. The director of revenue may not furnish that information
7 to a person representing the United States or another state unless the United States or the other state grants
8 substantially similar privileges to an officer of this state charged with the administration of this chapter.

9 (f) the disclosure of information to the commissioner of insurance's office that is necessary for the
10 administration of the small business health insurance tax credit provided for in Title 33, chapter 22, part 20; or

11 (g) the disclosure of an exempt organization's tax-exempt status request application materials, if
12 available, and information filed by an exempt organization that is open to public inspection consistent with 26
13 U.S.C. 6104.

14 (4) On written request to the director or a designee of the director, the department shall:

15 (a) allow the inspection of returns and reports by the legislative auditor, but the information furnished to
16 the legislative auditor is subject to the same restrictions on disclosure outside that office as provided in subsection
17 (1); and

18 (b) provide corporation income tax information, including any information that may be required under Title
19 15, chapter 30, part 33, to the legislative fiscal analyst, as provided in 5-12-303 or 15-1-106, and the office of
20 budget and program planning, as provided in 15-1-106 or 17-7-111. The information furnished to the legislative
21 fiscal analyst and the office of budget and program planning is subject to the same restrictions on disclosure
22 outside those offices as provided in subsection (1).

23 (5) A person convicted of violating this section shall be fined not to exceed \$500. If a public officer or
24 public employee is convicted of violating this section, the person is dismissed from office or employment and may
25 not hold any public office or public employment in the state for a period of 1 year after dismissal or, in the case
26 of a former officer or employee, for 1 year after conviction."

27 - END -