

1 SENATE BILL NO. 524
 2 INTRODUCED BY G. HERTZ
 3
 4 A BILL FOR AN ACT ENTITLED: "AN ACT REVISING THE TAXATION OF NONPROFIT CORPORATIONS;
 5 REVISING LAWS RELATED TO ~~LEGAL FEES AND LITIGATION~~ COSTS OF NONPROFIT CORPORATIONS
 6 CHALLENGING OR SUPPORTING CERTAIN GOVERNMENT ACTIONS; PROVIDING THAT INCOME USED
 7 TO SUPPORT CERTAIN ~~LEGAL FEES AND LITIGATION~~ COSTS IS SUBJECT TO TAXATION; AMENDING
 8 SECTIONS 15-30-3404 AND 15-31-102, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN
 9 APPLICABILITY DATE."

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

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 13 NEW SECTION. **Section 1. Nonprofit corporation -- legal fees and costs challenging certain**
 14 **government action.** (1) Except as otherwise provided in subsection (2), the payment of legal fees litigation
 15 costs, including attorney fees and costs, associated with a nonprofit corporation challenging or supporting a
 16 government action in a judicial or administrative proceeding is not a charitable purpose under state law, and
 17 any income used to support this activity constitutes unrelated business income under 15-31-102 and is subject
 18 to taxation as provided in 15-31-121. This requirement applies to any affiliated corporation or entity of the
 19 nonprofit corporation organized under 26 U.S.C. 501(c)(3) or 26 U.S.C. 527.

- 20 (2) This section does not apply:
- 21 (a) to a nonprofit corporation that is defending or prosecuting a government action that involves:
 - 22 (i) property belonging to the nonprofit corporation;
 - 23 (ii) a contract to which the nonprofit corporation is a party;
 - 24 (iii) a permit or license held or owned by the nonprofit corporation; or
 - 25 (iv) any professional license associated with an employee of the nonprofit corporation or the
 - 26 nonprofit corporation; or
 - 27 (b) to a health care facility licensed under Title 50, chapter 5, or other nonprofit corporations
 - 28 providing or advocating for critical health care delivery systems.

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

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

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

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

9 (b) "~~Legal fees and costs~~ Litigation costs" include but are not limited to:

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

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

15 (c) "Nonprofit corporation" means a nonprofit corporation exempt from taxation under 26 U.S.C.
16 501(c)(3) and organized for charitable purposes.

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

19 **"15-30-3404. Election -- partnership pays -- rulemaking.** (1) Subject to the limitations in subsection
20 (2), an audited partnership making an election under this section shall:

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

25 (b) no later than 180 days after the final determination date, pay an amount, determined as
26 follows, in lieu of taxes owed by its direct and indirect partners:

27 (i) exclude from final federal adjustments the distributive share of these adjustments reported to a
28 direct exempt partner not subject to tax under 15-31-102(3)(a);

1 (3)— (a)Any Except as provided in subsection (3)(b), any unrelated business taxable income, as
 2 defined by section 512 of the Internal Revenue Code, 26 U.S.C. 512, as amended, earned by any exempt
 3 corporation resulting in a federal unrelated business income tax liability of more than \$100 must be taxed as
 4 other corporation income is taxed under this title. An exempt corporation subject to taxation on unrelated
 5 business income under this section shall file a copy of its federal exempt organization business income tax
 6 return on which it reports its unrelated business income with the department.

7 (b) Income associated with the activities set forth in [section 1] is deemed unrelated business
 8 taxable income and taxable under 15-31-121."

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 10 **NEW SECTION. Section 4. Codification instruction.** [Section 1] is intended to be codified as an
 11 integral part of Title 25, chapter 10, and the provisions of Title 25, chapter 10, apply to [section 1].

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 13 **NEW SECTION. Section 5. Effective date.** [This act] is effective on passage and approval.

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 15 **NEW SECTION. Section 6. Applicability.** [This act] applies to any disbursements, contributions,
 16 expenditures, and promises associated with the payment of ~~legal fees and costs~~ litigation costs, including
 17 attorney fees and costs, pursuant to [section 1] on or after [the effective date of this act], regardless of whether
 18 the proceeding associated with the government action has already begun.

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