

THE MONTANA ENDOWMENT CREDIT

The Helena Symphony Society Foundation, Inc. is a qualified Montana endowment. Donors, wishing to make permanent endowment gifts to the Helena Symphony Foundation can take advantage of Montana's very generous endowment tax credit. This tax credit is much more favorable than a tax deduction and can now reduce Montana income taxes up to 40%. The Montana tax credit is in addition to the tax deduction available on a federal tax return. Consequently, properly planned Montana Endowment gifts can yield as much as 75%-80% in combined federal and state tax benefits! This means that for every \$100.00 dollars donated to a qualified Montana endowment, a taxpayer could potentially lose only \$20.00 in actual out-of-pocket costs!

The Montana tax credit is a complicated law. The ultimate tax benefit of an endowment gift will vary according to a taxpayer's taxable income, tax bracket, type of gift being made, and type of property being donated. Donors are urged to seek professional tax advice from a Montana CPA or tax lawyer before making a gift.

To help you better understand the mechanics of the Montana tax credit, the Endowment Credit, the articles below are provided by University of Montana law professor Kristen G. Juras.

Thomas C. Morrison, Chairman of the Board of Directors

THE MONTANA ENDOWMENT TAX CREDIT

by Kristen G. Juras, Esq.

Adjunct Professor, School of Law, University of Montana

TABLE OF CONTENTS

1. 2003 - A REVIEW OF THE AMENDED MONTANA ENDOWMENT TAX CREDIT AND REGULATION OF THE ISSUANCE OF CHARITABLE GIFT ANNUITIES3

1.1. The 2003 legislative changes to the Montana Endowment Tax Credit.....3

1.2. Form QEC.....3

1.3. Planned Gifts & Qualified Endowment Gifts-generally.3

1.4. Legislative history3

1.5. Statutes & Regulations.....3

1.6. Summary Chart.....3

2. SB 143 – CHARITABLE GIFT ANNUITIES.4

2.1. History.....4

2.2. 2003 Legislature.....4

2.3. Definition.....4

2.4. Conditions of Exemption.4

2.5. Non-qualified Annuity.4

3. MONTANA ENDOWMENT TAX CREDIT 2003 Statutes.....5

4. MONTANA ENDOWMENT TAX CREDIT 2003 Administrative Rulings.....7

5. PRE-2003 HISTORY OF THE MONTANA TAX CREDIT14

6. THE MONTANA ENDOWMENT TAX CREDIT - GENERALLY- PRE-2002 LAW.....15

1. 2003 - A REVIEW OF THE AMENDED MONTANA ENDOWMENT TAX CREDIT AND REGULATION OF THE ISSUANCE OF CHARITABLE GIFT ANNUITIES

Kristen G. Juras, Esq.

Adjunct Professor, School of Law, University of Montana

2003 LEGISLATIVE CHANGES.

***(H.B. 616-- Revisions to the Montana Endowment Tax Credit)**

1.1. The 2003 legislative changes to the Montana Endowment Tax Credit

– for **individuals**, the credit for contributions of a planned gift to a qualified endowment fund which are made between July 1, 2003 and the scheduled sunset of December 31, 2007 shall equal to 40% of the present value of a planned gift, not to exceed \$10,000 (or, if less, the taxpayer's income tax liability).

– for **corporations and pass-through entities**, the credit for contributions which are made between July 1, 2003 and the scheduled sunset of December 31, 2007 shall equal 20% of the value of the gift (which does not need to be planned, but can be an outright donation); the credit for C corporations cannot exceed \$10,000 (or, if less, the corporation's tax liability); for pass-through entities, the limitation of \$10,000 applies to the individual owners (and may not exceed each taxpayer's tax liability).

– the definition of "charitable gift annuity" has been changed, to impose certain net worth and operational requirements on the charity issuing the annuity. **(Part 2 below)**

1.2. Form QEC.

Form QEC prepared by the Montana Department of Revenue, on which the qualified endowment credit must now be reported.

1.3. Planned Gifts & Qualified Endowment Gifts-generally.

For a thorough discussion of the what constitutes a "planned gift" and "qualified endowment", and for other details regarding the endowment tax credit, see. **(Part 6 below)**

1.4. Legislative history

For a thorough discussion of the what constitutes a "planned gift" and "qualified endowment", and for other details regarding the endowment tax credit, see. **(Part 5 below)**

1.5. Statutes & Regulations.

Implementing statutes **(Part 3 below)** and regulations **(Part 4 below)** have been promulgated by the Montana Department of Revenue at A.R.M. 42.15.507; A.R.M. 42.15.513-.519 (but the 2003 changes have not yet been implemented into the A.R.M.)

1.6. Summary Chart.

Following is a table summarizing where we've been and where we are:

For individuals – planned gifts			For corporations, limited liability companies, partnerships – outright donation		
Date of Gift	Present Value %	Maximum Credit	Date of Gift	Value %	Maximum Credit
01/01/1997 to 12/31/01	50%	\$10,000	01/01/1997 to 12/31/01	50%	\$10,000
01/01/02 to 08/27/02	40%	\$10,000	01/01/02 to 08/27/02	20%	\$10,000
08/28/02 to 06/30/03	30%	\$6,600	08/28/02 to 06/30/03	13.3%	\$6,600
07/01/03 to 12/31/07	40%	\$10,000	07/01/03 to 12/31/07	20%	\$10,000

2. SB 143 – CHARITABLE GIFT ANNUITIES.

2.1. History.

In the past, the State Auditor's office has taken the position that the issuance of an annuity by a charity constituted engaging in the business of insurance, thus bringing the charity within the regulatory scope of the insurance code. See MCA §33-1-201, which defines insurance to include a contract "whereby one undertakes...to pay or provide a specified or determinable amount or benefit upon determinable contingencies." See also MCA §33-20-301 et seq. regarding annuities. The State Auditor expressed concerns about the ability of charitable organizations to fund charitable gift annuities, and whether risks of non-payment were being disclosed to charitable donors.

2.2. 2003 Legislature.

SB 143, requested by the State Auditor after months of joint study and co-operation among various state charities, consumer groups and the State Auditor's office, exempts certain charitable gift annuities from regulation under the insurance code (Title 33).

2.3. Definition.

A "charitable gift annuity" means a transfer of cash or other property by a donor to a charitable organization in return for an annuity payable over one or two lives, for the duration of that life or those lives, under which the actuarial value of the annuity is less than the value of the cash or other property transferred and the difference in value constitutes a charitable deduction for federal tax purposes." MCA §33-20-701(1).

2.4. Conditions of Exemption.

The issuance of a "qualified charitable gift annuity" does not constitute engaging in the business of insurance. MCA §33-20-702. This exemption (if the other requirements of the Act are met) applies to qualified annuities issued before the effective date of the act (April 24, 2003). In order to constitute a "qualified" charitable gift annuity, the annuity must be issued by a charitable organization (as described in Section 503(c)(3) or 170(c) of the Internal Revenue Code) which meets all of the following requirements (as set forth at MCA §33-20-701(3)(a):

–has a minimum net worth of \$300,000 or \$100,000 in unrestricted cash, cash equivalents or publicly traded securities, exclusive of the assets funding the annuity agreement;

–has been in continuous operation for at least 3 years (or is a successor or affiliate of a charitable organization that has been in continuous operation for at least 3 years); and

– maintains a separate annuity fund with at least one-half the value of the initial amount transferred for outstanding annuities. .

2.5. Non-qualified Annuity.

If a charitable organization does not meet the above requirements, and thus is unable to issue a "qualified" charitable gift annuity, it must commercially insure, by a licensed insurance company qualified to do business in Montana, any gift annuities which it issues. MCA §33-20-701(3)(b). In other words, the charity must use a regulated insurance company to issue the gift annuity.

Notice Requirements.

The charitable organization must disclose to the donor in the annuity agreement that the annuity is not insurance under the laws of Montana and is not subject to regulation. MCA §33-20-703. The charitable organization must also provide notice to the insurance commissioner of its activities if it issues charitable annuities. MCA §33-20-704. The commissioner may fine the issuer \$1,000 for each qualified charitable annuity with respect to which the charity fails to meet these notice requirements. MCA §33-20-705.

3. MONTANA ENDOWMENT TAX CREDIT 2003 Statutes

15-30-165. (Temporary) Qualified endowments credit -- definitions -- rules.

For the purposes of [15-30-166](#), the following definitions apply:

(1) Subject to subsection (3), "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)

(a) "Qualified endowment" means a permanent, irrevocable fund that is held by a Montana incorporated or established organization that:

- (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.

(b) For the purposes of sections [15-30-165](#) through [15-30-167](#), the affordable housing revolving loan account established in [90-6-133](#) is considered to be a qualified endowment.

(3)

(a) A contribution using a technique described in subsection (1)(a) or (1)(b) is not a planned gift unless the trust agreement provides that the trust may not terminate and the beneficiaries' interest in the trust may not be assigned or contributed to the qualified endowment sooner than the earlier of:

- (i) the date of death of the beneficiaries; or**
- (ii) 5 years from the date of the contribution.**

(b) A contribution using the technique described in subsection (1)(g) is not a planned gift unless the payment of the annuity is required to begin within the life expectancy of the annuitant or of the joint life expectancies of the annuitants, if more than one annuitant, as determined using the actuarial tables adopted by rule by the department in effect on the date of the contribution.

(c) A contribution using a technique described in subsection (1)(f) or (1)(g) is not a planned gift unless the annuity agreement provides that the interest of the annuitant or annuitants in the gift annuity may not be assigned to the qualified endowment sooner than the earlier of:

- (i) the date of death of the annuitant or annuitants; or
- (ii) 5 years after the date of the contribution.**

(d) A contribution using a technique described in subsection (1)(f) or (1)(g) is not a planned gift unless the annuity is a qualified charitable gift annuity as defined in [33-20-701](#).

(4) The department shall adopt rules to prepare life expectancy tables that are derived from the actuarial tables contained in the most recent Publication 1457 by the internal revenue service. (Subsection (2)(b) terminates December 31, 2004--sec. 7, Ch. 411, L. 2001; section terminates December 31, 2007--sec. 5, Ch. 226, L. 2001.)

15-30-166. (Temporary) 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 40% 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. 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. (Terminates December 31, 2007--sec. 5, Ch. 226, L. 2001.)

15-30-167. (Temporary) Beneficiaries of estates -- credit for contribution to qualified endowment.

A contribution to a qualified endowment, as defined in [15-30-165](#), by an estate qualifies for the credit provided in [15-30-166](#) if the contribution is a planned gift or in [15-31-161](#) 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 [15-30-166](#)(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. (Terminates December 31, 2007--sec. 5, Ch. 226, L. 2001.)

15-31-161. (Temporary) Credit for contribution by corporations to qualified endowment.

A corporation is allowed a credit in an amount equal to 20% of a charitable gift against the taxes otherwise due under [15-31-101](#) for charitable contributions made to a qualified endowment, as defined in [15-30-165](#). 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. (Terminates December 31, 2007--sec. 5, Ch. 226, L. 2001.)

15-31-162. (Temporary) Small business corporation, partnership, and limited liability company credit for contribution to qualified endowment.

A contribution to a qualified endowment, as defined in [15-30-165](#), by a small business corporation, as defined in [15-30-1101](#), a partnership, or a limited liability company, as defined in [35-8-102](#), carrying on any trade or business for which deductions would be allowed under section 162 of the Internal Revenue Code, 26 U.S.C. 162, or carrying on any rental activity qualifies for the credit provided in [15-31-161](#). 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 [15-30-166](#)(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. (Terminates December 31, 2007--sec. 5, Ch. 226, L. 2001.)

4. MONTANA ENDOWMENT TAX CREDIT 2003 Administrative Rulings

42.15.513 ELIGIBILITY REQUIREMENTS TO HOLD A QUALIFIED ENDOWMENT

(1) To hold a qualified endowment an organization must be:

- (a) incorporated or otherwise formed under the laws of Montana and exempt from federal income tax under 26 U.S.C. 501(C)(3); or
- (b) a bank or trust company, as defined in [15-30-165](#), MCA, holding an endowment fund on behalf of a Montana or foreign 501(C)(3) organization.

(History: Sec. [15-30-305](#) and [15-31-501](#), MCA; IMP, Sec. [15-30-165](#), [15-30-167](#), [15-31-161](#), and [15-31-162](#), MCA; NEW, 1998 MAR p. 1004, Eff. 4/17/98.)

42.15.514 TAX CREDIT AND DEDUCTION LIMITATIONS

(1) The credit allowed against the corporate, estate, trust, or individual tax liability for a contribution of a planned gift is the percentage, as shown in the following table, of the present value of the allowable contribution as defined in ARM [42.15.507](#). A contribution made in a previous tax year cannot be used for a credit in any subsequent tax year.

Planned Gifts by Individuals or Entities			
		Present Value	
Planned			
Percent	Used to	Maximum	
Gift			
of Present	Calculate	Credit	
Date			
Value	Maximum	Credit Per Year	
1/1/97 - 12/31/01	50%	\$20,000	\$10,000
1/1/02 - 8/27/02	40%	\$25,000	\$10,000
8/28/02 - 6/30/03	30%	\$22,000	\$ 6,600
7/1/03 - 4/30/04	50%	\$26,800	\$13,400
5/1/04 - 12/31/07	40%	\$25,000	\$10,000

(2) The credit allowed against the corporate, estate, trust, or individual tax liability for a charitable gift made by a corporation, small business corporation, estate, trust, partnership, or limited liability company directly to a qualified endowment is the percentage, as shown in the following table, of the allowable contribution as defined in ARM [42.15.507](#).

Non-Planned Gifts by Eligible Entities		
		Allowable
		Contribution
Qualified		
Percent of	Used to	Maximum

Charitable			
Allowable	Calculate	Credit	
Gift Date			
Contribution	Maximum Credit	Per Year	
1/1/97 - 12/31/01	50%	\$20,000	\$10,000
1/1/02 - 8/27/02	20%	\$50,000	\$10,000
8/28/02 - 6/30/03	13.3%	\$49,624	\$ 6,600
7/1/03 - 4/30/04	26.7%	\$50,187	\$13,400
5/1/04 - 12/31/07	20%	\$50,000	\$10,000

(3) The balance of the allowable contributions not used in the credit calculation may be used as a deduction subject to the limitations and carryover provisions found in [15-30-121](#), MCA, or for corporations the limitations and carryover provisions found in [15-31-114](#), MCA.

Examples of Allowable Deductions When a Planned Gift is Used for the Qualified Endowment Credit:

Time	Present	Maximum	Credit	Allowable											
Period	Value	Credit	Percentage	Deduction											
1/1/97 - 12/31/01	\$50,000		(\$10,000 / .50) =	\$30,000	\$50,000	(\$10,000 / .40) =	\$25,000	(\$6,600 / .30) =	\$28,000	\$50,000	(\$13,400 / .50) =	\$23,200	\$50,000	(\$10,000 / .40) =	\$25,000
			\$11/02 - 8/27/02				\$8/28/02 - 6/30/03					\$7/14/03 - 12/31/07			

Examples of Allowable Deductions When an Outright Gift is Used for the Qualified Endowment Credit:

Time	Market	Maximum	Credit	Allowable
Period	Value	Credit	Percentage	Deduction
1/1/97 - 12/31/01	50,000 -	(10,000 / .50) =	30,000	
1/1/02 - 8/27/02	50,000 -	(10,000 / .20) =	-0-	
8/28/02 - 6/30/03	50,000 -	(6,600 / .133) =	376	
7/1/03 - 4/30/04	50,000 -	(13,400 / .267) =	-0-	
5/1/04 - 12/31/07	50,000 -	(10,000 / .20) =	-0-	

(4) A contribution to a qualified endowment by a small business corporation, partnership, or limited liability company qualifies for the credit only if the entity is carrying on a trade or business or rental activity.

(5) The contribution to a qualified endowment from a small business corporation, partnership, or limited liability company is passed through to the shareholders, partners, or members or managers in the same proportion as their distributive share of the entity's income or loss for Montana income tax purposes. The proportionate share of the contribution passed through to each shareholder, partner, or member or manager becomes an allowable contribution for that donor for that year, and the credit allowed and the excess contribution deduction allowed are calculated as set forth in (1) and (2). The credit maximums apply at the corporation and individual levels, and not at the pass-through entity's level for partnerships, small business corporations, and limited liability companies.

(6) Deductions and credit limitations for an estate or trust are as follows:

- (a) if an estate or trust claims a credit based on the computation of the full amount of the contribution, there is no credit available to beneficiaries;
- (b) any portion of a contribution not used in the calculation of credit for the estate may be passed through to the beneficiaries, in the same proportion as their distributive share of the estate's or trust's income or loss for Montana income tax purposes; however, beneficiaries may deduct only that portion of allowable contributions not used toward the credit or deduction claimed by the estate or trust; or
- (c) if the estate or trust has deducted the full amount of the contribution, the credit may not be claimed by either the estate, trust, or the individual beneficiaries.

(7) At no time can a corporation, small business corporation, partnership, limited liability company, estate, trust, or individual be allowed to receive the benefit of both a contribution deduction and a credit from the same portion of a contribution.

(8) The maximum credit that may be claimed in a tax year by any donor for allowable contributions from all sources is limited to the maximum credit stated in (1) and (2). In the case of a married couple that makes a joint contribution, the contribution is assumed split equally. If each spouse makes a separate contribution, each may be allowed the maximum credit as stated in (1) and (2).

Example 1:

Assume a married couple makes a joint planned gift to a qualified endowment on September 1, 2002. The allowable contribution made by the couple is \$30,000. That couple is eligible to take a credit of up to \$9,000, with each claiming a credit of \$4,500.

Example 2:

Assume a married couple makes separate planned gifts to qualified endowments on September 1, 2002, which result in an allowable contribution of \$20,000 for each person. They each would be eligible to take a credit of up to \$6,000.

(9) A donor may, at a later date, name or substitute the Montana qualified endowment, as defined in [15-30-165](#), MCA, to receive the planned gift provided that the original trust or gift document reserves in the donor the right to do so.

(History: Sec. [15-30-305](#) and [15-31-501](#), MCA; IMP, Sec. [15-30-165](#), [15-30-166](#), [15-30-167](#), [15-31-161](#), and [15-31-162](#), MCA; NEW, 1998 MAR p. 1004, Eff. 4/17/98; AMD, 2000 MAR p. 2109, Eff. 8/11/00; AMD, 2002 MAR p. 3722, Eff. 12/27/02.)

42.15.515 CREATING A PERMANENT IRREVOCABLE FUND

(1) A permanent, irrevocable fund can be created by a restriction in the applicable planned gift document indicating the donor's intention that the contribution shall be held in a permanent, irrevocable fund. For planned gifts other than paid-up life insurance policies, the applicable planned gift document is the trust document, gift annuity contract, life estate agreement or pooled income fund agreement.

(2) A permanent irrevocable fund can be created in a separate gift document accompanying an outright contribution.

(3) A permanent irrevocable fund may be created by either a qualified organization referenced in ARM [42.15.513](#) under a separate governing document or when a donor creates an endowment through a gift document.

(4) By creating a permanent, irrevocable fund and receiving the credit, the donor waives the right under [72-30-207](#), MCA, to release the restriction in the gift document.

(5) All funds created by donors or qualified organizations must meet the requirements of a permanent irrevocable fund provided in these rules.

(History: Sec. [15-30-305](#) and [15-31-501](#), MCA; IMP, Sec. [15-30-165](#), [15-30-167](#), 15-31- 161, and [15-31-162](#), MCA; NEW, 1998 MAR p. 1004, Eff. 4/17/98; AMD, 2000 MAR p. 2109, Eff. 8/11/00.)

42.15.516 REPORTING REQUIREMENTS

(1) The donor must attach a copy of the following information to the tax return reporting the credit:

- (a) a receipt acknowledging the amount of the allowable contribution from the:
 - (i) tax-exempt organization under 26 U.S.C. 501(C)(3) holding the qualified endowment receiving the contribution;
 - (ii) trustee of the trust administering the planned gift; or
 - (iii) bank or trust company holding a qualified endowment on behalf of a tax exempt organization.
- (b) the date of the contribution to the qualified endowment or the planned gift;
- (c) the name of the organization incorporated or established in Montana holding the qualified endowment fund or the name of the tax exempt organization on behalf of which the qualified endowment fund is held;
- (d) In the case of a charitable trust where the charity is yet to be named, the donor shall include a copy of the disposition clause of the charitable trust which gives evidence that a qualified endowment fund has been created; and
- (e) a description of the type of gift, i.e. outright gift, charitable remainder unitrust, charitable gift annuity, etc.

(2) The information required by these rules will be reported on forms prescribed and made available by the department of revenue.

(History: Sec. [15-30-305](#) and [15-31-501](#), MCA; IMP, Sec. [15-30-166](#), [15-30-167](#), 15-31- 161, and [15-31-162](#), MCA; NEW, 1998 MAR p. 1004, Eff. 4/17/98; AMD, 2000 MAR p. 2109, Eff. 8/11/00.)

42.15.517 APPLICABILITY DATES (Is Hereby Repealed.)

(History: Sec. [15-30-305](#) and [15-31-501](#), MCA; IMP, Sec. [15-30-165](#), [15-30-166](#), [15-30-167](#), [15-31-161](#), and [15-31-162](#), MCA; NEW, 1998 MAR p. 1004, Eff. 4/17/98; REP, 2002 MAR p. 3722, Eff. 12/27/02.)

42.15.518 QUALIFIED ENDOWMENT CREDIT

(1) For purposes of the qualified endowment credit, as applied to corporations, the department adopts by reference ARM [42.15.507](#), [42.15.513](#), [42.15.514](#), [42.15.515](#), [42.15.516](#), and [42.15.517](#).

(History: Sec. [15-31-501](#), MCA; IMP, Sec. [15-30-165](#), [15-30-166](#), [15-30-167](#), [15-31-161](#), and [15-31-162](#), MCA; NEW, 1998 MAR p. 1004, Eff. 4/17/98.)

42.15.519 DETERMINING PRESENT VALUE FOR THE ENDOWMENT CREDIT

(1) For purposes of determining the endowment credit, the present value of a contribution is the amount reported to the internal revenue service for that contribution. The present value of a gift contributed to a qualified endowment is based on its fair market value on the date of the gift.

(History: Sec. [15-30-305](#) and [15-31-501](#), MCA; IMP, Sec. [15-30-166](#), MCA; NEW, 2000 MAR p. 2109, Eff. 8/11/00.)

5. PRE-2003 HISTORY OF THE MONTANA TAX CREDIT

The 1997 Act.

In 1997, the Montana legislature enacted a statute which allowed a tax credit in an amount equal to 50% of the present value of certain charitable gifts to a qualified endowment of a Montana charitable organization. MCA §15-30-166 (individuals); MCA §15-31-161 (corporations); MCA §15-31-162 (pass-through entities).

- The amount of the credit was limited to \$10,000 per individual (including the individual's share of any credits from a pass-through entity) or \$10,000 for C corporations, and could not exceed the taxpayer's tax liability.
- For individuals (but not for C corporations or pass-through entities), the gift was required to be in the form of a "planned gift," as defined by MCA §15-30-165. Planned gifts included charitable remainder trusts, pooled income funds, charitable lead trusts, charitable gift annuities, certain life estates, and paid up life insurance policies. The "planned gift" requirement was not imposed on gifts made by corporations or pass-through entities.
- The credit applied to gifts made after December 31, 1996, and was originally scheduled to expire on December 31, 2001.

The 2001 Act.

The 2001 legislature extended the "sunset" provision of the Montana endowment tax credit through December 31, 2007, but modified and restricted the credit for gifts made after December 31, 2001 through December 31, 2007. The primary changes made in 2001 (found at Sec. 2, Ch. 226, L. 2001) were:

- a reduction in the credit from 50% to 40% of the present value of the contribution for individuals
- a reduction in the credit from 50% to 20% of the value of the contribution for C corporations, S corporations, limited liability companies and partnerships; additionally, to stop charitable donors from forming an entity solely for purposes of making a contribution and thus avoiding the "planned gift" requirement, the entity had to be engaged in an active trade or business or real estate activities
- charitable remainder trusts could not terminate within 5 years of the date of contribution (or, if sooner, upon the death of the income beneficiary)
- for deferred charitable gift annuities, the payment to the individual annuitant must begin with the beneficiary's life expectancy
- for all charitable gift annuities (deferred and non-deferred), the annuitant's interest could not be assigned to the charity within 5 years of the date of contribution (or, if sooner, the date of death of the annuitant)
- by separate act, the Legislature also modified the definition of "qualified endowment" found at MCA §15-30-165(2) to include, through December 31, 2004, affordable housing revolving loan accounts established under MCA §90-6-133 (see Sec. 7, Ch. 411, L. 2001)

The 2002 Special Session Act.

Facing budget pressures, the 2002 special session of the Legislature resulted in further reductions to the endowment tax credit, as follows:

- the tax credit for individuals was reduced from 40% to 30% of the present value of a planned gift for gifts made after the effective date (August 28, 2002, when signed by the governor) through June 30, 2003
- the tax credit for corporations and pass-through business entities was reduced from 30% to 13.3% of the value of the charitable contribution
- the maximum amount which could be claimed by an individual (including an individual's share from pass-through entities) or a C corporation was reduced from \$10,000 to \$6,600
- for gifts made between July 1, 2003 and April 30, 2004, there was a scheduled increase in the credit to make up for the temporary decreases wrought by these changes; during this short window, individuals could claim a credit equal to 50% of the present value, up to \$13,400 per taxpayer, and corporations and other pass-through entities could claim a credit equal to 26.7% of the value of a charitable contribution, up to \$13,400; this special increase was repealed before it got started by the 2003 legislation discussed below

**6. THE MONTANA ENDOWMENT TAX CREDIT - GENERALLY- PRE-2002 LAW
(including recent legislative changes)**

49th Annual Montana Tax Institute October 26-27, 2001

Presented by: Kristen G. Juras, Esq.

Adjunct Professor, School of Law, University of Montana

Church, Harris, Johnson & Williams, P.C.

P.O. Box 1645

Great Falls, MT 59403

406 761 3000

CAVEAT: the article below was written before the 2002 and 2003 legislative changes but is helpful in understanding how the tax credit works, as noted in the above update by Ms. Juras and will make sense when referring to the Ms. Juras' lead article (1 above).

I. Montana Endowment Tax Credit

A. History of Tax Credit.

In 1997, the Montana legislature enacted a statute which allows a tax credit in an amount equal to 50% of the present value of a charitable gift to a qualified endowment of a Montana charitable organization. MCA §15-30-166 (individuals); MCA §15-31-161 (corporations); MCA §15-31-162 (pass-through entities). This credit is available for tax years beginning after December 31, 1996, and to allowable contributions **made on or before December 31, 2001**. A.R.M. 42.15.517.

B. What Is a "Qualified Endowment."

A qualified endowment is defined as "a permanent, irrevocable fund that is held by a Montana incorporated or established organization" that is tax exempt under Internal Revenue Code ("IRC") Section 501(c)(3) (or to a Montana bank or trust company that is holding the fund on behalf of a tax-exempt organization). MCA §15-30-165(2).

1. Most large Montana charitable organizations have established permanent endowment funds which meet the criteria of MCA §15-30-166. A permanent endowment fund can be set up, for example, by written resolution of the board of directors or board of trustees of the organization. The fund does not have to be established as a separate corporation or organization. If there is any uncertainty as to whether a donor's intended charity has established a qualified endowment fund, ask for a copy of the charity's resolution which establishes the endowment fund, or other written assurance that an irrevocable, permanent endowment fund has been created.

a. A.R.M. 42.15.507 (10) provides that the fund must be held for the life of the organization. Under the terms of the gift instrument or other governing documents, the present value of the gift as of the date of contribution (i.e, the principal) can not be spent by the charity.

b. The charity may use the income from an endowment fund. Income can be defined to include appreciation in value. See Uniform Management of Institutional Funds Act, MCA §72-30-101 et seq. If the donor wants the charity to be able to use any increase in value beyond the present value of the gift as of the date of contribution, the instrument creating the gift should clearly reflect this intent.

c. The fund must be used primarily for the benefit of Montana communities and citizens. A.R.M. 42.15.507(10).

2. If the charity has not established a permanent endowment fund, the donor can meet the "qualified endowment" requirements by placing restrictions in the applicable planned gift document indicating the donor's intention that the contribution shall be held in a permanent, irrevocable fund. A.R.M. 42.15.515(1) and (3).

3. To hold a qualified endowment fund, an organization must be incorporated or otherwise formed under the laws of Montana. MCA §15-30-165(2); A.R.M. 42.15.513. If the organization is not incorporated or otherwise formed under the laws of Montana, a Montana bank or trust company (as defined in MCA §15-30-165) may hold the fund on behalf of a foreign organization (a Montana bank or trust company may also hold the fund on behalf of a Montana organization).

4. If you are not certain that the intended charity is formed in Montana or is a tax-exempt organization, confirm that it is a Montana organization through the Montana Secretary of State, or by requesting a copy of its articles of organization. Confirm its 501(c)(3) tax exempt status through IRS publications or web sites, or by requesting a copy of its tax exempt ruling from the charity.

II. 2001 Legislative Changes for Gifts Made by Individuals

A. Reduction in Amount of Credit.

For gifts made by individuals **after December 31, 2001** and on or **before December 31, 2007**, a tax credit is available in an amount equal to **40%** of the present value of a planned gift made to a qualified endowment of a Montana charitable organization.

Planning Tip: Obviously, clients should be encouraged to make gifts prior to December 31, 2001 to maximize the credit.

B. Review: Definition of “Planned Gift.”

For charitable gifts made by individuals, the credit is available **only if** the charitable gift is in the form of a “**planned gift**.” MCA §15-30-166. This requirement is not imposed for charitable gifts made by corporations or pass-through entities. For planned gifts made **on or before December 31, 2001**, a “planned gift” is defined at MCA §15-30-165 as an irrevocable contribution to a permanent endowment fund of a Montana charity using any of the following techniques:

1. Charitable remainder unitrust, as defined by IRC §664;
2. Charitable remainder annuity trust, as defined by IRC §664;
3. Pooled income fund trusts, as defined by IRC §642(c)(5);
4. Charitable lead unitrust qualifying under IRC §170(f)(2)(B) (i.e., a lead unitrust whose annual income is taxable to the donor);
5. Charitable lead annuity trusts qualifying under IRC §170(f)(2)(B)(i.e., a lead annuity trust whose annual income is taxable to the donor);
6. Charitable gift annuities pursuant to IRC §1011(b);
7. Deferred charitable gift annuities pursuant to IRC §1011(b);
8. Charitable life estate agreements under IRC §170(f)(3)(B); and
9. Paid up life insurance policies meeting the requirements of IRC §170.

C. New Limitations on “Planned Gifts” after December 31, 2001.

For planned gifts made **after December 31, 2001 and on or before December 31, 2007**, new restrictions apply.

- i. Gifts to a charitable remainder unitrust or a charitable remainder annuity trust do not qualify unless the trust does not terminate (and the beneficiaries’ interest in the trust may not be assigned or contributed to the qualified endowment) sooner than the earlier of:
 - a. The date of death of the beneficiaries; or
 - b. 5 years from the date of contribution.

- ii. A deferred charitable gift annuity does not qualify unless the payment of the annuity is required to begin within the life expectancy of the annuitant (or joint lives, if more than one annuitant), as determined using the actuarial tables issued by the Montana Department of Revenue which are in effect as of the date of the gift.

- iii. Neither a charitable gift annuity nor a deferred gift annuity will qualify unless the annuity agreement provides that the interest of the annuitant(s) in the gift annuity may not be assigned to the qualified endowment sooner than the earlier of:
 - a. The date of death of the beneficiaries; or
 - b. 5 years after the date of contribution.

- iv. In preparing life expectancy tables, the Montana Department of Revenue is directed to derive such tables from the actuarial tables contained in the most recent Publication 1457 issued by the Internal Revenue Service.

Planning Tip: Prior to the legislative changes, clients whose primary purpose was to maximize the amount of the tax credit often used a charitable remainder trust which would last for a term of one year and a day. (Under IRC Section 664(d)(1)(A) and (2)(A), a charitable remainder annuity trust or unitrust must be established for a “term of years,” and many practitioners, including myself, determined that a term longer than one year, such as a year and a day, would meet this requirement.) By minimizing the retained income interest, the value of the remainder interest (and thus the value of the gift for tax credit purposes) was maximized. With the new requirement of a minimum term of 5 years (or, if shorter, until the donor’s death), the value of the remainder interest (upon which the credit is based) will decrease. In addition, the administrative costs (attorney and trustee fees, accounting fees for preparation of trust tax returns) will increase (it’s more expensive to prepare income tax returns for five years than one year). Deferred gift annuities may now provide the most “bang for your buck” for those clients whose primary purpose is to maximize the tax credit and decrease administrative costs, especially if the charity pays a low rate of interest. I suspect we’ll see more Montana charities gearing up to issue and administer deferred gift annuities.

III. 2001 Legislative Changes for Gifts Made by Entities

A. Reduction in Amount of Tax Credit.

For gifts made by a **C corporation, S corporation, limited liability company or partnership** after December 31, 2001 and before December 31, 2007, the tax credit has been reduced to **20%** of the value of charitable gift to a qualified endowment of a Montana charitable organization. **Ouch!!**

Planning Tip: As before, there is no requirement of a “planned gift” for contributions made by these entities. An simple check or a gift of securities will generate the tax credit. This remains as an advantage of making a gift through an entity. For gifts made after December 31, 2001, however, the amount of the credit has been significantly reduced from 50% to 20% of the value of the gift. For those individuals who previously contributed through an entity owned by them, for post-2001 gifts it may be more attractive to make a gift as an individual, even though the individual will have to jump through the “planned gift” hoop.

B. “Active Trade or Business” Requirement.

After 2001, for pass-through business entities (S corporations, partnerships, and limited liability companies), the entity must be engaged in an active trade or business, or in real estate activities.

Historical Note: To take advantage of the tax credit, some practitioners would advise their clients to form a pass-through entity, such as a single-member limited liability company, solely for the purpose of making a contribution. The entity had no other activities. By using a pass-through entity, the contributor did not have to jump through the “planned gift” hoop. Although the Montana Department of Revenue has challenged this practice from the very beginning, and reportedly has denied the tax credit in such a situation, it was successful in lobbying for this practice to be specifically disallowed by the statute.

IV. Other Limitations

A. Limitation - Individuals.

The maximum endowment tax credit that may be claimed by an individual taxpayer for contributions made from all sources in a year is **\$10,000**. This has not changed. The credit allowed may not exceed the taxpayer’s income tax liability. There is no carry back or carry forward of the credit; it must be used in the tax year in which the gift is made. If the credit is taken, the taxpayer may not take a deduction for the same amount. MCA §15-30-166; A.R.M. 42.15.514(5). For married taxpayers, both are eligible to take a credit of \$10,000 each for a joint gift, for a total credit of \$20,000 (it being assumed that a joint gift is made 50% by each spouse). A.R.M. 42.15.514(6).

1. For a married couple filing jointly (versus separately), the \$20,000 credit is available when a joint planned gift is made. The gift should come from a jointly held account, and not just an account in one spouse’s name. If it comes from an account owned by one spouse, the credit may be limited to a single \$10,000 credit.

2. If separate returns are filed by a married couple, it appears that each spouse can claim a credit only to the extent of that spouse’s separate tax liability. For example, if a joint planned gift generates a \$20,000 tax credit, and the wife’s separate tax liability is \$15,000 and the husband’s separate tax liability is \$5,000, the wife can take a credit of \$10,000, and the husband can take a credit of \$5,000, limiting the total credit to \$15,000.

B. Limitation-Corporations.

As with individuals, a C corporation is limited to a \$10,000 tax credit, which must be used in the tax year in which the gift is made (no carry-forward or carry-back). MCA §15-31-161. Unlike an individual, charitable gifts made by a corporation do not need to be “planned” in order to qualify for the credit.

C. Limitation-Pass-through Entities.

For S corporations, partnerships and limited liability companies, the \$10,000 maximum credit limitation applies at the shareholder, partner or member levels, and not at the pass-through entity’s level. MCA §15-31-162. The contribution is passed through to the shareholders, partners or members in the same proportion as their distributive share of the entity’s income or loss for Montana income tax purposes. A.R.M. 42.15.514(3).

D. Limitation- Estates; Trusts.

For estates and trusts, the rules are as follows:

1. If an estate or trust makes a qualifying contribution, the resulting credit must first be applied against the estate or trust's income tax liability. If the estate or trust deducts the value of the gift, no credit is available. A.R.M. 42.15.514(4).
2. Any portion of a contribution not used in the calculation of credit for the estate or trust (and not deducted from the estate or trust's income) may be passed through to the beneficiaries, in the same proportion as their distributive share of the estate's or trust's income.
3. If the beneficiaries are individuals, the gift must be a planned gift, and the tax credit is equal to 50% (**40%** post-2001) of the value of the planned gift. If the beneficiary of an estate or trust is a corporation or other pass-through entity, the gift may be a direct gift and the tax credit is equal to 50% (**20%** post-2001) of the value of the gift.

MCA §15-30-167.

E. Gifts that Generate a Credit in Excess of Limitations.

If a taxpayer makes a gift that generates in excess of a \$10,000 credit, the balance of the gift may be deducted. See A.R.M. 42.15.514.

Example for a gift made by an individual after December 31, 2001:

Credit Computation

Present value of the allowable contribution	\$60,000
Credit calculation (60,000 x 40%)	\$24,000
Maximum credit allowed	\$10,000

Excess Contribution Deduction Allowed

Present value of the allowable contribution	\$60,000
Maximum contribution used in credit computation (40% of 10,000 = 25,000)	<u>-25,000</u>
Balance allowed as an itemized deduction	\$35,000

F. Reporting Requirements.

The taxpayer must attach a copy of the following information to the tax return reporting the credit:

1. A receipt acknowledging the amount of the allowable contribution from (a) the tax exempt organization, (b) the trustee administering the planned gift, or (c) from the bank or trust company holding a qualified endowment on behalf of a tax exempt organization.
2. The date of the contribution, the name of the charitable organization who will benefit from the gift, and, in the case of a charitable trust where the charity is yet to be named, a copy of the dispositive clause.
3. A description of the type of gift, i.e., outright gift, charitable remainder unitrust, etc.

A.R.M. 42.15.516. The Montana Department of Revenue does not have any prescribed forms for reporting the gift.

G. Change of Beneficiary.

As before, a donor can reserve the right to change the charitable beneficiary under a planned gift. However, the trust document or gift document must provide that the recipient of the charitable gift portion of the planned gift is a qualified endowment as defined in MCA §15-30-165. A.R.M. 42.15.514(7).