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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 a~~ nonprofit corporation organized under 26 U.S.C. 501(c)(3) or 26 U.S.C. 527 and to any funds that are transferred by a nonprofit corporation that is organized under 26 U.S.C. 501(c)(3) or 26 U.S.C. 527 to an affiliated corporation or entity of the nonprofit corporation when funds are transferred to challenge or support a government action.

- (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

1 nonprofit corporation; or

2 (b) to a health care facility licensed under Title 50, chapter 5, or other nonprofit corporations  
3 providing or advocating for critical health care delivery systems.

4 (3) For the purposes of this section, the following definitions apply:

5 (a) "Government action" means the implementation or application of:

6 (i) the federal Clean Air Act, the federal Clean Water Act, the federal Endangered Species Act,  
7 the federal Surface Mining Control and Reclamation Act, the National Environmental Policy Act, or federal oil  
8 and coal leasing laws, including but not limited to federal rules, regulations, and policies implementing those  
9 laws; or

10 (ii) state law codified in Title 75, 76, 77, 80, 81, 82, or 87, including but not limited to state rules,  
11 regulations, and policies implementing those titles.

12 (b) "~~Legal fees and costs~~ LITIGATION COSTS" include but are not limited to:

13 (i) internal lawyer, internal paralegal, internal legal assistant, internal expert witness, and other  
14 internal employee fees and costs, including a calculation of employee benefits, associated with employee  
15 participation in the challenge or support of a government action; and

16 (ii) external lawyer, external paralegal, external legal assistant, expert witness, and other external  
17 resource fees and costs associated with participation in the challenge or support of a government action.

18 (c) "Nonprofit corporation" means a nonprofit corporation exempt from taxation under 26 U.S.C.  
19 501(c)(3) and organized for charitable purposes.

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21 **Section 2.** Section 15-30-3404, MCA, is amended to read:

22 **"15-30-3404. Election -- partnership pays -- rulemaking.** (1) Subject to the limitations in subsection  
23 (2), an audited partnership making an election under this section shall:

24 (a) no later than 90 days after the final determination date, file a completed federal adjustments  
25 report, including information required by the department, and notify the department that it is making the election  
26 under this section. A partnership that fails to file a timely completed federal adjustments report must be  
27 assessed a late file penalty as provided for in 15-30-3302(5)(d).

28 (b) no later than 180 days after the final determination date, pay an amount, determined as