

## HOUSE BILL NO. 304

INTRODUCED BY A. OLSON, BALES, LANGE, MATTHEWS, MCGEE, PETERSON

A BILL FOR AN ACT ENTITLED: "~~AN ACT ELIMINATING THE REQUIREMENT THAT AN ELECTRICAL PRODUCER AGREE TO OFFER TO SELL THE FIRST ONE-HALF OF POWER THAT IT PRODUCES TO MONTANA CUSTOMERS AND DISTRIBUTION SERVICES PROVIDERS FOR USE WITHIN THE STATE IN ORDER TO RECEIVE A REDUCTION IN THE RATE OF COAL SEVERANCE TAX; CLARIFYING THAT THE REDUCTION IN THE RATE OF THE COAL SEVERANCE TAX FOR CERTAIN ELECTRICAL GENERATION FACILITIES IS CONDITIONED ON THE ELECTRICAL PRODUCER ~~OFFERING TO SELL~~ SELLING ONE-HALF OF THE POWER IT PRODUCES FROM THE COAL CONTRACTED FOR AT A RATE SET BY THE PUBLIC SERVICE COMMISSION; SPECIFYING THAT THE REDUCED TAX RATE IS IN EFFECT FOR 2 YEARS AFTER CERTAIN CONDITIONS ARE MET; ~~CLARIFYING~~ PROVIDING THAT THE REDUCTION IN RATE OF THE COAL SEVERANCE TAX IS APPLICABLE TO ELECTRICAL GENERATION FACILITIES CONSTRUCTED AND OPERATIONAL BETWEEN DECEMBER 31, 2001, AND JANUARY 1, ~~2008~~ 2012; AMENDING SECTION 15-35-103, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE."~~

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

**Section 1.** Section 15-35-103, MCA, is amended to read:

**"15-35-103. (Temporary) Severance tax -- rates imposed.** (1) (a) A severance tax is imposed on each ton of coal produced in the state in accordance with the following schedule:

Heating quality	Surface	Underground
(Btu per pound of coal):	Mining	Mining
Under 7,000	10% of value	3% of value
7,000 and over	15% of value	4% of value

(b) The rate of taxation for coal that meets the following conditions is one-third the applicable rate set forth in subsection (1)(a), rounded to the nearest 10th of a percent:

(i) The coal is used for the production of electricity within the state in an electrical generation facility that was constructed and operational after December 31, 2001, and before January 1, ~~2008~~ 2012.

(ii) The electrical producer ~~agrees to offer, for use within the state~~ offers to sell AND SELLS TO MONTANA CUSTOMERS AND DISTRIBUTION SERVICES PROVIDERS; ~~the first one-half of the amount of power that it produces to Montana customers and distribution services providers~~ from the coal contracted for at a cost to be set by the public service commission that reflects the producer's cost of generating the electricity plus a reasonable return on investment.

(c) The reduced tax rate provided for in subsection (1)(b):

(i) is effective only after both conditions contained in subsection (1)(b) have occurred::

(ii) APPLIES ONLY TO THE AMOUNT OF COAL THAT IS USED FOR THE PRODUCTION OF ELECTRICITY THAT IS SOLD TO MONTANA CUSTOMERS AND DISTRIBUTION SERVICES PROVIDERS; AND

(iii) REMAINS IN EFFECT FOR 2 YEARS FROM DECEMBER 31 OF THE YEAR IN WHICH THE DEPARTMENT DETERMINES THAT THE CONDITIONS IN SUBSECTION (1)(B) HAVE OCCURRED.

(2) "Value" means the contract sales price.

(3) The formula that yields the greater amount of tax in a particular case must be used at each point on the schedule.

(4) A person is not liable for any severance tax upon 50,000 tons of the coal that the person produces in a calendar year, except that if more than 50,000 tons of coal are produced in a calendar year, the producer is liable for severance tax upon all coal produced in excess of the first 20,000 tons.

(5) In addition to the exemption described in subsection (4), a person is not liable for any severance tax upon up to 2 million tons of coal that the person produces as feedstock for coal enhancement facilities in a calendar year, except if more than 2 million tons of coal are produced as feedstock for coal enhancement facilities in a calendar year, the producer is liable for severance tax on all coal produced as feedstock for these facilities in excess of the first 2 million tons. (Terminates December 31, 2005--sec. 5, Ch. 318, L. 1995.)

**15-35-103. (Effective January 1, 2006) Severance tax -- rates imposed.** (1) (a) A severance tax is imposed on each ton of coal produced in the state in accordance with the following schedule:

Heating quality	Surface	Underground
(Btu per pound of coal):	Mining	Mining
Under 7,000	10% of value	3% of value
7,000 and over	15% of value	4% of value

(b) The rate of taxation for coal that meets the following conditions is one-third the applicable rate set forth in subsection (1)(a), rounded to the nearest 10th of a percent:

(i) The coal is used for the production of electricity within the state in an electrical generation facility that was constructed after December 31, 2001, and before January 1, ~~2008~~ 2012.

(ii) The electrical producer ~~agrees to offer, for use within the state~~ offers to sell AND SELLS TO MONTANA CUSTOMERS AND DISTRIBUTION SERVICES PROVIDERS, ~~the first one-half of the amount of power that it produces to Montana customers and distribution services providers~~ from the coal contracted for at a cost to be set by the public service commission that reflects the producer's cost of generating the electricity plus a reasonable return on investment.

(c) The reduced tax rate provided for in subsection (1)(b):

(i) is effective only after both conditions contained in subsection (1)(b) have occurred;

(ii) APPLIES ONLY TO THE AMOUNT OF COAL THAT IS USED FOR THE PRODUCTION OF ELECTRICITY THAT IS SOLD TO MONTANA CUSTOMERS AND DISTRIBUTION SERVICES PROVIDERS; AND

(iii) REMAINS IN EFFECT FOR 2 YEARS FROM DECEMBER 31 OF THE YEAR IN WHICH THE DEPARTMENT DETERMINES THAT THE CONDITIONS IN SUBSECTION (1)(B) HAVE OCCURRED.

(2) "Value" means the contract sales price.

(3) The formula that yields the greater amount of tax in a particular case must be used at each point on the schedule.

(4) A person is not liable for any severance tax upon 50,000 tons of the coal that the person produces in a calendar year, except that if more than 50,000 tons of coal are produced in a calendar year, the producer is liable for severance tax upon all coal produced in excess of the first 20,000 tons."

NEW SECTION. SECTION 2. COORDINATION INSTRUCTION. IF SENATE BILL NO. 472 AND [THIS ACT] ARE BOTH PASSED AND APPROVED, [THIS ACT] IS VOID.

NEW SECTION. SECTION 3. NOTIFICATION OF CODE COMMISSIONER. THE DEPARTMENT OF REVENUE SHALL NOTIFY THE CODE COMMISSIONER WHEN THE CONDITIONS IN 15-35-103(1)(B) HAVE OCCURRED.

NEW SECTION. Section 4. Effective date. [This act] is effective on passage and approval.

NEW SECTION. Section 5. Retroactive applicability. [This act] applies retroactively, within the meaning of 1-2-109, to facilities constructed and operational after December 31, 2001.

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