

HOUSE BILL NO. HB0147

Electrical generation tax.

Sponsored by: Representative(s) Larsen, L and Walters and
Senator(s) Case

A BILL

for

1 AN ACT relating to taxation and revenue; imposing an excise
2 tax on the production of electricity; providing credits for
3 other taxes paid; providing for administration and
4 rulemaking authority; providing penalties; providing for
5 distribution of the tax; and providing for an effective
6 date.

7

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

9

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

12

13

CHAPTER 24

14

TAX ON ELECTRICAL GENERATION

15

1 **39-24-101. Definitions.**

2

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

5

6 **39-24-102. Administration.**

7

8 The department of revenue shall enforce the provisions of
9 this chapter. The department shall promulgate rules
10 necessary for the implementation and enforcement of this
11 chapter.

12

13 **39-24-103. Imposition.**

14

15 There is levied an excise tax upon the privilege of
16 producing and selling electricity in this state. The tax
17 shall be imposed upon the sale of any electricity produced
18 in Wyoming on or after January 1, 2025, and shall be paid
19 by the person producing the electricity. The tax shall be
20 imposed on the annual gross energy earnings from energy
21 produced in Wyoming.

22

23 **39-24-104. Taxation rate.**

1

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

5

6 **39-24-105. Exemptions.**

7

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

11

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

17

18 **39-24-106. Licensing; permits.**

19

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

22

23 **39-24-107. Compliance; collection procedures.**

1

2 (a) Returns and reports. Any person producing
3 electricity for sale within this state that is subject to
4 the tax imposed by this chapter shall report:

5

6 (i) The annual gross energy earnings from energy
7 produced in Wyoming on or before February 1 of the year
8 immediately following the year in which the electricity was
9 produced;

10

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

17

18 (b) Payment. Any person owing a tax under this
19 chapter shall pay the tax one (1) time each year on or
20 before February 1 of the year immediately following the
21 year in which the electricity was produced. The tax shall
22 be collected by the department of revenue.

23

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

3

4 **39-24-108. Enforcement.**

5

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

8

9 (b) Interest. Interest at an annual rate equal to
10 the average prime interest as determined by the state
11 treasurer during the preceding fiscal year, plus four
12 percent (4%), shall be added to all delinquent taxes under
13 this chapter. To determine the average prime interest rate,
14 the state treasurer shall average the prime interest rate
15 for at least seventy-five percent (75%) of the thirty (30)
16 largest banks in the United States. The interest rate on
17 delinquent taxes shall be adjusted on January 1 of each
18 year following the year in which the taxes first became
19 delinquent. In no instance shall the delinquent interest
20 rate be less than twelve percent (12%) nor greater than
21 eighteen percent (18%).

22

23 (c) Penalties. The following shall apply:

1

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

17

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

21

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

4

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

13

14 (iii) Taxes due together with interest,
15 penalties and costs shall be collectible by the department
16 by appropriate judicial proceedings;

17

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

21

22 (d) Liens. Any delinquent tax is a lien upon the
23 property of any person owing tax under this chapter from

1 and after the time the tax is due until the tax is paid.
2 The tax lien shall have preference over all liens except
3 any valid mortgage or other liens of record filed or
4 recorded before the date the tax became due.

5

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

8

9 **39-24-109. Tax remedies.**

10

11 (a) Credits. The following shall apply:

12

13 (i) Each taxpayer is entitled to a credit
14 against tax liability under this chapter for all excise,
15 sales, use, severance and ad valorem taxes paid in the tax
16 year by the same taxpayer to any taxing authority in
17 Wyoming. If the taxpayer produces electricity in this state
18 used in the production process of any mineral that is taxed
19 under the provisions of W.S. 39-14-101 et seq., the person
20 producing the electricity shall be entitled to a credit
21 equal to the amount of the tax paid on the minerals
22 consumed in the production of the electricity;

23

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

9

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

13

14 **39-24-110. Statute of limitations.**

15

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

18

19 **39-24-111. Distribution.**

20

21 (a) The proceeds from the tax imposed by this chapter
22 shall be distributed on March 1 of each year for taxes
23 attributable to the preceding year as follows:

1

2 (i) Subject to subsection (b) of this section,
3 an amount of proceeds equal to the amount of taxes that
4 would be due if the sales of electricity reported under
5 W.S. 39-24-107(a)(ii) were subject to sales tax as provided
6 in W.S. 39-15-101 through 39-15-111, notwithstanding any
7 tax exemption for sales of electricity, shall be
8 distributed as follows:

9

10 (A) Credit sixty-nine percent (69%) to the
11 state general fund for deposit by the state treasurer;

12

13 (B) Deduct one percent (1%) from the
14 remaining share to cover all administrative expenses and
15 costs attributable to the remaining share and credit for
16 deposit by the state treasurer into the general fund for
17 that amount;

18

19 (C) The balance shall then be paid to the
20 treasurers of the counties, cities and towns for payment
21 into their respective general funds. The percentage of the
22 balance that will be distributed to each county and its
23 cities and towns will be determined by computing the

1 percentage that net sales taxes collected attributable to
2 vendors in each county including its cities and towns bear
3 to total net sales taxes collected of vendors in all
4 counties including their cities and towns. This percentage
5 of the balance shall be distributed within each county as
6 follows:

7
8 (I) To each county in the proportion
9 that the population of the county situated outside the
10 corporate limits of its cities and towns bears to the total
11 population of the county including cities and towns;

12
13 (II) To each city and town within the
14 county in the proportion the population of the city or town
15 bears to the population of the county.

16
17 (ii) Any remaining amount of proceeds after the
18 distributions specified in paragraph (i) of this subsection
19 shall be deposited in the general fund.

20
21 (b) If the amount of proceeds available under
22 subsection (a) of this section are less than the amount of
23 taxes that would be due if the sales of electricity

1 reported under W.S. 39-24-107(a)(ii) were subject to sales
2 tax as provided in W.S. 39-15-101 through 39-15-111, the
3 amount to be distributed under paragraph (a)(i) of this
4 section shall be reduced proportionally to the state and to
5 each county, city and town based on the ratio of the amount
6 of proceeds that are available compared to the amount of
7 taxes that would be due if the sales of electricity
8 reported under W.S. 39-24-107(a)(ii) were subject to sales
9 tax as provided in W.S. 39-15-101 through 39-15-111.

10

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

13

14 **39-11-101. Definitions.**

15

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

18

19 (xviii) "This act" means W.S. 39-11-101 through
20 ~~39-23-111~~ 39-24-111.

21

