

HOUSE BILL NO. 682
INTRODUCED BY W. MCNUTT

A BILL FOR AN ACT ENTITLED: "AN ACT REVISING THE WHOLESALE ENERGY TRANSACTION TAX LAWS; CLARIFYING THE PERSON OR ENTITY THAT IS RESPONSIBLE FOR PAYING THE TAX; REQUIRING THAT A TRANSMISSION SERVICES PROVIDER AND A SELF-ASSESSING DISTRIBUTION SERVICES PROVIDER PROVIDE THE DEPARTMENT AND THE TAXPAYER WITH CERTAIN TRANSMISSION INFORMATION; AMENDING SECTIONS 15-72-104, 15-72-106, AND 15-72-110, MCA; AND PROVIDING A DELAYED EFFECTIVE DATE AND AN APPLICABILITY DATE."

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

Section 1. Section 15-72-104, MCA, is amended to read:

"15-72-104. Wholesale energy transaction tax -- rate of tax -- exemptions -- cost recovery. (1) (a) Except as provided in subsection (3), a wholesale energy transaction tax is imposed upon electricity transmitted within the state as provided in this section. The tax is imposed at a rate of 0.015 cent per kilowatt hour of electricity transmitted by a transmission services provider in the state.

(b) For electricity produced in the state for delivery outside of the state, the taxpayer is the person owning or operating the electrical generation facility producing the electricity. The transmission services provider person owning or operating the electrical generation facility producing the electricity shall collect pay the tax from the person based upon the kilowatt hours introduced onto transmission lines from the electrical generation facility. The amount of kilowatt hours subject to tax must be reduced by 5% to compensate for transmission line losses. If a person owning or operating an electrical generation facility producing electricity in the state delivers electricity to a party that does not own distribution facilities within the state, then for tax payment purposes, that delivered electricity is considered to be electricity delivered outside the state.

(c) For electricity produced in the state for delivery within the state, the taxpayer is the distribution services provider. The transmission distribution services provider shall collect pay the tax based upon the amount of kilowatt hours of electricity delivered to the distribution services provider. The taxpayer may apply for a refund for overpayment of taxes pursuant to 15-72-116.

(d) For electricity produced outside the state for delivery inside the state, the taxpayer is the distribution services provider. The transmission distribution services provider shall collect pay the tax based upon the amount

of kilowatt hours of electricity delivered to the distribution services provider.

(e) For electricity delivered to a distribution services provider that is a rural electric cooperative for delivery to purchasers that have opted for customer choice under the provisions of Title 69, chapter 8, part 3, the taxpayer is the distribution services provider. The ~~transmission~~ distribution services provider shall ~~collect~~ pay the tax based on the amount of kilowatt hours of electricity delivered to the distribution services provider that is attributable to customers that have opted for customer choice.

(f) For electricity delivered to a distribution services provider that prior to May 2, 1999, was owned by a public utility as defined in 69-3-101, the tax is imposed on the successor distribution services provider. The ~~transmission~~ distribution services provider shall ~~collect~~ pay the tax based upon the amount of kilowatt hours of electricity delivered to the distribution services provider.

(2) (a) If more than one transmission services provider transmits electricity, the last transmission services provider transmitting or delivering the electricity shall ~~collect the tax~~ provide the necessary information to the department and the taxpayer as provided in [section 4].

(b) If the transmission services provider is an agency of the United States government, the distribution services provider receiving the electricity shall self-assess the tax subject to the provisions of this part and report to the department as provided in [section 4].

(c) If an electrical generation facility located within the state produces electricity for sale inside and outside the state, sales within the state are considered to have come from electricity produced within the state for purposes of the tax imposed by this section.

(3) (a) Electricity transmitted through the state that is not produced or delivered in the state is exempt from the tax imposed by this section.

(b) Electricity produced in the state by an agency of the United States government or electricity produced from an electric energy generation facility, as defined in 90-5-101(3), constructed after May 1, 2001, that is within the exterior boundaries of a Montana Indian reservation for delivery outside of the state is exempt from the tax imposed by this section.

(c) Electricity produced by wind turbines erected on state land for which annual lease payments are made to the permanent school trust fund is exempt from the tax imposed by this section.

(d) Electricity delivered to a distribution services provider that is a municipal utility described in 69-8-103(5)(b) or a rural electric cooperative organized under the provisions of Title 35, chapter 18, is exempt from the tax imposed by this section.

(e) Electricity delivered to a purchaser that receives its power directly from a transmission or distribution

facility owned by an entity of the United States government on or before May 2, 1997, or electricity that is transmitted exclusively on transmission or distribution facilities owned by an entity of the United States government on or before May 2, 1997, is exempt from the tax imposed by this section.

(4) A distribution services provider is allowed to recover the tax imposed by this section and the administrative costs to comply with this part in its rates."

Section 2. Section 15-72-106, MCA, is amended to read:

"15-72-106. ~~Collection~~ Disposition of wholesale energy transaction tax -- ~~disposition of revenue.~~

~~(1) A transmission services provider shall collect the tax imposed under 15-72-104 from the taxpayer and pay the tax collected to the department. If the transmission services provider collects a tax in excess of the tax imposed by 15-72-104, both the tax and the excess must be remitted to the department.~~

~~(2) A self-assessing distribution services provider is subject to the provisions of this part.~~

~~(3) The wholesale energy transaction tax collected under this part must be deposited in the general fund."~~

Section 3. Section 15-72-110, MCA, is amended to read:

"15-72-110. 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 this part 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 transmitting electricity in this state~~ taxpayer that is subject to the tax under this part shall file a return.

(3) (a) A person required to ~~collect and pay to~~ submit information to the department or pay to the department the tax imposed by this part shall keep records, render statements, make returns, and comply with the provisions of this part 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 this part, 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. Transmission information for tax purposes. (1) On or before the 10th calendar day of the month, a transmission services provider and a self-assessing distribution services provider shall submit to the department and the taxpayer information showing the amount of kilowatt hours transmitted and the amount of tax due from each taxpayer for the preceding calendar month.

(2) If the taxpayer believes that the information provided by the transmission services provider or self-assessing distribution services provider to the department is incorrect, the taxpayer may file a written statement with the department and the transmission services provider or the self-assessing distribution services provider within 10 days of the receipt of the information pursuant to subsection (1) explaining why the taxpayer disagrees with the transmission services provider or self-assessing distribution services provider.

(3) The department shall maintain the information submitted by the taxpayer under subsection (1) and may use that information in an audit of the taxpayer or in a tax appeal proceeding involving the taxpayer.

NEW SECTION. Section 5. Codification instruction. [Section 4] is intended to be codified as an integral part of Title 15, chapter 72, part 1, and the provisions of Title 15, chapter 72, part 1, apply to [section 4].

NEW SECTION. Section 6. Effective date. [This act] is effective January 1, 2008.

NEW SECTION. Section 7. Applicability. [This act] applies to electricity transmitted after December 31, 2007.

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