

SENATE BILL

No. 1

Introduced by Senators Soto and Scott

May 17, 2001

An act to *amend Section 19221 of*, to add Section 17052.75 to, and 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 introduced, 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 Electric Windfall Profits Tax imposed under this bill *as reduced by any amounts refunded in that taxable year*.

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

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 not apply to sales of electricity made pursuant to a binding written contract executed on or before the effective date of this bill.*

This bill would take effect immediately as a tax levy, *but its operative date would depend upon its effective date.*

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 Electric Windfall Profits Tax on California
- 6 taxpayers engaged in the business of generating electrical power
- 7 and would return the proceeds of this tax to California’s taxpayers
- 8 in the form of the California Electricity Consumers Credit.
- 9 (b) It is the intent of the Legislature that taxpayers engaged in
- 10 the business of generating and selling electrical power not pass on,
- 11 in any manner, any increased costs of doing business attributable



1 to the imposition of the Electric Windfall Profits Tax. It is also the
2 intent of the Legislature that the Public Utilities Commission
3 monitor taxpayers engaged in the business of generating and
4 selling electrical power to ensure that any rate increases in the
5 provision of electrical services are not done for the purpose of
6 offsetting the Electric Windfall Profits Tax.

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

9 17052.75. (a) For each taxable year beginning on or after
10 January 1, 2001, there shall be allowed, against the “net tax,” as
11 defined in Section 17039, a California Electricity Consumers
12 Credit in an amount as determined by the Franchise Tax Board
13 under subdivision (b).

14 (b) The allowable credit for each taxable year shall be
15 determined in a manner that distributes, in equal amounts among
16 those individuals required to file an income tax return under this
17 part, a sum that is equal to the total amount due and payable for the
18 same taxable year under the Electric Windfall Profits Tax imposed
19 under Chapter 2.7 (commencing with Section 23471) of Part 11.

20 (c) *The total credit amount available for distribution for each*
21 *taxable year under subdivision (b) shall be adjusted by reducing*
22 *the total amount of the Windfall Profits Tax due and payable for*
23 *that taxable year by the amount of refunds allowed under Section*
24 *33006 for that taxable year.*

25 (d) In the case where the credit allowed by this section exceeds
26 the “net tax,” the excess shall be credited against other amounts
27 due, if any, from the taxpayer. The balance, if any, shall be
28 refunded to the taxpayer upon appropriation by the Legislature of
29 the amount necessary to pay that refund.

30 SEC. 3. *Section 19221 of the Revenue and Taxation Code is*
31 *amended to read:*

32 19221. (a) If any taxpayer or person fails to pay any liability
33 imposed under Part 10 (commencing with Section 17001) or Part
34 11 (commencing with Section 23001) *or under Part 14.5*
35 *(commencing with Section 33001)*, at the time that it becomes due
36 and payable, the amount thereof, (including any interest,
37 additional amount, addition to tax, or penalty, together with any
38 costs that may accrue in addition thereto) shall thereupon be a
39 perfected and enforceable state tax lien. This lien is subject to



1 Chapter 14 (commencing with Section 7150) of Division 7 of Title
2 1 of the Government Code.

3 (b) For the purpose of this section, amounts are “due and
4 payable” on the following dates:

5 (1) For amounts of any liability disclosed on a return filed on
6 or before the date payment is due (with regard to any extension of
7 time to pay), the date the amount is established on the records of
8 the Franchise Tax Board, except that in no case will it be prior to
9 the day after the payment due date;

10 (2) For amounts of any liability disclosed on a return filed after
11 the date payment is due (with regard to any extension of time to
12 pay), the date the amount is established on the records of the
13 Franchise Tax Board;

14 (3) For amounts of any liability determined under Section
15 19081 or 19082 (pertaining to jeopardy assessments), the date the
16 notice of the Franchise Tax Board’s finding is mailed or issued;

17 (4) For all other amounts of liability, the date the assessment is
18 final.

19 (c) Notwithstanding subdivision (a), during any period that
20 Section 362 of Title 11 of the United States Code applies, any tax
21 lien that would otherwise attach to property by reason of
22 subdivision (a) shall not take effect, unless the tax is a debt of the
23 debtor that will not be discharged in the bankruptcy proceeding
24 and the property or its proceeds are transferred out of the
25 bankruptcy estate to, or otherwise revested in, the debtor.

26 SEC. 4. Part 14.5 (commencing with Section 33001) is added
27 to Division 2 of the Revenue and Taxation Code, to read:

28

29 PART 14.5. ELECTRIC WINDFALL PROFITS TAX

30

31 33001. (a) In addition to the tax imposed pursuant to this
32 division, there is hereby imposed on sellers of electricity in this
33 state an Electric Windfall Profits Tax in an amount equal to that
34 portion of the sales price of electricity sold in this state that exceeds
35 the base price.

36 (b) For purposes of this part:

37 (1) “Base price” means eighty dollars (\$80) per megawatt
38 hour of electricity sold, or any subsequent price developed and
39 approved by the California Public Utilities Commission (CPUC)
40 that is based on an industrywide average of the cost of selling



1 electricity, as adjusted for a reasonable allowance for profit
2 margins and maintenance and operational expenses.

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

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

12 33002. (a) Except with respect to a seller of electricity
13 described in Section 33003, the California Independent Systems
14 Operator, any utility distribution company, or any other person or
15 entity in this state that processes or is required to process sales of
16 electricity, shall withhold from payments made to sellers of
17 electricity 100 percent of that portion of the sales price of
18 electricity that is subject to the Electric Windfall Profits Tax
19 imposed by this part.

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

22 (c) Each amount of the Electric Windfall Profits Tax withheld
23 under this section shall be remitted to the Franchise Tax Board on
24 or before the 15th day of the month immediately following the
25 month in which this tax was withheld.

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

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

34 (f) *If any amount required to be remitted under this section is*
35 *not remitted to the Franchise Tax Board on or before the due date,*
36 *a penalty may be assessed by the Franchise Tax Board in*
37 *accordance with the provisions of Section 19132.*

38 33003. (a) Any seller of electricity whose sales of electricity
39 are not processed, or required to be processed, through the
40 California Independent Systems Operator, a utility distribution



1 company, or any other person or entity shall, with respect to each
2 of its sales of electricity in this state, remit to the Franchise Tax
3 Board 100 percent of that portion of the sales price of electricity
4 subject to the Electric Windfall Profits Tax imposed by this part.

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

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

15 (d) *If any amount required to be remitted under this section is*
16 *not remitted to the Franchise Tax Board on or before the due date,*
17 *a penalty may be assessed by the Franchise Tax Board in*
18 *accordance with the provisions of Section 19132.*

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

35 (b) Any seller of electricity whose sales of electricity are not
36 processed, or required to be processed, through the California
37 Independent Systems Operator, a utility distribution company, or
38 any other person or entity required to remit electric windfall profits
39 taxes to the Franchise Tax Board under Section 33003 shall
40 prepare and file with the Franchise Tax Board a monthly return



1 showing, the amount of tax remitted, the total number of megawatt
2 hours of electricity sold that was subject to the tax, the total amount
3 of kilowatthours of electricity sold, the purchaser of the electricity,
4 and any other information as the Franchise Tax Board deems
5 necessary for the proper administration of this part. This return
6 shall be filed on or before the 15th day of the month following the
7 month in which the tax was withheld.

8 (c) *If a taxpayer fails to file or make a return as required by this*
9 *section before the due date of the return or the date as may be*
10 *extended by the Franchise Tax Board, a penalty may be assessed*
11 *by the Franchise Tax Board in accordance with the provisions of*
12 *Section 19131.*

13 (d) In order to facilitate the administration of this part, the
14 Franchise Tax Board may require the filing of the returns for
15 periods other than monthly periods.

16 33005. The California Public Utilities Commission, may by
17 regulation, authorize exemptions from all or a portion of the tax
18 imposed under this part for generators of renewable energy
19 sources.

20 33006. (a) It shall be presumed that the tax required to be
21 withheld and remitted under Sections 33002 and 33003 is the full
22 amount of tax owed by the taxpayer subject to the Electric
23 Windfall Profits Tax imposed under this part. If a taxpayer disputes
24 the actual tax withheld or remitted under this part, the taxpayer
25 may request a refund setting forth the reasons and facts that
26 demonstrate that the tax withheld and remitted under this part does
27 not accurately reflect the tax owed by the taxpayer.

28 (b) (1) It shall be presumed that any base price developed and
29 approved by the California Public Utilities Commission (CPUC)
30 reflects the taxpayer's costs of selling electricity, as adjusted for
31 the reasonable allowance of profit margins and maintenance and
32 operational expenses. If a taxpayer contends that the base price, as
33 calculated and approved by the CPUC, does not allow the taxpayer
34 a reasonable allowance for profit margins and maintenance and
35 operational expenses, the taxpayer may file a claim for refund
36 setting forth the reasons and calculations that demonstrate that the
37 base price does not reflect the taxpayer's actual costs of selling
38 electricity.

39 (2) A claim for refund filed under this subdivision shall be
40 reviewed by the CPUC and no refund may be issued unless the



1 CPUC determines that the taxpayer has demonstrated that an
2 adjustment should be made to the base price to accurately reflect
3 the taxpayer’s cost of selling electricity. The refund amount, if any,
4 shall be calculated and approved by the CPUC.

5 (3) *In the event the CPUC determines that the taxpayer is not*
6 *entitled, in whole or part, to a refund claimed under this section,*
7 *the taxpayer, in accordance with the provisions set forth in Article*
8 *3 of Chapter 6 of Part 10.2 (commencing with Section 19381), may*
9 *bring an action against the Franchise Tax Board upon the grounds*
10 *set forth in the claim for refund.*

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

15 (d) *Interest shall be allowed on any amount refunded under this*
16 *section, calculated at the adjusted annual rate established*
17 *pursuant to Section 19521 and computed from the date of*
18 *overpayment to the date the refund warrant is issued.*

19 33007. *The Franchise Tax Board shall administer this part in*
20 *accordance with its authority set forth in Part 10.2 (commencing*
21 *with Section 18401).*

22 33008. *This part does not apply to sales of electricity made*
23 *pursuant to binding written contracts executed on or before the*
24 *effective date of this part.*

25 ~~SEC. 4.—~~

26 SEC. 5. This act provides for a tax levy within the meaning
27 of Article IV of the Constitution and shall go into immediate
28 effect. *However, the provisions of this act shall become operative*
29 *on the first day of the first month commencing more than 60 days*
30 *after the effective date of this act.*

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