

AMENDED IN SENATE APRIL 23, 2001

AMENDED IN SENATE APRIL 16, 2001

AMENDED IN SENATE MARCH 1, 2001

AMENDED IN SENATE FEBRUARY 6, 2001

CALIFORNIA LEGISLATURE—2001–02 FIRST EXTRAORDINARY SESSION

SENATE BILL

No. 1

Introduced by Senators Soto and Scott

January 17, 2001

An act to add Section 17052.75 to, and ~~to add Chapter 2.7 (commencing with Section 23471) to Part 11 of Division 2 of, the Revenue and Taxation Code, relating to taxation, to~~ *to add Part 14.5 (commencing with Section 33001) to Division 2 of the Revenue and Taxation Code, relating to taxation, to* take effect immediately, tax levy.

LEGISLATIVE COUNSEL'S DIGEST

SB 1, as amended, Soto. Personal income and bank and corporation taxes: electrical windfall profits tax: consumer credit.

The Personal Income Tax Law authorizes various credits against the taxes imposed by those laws.

This bill, in accordance with the Legislature's stated intent to provide relief to California consumers of electrical power, would for each taxable year beginning on or after January 1, 2001, authorize a refundable California Electricity Consumers Tax Credit. The allowable credit would be computed in a manner that distributes, in equal amounts among those taxpayers required to file a tax return under the Personal Income Tax Law, a sum that is equal to the total amount due and payable



under the ~~Electricity Generation Excess~~ *Electric Windfall Profits Tax* imposed under this bill.

The *Personal Income Tax Law and the Bank and Corporation Tax Law* ~~imposes~~ *impose* a tax measured by income upon every *individual or corporation* doing business in, or deriving income ~~from,~~ *from* this state.

~~This bill would additionally impose under the Bank and Corporation Tax Law, for any taxable year beginning on or after January 1, 2001, an Electricity Generation Excess Profits Tax upon any taxpayer that is engaged in this state in the business of generating electrical power. This bill would impose this tax at a rate equal to ___% of the net income reported for the taxable year that exceeds ___% of the net income reported for the 1999 taxable year.~~

This bill would impose the Electric Windfall Profits Tax on sellers of electricity in this state in an amount equal to the portion of the sales price of electricity that exceeds the base price, as defined. This bill would require the California Independent Systems Operator, any utility distribution company, or any other person or entity in this state required to process sales of electricity, to withhold from payments to the seller the entire amount of the Electric Windfall Profits Tax generated from the sale of electricity. The Electric Windfall Profits Tax withheld would be required to be remitted to the Franchise Tax Board in the month immediately following the month in which the sale of electricity that generated the Electric Windfall Profits Tax occurred.

In addition to the remittance of the Electric Windfall Profits Tax, this bill would require the California Independent Systems Operator, any utility distribution company, or any other person or entity in this state required to process sales of electricity, to file a monthly information return with the Franchise Tax Board.

This bill would require sellers of electricity, whose sales are not required to be processed by the California Independent Systems Operator or any other person or entity in this state, to file a return and remit to the Franchise Tax Board the entire Electric Windfall Profits Tax owed in the month immediately following the month in which the sale of electricity that generated the Electric Windfall Profits Tax occurred.

This bill would take effect immediately as a tax levy.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: no.



The people of the State of California do enact as follows:

1 SECTION 1. (a) It is the intent of the Legislature to provide
2 some relief to California’s consumers of electrical power who have
3 been subjected to unprecedented increases in the rates charged by
4 providers of electrical services. In order to achieve this intent, this
5 bill would impose the ~~Electricity Generation Excess~~ *Electric*
6 *Windfall* Profits Tax on California taxpayers engaged in the
7 business of generating electrical power and would return the
8 proceeds of this tax to California’s taxpayers in the form of the
9 California Electricity Consumers Credit.

10 (b) It is the intent of the Legislature that taxpayers engaged in
11 ~~the business of generating electrical power not increase their rates~~
12 ~~for the provision of electrical services or pass on, in any other~~ *the*
13 *business of generating and selling electrical power not pass on, in*
14 *any manner, any increased costs of doing business attributable to*
15 *the imposition of the* ~~Electricity Generation Excess~~ *Electric*
16 *Windfall* Profits Tax. It is also the intent of the Legislature that the
17 Public Utilities Commission monitor taxpayers engaged in the
18 business of generating *and selling* electrical power to ensure that
19 any rate increases in the provision of electrical services are not
20 done for the purpose of offsetting the ~~Electricity Generation~~
21 *Electric Windfall* Profits Tax.

22 SEC. 2. Section 17052.75 is added to the Revenue and
23 Taxation Code, to read:

24 17052.75. (a) For each taxable year beginning on or after
25 January 1, 2001, there shall be allowed, against the “net tax,” as
26 defined in Section 17039, a California Electricity Consumers
27 Credit in an amount as determined by the Franchise Tax Board
28 under subdivision (b).

29 (b) The allowable credit for each taxable year shall be
30 determined in a manner that distributes, in equal amounts among
31 those individuals required to file an income tax return under this
32 part, a sum that is equal to the total amount due and payable for the
33 same taxable year under the ~~Electricity Generation Excess~~ *Electric*
34 *Windfall* Profits Tax imposed under Chapter 2.7 (commencing
35 with Section 23471) of Part 11.

36 (c) In the case where the credit allowed by this section exceeds
37 the “net tax,” the excess shall be credited against other amounts
38 due, if any, from the taxpayer. The balance, if any, shall be

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1 refunded to the taxpayer upon appropriation by the Legislature of
2 the amount necessary to pay that refund.

3 ~~SEC. 3. Chapter 2.7 (commencing with Section 23471) is~~
4 ~~added to Part 11 of Division 2 of the Revenue and Taxation Code,~~
5 ~~to read:~~

6
7 ~~CHAPTER 2.7. ELECTRICITY GENERATION EXCESS PROFITS TAX~~

8
9 ~~23471. (a) There is hereby imposed for any taxable year~~
10 ~~beginning on or after January 1, 2001, in addition to the tax~~
11 ~~imposed pursuant to Chapter 2 (commencing with Section 23101),~~
12 ~~an Electricity Generation Excess Profits Tax measured by the net~~
13 ~~income of a taxpayer that is engaged in the business of generating~~
14 ~~electrical power.~~

15 ~~(b) The tax imposed pursuant to this chapter shall be imposed~~
16 ~~at a rate equal to ___ percent of the amount of the net income~~
17 ~~reported for the taxable year that exceeds ___ percent of the net~~
18 ~~income reported for the 1999 taxable year.~~

19 ~~(c) The Franchise Tax Board shall publicly announce the rate~~
20 ~~of the tax imposed under this section no later than ____.~~

21 ~~23472. The tax imposed pursuant to Section 23471 shall be~~
22 ~~imposed and collected in the same manner as the taxes imposed~~
23 ~~pursuant to Chapter 2 (commencing with Section 23101).~~

24 ~~SEC. 4. This act provides for a tax levy within the meaning of~~
25 ~~Article IV of the Constitution and shall go into immediate effect.~~

26 ~~SEC. 5. This bill shall not become operative unless SB 17 of~~
27 ~~the 2001-02 First Extraordinary Session becomes operative.~~

28 ~~SEC. 3. Part 14.5 (commencing with Section 33001) is added~~
29 ~~to Division 2 of the Revenue and Taxation Code, to read:~~

30
31 *PART 14.5. ELECTRIC WINDFALL PROFITS TAX*

32
33 *33001. (a) In addition to the tax imposed pursuant to this*
34 *division, there is hereby imposed on sellers of electricity in this*
35 *state an electric windfall profits tax in an amount equal to that*
36 *portion of the sales price of electricity sold in this state that exceeds*
37 *the base price.*

38 *(b) For purposes of this part:*

39 *(1) "Base price" means eighty dollars (\$80) per megawatt*
40 *hour of electricity sold, or any subsequent price developed and*



1 approved by the California Public Utilities Commission (CPUC)
2 that is based on an industry wide average of the cost of selling
3 electricity, as adjusted for a reasonable allowance for profit
4 margins and maintenance and operational expenses.

5 (2) "Sellers of electricity" include individuals, partnerships,
6 limited partnerships, joint ventures, trusts, associations,
7 corporations, Subchapter S corporations, or any other entity that
8 is a producer, generator, wholesaler, marketer, broker, or other
9 vendor of electricity.

10 (c) It shall be presumed that the tax imposed pursuant to this
11 part is the amount of tax withheld and remitted or required to be
12 remitted to the Franchise Tax Board pursuant to Sections 33002
13 and 33003.

14 33002. (a) Except with respect to a seller of electricity
15 described in Section 33003, the California Independent Systems
16 Operator, any utility distribution company, or any other person or
17 entity in this state that processes or is required to process sales of
18 electricity, shall withhold from payments made to sellers of
19 electricity 100 percent of that portion of the sales price of
20 electricity that is subject to the electric windfall profits tax imposed
21 by this part.

22 (b) Any amounts withheld under this section shall be held in a
23 segregated account or fund in trust for the State of California.

24 (c) Each amount of the electric windfall profits tax withheld
25 under this section shall be remitted to the Franchise Tax Board on
26 or before the 15th day of the month immediately following the
27 month in which this tax was withheld.

28 (d) Every person required under this section to withhold and
29 remit the tax imposed under this part is hereby liable for the tax
30 imposed under this part.

31 (e) If any amount required to be withheld under this section is
32 not remitted to the Franchise Tax Board on or before the due date,
33 interest shall be assessed at the adjusted annual rate established
34 pursuant to Section 19521, computed from the due date to the date
35 payment is received by the Franchise Tax Board.

36 33003. (a) Any seller of electricity whose sales of electricity
37 are not processed, or required to be processed, through the
38 California Independent Systems Operator, a utility distribution
39 company, or any other person or entity shall, with respect to each
40 of its sales of electricity in this state, remit to the Franchise Tax



1 Board 100 percent of that portion of the sales price of electricity
2 subject to the electric windfall profits tax imposed by this part.

3 (b) The tax due under this section shall be remitted to the
4 Franchise Tax Board on or before the 15th day of the month
5 immediately following the month in which the sale of the electricity
6 which generated the tax imposed under this part occurred.

7 (c) If any amount required to be remitted under this section is
8 not remitted to the Franchise Tax Board on or before the due date,
9 interest shall be assessed at the adjusted annual rate established
10 pursuant to Section 19521, computed from the due date to the date
11 payment is received by the Franchise Tax Board.

12 33004. (a) The California Independent Systems Operator,
13 any utility distribution companies, or any other entity required to
14 withhold and remit electric windfall profits taxes to the Franchise
15 Tax Board under Section 33002 shall prepare and file with the
16 Franchise Tax Board a monthly return showing, for each seller of
17 electricity subject to the tax imposed under this part, the name and
18 tax identification number of the seller on whose behalf the tax was
19 withheld, the amount of tax, the total number of megawatt hours
20 of electricity sold that was subject to the tax, the total amount of
21 kilowatt hours of electricity sold, the purchaser of the electricity,
22 and any other information as the Franchise Tax Board deems
23 necessary for the proper administration of this part. The return
24 shall be filed on or before the 15th day of the month following the
25 month in which the tax was withheld. To facilitate the
26 administration of this part, the board may require the filing of the
27 returns for periods other than monthly periods.

28 (b) Any seller of electricity whose sales of electricity are not
29 processed, or required to be processed, through the California
30 Independent Systems Operator, a utility distribution company, or
31 any other person or entity required to remit electric windfall profits
32 taxes to the Franchise Tax Board under Section 33003 shall
33 prepare and file with the Franchise Tax Board a monthly return
34 showing, the amount of tax remitted, the total number of megawatt
35 hours of electricity sold that was subject to the tax, the total amount
36 of kilowatt hours of electricity sold, the purchaser of the electricity,
37 and any other information as the Franchise Tax Board deems
38 necessary for the proper administration of this part. This return
39 shall be filed on or before the 15th day of the month following the
40 month in which the tax was withheld.



1 (c) In order to facilitate the administration of this part, the
2 Franchise Tax Board may require the filing of the returns for
3 periods other than monthly periods.

4 33005. The California Public Utilities Commission, may by
5 regulation, authorize exemptions from all or a portion of the tax
6 imposed under this part for generators of renewable energy
7 sources.

8 33006. (a) It shall be presumed that the tax required to be
9 withheld and remitted under Sections 33002 and 33003 is the full
10 amount of tax owed by the taxpayer subject to the electric windfall
11 profits tax imposed under this part. If a taxpayer disputes the
12 actual tax withheld or remitted under this part, the taxpayer may
13 request a refund setting forth the reasons and facts that
14 demonstrate that the tax withheld and remitted under this part does
15 not accurately reflect the tax owed by the taxpayer.

16 (b) (1) It shall be presumed that any base price developed and
17 approved by the California Public Utilities Commission (CPUC)
18 reflects the taxpayer’s costs of selling electricity, as adjusted for
19 the reasonable allowance of profit margins and maintenance and
20 operational expenses. If a taxpayer contends that the base price,
21 as calculated and approved by the CPUC, does not allow the
22 taxpayer a reasonable allowance for profit margins and
23 maintenance and operational expenses, the taxpayer may file a
24 claim for refund setting forth the reasons and calculations that
25 demonstrate that the base price does not reflect the taxpayer’s
26 actual costs of selling electricity.

27 (2) A claim for refund filed under this subdivision shall be
28 reviewed by the CPUC and no refund may be issued unless the
29 CPUC determines that the taxpayer has demonstrated that an
30 adjustment should be made to the base price to accurately reflect
31 the taxpayer’s cost of selling electricity. The refund amount, if any,
32 shall be calculated and approved by the CPUC.

33 (c) Any claim for refund filed under this section shall be filed
34 within four years from the date the tax was required to be remitted
35 or within one year from the date the tax was remitted, whichever
36 period is longer.

37 SEC. 4. This act provides for a tax levy within the meaning of
38 Article IV of the Constitution and shall go into immediate effect.

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