DRAFT ONLY
NOT APPROVED FOR INTRODUCTION

SENATE FILE NO.

Electrical generation tax.

Sponsored by: Senator(s) Case

A BILL

for

AN ACT relating to taxation and revenue; imposing an excise tax on the production of electricity; providing credits for other taxes paid; providing for administration and rulemaking authority; providing penalties; providing for distribution of the tax; creating an account; making conforming amendments; and providing for effective dates.

Be It Enacted by the Legislature of the State of Wyoming:

Section 1. W.S. 39-24-101 through 39-24-111 are created to read:

CHAPTER 24

TAX ON ELECTRICAL GENERATION

39-24-101. Definitions.

There are no specific applicable provisions for definitions for this chapter.

39-24-102. Administration.

The department of revenue shall enforce this chapter. The department shall promulgate rules necessary for the implementation and enforcement of this chapter.

39-24-103. Imposition.

There is levied an excise tax upon the privilege of producing and selling electricity in this state. The tax shall be imposed upon the sale of any electricity produced in Wyoming on or after January 1, 2028, and shall be paid by the person producing the electricity. The tax shall be imposed on the annual gross energy earnings from energy produced in Wyoming.

39-24-104. Taxation rate.

The tax rate shall be three and one-half percent (3.5%) of the annual gross energy earnings from energy produced in this state.

39-24-105. Exemptions.

(a) No tax shall be imposed upon electricity that is produced from any generating facility owned or operated by the federal government or the state of Wyoming.

(b) No tax shall be imposed upon electricity that is produced for the personal consumption of the producer, including any excess production of electricity that does not exceed five hundred (500) kilowatt hours in any twenty-four (24) hour period.

39-24-106. Licensing; permits.

There are no specific applicable provisions for licenses and permits for this chapter.

39-24-107. Compliance; collection procedures.

(a) Returns and reports. Any person producing electricity for sale within this state that is subject to the tax imposed by this chapter shall report the following information not later than February 1 of the year immediately following the year in which the electricity was produced:

(i) The annual gross energy earnings from energy produced in Wyoming during the applicable calendar year;

(ii) Sales of electricity in Wyoming that are or could be subject to sales or use tax under W.S. 39-15-103 or 39-16-103, regardless of any exemption that may apply to sales of electricity. Sales of electricity shall be reported by jurisdiction as required by rule of the department.

(b) Payment. Any person owing a tax under this chapter shall pay the tax one (1) time each year on or before February 1 of the year immediately following the

year in which the electricity was produced. The tax shall be collected by the department of revenue.

(c) Timelines. There are no specific applicable provisions for timelines for this chapter.

39-24-108. Enforcement.

(a) Audits. There are no specific applicable provisions for audits for this chapter.

(b) Interest. Interest at an annual rate equal to the average prime interest as determined by the state treasurer during the preceding fiscal year, plus four percent (4%), shall be added to all delinquent taxes under this chapter. To determine the average prime interest rate, the state treasurer shall average the prime interest rate for at least seventy-five percent (75%) of the thirty (30) largest banks in the United States. The interest rate on delinquent taxes shall be adjusted on January 1 of each year following the year in which the taxes first became delinquent. In no instance shall the delinquent interest rate be less than

twelve percent (12%) nor greater than eighteen percent (18%).

(c) Penalties. The following shall apply:

(i) If any person fails to make or file a return and remit the tax as required by W.S. 39-24-107, the department shall impose a penalty of five percent (5%) of the taxes due for each thirty (30) day period, or a fraction thereof, elapsing between the due date of the return and the date filed, unless the person for good cause obtains from the department an extension of time for filing before the due date for filing. In the event of an extension, the person shall pay the interest due on delinquent payments set forth in subsection (b) of this section. In no event shall the total penalty imposed by this paragraph exceed twenty-five percent (25%) of the tax due. The department, for good cause, may waive a penalty imposed for failure to file a return for any one (1) calendar year, provided that:

(A) The return was filed within five (5) business days following the due date, including a due date determined by an approved extension period; and

(B) The taxpayer requests the waiver in writing within fifteen (15) days after the return was filed, setting forth the reasons for the late filing.

(ii) If any part of a tax deficiency is due to the negligence or intentional disregard of this chapter or department rules there shall be added a penalty of five percent (5%) of the amount of the deficiency plus interest as provided by subsection (b) of this section. The taxes, penalty and interest shall be paid by the taxpayer within ten (10) days after receipt of notice and demand by the department;

(iii) Taxes, interest, penalties and costs shall be collectible by the department by appropriate judicial proceedings;

(iv) The department may credit or waive penalties imposed by this subsection as part of a settlement or for any other good cause.

(d) Liens. Any delinquent tax is a lien upon the property of any person owing tax under this chapter from and after the time the tax is due until the tax is paid. The tax lien shall have preference over all liens except any valid mortgage or other liens of record filed or recorded before the date the tax became due.

(e) Tax sales. There are no specific applicable provisions for tax sales for this chapter.

39-24-109. Tax remedies.

(a) Credits. The following shall apply:

(i) Each taxpayer is entitled to a credit against tax liability under this chapter for all excise, sales, use, severance and ad valorem taxes paid in the tax year by the same taxpayer to any taxing authority in Wyoming. If the taxpayer produces electricity in this state

used in the production process of any mineral that is taxed under the provisions of chapter 14 of this title, the person producing the electricity shall be entitled to a credit equal to the amount of the severance tax paid on the minerals consumed in the production of the electricity;

(ii) To qualify for a credit under paragraph (i) of this subsection for severance taxes paid by another person, the person producing the electricity shall provide documentation that adequately demonstrates, as determined by department rules, the amount of minerals that were consumed in the production of the electricity and the amount of taxes paid on those minerals. The taxpayer shall report the credit to the department on the return filed under W.S. 39-24-107;

(iii) In no case shall any refund be due or payable if the amount of any credit claimed under this section exceeds the amount of tax due under this chapter.

39-24-110. Statute of limitations.

There are no specific applicable provisions for a statute of limitations for this chapter.

39-24-111. Distribution.

The electrical generation account is created. The proceeds from the tax imposed by this chapter shall be deposited in the account. All funds within the account shall be invested by the state treasurer in accordance with law and all investment earnings from the account shall be credited to the account. It is the intent of the legislature that a portion of the funds in the account be used to provide payments to local governments for sales taxes that would have been collected if any sales of electricity reported under W.S. 39-24-107(a)(ii) are exempt from sales tax. Funds within the account shall only be expended by legislative appropriation.

Section 2. W.S. 39-11-101(a)(xviii) is amended to read:

39-11-101. Definitions.

(a) As used in this act unless otherwise specifically provided:

(xviii) "This act" means W.S. 39-11-101 through ~~39-23-111~~ 39-24-111.

Section 3. The department of revenue shall adopt any rules necessary to implement this act not later than July 1, 2027.

Section 4.

(a) Except as provided in subsection (b) of this section, this act is effective immediately upon completion of all acts necessary for a bill to become law as provided by Article 4, Section 8 of the Wyoming Constitution.

(b) Section 1 of this act is effective July 1, 2027.

(END)