

SENATE BILL NO. 176
INTRODUCED BY K. TOOLE

A BILL FOR AN ACT ENTITLED: "AN ACT IMPOSING A 1 PERCENT HYDROELECTRIC TAX ON THE GROSS REVENUE DERIVED FROM THE SALE OF ELECTRICITY FROM CERTAIN HYDROELECTRIC FACILITIES; PROVIDING DEFINITIONS; PROVIDING EXEMPTIONS FROM THE HYDROELECTRIC TAX; PROVIDING FOR THE ADMINISTRATION OF THE HYDROELECTRIC TAX AND FOR PENALTIES AND INTEREST; REQUIRING THAT THE PROCEEDS FROM THE HYDROELECTRIC TAX BE DEPOSITED IN THE STATE GENERAL FUND; AND PROVIDING A DELAYED EFFECTIVE DATE AND AN APPLICABILITY DATE."

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

NEW SECTION. Section 1. Definitions. As used in [sections 1 through 11], unless the context requires otherwise, the following definitions apply:

(1) "Hydroelectric facility" means a turbine generator or any combination of physically connected turbine generators at a single site that are driven by falling water and that produce electricity.

(2) "Person" means an individual, estate, trust, receiver, cooperative association, corporation, small business corporation, limited liability company, firm, partnership, joint venture, syndicate, or other entity.

NEW SECTION. Section 2. Hydroelectric tax -- rate of tax -- exemptions. (1) Except as provided in subsection (2), a hydroelectric tax is imposed on the gross revenue derived from the sale of electricity produced from a hydroelectric facility with a nameplate capacity of 5 megawatts or greater. The tax is imposed at the rate of 1% of the gross revenue derived from the sale of electricity produced from a hydroelectric facility or from a combination of hydroelectric facilities owned or operated by the same person.

(2) (a) The gross revenue derived from the sale of electricity produced from a hydroelectric facility owned by the state or by an agency of the United States government is exempt from the tax imposed by this section.

(b) The gross revenue derived from the sale of electricity produced from a hydroelectric facility owned by a municipal electric utility referred to in 69-8-103(5) or by a rural electric cooperative organized under the provisions of Title 35, chapter 18, is exempt from the tax imposed by this section.

NEW SECTION. Section 3. Returns -- payment -- authority of department. (1) On or before the 30th

day of the month following the end of the calendar quarter in which the tax imposed by [sections 1 through 11] is payable, a return, on a form provided by the department, and payment of the tax for the preceding calendar quarter must be filed with the department.

(2) Each person engaged in producing electricity from a hydroelectric facility in this state that is subject to the tax under [sections 1 through 11] shall file a return.

(3) (a) A person required to pay the tax imposed by [sections 1 through 11] shall keep records, render statements, make returns, and comply with the provisions of [sections 1 through 11] and the rules prescribed by the department. Each return or statement must include the information required by the rules of the department.

(b) For the purpose of determining compliance with the provisions of [sections 1 through 11], the department is authorized to examine or cause to be examined any books, papers, records, or memoranda relevant to making a determination of the amount of tax due, whether the books, papers, records, or memoranda are the property of or in the possession of the person filing the return or another person. In determining compliance, the department may use statistical sampling and other sampling techniques consistent with generally accepted auditing standards. The department may also:

- (i) require the attendance of a person having knowledge or information relevant to a return;
- (ii) compel the production of books, papers, records, or memoranda by the person required to attend;
- (iii) implement the provisions of 15-1-703 if the department determines that the collection of the tax is or may be jeopardized because of delay;
- (iv) take testimony on matters material to the determination; and
- (v) administer oaths or affirmations.

(4) Pursuant to rules established by the department, returns may be computer-generated and electronically filed.

NEW SECTION. Section 4. Examination of return -- adjustments -- delivery of notices and demands. (1) If the department determines that the amount of tax due is different from the amount reported, the amount of tax computed on the basis of the examination conducted pursuant to [section 3] constitutes the tax to be paid.

(2) If the tax due exceeds the amount of tax reported as due on the taxpayer's return, the excess must be paid to the department within 30 days after notice of the amount and demand for payment is mailed or delivered to the person making the return unless the taxpayer files a timely objection as provided in 15-1-211. If the amount of the tax found due by the department is less than that reported as due on the return and the tax

has been paid, the excess must be credited or, if no tax liability exists or is likely to exist, refunded to the person making the return.

(3) The notice and demand provided for in this section must contain a statement of the computation of the tax and interest and must be:

(a) sent by mail to the taxpayer at the address given in the taxpayer's return, if any, or to the taxpayer's last-known address; or

(b) served personally upon the taxpayer.

(4) A taxpayer filing an objection to the demand for payment is subject to and governed by the uniform dispute review procedure provided in 15-1-211.

NEW SECTION. Section 5. Penalties and interest for violation. (1) (a) A person who fails to file a return as required by [section 3] must be assessed a penalty as provided in 15-1-216. The department may waive the penalty as provided in 15-1-206.

(b) A person who fails to file the return required by [section 3] and to pay the tax before the due date must be assessed a penalty and interest as provided in 15-1-216. The department may waive any penalty pursuant to 15-1-206.

(2) A person who purposely fails to pay the tax when due must be assessed an additional penalty as provided in 15-1-216.

NEW SECTION. Section 6. Authority to collect delinquent taxes. (1) (a) The department shall collect taxes that are delinquent as determined under [sections 1 through 11].

(b) If a tax imposed by [sections 1 through 11] or any portion of the tax is not paid when due, the department may issue a warrant for distraint as provided in Title 15, chapter 1, part 7.

(2) In addition to any other remedy, in order to collect delinquent taxes after the time for appeal has expired, the department may direct the offset of tax refunds or other funds that are due to the taxpayer from the state, except wages subject to the provisions of 25-13-614 and retirement benefits.

(3) As provided in 15-1-705, the taxpayer has the right to a review on the tax liability prior to any offset by the department.

(4) The department may file a claim for state funds on behalf of the taxpayer if a claim is required before funds are available for offset.

NEW SECTION. Section 7. Interest on deficiency -- penalty. (1) Interest accrues on unpaid or delinquent taxes as provided in 15-1-216. The interest must be computed from the date on which the return and tax were originally due.

(2) If the payment of a tax deficiency is not made within 60 days after it is due and payable and if the deficiency is due to negligence on the part of the taxpayer but without fraud, the penalty imposed by 15-1-216(1)(c) must be added to the amount of the deficiency.

NEW SECTION. Section 8. Limitations -- action on fraudulent return. (1) Except in the case of a person who fails to file a return or who purposely or knowingly, as those terms are defined in 45-2-101, files a false or fraudulent return violating the provisions of [sections 1 through 11], a deficiency may not be assessed or collected with respect to a month or quarter for which a return is filed unless the notice of additional tax proposed to be assessed is mailed to or personally served upon the taxpayer within 5 years from the date on which the return was filed. For purposes of this section, a return filed before the last day prescribed for filing is considered to be filed on the last day.

(2) If, before the expiration of the 5-year period prescribed in subsection (1) for assessment of the tax, the taxpayer consents in writing to an assessment after expiration of the 5-year period, a deficiency may be assessed at any time prior to the expiration of the period to which the taxpayer consented.

(3) Whenever a return is required to be filed and the taxpayer files a fraudulent return or fails to file the return, the department may at any time assess the tax or begin a proceeding in court for the collection of the tax without assessment.

NEW SECTION. Section 9. Refunds -- interest -- limitations. (1) A claim for a refund or credit as a result of overpayment of taxes collected under [sections 1 through 11] must be filed within 5 years of the date on which the return was due, without regard to any extension of time for filing.

(2) (a) Interest on an overpayment must be paid or credited at the same rate as the interest rate charged on unpaid taxes as provided in 15-1-216.

(b) Except as provided in subsection (2)(c), interest must be paid from the date on which the return was due or the date of overpayment, whichever is later. Interest does not accrue during any period in which the processing of a claim is delayed more than 30 days because the taxpayer has not furnished necessary information.

(c) The department is not required to pay interest if:

- (i) the overpayment is refunded or credited within 6 months of the date on which a claim was filed; or
- (ii) the amount of overpayment and interest does not exceed \$1.

NEW SECTION. Section 10. Administration -- rules. The department shall:

- (1) administer and enforce the provisions of [sections 1 through 11];
- (2) cause to be prepared and distributed forms and information that may be necessary to administer the provisions of [sections 1 through 11]; and
- (3) adopt rules that may be necessary or appropriate to administer and enforce the provisions of [sections 1 through 11]. The rules must specify the method for reporting gross revenue derived from the sale of electricity from a hydroelectric facility or from a combination of hydroelectric facilities owned or operated by the same person.

NEW SECTION. Section 11. Disposition of revenue. Taxes collected under [sections 1 through 11] must, in accordance with the provisions of 15-1-501, be deposited in the general fund.

NEW SECTION. Section 12. Codification instruction. [Sections 1 through 11] are intended to be codified as an integral part of Title 15, and the provisions of Title 15 apply to [sections 1 through 11].

NEW SECTION. Section 13. Effective date. [This act] is effective January 1, 2004.

NEW SECTION. Section 14. Applicability. [This act] applies to electricity produced from hydroelectric facilities and to tax years beginning after December 31, 2003.

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