

IN THE HOUSE OF REPRESENTATIVES

HOUSE BILL NO. 823

BY WAYS AND MEANS COMMITTEE

AN ACT

1 RELATING TO ELECTRIC UTILITIES; AMENDING SECTION 63-602JJ, IDAHO CODE, TO
2 REVISE PROVISIONS REGARDING THE TAX EXEMPTION OF CERTAIN PROPERTY OF
3 ELECTRIC UTILITIES AND PRODUCERS OF ELECTRICITY AND TO MAKE TECHNICAL
4 CORRECTIONS; AMENDING SECTION 63-3501, IDAHO CODE, TO DEFINE TERMS AND
5 TO MAKE TECHNICAL CORRECTIONS; AMENDING SECTION 63-3502, IDAHO CODE, TO
6 REVISE TERMINOLOGY AND TO MAKE TECHNICAL CORRECTIONS; AMENDING CHAPTER
7 35, TITLE 63, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 63-3502C,
8 IDAHO CODE, TO ESTABLISH PROVISIONS REGARDING THE LEVY OF A TAX ON AN-
9 NUAL GROSS UTILITY ELECTRICAL EARNINGS; AMENDING CHAPTER 35, TITLE 63,
10 IDAHO CODE, BY THE ADDITION OF A NEW SECTION 63-3503C, IDAHO CODE, TO
11 ESTABLISH PROVISIONS REGARDING THE ALLOTMENT AND APPORTIONMENT OF TAX
12 DUE FROM ELECTRICAL UTILITIES; AMENDING SECTION 63-3504, IDAHO CODE, TO
13 REVISE PROVISIONS REGARDING A COUNTY TREASURER NOTIFICATION; AMENDING
14 SECTION 63-3505, IDAHO CODE, TO REVISE A PROVISION REGARDING TAX LIENS
15 ON CERTAIN PROPERTY; AMENDING SECTION 63-3506, IDAHO CODE, TO PROVIDE
16 FOR AN EXCEPTION TO THE ASSESSMENT OF CERTAIN ELECTRIC UTILITY PROPERTY
17 AND TO MAKE A TECHNICAL CORRECTION; AND PROVIDING AN EFFECTIVE DATE.
18

19 Be It Enacted by the Legislature of the State of Idaho:

20 SECTION 1. That Section 63-602JJ, Idaho Code, be, and the same is hereby
21 amended to read as follows:

22 63-602JJ. PROPERTY EXEMPT FROM TAXATION -- CERTAIN PROPERTY OF
23 ELECTRIC UTILITIES AND PRODUCERS OF ELECTRICITY BY MEANS OF WIND, SOLAR OR
24 GEOTHERMAL ENERGY. Real estate, fixtures, operating property, or personal
25 property is exempt from taxation if it is:

26 (1) Owned, controlled, operated, or managed by an electrical or natu-
27 ral gas association or producer of electricity by means of wind energy, solar
28 energy, or geothermal energy, excluding entities that are regulated by the
29 Idaho public utilities commission as to price, or by an electric utility reg-
30 ulated by the Idaho public utilities commission as to its retail rates;

31 (2) Held or used in connection with or to facilitate:

32 (a) The generation, transmission, distribution, delivery, or measur-
33 ing of electricity by an electric utility regulated by the Idaho public
34 utilities commission as to its retail rates, including all conduits,
35 ducts, or other devices, materials, apparatuses, or property for con-
36 taining, holding, or carrying conductors used for the transmission,
37 distribution, and delivery of electricity by the electric utility, and
38 including construction tools, materials, and supplies; or

39 (b) ~~the~~ The generation, transmission, distribution, delivery, or mea-
40 suring of electric power, natural gas, or electrical electric energy
41 generated, manufactured, or produced by means of wind energy, solar en-
42 ergy, or geothermal energy, and all conduits, ducts, or other devices,

1 materials, apparatuses, or property for containing, holding, or carrying
 2 rying conductors used for the transmission, distribution, and delivery
 3 of electric power, natural gas, or electric energy generated, manufac-
 4 tured, or produced by means of wind energy, solar energy, or geothermal
 5 energy, including construction tools, materials, and supplies; and

6 (3) Subject to the taxes on gross utility electrical earnings or gross
 7 wind, solar, or geothermal energy earnings pursuant to chapter 35, title 63,
 8 Idaho Code.

9 SECTION 2. That Section 63-3501, Idaho Code, be, and the same is hereby
 10 amended to read as follows:

11 63-3501. DEFINITIONS. For the purposes of this chapter:

12 (a) The term "cooperative electrical association" means any nonprofit,
 13 cooperative association organized and maintained by its members, whether
 14 incorporated or unincorporated, for the purpose of transmitting, distribut-
 15 ing or delivering electric power to its members.

16 (b) The term "cooperative natural gas association" means any nonprofit
 17 cooperative association organized and maintained by its members, whether
 18 incorporated or unincorporated, for the purpose of transmitting, distribut-
 19 ing or delivering natural gas to its members.

20 (c) The term "cost of power" means the cost of power purchases and
 21 generation included in reports to, and in accordance with applicable re-
 22 quirements of, the rural electrification administration, United States
 23 department of agriculture, by cooperative electrical associations ~~which~~
 24 that are borrowers from the rural electrification administration, and for
 25 cooperative electrical associations ~~which that~~ are not borrowers from the
 26 rural electrification administration, such costs ~~which that~~ could have
 27 been included by such cooperative electrical associations using equiva-
 28 lent reporting and accounting requirements. The state tax commission shall
 29 prescribe necessary rules for the purpose of providing a uniform method of
 30 reporting cost of power purchases and generation by cooperative electrical
 31 associations, consistent with the reporting and accounting requirements of
 32 the rural electrification administration.

33 (d) The term "cost of gas" means the cost of natural gas purchased by co-
 34 operative natural gas associations from wholesale or other suppliers of nat-
 35 ural gas for delivery to members of the cooperative natural gas association.

36 (e) The term "electric utility" means a company providing electric
 37 utility service to retail customers in Idaho and regulated by the Idaho pub-
 38 lic utility commission as to the rates it charges.

39 (f) The term "gross cooperative electrical earnings" means the gross
 40 receipts of a cooperative electrical association from the distribution, de-
 41 livery and sale of electric power within the state of Idaho, but shall not
 42 include any earnings or receipts from the distribution, delivery or sale of
 43 electric power consumed in pumping water for irrigation or drainage purposes
 44 within the state of Idaho, upon the land of such consumer and for the use and
 45 benefit of his own land, and where such consumer has received from the asso-
 46 ciation a refund, rebate, or credit of three and one-half percent (3 1/2%) of
 47 the cost to him of the electric power so used and consumed.

48 (g) The term "gross utility electrical earnings" means the gross re-
 49 ceipts of an electric utility from all retail sales of electricity to cus-

1 tomers for use in facilities within the state of Idaho. The term shall not
 2 include any earnings or receipts from the distribution, delivery, or sale of
 3 electric power consumed in pumping water for irrigation or drainage purposes
 4 within the state of Idaho upon the land of such consumer and for the use and
 5 benefit of his own land and where such consumer has received from the elec-
 6 tric utility a refund, rebate, or credit of one percent (1%) of the cost to
 7 him of the electric power so used and consumed.

8 (~~h~~) The term "gross natural gas earnings" means the gross receipts of
 9 a cooperative natural gas association from the distribution, delivery and
 10 sale of natural gas within the state of Idaho.

11 (~~i~~) The term "gross wind, solar or geothermal energy earnings" means
 12 the gross receipts of a wind energy generator, solar energy generator or a
 13 geothermal energy generator from the distribution, delivery and sale to a
 14 customer for the direct use or resale of electrical energy generated, manu-
 15 factured or produced by means of wind energy, solar energy or geothermal en-
 16 ergy within the state of Idaho.

17 (~~j~~) The term "taxing unit" shall include any of the following that had
 18 property taxes levied in the prior year: the separate taxing districts of
 19 the county as well as the county itself and any such taxing district's fund
 20 having a different geographical boundary than such taxing district itself.

21 (~~k~~) The term "tax levy" means the total tax levies fixed by each taxing
 22 district, as defined herein, in the prior calendar year.

23 (~~l~~) The term "WPPSS 4 and 5 costs" means, for a cooperative electrical
 24 association ~~which~~ that is a participant under the Washington public power
 25 supply system nuclear projects numbers 4 and 5 participants' agreement,
 26 dated July 14, 1976, all of its costs in connection with Washington public
 27 power supply system nuclear projects numbers 4 and 5.

28 (~~m~~) The term "weighted wire mileage factor" means a figure ~~which is~~ ar-
 29 rived at by multiplying the tax levy of each taxing unit by the number of wire
 30 miles of transmission and distribution lines of such cooperative electrical
 31 association situated in such taxing unit.

32 (~~n~~) The term "gas line mileage factor" means a figure ~~which is~~ arrived
 33 at by multiplying the tax levy of each taxing unit by the number of miles of
 34 natural gas transmission and distribution lines of such cooperative natural
 35 gas association situated in such taxing unit.

36 SECTION 3. That Section 63-3502, Idaho Code, be, and the same is hereby
 37 amended to read as follows:

38 63-3502. LEVY OF TAX ON ANNUAL GROSS COOPERATIVE ELECTRICAL EARN-
 39 INGS. There shall be levied against every cooperative electrical associ-
 40 ation in this state a tax of three and one-half percent (~~3-1/2~~3.5%) of its
 41 annual gross earnings, after first reducing such gross earnings by its cost
 42 of power and WPPSS 4 and 5 costs in such sum as the amount of its gross earn-
 43 ings bears to its gross receipts from the distribution, delivery and sale of
 44 electric power within the state of Idaho. This tax shall be in lieu of all
 45 other taxes on the property of such association exempted pursuant to sec-
 46 tion 63-602JJ, Idaho Code, for the tax year next preceding the filing of the
 47 statement hereinafter provided for, and which shall be paid in the manner and
 48 at the time prescribed herein.

1 SECTION 4. That Chapter 35, Title 63, Idaho Code, be, and the same is
2 hereby amended by the addition thereto of a NEW SECTION, to be known and des-
3 ignated as Section 63-3502C, Idaho Code, and to read as follows:

4 63-3502C. LEVY OF TAX ON ANNUAL GROSS UTILITY ELECTRICAL EARN-
5 INGS. (1) A tax shall be levied against electric utilities in the amount of
6 one percent (1%) of gross utility electrical earnings; provided that the
7 total tax shall be reduced by the amount that would otherwise be allocated to
8 fire protection taxing districts in which electric utilities are exempt from
9 taxation as provided in section 31-1425, Idaho Code, in the allocation re-
10 quired pursuant to section 63-3503C, Idaho Code. The rate set forth in this
11 subsection and in section 63-3501(g), Idaho Code, shall be adjusted down-
12 ward in the event of an increase in the personal property exemption allowed
13 pursuant to section 63-602KK, Idaho Code, so that an electric utility would
14 receive a reduction in the tax payable pursuant to this chapter comparable
15 to the reduction in tax it would have received if its property were subject
16 to property taxation and had received the benefit of the increased exemption
17 for personal property.

18 (2) The tax on gross utility electrical earnings authorized in this
19 section shall be in lieu of all other taxes on the operating property of such
20 electric utility exempted pursuant to section 63-602JJ, Idaho Code.

21 (3) For purposes of the certification required by section 63-803, Idaho
22 Code, and the limitations provided by section 63-802, Idaho Code, the taxes
23 levied pursuant to this section shall reduce the property tax to be levied to
24 finance an annual budget and shall not be included in the amount of property
25 tax revenues to finance an annual budget for the purpose of limitations on
26 increases in the annual budget as provided in section 63-802, Idaho Code.

27 SECTION 5. That Chapter 35, Title 63, Idaho Code, be, and the same is
28 hereby amended by the addition thereto of a NEW SECTION, to be known and des-
29 ignated as Section 63-3503C, Idaho Code, and to read as follows:

30 63-3503C. FILING OPERATOR'S STATEMENT -- ALLOTMENT AND APPORTION-
31 MENT OF TAX DUE FROM ELECTRIC UTILITIES BY STATE TAX COMMISSION. (1) Every
32 electric utility in this state shall file with the state tax commission of
33 the state of Idaho the operator's statement provided for in section 63-404,
34 Idaho Code, and shall include thereon a statement of the amount of its gross
35 utility electrical earnings for the previous calendar year. Upon examining
36 and verifying said statement, the state tax commission shall compute the
37 amount of the tax measured by said gross utility electrical earnings and
38 shall allot to each county in which the property of such electric utility is
39 situated and otherwise exempted from taxation by section 63-602JJ, Idaho
40 Code, that proportion of the total tax of the utility shown to be due as pro-
41 vided in this section.

42 (2) The state tax commission shall first apportion the tax to each
43 county in proportion to the total transmission and distribution investment
44 by county to the total statewide transmission and distribution investment.

45 (3) The state tax commission shall then apportion the tax to each taxing
46 district in the county as follows:

47 (a) From each county's transmission investment determined in subsec-
48 tion (2) of this section, deduct the investment in property referred to

1 in section 63-405(3), Idaho Code, and deduct the investment in any other
 2 property for which physical location is the method of apportionment,
 3 and divide the total by the number of miles of transmission lines in the
 4 county to determine the investment per line mile of transmission lines.

5 (b) From each county's distribution investment determined in subsec-
 6 tion (2) of this section, deduct the investment in other property for
 7 which physical location is the method of apportionment, and divide the
 8 total by the number of miles of distribution lines in the county to de-
 9 termine the investment per line mile of distribution lines.

10 (c) Using the total number of miles of transmission and distribution
 11 lines in each taxing district, multiply by the applicable investment
 12 per mile of transmission lines and distribution lines to determine the
 13 total transmission investment and the total distribution investment in
 14 the taxing district.

15 (d) Add the investment in any property located in the taxing district
 16 for which physical location is the method of apportionment to determine
 17 the total investment in the taxing district.

18 (e) Multiply the total investment in the taxing district by the levy
 19 rate for that district in the preceding year.

20 (f) Add the results derived from paragraph (e) of this subsection for
 21 all taxing districts and then calculate each taxing district's percent-
 22 age of that total.

23 (g) Apply each taxing district's percentage as determined in paragraph
 24 (f) of this subsection to the gross receipts tax determined in section
 25 63-3502C, Idaho Code. The resulting amount shall represent the tax ap-
 26 portioned to each taxing district; provided that fire protection dis-
 27 tricts shall receive no allocation of tax pursuant to section 31-1425,
 28 Idaho Code.

29 (4) No later than the third Monday of May each year, the state tax com-
 30 mission shall notify the state superintendent of public instruction and
 31 the county treasurer of such allotment and apportionment and the amounts
 32 thereof.

33 SECTION 6. That Section 63-3504, Idaho Code, be, and the same is hereby
 34 amended to read as follows:

35 63-3504. COLLECTION BY COUNTY TREASURER -- PENALTY AND INTEREST IM-
 36 POSED WHEN DELINQUENT. Upon receipt of the notification of the allotment
 37 and apportionment of such taxes by the state tax commission by the county
 38 treasurer, said county treasurer shall, not later than June 15 of each year,
 39 notify each cooperative electrical association, natural gas cooperative,
 40 electric utility, and producer of electricity by means of wind energy, by
 41 means of solar energy or by means of geothermal energy, of the amount of taxes
 42 owed, and the apportionment thereof to the county and to the several taxing
 43 districts in the county and such tax shall be due and payable not later than
 44 July 1, following and, upon the payment thereof, the county treasurer shall
 45 pay over to each taxing district its apportionment as herein determined. Any
 46 such taxes not paid by July 1, as aforesaid, shall become delinquent and a
 47 penalty of five percent (5%) thereof shall be imposed, together with inter-
 48 est at the rate of one percent (1%) per month from July 1 until paid.

1 SECTION 7. That Section 63-3505, Idaho Code, be, and the same is hereby
2 amended to read as follows:

3 63-3505. TAXES A LIEN ON PROPERTY OF ASSOCIATION, ELECTRIC UTILITY, OR
4 PRODUCER UNTIL PAID. All taxes due and payable under this chapter shall be a
5 lien on all property, real and personal, of the electrical, or natural gas
6 association, electric utility, or the producer of electricity by means of
7 wind energy, by means of solar energy or by means of geothermal energy, owing
8 the same, as of June 15 of each year and shall be discharged only by the pay-
9 ment thereof. In any action to enforce payment of any delinquent taxes due
10 under this chapter, the county prosecuting such action shall be entitled to a
11 judgment for the reasonable costs of prosecuting such action, as well as for
12 the delinquent taxes, penalty and interest.

13 SECTION 8. That Section 63-3506, Idaho Code, be, and the same is hereby
14 amended to read as follows:

15 63-3506. ASSESSMENT OF PROPERTY BY ASSESSOR. Any property not subject
16 to the gross receipts tax levied in this chapter of any cooperative electri-
17 cal or natural gas association, electric utility, or producer of electricity
18 by means of wind energy, by means of solar energy or by means of geothermal
19 energy, shall be assessed by the county assessor of the county wherein such
20 property is situate, and taxes levied against the same shall be a lien, and
21 shall be due and payable, in the same manner as are any other taxes on prop-
22 erty.

23 SECTION 9. This act shall be in full force and effect on and after July
24 1, 2023.