

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

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