Bishop BENEDICT Bitney Ellis Wiseman Sliter Thomas M. Hansen Foster Beaudry Walters HEAVY RUNNER Smith Anderson Swanson Clark Masolo Zook Harrington Kitzenberg Hayne Simpson Knox Wilson DENNY Storall Curtiss Beck

HOUSE BILL NO. 434

INTRODUCED BY

A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING A TAX CREDIT FOR PLANNED GIFTS BY INDIVIDUALS AND OTHER GIFTS BY CORPORATIONS AND ESTATES MADE TO QUALIFIED CHARITABLE ENDOWMENT FUNDS; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE, A RETROACTIVE APPLICABILITY DATE, AND A TERMINATION DATE."

WHEREAS, charitable endowments are permanent savings accounts, the income from which is perpetually committed to charitable purposes; and

WHEREAS, Montana-based charitable endowments can grow over time to become significant resources capable of funding many unanticipated and unmet needs of, and creating new opportunities for, Montana's citizens and their communities; and

WHEREAS, Montana's relatively weak tradition of endowed philanthropy can be demonstrated by comparing our state with the other 49 states, in that Montana ranks 44th in population and 41st in per capita income, but ranks 48th in foundation assets and 49th in foundation giving; and

WHEREAS, a planned gift is a type of charitable contribution that has the following three characteristics: first, it is composed typically of assets saved over the contributor's lifetime; second, it is conferred in connection with a carefully considered estate plan; and third, it transfers assets of the contributor to a charity prior to the contributor's death; and

WHEREAS, although planned gifts would appear to offer genuine financial potential for creating and expanding charitable endowments in Montana, in reality, planned gifts are so infrequently contributed in Montana that endowments in our state are not growing as fast as they are in other states; and

WHEREAS, planned gifts might be used more in funding charitable endowments in Montana if contributors could offset a significant portion of their gifts against their Montana income tax liabilities; and

WHEREAS, over the long term, income distributed from endowments can help achieve community goals and objectives when current funding from state and local government budgets may be limited; and

WHEREAS, local charitable endowments currently exist in almost every Montana community, and the existence of these widespread endowments offers everyone in Montana an opportunity to contribute ndowed funding for their local communities; and

WHEREAS, community-based endowments in Montana have long-term potential to benefit all Montana communities by developing creative solutions to help individual communities meet growing needs and by helping these communities find transitions to self-sufficiency; and

WHEREAS, earnings from charitable endowments in Montana are distributed by volunteer boards of diverse community leaders to meet emerging community needs in such areas as education, arts and culture, social services, economic development, and health and the environment; and

WHEREAS, government cannot meet, nor should it be expected to meet, all of the needs of the state's communities because of its limited financial resources and because each community is in a better position to determine its own existing and future needs and opportunities; and

WHEREAS, tax credits provide financial incentives that encourage contributions for the establishment or expansion of charitable endowments in Montana; and

WHEREAS, the Legislature limits the tax credit created by [this act] to qualified permanent endowments held by tax-exempt organizations or by banks or trust companies on behalf of tax-exempt organizations; and

WHEREAS, for the purpose of renewing the tax credit created by [this act], it is the intent of the 55th Legislature that the state's cost of administering the tax credit may not exceed 5% of the total annual credits claimed.

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

NEW SECTION. **Section 1. Qualified endowments credit -- definitions.** For the purposes of [section 2], the following definitions apply:

(1) "Planned gift" means an irrevocable contribution to a permanent endowment held by a tax-exempt organization or, for a tax-exempt organization, when the contribution uses any of the following techniques that are authorized under the Internal Revenue Code:

(a) charitable remainder unitrusts, as defined by 26 U.S.C. 664;

(b) charitable remainder annuity trusts, as defined by 26 U.S.C. 664;

(c) pooled income fund trusts, as defined by 26 U.S.C. 642(c)(5);

(d) charitable lead unitrusts, qualifying under 26 U.S.C. 170(f)(2)(B);

(e) charitable lead annuity trusts, qualifying under 26 U.S.C. 170(f)(2)(B);

(f) charitable gift annuities, undertaken pursuant to 26 U.S.C. 1011(b);

(g) deferred charitable gift annuities, undertaken pursuant to 26 U.S.C. 1011(b);

(h) charitable life estate agreements, qualifying under 26 U.S.C. 170(f)(3)(B);

(i) paid-up life insurance policies, meeting the requirements of 26 U.S.C. 170.

(2) "Qualified endowment" means a permanent, irrevocable fund that is held by an organization that:

(a) (i) is a tax-exempt organization under 26 U.S.C. 501(c)(3); or

(ii) is a bank or trust company, as defined in Title 32, chapter 1, part 1, that is holding the fund on behalf of a tax-exempt organization; and

(b) manages the principal, revenue, and disbursements of the endowment in a manner that guards against erosion by meeting the prudent investor rule.

NEW SECTION. **Section 2. Credit for contributions to qualified endowment.** (1) A taxpayer is allowed a tax credit against the taxes imposed by 15-30-103 or 15-31-101 in an amount equal to 50% of the present value of the aggregate amount of the gift portion of a planned gift made by the taxpayer during the year to any qualified endowment fund. The maximum credit that be claimed by a taxpayer for contributions made from all sources in a year is $10,000. The credit allowed under this section may not exceed the taxpayer's income tax liability.

(2) The credit allowed under this section may not be claimed by an individual taxpayer if the taxpayer has included the contribution as a deduction under 15-30-121(1) or 15-30-136(2).

(3) There is no carryback or carryforward of the credit permitted under this section, and the credit must be applied to the tax year in which the contribution is made.

NEW SECTION. **Section 3. Credit for contribution by corporations to qualified endowment.** A corporation is allowed a credit against the taxes otherwise due under 15-31-101 for charitable contributions made to a qualified endowment, as defined in [section 1]. The credit must be in accordance with the provisions of [section 2]. The maximum credit that may be claimed by a corporation for contributions made from all sources in a year under this section is $10,000. The credit allowed under this section may not exceed the corporate taxpayer's income tax liability. There is no carryback or carryforward of the credit permitted under this section, and the credit must be applied to the tax year in which the contribution is made.

NEW SECTION. **Section 4. Small business corporation, partnership, and limited liability company credit for contribution to qualified endowment**. A contribution to a qualified endowment, as defined in [section 1], by a small business corporation, as defined in 15-31-201, a partnership, or a limited liability company, as defined in 35-8-102, qualifies for the credit provided in [section 2]. The credit must be attributed to shareholders, partners, or members or managers of a limited liability company in the same proportion used to report the corporation's, partnership's, or limited liability company's income or loss for Montana income tax purposes. The maximum credit that a shareholder of a small business corporation, a partner of a partnership, or a member or manager of a limited liability company may claim in a year is $10,000, subject to the limitations in [section 2]. The credit allowed under this section may not exceed the taxpayer's income tax liability. There is no carryback or carryforward of the credit permitted under this section, and the credit must be applied to the tax year in which the contribution is made.

NEW SECTION. **Section 5. Beneficiaries of estates -- credit for contribution to qualified endowment.** A contribution to a general endowment fund of a qualified endowment, as defined in [section 1], by an estate qualifies for the credit provided in [section 2]. Any credit not used by the estate may be attributed to each beneficiary of the estate in the same proportion used to report the beneficiary's income from the estate for Montana income tax purposes. The maximum amount of credit that a beneficiary may claim is $10,000, subject to the limitation in [section 2], and the credit must be claimed in the year in which the contribution is made. The credit may not be carried forward or carried back.

NEW SECTION. **Section 6. Report on income tax credit to committee.** The department shall report to the revenue oversight committee at least once each year the number and type of taxpayers claiming the credit under [section 2], the total amount of the credit claimed, and the department's cost associated with administering the credit.

NEW SECTION. **Section 7. Codification instruction.** (1) [Sections 1, 2, and 5] are intended to be codified as an integral part of Title 15, chapter 30, and the provisions of Title 15, chapter 30, apply to [sections 1, 2, and 5].

(2) [Sections 3 and 4] are intended to be codified as an integral part of Title 15, chapter 31, and the provisions of Title 15, chapter 31, apply to [sections 3 and 4].

(3) [Section 6] is intended to be codified as an integral part of Title 15, chapter 1, part 2, and the provisions of Title 15, chapter 1, part 2, apply to [section 6].

NEW SECTION. **Section 8. Effective date -- retroactive applicability.** [This act] is effective on passage and approval and applies retroactively, within the meaning of 1-2-109, to tax years beginning after December 31, 1996.

NEW SECTION. **Section 9. Termination.** [This act] terminates December 31, 2001.

-END-

STATE OF MONTANA - FISCAL NOTE

Fiscal Note for HB0434, as introduced

DESCRIPTION OF PROPOSED LEGISLATION:
An act providing a tax credit for planned gifts by individuals and other gifts by corporations and estates made to qualified charitable endowment funds; and providing an immediate effective date, a retroactive applicability date, and a termination date.

ASSUMPTIONS:

1. The bill applies to planned gifts and other gifts by corporations and estates given after December 31, 1996.
2. The maximum credit for any planned gift is $10,000 per taxpayer; a married couple filing separate returns would be allowed a combined maximum credit of $20,000.
3. The credit provided for in the bill cannot be claimed if the taxpayer has claimed the contribution as an itemized deduction.
4. The credit amount associated with small business corporations, partnerships, or limited liability companies is limited to $10,000 for each shareholder, partner, or member or manager, based on the individual's liability, not on the entity's liability.
5. The tax credit cannot exceed the taxpayer's income tax liability; the credit may not be carried forward or backward, but must be used, to the extent possible, in the year claimed.
6. Administrative expenses would include one-time computer programming expenses for adding a new line to income tax forms and ongoing record storage costs. These programming costs would equal $1,600 for the Corporate Tax Division and $14,418 for the Income Tax Division. The ongoing record storage costs would be $254 per year for the Income Tax Division.

FISCAL IMPACT:

	FY98	FY99
Expenditures: (General Fund)		
Corporate License Tax	$ 1,600	
Individual Income Tax		
Programming Costs	$ 14,418	
Record Storage Costs	$ 254	$ 254
Total	$ 16,272	$ 254

Revenues: (General Fund)

It is very difficult to determine the revenue impact of this proposal. The revenue impact will depend on the number of planned gifts and other gifts by corporations and estates made each year.

Based on information provided by the State of Michigan, where this credit has been in place for several years, the Department of Revenue estimates that this credit will reduce tax revenue by approximately $200,000 annually, with this amount shared 75% in individual income tax revenues and 25% in corporation license tax revenues.

Dave Lewis 2-10-97
DAVE LEWIS, BUDGET DIRECTOR DATE
Office of Budget and Program Planning

Chase Hibbard 2-12-97
CHASE HIBBARD, PRIMARY SPONSOR DATE

HB 434

APPROVED BY COM
ON TAXATION

HOUSE BILL NO. 434

INTRODUCED BY HIBBARD, MARSHALL, GRIMES, FELAND, THOMAS, ROSE, HAGENER, SOFT, FOSTER, R. JOHNSON, M. HANSON, BEAUDRY, SPRAGUE, OHS, ECK, MOOD, CHRISTIAENS, MENAHAN, WATERMAN, WALTERS, SMITH, HERTEL, ANDERSON, BOHLINGER, HARRINGTON, REAM, MAHLUM, HAYNE, HOLLAND, HEAVY RUNNER, JENKINS, MCCULLOCH, LAWSON, SANDS, AHNER, GROSFIELD, SWANSON, CLARK, MASOLO, ZOOK, J. JOHNSON, HARGROVE, HARPER, PAVLOVICH, SHEA, DOWELL, BOOKOUT, PECK, KITZENBERG, BROOKE, RANEY, ELLINGSON, KOTTEL, KNOX, SIMPSON, SQUIRES, QUILICI, BECK, HALLIGAN, WILSON, BURNETT, DENNY, DEVANEY, KRENZLER, GRADY, MCGEE, CURTISS, STOVALL, STANG, BISHOP, BENEDICT, RYAN, BITNEY, CAREY, ELLIS, BAER, MILLS, LYNCH, TASH, SLITER, SIMON, VAN VALKENBURG, FRANKLIN, MCCARTHY, MOHL, WISEMAN, TAYLOR

A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING A TAX CREDIT FOR PLANNED GIFTS BY INDIVIDUALS AND OTHER GIFTS BY CORPORATIONS AND ESTATES MADE TO QUALIFIED CHARITABLE ENDOWMENT FUNDS; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE, A RETROACTIVE APPLICABILITY DATE, AND A TERMINATION DATE."

WHEREAS, charitable endowments are permanent savings accounts, the income from which is perpetually committed to charitable purposes; and

WHEREAS, Montana-based charitable endowments can grow over time to become significant resources capable of funding many unanticipated and unmet needs of, and creating new opportunities for, Montana's citizens and their communities; and

WHEREAS, Montana's relatively weak tradition of endowed philanthropy can be demonstrated by comparing our state with the other 49 states, in that Montana ranks 44th in population and 41st in per capita income, but ranks 48th in foundation assets and 49th in foundation giving; and

WHEREAS, a planned gift is a type of charitable contribution that has the following three characteristics: first, it is composed typically of assets saved over the contributor's lifetime; second, it is conferred in connection with a carefully considered estate plan; and third, it transfers assets of the contributor to a charity prior to the contributor's death; and

WHEREAS, although planned gifts would appear to offer genuine financial potential for creating and

SECOND READING

expanding charitable endowments in Montana, in reality, planned gifts are so infrequently contributed in Montana that endowments in our state are not growing as fast as they are in other states; and

WHEREAS, planned gifts might be used more in funding charitable endowments in Montana if contributors could offset a significant portion of their gifts against their Montana income tax liabilities; and

WHEREAS, over the long term, income distributed from endowments can help achieve community goals and objectives when current funding from state and local government budgets may be limited; and

WHEREAS, local charitable endowments currently exist in almost every Montana community, and the existence of these widespread endowments offers everyone in Montana an opportunity to contribute endowed funding for their local communities; and

WHEREAS, community-based endowments in Montana have long-term potential to benefit all Montana communities by developing creative solutions to help individual communities meet growing needs and by helping these communities find transitions to self-sufficiency; and

WHEREAS, earnings from charitable endowments in Montana are distributed by volunteer boards of diverse community leaders to meet emerging community needs in such areas as education, arts and culture, social services, economic development, and health and the environment; and

WHEREAS, government cannot meet, nor should it be expected to meet, all of the needs of the state's communities because of its limited financial resources and because each community is in a better position to determine its own existing and future needs and opportunities; and

WHEREAS, tax credits provide financial incentives that encourage contributions for the establishment or expansion of charitable endowments in Montana; and

WHEREAS, the Legislature limits the tax credit created by [this act] to qualified permanent endowments held by tax-exempt organizations or by banks or trust companies on behalf of tax-exempt organizations; and

WHEREAS, for the purpose of renewing the tax credit created by [this act], it is the intent of the 55th Legislature that the state's cost of administering the tax credit may not exceed 5% of the total annual credits claimed.

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

<u>NEW SECTION.</u> **Section 1. Qualified endowments credit -- definitions.** For the purposes of [section

2], the following definitions apply:

(1) "Planned gift" means an irrevocable contribution to a permanent endowment held by a tax-exempt organization, or~~,~~ for a tax-exempt organization, when the contribution uses any of the following techniques that are authorized under the Internal Revenue Code:

(a) charitable remainder unitrusts, as defined by 26 U.S.C. 664;

(b) charitable remainder annuity trusts, as defined by 26 U.S.C. 664;

(c) pooled income fund trusts, as defined by 26 U.S.C. 642(c)(5);

(d) charitable lead unitrusts, qualifying under 26 U.S.C. 170(f)(2)(B);

(e) charitable lead annuity trusts, qualifying under 26 U.S.C. 170(f)(2)(B);

(f) charitable gift annuities, undertaken pursuant to 26 U.S.C. 1011(b);

(g) deferred charitable gift annuities, undertaken pursuant to 26 U.S.C. 1011(b);

(h) charitable life estate agreements, qualifying under 26 U.S.C. 170(f)(3)(B);

(i) paid-up life insurance policies, meeting the requirements of 26 U.S.C. 170.

(2) "Qualified endowment" means a permanent, irrevocable fund that is held by ~~an~~ A MONTANA INCORPORATED OR ESTABLISHED organization that:

(a) ~~(i)~~ is a tax-exempt organization under 26 U.S.C. 501(c)(3); or

~~(ii)~~(B) is a bank or trust company, as defined in Title 32, chapter 1, part 1, that is holding the fund on behalf of a tax-exempt organization~~; and~~

~~(b) manages the principal, revenue, and disbursements of the endowment in a manner that guards against erosion by meeting the prudent investor rule~~.

NEW SECTION. **Section 2. Credit for contributions to qualified endowment.** (1) A taxpayer is allowed a tax credit against the taxes imposed by 15-30-103 or 15-31-101 in an amount equal to 50% of the present value of the aggregate amount of the CHARITABLE gift portion of a planned gift made by the taxpayer during the year to any qualified endowment ~~fund~~. The maximum credit that MAY be claimed by a taxpayer for contributions made from all sources in a year is $10,000. The credit allowed under this section may not exceed the taxpayer's income tax liability.

(2) The credit allowed under this section may not be claimed by an individual taxpayer if the taxpayer has included the FULL AMOUNT OF THE contribution UPON WHICH THE AMOUNT OF THE CREDIT WAS COMPUTED as a deduction under 15-30-121(1) or 15-30-136(2).

(3) There is no carryback or carryforward of the credit permitted under this section, and the credit must be applied to the tax year in which the contribution is made.

NEW SECTION. **Section 3. Credit for contribution by corporations to qualified endowment.** A corporation is allowed a credit IN AN AMOUNT EQUAL TO 50% OF A CHARITABLE GIFT against the taxes otherwise due under 15-31-101 for charitable contributions made to a qualified endowment, as defined in [section 1]. ~~The credit must be in accordance with the provisions of [section 2].~~ The maximum credit that may be claimed by a corporation for contributions made from all sources in a year under this section is $10,000. The credit allowed under this section may not exceed the corporate taxpayer's income tax liability. THE CREDIT ALLOWED UNDER THIS SECTION MAY NOT BE CLAIMED BY A CORPORATION IF THE TAXPAYER HAS INCLUDED THE FULL AMOUNT OF THE CONTRIBUTION UPON WHICH THE AMOUNT OF THE CREDIT WAS COMPUTED AS A DEDUCTION UNDER 15-31-114. There is no carryback or carryforward of the credit permitted under this section, and the credit must be applied to the tax year in which the contribution is made.

NEW SECTION. **Section 4. Small business corporation, partnership, and limited liability company credit for contribution to qualified endowment.** A contribution to a qualified endowment, as defined in [section 1], by a small business corporation, as defined in 15-31-201, a partnership, or a limited liability company, as defined in 35-8-102, qualifies for the credit provided in [section ~~2~~ 3]. The credit must be attributed to shareholders, partners, or members or managers of a limited liability company in the same proportion used to report the corporation's, partnership's, or limited liability company's income or loss for Montana income tax purposes. The maximum credit that a shareholder of a small business corporation, a partner of a partnership, or a member or manager of a limited liability company may claim in a year is $10,000, subject to the limitations in [section 2(2)]. The credit allowed under this section may not exceed the taxpayer's income tax liability. There is no carryback or carryforward of the credit permitted under this section, and the credit must be applied to the tax year in which the contribution is made.

NEW SECTION. **Section 5. Beneficiaries of estates -- credit for contribution to qualified endowment.** A contribution to a ~~general endowment fund of a~~ qualified endowment, as defined in [section 1], by an estate qualifies for the credit provided in [section 2] IF THE CONTRIBUTION IS A PLANNED GIFT

OR IN [SECTION 3] IF THE CONTRIBUTION IS AN OUTRIGHT GIFT TO A QUALIFIED ENDOWMENT. Any credit not used by the estate may be attributed to each beneficiary of the estate in the same proportion used to report the beneficiary's income from the estate for Montana income tax purposes. The maximum amount of credit that a beneficiary may claim is $10,000, subject to the limitation in [section 2(2)], and the credit must be claimed in the year in which the contribution is made. The credit may not be carried forward or carried back.

NEW SECTION. **Section 6. Report on income tax credit to committee.** The department shall report to the revenue oversight committee at least once each year the number and type of taxpayers claiming the credit under [section 2], the total amount of the credit claimed, and the department's cost associated with administering the credit.

NEW SECTION. **Section 7. Codification instruction.** (1) [Sections 1, 2, and 5] are intended to be codified as an integral part of Title 15, chapter 30, and the provisions of Title 15, chapter 30, apply to [sections 1, 2, and 5].

(2) [Sections 3 and 4] are intended to be codified as an integral part of Title 15, chapter 31, and the provisions of Title 15, chapter 31, apply to [sections 3 and 4].

(3) [Section 6] is intended to be codified as an integral part of Title 15, chapter 1, part 2, and the provisions of Title 15, chapter 1, part 2, apply to [section 6].

NEW SECTION. **Section 8. Effective date -- retroactive applicability.** [This act] is effective on passage and approval and applies retroactively, within the meaning of 1-2-109, to tax years beginning after December 31, 1996.

NEW SECTION. **Section 9. Termination.** [This act] terminates December 31, 2001.

-END-

HOUSE BILL NO. 434

INTRODUCED BY HIBBARD, MARSHALL, GRIMES, FELAND, THOMAS, ROSE, HAGENER, SOFT, FOSTER, R. JOHNSON, M. HANSON, BEAUDRY, SPRAGUE, OHS, ECK, MOOD, CHRISTIAENS, MENAHAN, WATERMAN, WALTERS, SMITH, HERTEL, ANDERSON, BOHLINGER, HARRINGTON, REAM, MAHLUM, HAYNE, HOLLAND, HEAVY RUNNER, JENKINS, MCCULLOCH, LAWSON, SANDS, AHNER, GROSFIELD, SWANSON, CLARK, MASOLO, ZOOK, J. JOHNSON, HARGROVE, HARPER, PAVLOVICH, SHEA, DOWELL, BOOKOUT, PECK, KITZENBERG, BROOKE, RANEY, ELLINGSON, KOTTEL, KNOX, SIMPSON, SQUIRES, QUILICI, BECK, HALLIGAN, WILSON, BURNETT, DENNY, DEVANEY, KRENZLER, GRADY, MCGEE, CURTISS, STOVALL, STANG, BISHOP, BENEDICT, RYAN, BITNEY, CAREY, ELLIS, BAER, MILLS, LYNCH, TASH, SLITER, SIMON, VAN VALKENBURG, FRANKLIN, MCCARTHY, MOHL, WISEMAN, TAYLOR

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THERE ARE NO CHANGES IN THIS BILL AND IT WILL NOT BE REPRINTED. PLEASE REFER TO SECOND READING COPY (YELLOW) FOR COMPLETE TEXT.

APPROVED BY COM
ON TAXATION

HOUSE BILL NO. 434

INTRODUCED BY HIBBARD, MARSHALL, GRIMES, FELAND, THOMAS, ROSE, HAGENER, SOFT, FOSTER, R. JOHNSON, M. HANSON, BEAUDRY, SPRAGUE, OHS, ECK, MOOD, CHRISTIAENS, MENAHAN, WATERMAN, WALTERS, SMITH, HERTEL, ANDERSON, BOHLINGER, HARRINGTON, REAM, MAHLUM, HAYNE, HOLLAND, HEAVY RUNNER, JENKINS, MCCULLOCH, LAWSON, SANDS, AHNER, GROSFIELD, SWANSON, CLARK, MASOLO, ZOOK, J. JOHNSON, HARGROVE, HARPER, PAVLOVICH, SHEA, DOWELL, BOOKOUT, PECK, KITZENBERG, BROOKE, RANEY, ELLINGSON, KOTTEL, KNOX, SIMPSON, SQUIRES, QUILICI, BECK, HALLIGAN, WILSON, BURNETT, DENNY, DEVANEY, KRENZLER, GRADY, MCGEE, CURTISS, STOVALL, STANG, BISHOP, BENEDICT, RYAN, BITNEY, CAREY, ELLIS, BAER, MILLS, LYNCH, TASH, SLITER, SIMON, VAN VALKENBURG, FRANKLIN, MCCARTHY, MOHL, WISEMAN, TAYLOR

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WHEREAS, a planned gift is a type of charitable contribution that has the following three characteristics: first, it is composed typically of assets saved over the contributor's lifetime; second, it is conferred in connection with a carefully considered estate plan; and third, it transfers assets of the contributor to a charity prior to the contributor's death; and

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WHEREAS, community-based endowments in Montana have long-term potential to benefit all Montana communities by developing creative solutions to help individual communities meet growing needs and by helping these communities find transitions to self-sufficiency; and

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WHEREAS, the Legislature limits the tax credit created by [this act] to qualified permanent endowments held by tax-exempt organizations or by banks or trust companies on behalf of tax-exempt organizations; and

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(a) charitable remainder unitrusts, as defined by 26 U.S.C. 664;

(b) charitable remainder annuity trusts, as defined by 26 U.S.C. 664;

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~~(ii)~~(B) is a bank or trust company, as defined in Title 32, chapter 1, part 1, that is holding the fund on behalf of a tax-exempt organization~~; and~~

~~(b) manages the principal, revenue, and disbursements of the endowment in a manner that guards against erosion by meeting the prudent investor rule~~.

NEW SECTION. **Section 2. Credit for contributions to qualified endowment.** (1) A taxpayer is allowed a tax credit against the taxes imposed by 15-30-103 or 15-31-101 in an amount equal to 50% of the present value of the aggregate amount of the CHARITABLE gift portion of a planned gift made by the taxpayer during the year to any qualified endowment ~~fund~~. The maximum credit that MAY be claimed by a taxpayer for contributions made from all sources in a year is $10,000. The credit allowed under this section may not exceed the taxpayer's income tax liability.

(2) The credit allowed under this section may not be claimed by an individual taxpayer if the taxpayer has included the FULL AMOUNT OF THE contribution UPON WHICH THE AMOUNT OF THE CREDIT WAS COMPUTED as a deduction under 15-30-121(1) or 15-30-136(2).

(3) There is no carryback or carryforward of the credit permitted under this section, and the credit must be applied to the tax year in which the contribution is made.

NEW SECTION. **Section 3. Credit for contribution by corporations to qualified endowment.** A corporation is allowed a credit IN AN AMOUNT EQUAL TO 50% OF A CHARITABLE GIFT against the taxes otherwise due under 15-31-101 for charitable contributions made to a qualified endowment, as defined in [section 1]. ~~The credit must be in accordance with the provisions of [section 2].~~ The maximum credit that may be claimed by a corporation for contributions made from all sources in a year under this section is $10,000. The credit allowed under this section may not exceed the corporate taxpayer's income tax liability. THE CREDIT ALLOWED UNDER THIS SECTION MAY NOT BE CLAIMED BY A CORPORATION IF THE TAXPAYER HAS INCLUDED THE FULL AMOUNT OF THE CONTRIBUTION UPON WHICH THE AMOUNT OF THE CREDIT WAS COMPUTED AS A DEDUCTION UNDER 15-31-114. There is no carryback or carryforward of the credit permitted under this section, and the credit must be applied to the tax year in which the contribution is made.

NEW SECTION. **Section 4. Small business corporation, partnership, and limited liability company credit for contribution to qualified endowment.** A contribution to a qualified endowment, as defined in [section 1], by a small business corporation, as defined in 15-31-201, a partnership, or a limited liability company, as defined in 35-8-102, qualifies for the credit provided in [section ~~2~~ 3]. The credit must be attributed to shareholders, partners, or members or managers of a limited liability company in the same proportion used to report the corporation's, partnership's, or limited liability company's income or loss for Montana income tax purposes. The maximum credit that a shareholder of a small business corporation, a partner of a partnership, or a member or manager of a limited liability company may claim in a year is $10,000, subject to the limitations in [section 2(2)]. The credit allowed under this section may not exceed the taxpayer's income tax liability. There is no carryback or carryforward of the credit permitted under this section, and the credit must be applied to the tax year in which the contribution is made.

NEW SECTION. **Section 5. Beneficiaries of estates -- credit for contribution to qualified endowment.** A contribution to a ~~general endowment fund of a~~ qualified endowment, as defined in [section 1], by an estate qualifies for the credit provided in [section 2] IF THE CONTRIBUTION IS A PLANNED GIFT

OR IN [SECTION 3] IF THE CONTRIBUTION IS AN OUTRIGHT GIFT TO A QUALIFIED ENDOWMENT. Any credit not used by the estate may be attributed to each beneficiary of the estate in the same proportion used to report the beneficiary's income from the estate for Montana income tax purposes. The maximum amount of credit that a beneficiary may claim is $10,000, subject to the limitation in [section 2(2)], and the credit must be claimed in the year in which the contribution is made. The credit may not be carried forward or carried back.

NEW SECTION. **Section 6. Report on income tax credit to committee.** The department shall report to the revenue oversight committee at least once each year the number and type of taxpayers claiming the credit under [section 2], the total amount of the credit claimed, and the department's cost associated with administering the credit.

NEW SECTION. **Section 7. Codification instruction.** (1) [Sections 1, 2, and 5] are intended to be codified as an integral part of Title 15, chapter 30, and the provisions of Title 15, chapter 30, apply to [sections 1, 2, and 5].

(2) [Sections 3 and 4] are intended to be codified as an integral part of Title 15, chapter 31, and the provisions of Title 15, chapter 31, apply to [sections 3 and 4].

(3) [Section 6] is intended to be codified as an integral part of Title 15, chapter 1, part 2, and the provisions of Title 15, chapter 1, part 2, apply to [section 6].

NEW SECTION. **Section 8. Effective date -- retroactive applicability.** [This act] is effective on passage and approval and applies retroactively, within the meaning of 1-2-109, to tax years beginning after December 31, 1996.

NEW SECTION. **Section 9. Termination.** [This act] terminates December 31, 2001.

-END-

HOUSE BILL NO. 434

INTRODUCED BY HIBBARD, MARSHALL, GRIMES, FELAND, THOMAS, ROSE, HAGENER, SOFT, FOSTER, R. JOHNSON, M. HANSON, BEAUDRY, SPRAGUE, OHS, ECK, MOOD, CHRISTIAENS, MENAHAN, WATERMAN, WALTERS, SMITH, HERTEL, ANDERSON, BOHLINGER, HARRINGTON, REAM, MAHLUM, HAYNE, HOLLAND, HEAVY RUNNER, JENKINS, MCCULLOCH, LAWSON, SANDS, AHNER, GROSFIELD, SWANSON, CLARK, MASOLO, ZOOK, J. JOHNSON, HARGROVE, HARPER, PAVLOVICH, SHEA, DOWELL, BOOKOUT, PECK, KITZENBERG, BROOKE, RANEY, ELLINGSON, KOTTEL, KNOX, SIMPSON, SQUIRES, QUILICI, BECK, HALLIGAN, WILSON, BURNETT, DENNY, DEVANEY, KRENZLER, GRADY, MCGEE, CURTISS, STOVALL, STANG, BISHOP, BENEDICT, RYAN, BITNEY, CAREY, ELLIS, BAER, MILLS, LYNCH, TASH, SLITER, SIMON, VAN VALKENBURG, FRANKLIN, MCCARTHY, MOHL, WISEMAN, TAYLOR

A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING A TAX CREDIT FOR PLANNED GIFTS BY INDIVIDUALS AND OTHER GIFTS BY CORPORATIONS AND ESTATES MADE TO QUALIFIED CHARITABLE ENDOWMENT FUNDS; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE, A RETROACTIVE APPLICABILITY DATE, AND A TERMINATION DATE."

WHEREAS, charitable endowments are permanent savings accounts, the income from which is perpetually committed to charitable purposes; and

WHEREAS, Montana-based charitable endowments can grow over time to become significant resources capable of funding many unanticipated and unmet needs of, and creating new opportunities for, Montana's citizens and their communities; and

WHEREAS, Montana's relatively weak tradition of endowed philanthropy can be demonstrated by comparing our state with the other 49 states, in that Montana ranks 44th in population and 41st in per capita income, but ranks 48th in foundation assets and 49th in foundation giving; and

WHEREAS, a planned gift is a type of charitable contribution that has the following three characteristics: first, it is composed typically of assets saved over the contributor's lifetime; second, it is conferred in connection with a carefully considered estate plan; and third, it transfers assets of the contributor to a charity prior to the contributor's death; and

WHEREAS, although planned gifts would appear to offer genuine financial potential for creating and

REFERENCE BILL

expanding charitable endowments in Montana, in reality, planned gifts are so infrequently contributed in Montana that endowments in our state are not growing as fast as they are in other states; and

WHEREAS, planned gifts might be used more in funding charitable endowments in Montana if contributors could offset a significant portion of their gifts against their Montana income tax liabilities; and

WHEREAS, over the long term, income distributed from endowments can help achieve community goals and objectives when current funding from state and local government budgets may be limited; and

WHEREAS, local charitable endowments currently exist in almost every Montana community, and the existence of these widespread endowments offers everyone in Montana an opportunity to contribute endowed funding for their local communities; and

WHEREAS, community-based endowments in Montana have long-term potential to benefit all Montana communities by developing creative solutions to help individual communities meet growing needs and by helping these communities find transitions to self-sufficiency; and

WHEREAS, earnings from charitable endowments in Montana are distributed by volunteer boards of diverse community leaders to meet emerging community needs in such areas as education, arts and culture, social services, economic development, and health and the environment; and

WHEREAS, government cannot meet, nor should it be expected to meet, all of the needs of the state's communities because of its limited financial resources and because each community is in a better position to determine its own existing and future needs and opportunities; and

WHEREAS, tax credits provide financial incentives that encourage contributions for the establishment or expansion of charitable endowments in Montana; and

WHEREAS, the Legislature limits the tax credit created by [this act] to qualified permanent endowments held by tax-exempt organizations or by banks or trust companies on behalf of tax-exempt organizations; and

WHEREAS, for the purpose of renewing the tax credit created by [this act], it is the intent of the 55th Legislature that the state's cost of administering the tax credit may not exceed 5% of the total annual credits claimed.

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

NEW SECTION. **Section 1. Qualified endowments credit -- definitions.** For the purposes of [section

2], the following definitions apply:

(1) "Planned gift" means an irrevocable contribution to a permanent endowment held by a tax-exempt organization, or~~,~~ for a tax-exempt organization, when the contribution uses any of the following techniques that are authorized under the Internal Revenue Code:

(a) charitable remainder unitrusts, as defined by 26 U.S.C. 664;

(b) charitable remainder annuity trusts, as defined by 26 U.S.C. 664;

(c) pooled income fund trusts, as defined by 26 U.S.C. 642(c)(5);

(d) charitable lead unitrusts, qualifying under 26 U.S.C. 170(f)(2)(B);

(e) charitable lead annuity trusts, qualifying under 26 U.S.C. 170(f)(2)(B);

(f) charitable gift annuities, undertaken pursuant to 26 U.S.C. 1011(b);

(g) deferred charitable gift annuities, undertaken pursuant to 26 U.S.C. 1011(b);

(h) charitable life estate agreements, qualifying under 26 U.S.C. 170(f)(3)(B);

(i) paid-up life insurance policies, meeting the requirements of 26 U.S.C. 170.

(2) "Qualified endowment" means a permanent, irrevocable fund that is held by ~~an~~ A MONTANA INCORPORATED OR ESTABLISHED organization that:

(a) ~~(i)~~ is a tax-exempt organization under 26 U.S.C. 501(c)(3); or

~~(ii)~~(B) is a bank or trust company, as defined in Title 32, chapter 1, part 1, that is holding the fund on behalf of a tax-exempt organization~~; and~~

~~(b) manages the principal, revenue, and disbursements of the endowment in a manner that guards against erosion by meeting the prudent investor rule~~.

NEW SECTION. **Section 2. Credit for contributions to qualified endowment.** (1) A taxpayer is allowed a tax credit against the taxes imposed by 15-30-103 or 15-31-101 in an amount equal to 50% of the present value of the aggregate amount of the CHARITABLE gift portion of a planned gift made by the taxpayer during the year to any qualified endowment ~~fund~~. The maximum credit that MAY be claimed by a taxpayer for contributions made from all sources in a year is $10,000. The credit allowed under this section may not exceed the taxpayer's income tax liability.

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