

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) 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

(b) to a health care facility licensed under Title 50, chapter 5, or other nonprofit corporations 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);

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

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

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

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

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

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