

IN THE HOUSE OF REPRESENTATIVES

HOUSE BILL NO. 203, As Amended

BY REVENUE AND TAXATION COMMITTEE

AN ACT

1 RELATING TO TAXATION OF RENEWABLE ENERGY PROJECTS; AMENDING
 2 SECTION 63-602JJ, IDAHO CODE, TO PROVIDE THAT CERTAIN PROPERTY
 3 OF A PRODUCER OF ELECTRICITY BY MEANS OF RENEWABLE ENERGY
 4 IS EXEMPT FROM TAXATION, TO DEFINE TERMS AND TO PROVIDE
 5 APPLICATION; AMENDING SECTION 63-3501, IDAHO CODE, TO REVISE
 6 DEFINITIONS; AMENDING SECTION 63-3502B, IDAHO CODE, TO PROVIDE
 7 FOR LEVY OF A TAX ON RENEWABLE ENERGY ELECTRICAL PRODUCTION;
 8 AMENDING SECTION 63-3503B, IDAHO CODE, TO PROVIDE FOR FILING
 9 OPERATORS' STATEMENTS AND THE ALLOTMENT AND APPORTIONMENT OF
 10 TAX DUE FROM PRODUCERS OF ELECTRICITY BY MEANS OF RENEWABLE
 11 ENERGY BY THE STATE TAX COMMISSION; AMENDING SECTION 63-3504,
 12 IDAHO CODE, TO PROVIDE REFERENCES TO A PRODUCER OF ELECTRICITY
 13 BY MEANS OF RENEWABLE ENERGY; AMENDING SECTION 63-3505, IDAHO
 14 CODE, TO PROVIDE REFERENCE TO A PRODUCER OF ELECTRICITY BY
 15 MEANS OF RENEWABLE ENERGY; AMENDING SECTION 63-3506, IDAHO
 16 CODE, TO PROVIDE REFERENCE TO A PRODUCER OF ELECTRICITY BY
 17 MEANS OF RENEWABLE ENERGY; AMENDING SECTION 63-802, IDAHO CODE,
 18 TO PROVIDE FOR A TAXING DISTRICT'S PROPERTY TAX BUDGET IF THE
 19 ALTERNATIVE ENERGY EQUIPMENT CEASES TO PRODUCE ELECTRICITY;
 20 DECLARING AN EMERGENCY AND PROVIDING RETROACTIVE APPLICATION.
 21

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

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

25 63-602JJ. PROPERTY EXEMPT FROM TAXATION – CERTAIN OPERATING
 26 PROPERTY OF PRODUCER OF ELECTRICITY BY MEANS OF ~~WIND ENERGY OR BY~~
 27 ~~MEANS OF GEOTHERMAL~~ RENEWABLE ENERGY. (1) The following property is exempt
 28 from taxation: ~~(i) operating property of commercial producers of electricity by means of wind~~
 29 ~~renewable energy exclusively used to produce electricity by means of wind renewable energy~~
 30 ~~on which the tax on gross wind renewable energy earnings will be paid; and (ii) operating~~
 31 ~~property of producers of electricity by means of geothermal energy exclusively used to produce~~
 32 ~~electricity by means of geothermal energy on which the tax on gross geothermal energy~~
 33 ~~earnings will be paid.~~

34 (2) As used in this section, the term "renewable energy" means energy generated from
 35 the following sources: wind energy, geothermal resources, renewable biomass, solar energy
 36 and landfill gas power. As used herein "renewable biomass" means any organic matter that
 37 is available on a renewable or recurring basis including: renewable plant material including
 38 feed grains, other agricultural commodities, other plants and trees and algae; and waste

1 material including crop residue, other vegetative waste material (including wood waste and
 2 wood residues), animal waste and byproducts (including fats, oils, greases and manure) and
 3 construction waste and yard waste.

4 Any property exempt from taxation pursuant to this section shall not be included on the
 5 new construction roll pursuant to section 63-301A, Idaho Code.

6 Property exempt from taxation pursuant to this section means industrial fixtures, devices
 7 and support facilities that are integral and necessary to the generation of electricity using wind,
 8 geothermal resources, renewable biomass, sun, or landfill gas as the principal source of power.

9 "Machinery and equipment" includes all operating property as described in section
 10 63-3501(h), Idaho Code. "Machinery and equipment" does not include: hand-powered tools;
 11 property with a useful life of less than one (1) year; repair parts required to restore machinery
 12 and equipment to normal working order; replacement parts that do not increase productivity,
 13 improve efficiency or extend the useful life of machinery and equipment; buildings or building
 14 fixtures that are not integral and necessary to the generation of electricity that are permanently
 15 affixed to and become a physical part of a building. "Machinery and equipment" is used
 16 directly in generating electricity by wind energy, geothermal resources, renewable biomass,
 17 solar energy or landfill gas power if it provides any part of the process that captures the energy
 18 of the wind, geothermal resources, renewable biomass, sun, or landfill gas, converts that energy
 19 to electricity and stores, transforms or transmits that electricity for entry into or operation in
 20 parallel with electric transmission and distribution systems or for the owner's own use.

21 The owner of an existing renewable energy project, which is not exempt from property
 22 taxation on February 1, 2009, shall make an election as to whether to be taxed on the property
 23 tax or the production tax. The owner shall certify to the county assessor and the state tax
 24 commission by April 15, 2010, that he is making application for the exemption allowed
 25 pursuant to this section. Once the owner of the property applies for the exemption and the
 26 exemption is granted, the property shall forever be exempt from property taxation as long as it
 27 qualifies for the exemption provided pursuant to this section by virtue of payment of the tax
 28 provided in section 63-3502B, Idaho Code, and produces electric energy.

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

31 63-3501. DEFINITIONS. For the purposes of this chapter:

32 (a) The term "cooperative electrical association" means any nonprofit, cooperative
 33 association organized and maintained by its members, whether incorporated or unincorporated,
 34 for the purpose of transmitting, distributing or delivering electric power to its members.

35 (b) The term "cooperative natural gas association" means any nonprofit cooperative
 36 association organized and maintained by its members, whether incorporated or unincorporated,
 37 for the purpose of transmitting, distributing or delivering natural gas to its members.

38 (c) The term "cost of power" means the cost of power purchases and generation included
 39 in reports to, and in accordance with applicable requirements of, the rural electrification
 40 administration, United States department of agriculture, by cooperative electrical associations
 41 which are borrowers from the rural electrification administration, and for cooperative electrical
 42 associations which are not borrowers from the rural electrification administration, such costs
 43 which could have been included by such cooperative electrical associations using equivalent
 44 reporting and accounting requirements. The state tax commission shall prescribe necessary
 45 rules for the purpose of providing a uniform method of reporting cost of power purchases and

1 generation by cooperative electrical associations, consistent with the reporting and accounting
2 requirements of the rural electrification administration.

3 (d) The term "cost of gas" means the cost of natural gas purchased by cooperative natural
4 gas associations from wholesale or other suppliers of natural gas for delivery to members of the
5 cooperative natural gas association.

6 (e) The term "gross electrical earnings" means the gross receipts of a cooperative
7 electrical association from the distribution, delivery and sale of electric power within the state
8 of Idaho, but shall not include any earnings or receipts from the distribution, delivery or sale
9 of electric power consumed in pumping water for irrigation or drainage purposes within the
10 state of Idaho, upon the land of such consumer and for the use and benefit of his own land, and
11 where such consumer has received from the association a refund, rebate, or credit of three and
12 one-half percent (3 1/2%) of the cost to him of the electric power so used and consumed.

13 (f) The term "gross natural gas earnings" means the gross receipts of a cooperative
14 natural gas association from the distribution, delivery and sale of natural gas within the state
15 of Idaho.

16 (g) The term "gross ~~wind or geothermal~~ renewable energy earnings" means the gross
17 receipts of a ~~wind~~ renewable energy generator ~~or a geothermal energy generator~~ from the
18 distribution, delivery and sale to a customer for the direct use or resale of electrical energy
19 generated, manufactured or produced by means of ~~wind energy or geothermal~~ renewable energy
20 within the state of Idaho.

21 (h) The term "operating property" means and includes all real estate, fixtures or
22 personal property owned, controlled, operated or managed by such electrical or natural gas
23 association, or producer of electricity by means of ~~wind energy or geothermal~~ renewable
24 energy, excluding entities that are regulated by the Idaho public utilities commission as to
25 price, in connection with or to facilitate the generation, transmission, distribution, delivery,
26 or measuring of electric power, natural gas, or electrical energy generated, manufactured or
27 produced by means of ~~wind energy or geothermal~~ renewable energy, excluding entities that
28 are regulated by the Idaho public utilities commission as to price, and all conduits, ducts, or
29 other devices, materials, apparatus or property for containing, holding or carrying conductors
30 used for the transmission, distribution and delivery of electric power, natural gas, or electrical
31 energy generated, manufactured or produced by means of ~~wind energy or geothermal~~ renewable
32 energy, excluding entities that are regulated by the Idaho public utilities commission as to price,
33 including construction tools, materials and supplies.

34 (i) The term "nonoperating property" means all other property, real or personal, owned,
35 controlled or managed by such electrical or natural gas association.

36 (j) The term "renewable energy" means energy generated from the following sources:
37 wind energy, geothermal resources, renewable biomass, solar energy and landfill gas power. As
38 used herein "renewable biomass" means any organic matter that is available on a renewable
39 or recurring basis including: renewable plant material including feed grains, other agricultural
40 commodities, other plants and trees and algae; and waste material including crop residue,
41 other vegetative waste material (including wood waste and wood residues), animal waste and
42 byproducts (including fats, oils, greases and manure) and construction waste and yard waste.

43 (k) The term "taxing unit" shall include any of the following that had property taxes
44 levied in the prior year: the separate taxing districts of the county as well as the county itself
45 and any such taxing district's fund having a different geographical boundary than such taxing
46 district itself.

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

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

7 ~~(nn)~~ (o) The term "weighted wire mileage factor" means a figure which is arrived at by
8 multiplying the tax levy of each taxing unit by the number of wire miles of transmission and
9 distribution lines of such cooperative electrical association situated in such taxing unit.

10 ~~(oo)~~ (p) The term "gas line mileage factor" means a figure which is arrived at by multiplying
11 the tax levy of each taxing unit by the number of miles of natural gas transmission and
12 distribution lines of such cooperative natural gas association situated in such taxing unit.

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

15 63-3502B. LEVY OF TAX ON ~~WIND ENERGY OR GEOTHERMAL~~ RENEWABLE
16 ENERGY ELECTRICAL PRODUCTION. There shall be levied against every producer of
17 electricity by means of ~~wind energy or geothermal~~ renewable energy a ~~wind energy tax or a~~
18 ~~geothermal~~ renewable energy tax equal to three percent (3%) of such producer's gross ~~wind~~
19 ~~energy earnings or geothermal~~ renewable energy earnings. This ~~wind energy tax or geothermal~~
20 renewable energy tax shall be in lieu of all other taxes on the operating property, as defined
21 in section 63-3501(h), Idaho Code, of such ~~wind energy producer or of such geothermal~~
22 renewable energy producer.

23 SECTION 4. That Section 63-3503B, Idaho Code, be, and the same is hereby amended
24 to read as follows:

25 63-3503B. FILING OPERATORS' STATEMENTS - ALLOTMENT AND
26 APPORTIONMENT OF TAX DUE FROM PRODUCERS OF ELECTRICITY BY
27 MEANS OF ~~WIND ENERGY OR GEOTHERMAL~~ RENEWABLE ENERGY BY STATE
28 TAX COMMISSION. Every producer of electricity by means of ~~wind energy or by means of~~
29 ~~geothermal~~ renewable energy in this state shall file with the state tax commission of the state
30 of Idaho an operator's statement in the manner as provided for in section 63-404, Idaho Code,
31 and shall include thereon a statement of the prior calendar year's gross ~~wind energy earnings~~
32 ~~or gross geothermal~~ renewable energy earnings. Upon examining and verifying said statement,
33 the state tax commission shall compute the amount of the ~~wind energy tax or the geothermal~~
34 renewable energy tax based on the gross ~~wind energy earnings or the gross geothermal~~
35 renewable energy earnings and shall allot to each county in which the operating property of
36 such producer is situate either: that proportion of the total ~~wind energy tax or that proportion~~
37 ~~of the total geothermal~~ renewable energy tax of such producer shown to be due as the same
38 proportion that the total original cost of operating property situate in such county bears to the
39 total original cost of operating property of such producer for the ~~wind energy project or of such~~
40 ~~producer for the geothermal~~ renewable energy project. The state tax commission shall then, for
41 each county, apportion the ~~wind energy tax or geothermal~~ renewable energy tax so allotted to
42 such county among the several taxing units thereof within which any operating property of such
43 producer is situate, by apportioning to each such taxing unit that proportion of the ~~wind energy~~

1 ~~tax or geothermal~~ renewable energy tax so allotted to such county. For such apportionment,
 2 the state tax commission shall calculate the weighted original cost which shall be the product
 3 of the original cost of such operating property within such taxing unit times such taxing unit's
 4 property tax levy for the prior year and the weighted apportionment rate which shall be the
 5 ratio of the ~~wind energy tax or of the geothermal~~ renewable energy tax as the case may be,
 6 allotted to such county, to the aggregate weighted original cost for all such taxing units within
 7 which the operating property is located and then shall calculate the apportionment of the ~~wind~~
 8 ~~energy tax or geothermal~~ renewable energy tax for each such taxing unit to be equal to the
 9 product of the weighted original cost times the weighted apportionment rate. The state tax
 10 commission shall, on or before the second Monday in August, notify the state superintendent
 11 of public instruction, the county auditor, and the county treasurer of such allotment and
 12 apportionment and the amounts thereof. On or before the third Monday in August, the county
 13 auditor shall notify the appropriate taxing units of the amount of ~~wind energy tax or the amount~~
 14 ~~of the geothermal~~ the renewable energy tax being apportioned.

15 SECTION 5. That Section 63-3504, Idaho Code, be, and the same is hereby amended to
 16 read as follows:

17 63-3504. COLLECTION BY COUNTY TREASURER – PENALTY AND INTEREST
 18 IMPOSED WHEN DELINQUENT. Upon receipt of the notification of the allotment and
 19 apportionment of such taxes by the state tax commission by the county treasurer, said
 20 county treasurer shall, not later than June 15 of each year, notify each cooperative electrical
 21 association, natural gas cooperative, and producer of electricity by means of ~~wind energy or by~~
 22 ~~means of geothermal~~ renewable energy, of the amount of taxes owed, and the apportionment
 23 thereof to the county and to the several taxing districts in the county and such tax shall be due
 24 and payable not later than July 1, following and, upon the payment thereof, the county treasurer
 25 shall pay over to each taxing district its apportionment as herein determined. Any such taxes
 26 not paid by July 1, as aforesaid, shall become delinquent and a penalty of five percent (5%)
 27 thereof shall be imposed, together with interest at the rate of one percent (1%) per month from
 28 July 1 until paid.

29 SECTION 6. That Section 63-3505, Idaho Code, be, and the same is hereby amended to
 30 read as follows:

31 63-3505. TAXES A LIEN ON PROPERTY OF ASSOCIATION OR PRODUCER
 32 UNTIL PAID. All taxes due and payable under this chapter shall be a lien on all property,
 33 real and personal, of the electrical, or natural gas association, or the producer of electricity by
 34 means of ~~wind energy or by means of geothermal~~ renewable energy, owing the same, as of June
 35 15 of each year and shall be discharged only by the payment thereof. In any action to enforce
 36 payment of any delinquent taxes due under this chapter, the county prosecuting such action
 37 shall be entitled to a judgment for the reasonable costs of prosecuting such action, as well as
 38 for the delinquent taxes, penalty and interest.

39 SECTION 7. That Section 63-3506, Idaho Code, be, and the same is hereby amended to
 40 read as follows:

1 63-3506. ASSESSMENT OF NONOPERATING PROPERTY BY ASSESSOR. The
 2 nonoperating property of any cooperative electrical or natural gas association, or producer of
 3 electricity by means of ~~wind energy or by means of geothermal~~ renewable energy, shall be
 4 assessed by the county assessor of the county wherein such property is situate, and taxes levied
 5 against the same shall be a lien, and shall be due and payable, in the same manner as are any
 6 other taxes on property.

7 SECTION 8. That Section 63-802, Idaho Code, be, and the same is hereby amended to
 8 read as follows:

9 63-802. LIMITATION ON BUDGET REQUESTS – LIMITATION ON TAX
 10 CHARGES – EXCEPTIONS. (1) Except as provided in subsection (3) of this section for tax
 11 year 1995, and each year thereafter, no taxing district shall certify a budget request for an
 12 amount of property tax revenues to finance an annual budget that exceeds the greater of:

13 (a) The dollar amount of property taxes certified for its annual budget for any one (1) of
 14 the three (3) tax years preceding the current tax year, whichever is greater, plus the dollar
 15 amount of moneys received pursuant to section 63-3638(12), Idaho Code, for the past tax
 16 year, which amount may be increased by a growth factor of not to exceed three percent
 17 (3%) plus the amount of revenue that would have been generated by applying the levy
 18 of the previous year, not including any levy described in subsection (4) of this section,
 19 or any school district levy reduction resulting from a distribution of state funds pursuant
 20 to section 63-3638(10), Idaho Code, to any increase in market value subject to taxation
 21 resulting from new construction or change of land use classification as evidenced by the
 22 value shown on the new construction roll compiled pursuant to section 63-301A, Idaho
 23 Code; and by the value of annexation during the previous calendar year, as certified by
 24 the state tax commission for market values of operating property of public utilities and by
 25 the county assessor; or

26 (b) The dollar amount of property taxes certified for its annual budget during the last
 27 year in which a levy was made; or

28 (c) The dollar amount of the actual budget request, if the taxing district is newly created
 29 except as may be provided in subsection (1)(h) of this section; or

30 (d) In the case of school districts, the restriction imposed in section 33-802, Idaho Code;
 31 or

32 (e) In the case of a nonschool district for which less than the maximum allowable
 33 increase in the dollar amount of property taxes is certified for annual budget purposes in
 34 any one (1) year, such a district may, in any following year, recover the foregone increase
 35 by certifying, in addition to any increase otherwise allowed, an amount not to exceed one
 36 hundred percent (100%) of the increase originally foregone. Said additional amount shall
 37 be included in future calculations for increases as allowed; or

38 (f) In the case of cities, if the immediately preceding year's levy subject to the limitation
 39 provided by this section, is less than 0.004, the city may increase its budget by an amount
 40 not to exceed the difference between 0.004 and actual prior year's levy multiplied by
 41 the prior year's market value for assessment purposes. The additional amount must be
 42 approved by sixty percent (60%) of the voters voting on the question at an election called
 43 for that purpose and held on the date in May or November provided by law, and may be
 44 included in the annual budget of the city for purposes of this section; or

1 (g) A taxing district may submit to the electors within the district the question of whether
 2 the budget from property tax revenues may be increased beyond the amount authorized in
 3 this section, but not beyond the levy authorized by statute. The additional amount must
 4 be approved by sixty-six and two-thirds percent (66 2/3%) or more of the voters voting
 5 on the question at an election called for that purpose and held on the May or November
 6 dates provided by section 34-106, Idaho Code. If approved by the required minimum
 7 sixty-six and two-thirds percent (66 2/3%) of the voters voting at the election, the new
 8 budget amount shall be the base budget for the purposes of this section; or

9 (h) When a nonschool district consolidates with another nonschool district or dissolves
 10 and a new district performing similar governmental functions as the dissolved district
 11 forms with the same boundaries within three (3) years, the maximum amount of a budget
 12 of the district from property tax revenues shall not be greater than the sum of the amounts
 13 that would have been authorized by this section for the district itself or for the districts
 14 that were consolidated or dissolved and incorporated into a new district; or

15 (i) In the instance or case of cooperative service agencies, the restrictions imposed in
 16 sections 33-315 through 33-318, Idaho Code; or

17 (j) In the instance where a taxing district received money pursuant to section 63-3502B,
 18 Idaho Code, and the alternative energy equipment no longer produces electrical energy,
 19 the taxing district may increase the dollar amount of property taxes certified for its annual
 20 budget by the amount received pursuant to section 63-3502B, Idaho Code, during the
 21 alternative energy equipment's last full year of production.

22 (2) In the case of fire districts, during the year immediately following the election of
 23 a public utility or public utilities to consent to be provided fire protection pursuant to section
 24 31-1425, Idaho Code, the maximum amount of property tax revenues permitted in subsection
 25 (1) of this section may be increased by an amount equal to the current year's taxable value of
 26 the consenting public utility or public utilities multiplied by that portion of the prior year's levy
 27 subject to the limitation provided by subsection (1) of this section.

28 (3) No board of county commissioners shall set a levy, nor shall the state tax commission
 29 approve a levy for annual budget purposes which exceeds the limitation imposed in subsection
 30 (1) of this section, unless authority to exceed such limitation has been approved by a majority
 31 of the taxing district's electors voting on the question at an election called for that purpose and
 32 held pursuant to section 34-106, Idaho Code, provided however, that such voter approval shall
 33 be for a period of not to exceed two (2) years.

34 (4) The amount of property tax revenues to finance an annual budget does not include
 35 revenues from nonproperty tax sources, and does not include revenue from levies that are voter
 36 approved for bonds, override levies or supplemental levies, plant facilities reserve fund levies,
 37 school emergency fund levies or for levies applicable to newly annexed property or for levies
 38 applicable to new construction as evidenced by the value of property subject to the occupancy
 39 tax pursuant to section 63-317, Idaho Code, for the preceding tax year.

40 SECTION 9. An emergency existing therefor, which emergency is hereby declared to
 41 exist, this act shall be in full force and effect on and after its passage and approval, and
 42 retroactively to January 1, 2009.