

**DRAFT ONLY
NOT APPROVED FOR
INTRODUCTION**

HOUSE BILL NO.

Electrical generation tax.

Sponsored by: Joint Revenue Interim Committee

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; and providing
5 for an effective date.

6

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

8

9 **Section 1.** W.S. 39-23-101 through 39-23-111 are
10 created to read:

11

12

CHAPTER 23

13

TAX ON ELECTRICAL GENERATION

1

2 **39-23-101. Definitions.**

3

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

6

7 **39-23-102. Administration.**

8

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

13

14 **39-23-103. Imposition.**

15

16 There is levied an excise tax upon the privilege of
17 producing electricity in this state. The tax shall be
18 imposed upon the production of any electricity for sale or
19 trade on or after January 1, 2021, and shall be paid by the
20 person producing the electricity. The tax shall be imposed
21 on each megawatt hour of electricity produced at the point
22 of interconnection with an electric transmission line.

23

1 **39-23-104. Taxation rate.**

2

3 The tax rate shall be one dollar (\$1.00) on each megawatt
4 hour, or portion thereof, which is produced in this state.

5

6 **39-23-105. 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 twenty-
16 four (24) hour period.

17

18 **39-23-106. Licensing; permits.**

19

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

22

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

1

2 (a) Returns and reports. Any person producing
3 electricity for sale within this state which is subject to
4 the tax imposed by this chapter shall report the amount of
5 megawatt hours produced in this state on or before February
6 1 of the year immediately following the year in which the
7 electricity was produced.

8

9 (b) Payment. Any person owing a tax under this
10 chapter shall pay the tax once each year on or before
11 February 1 of the year immediately following the year in
12 which the electricity was produced. The tax shall be
13 collected by the department of revenue.

14

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

17

18 **39-23-108. Enforcement.**

19

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

22

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

14

15 (c) Penalties. The following shall apply:

16

17 (i) If any person fails to make or file a return
18 and remit the tax as required by W.S. 39-23-107, the
19 department shall impose a penalty of five percent (5%) of
20 the taxes due for each thirty (30) day period, or fraction
21 thereof, elapsing between the due date of the return and
22 the date filed, unless the person for good cause obtains
23 from the department an extension of time for filing before

1 the due date for filing. In the event of an extension, the
2 person shall pay the interest due on delinquent payments
3 set forth in subsection (b) of this section. In no event
4 shall the total penalty imposed by this subsection exceed
5 twenty-five percent (25%) of the tax due. The department,
6 for good cause, may waive a penalty imposed for failure to
7 file a return for any one (1) calendar year, provided that:

8

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

12

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

16

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

1

2 (iii) Taxes due together with interest,
3 penalties and costs shall be collectible by the department
4 by appropriate judicial proceedings;

5

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

9

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

16

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

19

20 **39-23-109. Tax remedies.**

21

22 (a) Credits. Each taxpayer is entitled to a credit
23 against tax liability under this chapter for all excise,

1 sales, use, severance and ad valorem taxes paid in the tax
2 year by the same taxpayer to any taxing authority in
3 Wyoming. If the taxpayer produces electricity in this state
4 using in the production process any mineral that has been
5 taxed under the provisions of W.S. 39-14-101 et seq., the
6 person producing the electricity shall be entitled to a
7 credit equal to the amount of the tax paid on the minerals
8 consumed in the production of the electricity. To qualify
9 for a credit under this subsection for severance taxes paid
10 by another person, the person producing the electricity
11 shall provide documentation that adequately demonstrates,
12 as determined by department rules, the amount of taxes paid
13 on the minerals that were consumed in the production of the
14 electricity. The taxpayer shall report the credit to the
15 department on the return filed under W.S. 39-23-107. In no
16 case shall any refund be due or payable if the amount of
17 the credit claimed under this paragraph exceeds the amount
18 of tax due under this chapter.

19

20 **39-23-110. Statute of limitations.**

21

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

1

2 **39-23-111. Distribution.**

3

4 The proceeds from the tax imposed by this chapter shall be
5 deposited in the general fund.

6

7 ******* STAFF COMMENTS *******

8 The Committee briefly discussed imposing a tax
9 similar to Idaho, which is based on gross
10 earnings as compared to the amount of electrical
11 production in this draft. The primary changes
12 that would be required are shown below, provided
13 it would be recommended to define "gross
14 earnings." For example, Idaho allows for the
15 deduction of specified costs that could be
16 included in a definition of gross earnings but
17 those provisions are not reflected below:

18

19 **39-23-103. Imposition.**

20

21 There is levied an excise tax upon the privilege of
22 producing and selling electricity in this state. The tax
23 shall be imposed upon the sale of any electricity produced

1 in Wyoming on or after January 1, 2021, and shall be paid
2 by the person producing the electricity. The tax shall be
3 imposed on the annual gross energy earnings from energy
4 produced in Wyoming.

5

6 **39-23-104. Taxation rate.**

7

8 The tax rate shall be three and one-half percent
9 (3.5%) of the annual gross energy earnings from energy
10 produced in this state.

11

12

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

15

16 **39-11-101. Definitions.**

17

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

20

21 (xviii) "This act" means W.S. 39-11-101 through
22 ~~39-22-111~~ 39-23-111.

23

1 **Section 3.** This act is effective July 1, 2020.

2

3

(END)