



## WIND ENERGY TAX ISSUES

### POSITION PAPER

Wyoming lawmakers have a proven record of maximizing the benefits of the State's natural resources for Wyoming residents. For nearly a century, Wyoming has captured a fair value on its exported minerals without making those commodities uncompetitive in the marketplace. WPPC believes lawmakers should seek the same balance with respect to wind energy. A good tax policy must be competitive. A wise tax policy should consider current constraints to Wyoming wind development and enable Wyoming wind to compete in the marketplace in the short term, yet provide flexibility for local government to capture a fair share of the benefits in the long run once constraints are eased and markets become more established.

Wyoming taxes must be competitive with other states. In spite of the excellent resource, it is currently difficult to develop wind projects in the State. As is the case with its minerals, Wyoming's wind is of value mainly as an export product since Wyoming electric loads – and therefore demand – are not sufficient to drive a large-scale supply of wind energy. While strong demand for wind energy exists outside of Wyoming, reaching those markets from Wyoming is expensive. Transmission constraints currently prevent commercial viability of most projects in Wyoming, and until these transmission constraints are overcome and costs are reduced, Wyoming's wind energy will remain less competitive than in neighboring states.

If Wyoming projects are more expensive than in competing locations, they will be built last – if at all. When projects do not materialize, property tax revenues, payments to landowners, and other economic benefits that should flow to Wyoming citizens, especially those who have not benefited directly from minerals, will be forfeited to neighboring states.

WPPC members operate across the country and our members track the economic viability of projects in every windy place. We submit that Wyoming ranks very high in terms of wind resource. But we also note that there are many comparable resources in other places that have better economics when combined with lower transmission cost, and/or more favorable tax policy. WPPC agrees that federal tax policies like the Production Tax Credit drive development, but they benefit development in *every state*. Wyoming tax policies should at least be on par with her

neighbors and should recognize the higher upfront cost of development to ensure that developers do not further discount Wyoming's wind potential.

From a developer's perspective tax burdens fall into three main categories, sales tax, property tax, and generation tax. Income tax is a factor, but is generally based on where power is sold, revenue generated, and/or where a company makes its home.

## SALES TAX

Wyoming's legislature repealed its only commercial scale renewable energy incentive by moving up the sun set date on the exemption on sales tax for wind energy development. As of the sun set date, all aspects of wind energy development in Wyoming will be subject to a 6% sales tax. This is an immense upfront hit on the developer's bottom line, before the project can even begin to generate electricity and revenue. No other adjoining state levies such an impact (see Appendix A), and within the interior west's competitive bid based power market, Wyoming projects now have a disadvantage.

Colorado's sales tax policy exempts turbines, towers, transformers and a number of other capital facilities (the bulk of the cost of a wind farm) from any tax whatsoever, and taxes the remaining equipment within a range of 3.65% - 4.85%. Utah's sales tax situation is similar to Colorado's, as is South Dakota's at 4% and also offers rebates for major components. Idaho's sales taxes are eligible for 100% exemption, and Montana has no sales tax at all for wind energy.

Clearly, Wyoming's sales tax policy puts the State's citizens at a competitive disadvantage, as the upfront cost of doing business in Wyoming is the highest in the region. WPPC supports legislation to re-establish the exemption on sales tax for wind energy development.

## PROPERTY TAX

Wyoming's property tax burden is the highest relative to adjoining states (see Appendix B). A typical 100MW project in Wyoming pays roughly \$1,900,000 in annual property tax (see Appendix C for 20-yr forecast). Contrast that with Idaho (\$630,000), Colorado (\$590,000), Montana (\$400,000), or South Dakota (\$330,000) and observe that Wyoming's property tax rates are three to five times that of most of its competing neighbors. Utah's property tax is \$1,500,000, but their recently enacted H.B. 430 creates a local abatement mechanism for some or all of the property tax for up to 30 years. WPPC does not suggest that Wyoming should reduce property tax rates, and recognize the difficulty in developing the legislative structure for locally adjusted property assessments in Wyoming. That said, the Legislature should fully consider Wyoming's relatively high property tax when considering additional revenue options.

## GENERATION TAXES

Wyoming is currently considering imposing either an excise tax on electrical units produced by wind or a royalty on revenue. WPPC strongly opposes the imposition of a royalty because it implies that the State owns the wind. Such a position would raise countless questions about wind ownership and clear title – uncertainties that would stall investment in the State.

WPPC believes that an excise tax, if imposed, should not add so much to the total tax burden as to make Wyoming power uncompetitive. For example, Idaho imposes a tax at \$.0005 (1/2 mill)

per kilowatt hour but has a low property tax and a 100% exemption from sales tax. Montana imposes a \$0.00015 per kilowatt hour transaction tax, but exempts renewable generation, provides a large property tax rebate and imposes no sales tax. South Dakota imposes a 2% gross receipts tax on an electricity base rate (\$0.0511 for 2009 adjusted for inflation) times the annual kilowatt hours generated by wind projects, but waives all state and local property taxes and provides partial rebates for transmission construction costs.

For comparison purposes if these production based rates were converted to equivalent royalty percentages for wind power projects, Idaho, Montana, and South Dakota would be 0.83%, 0.25%, and 1.7% respectively<sup>1</sup>.

Colorado and Utah do not impose a tax on electricity generation.

## INCOME TAX

A state-by-state comparison of corporate income tax rates can be misleading because different companies allocate tax burdens according to various methods of income accounting. Generally companies doing business across state lines must apportion total income from all states according to a formula based on the percentage of sales, property and payroll residing in each state. However how and where each company determines sales revenue can affect where the company pays the income tax. Moreover relatively thin margins, high investment costs and federal deductions can significantly limit the actual net income from renewable projects that are subject to corporate income tax. That said, income tax rates do matter for project economics, but they are not as determinant as property, excise, or sales and use taxes.

Among comparison states (see chart in Appendix D), Wyoming and South Dakota levy no corporate income tax. Colorado, Utah, Idaho and Montana all levy corporate income tax in a range between 4.63% in Colorado, to 7.6% in Idaho. Utah (5.0%) and Montana (6.75%) both offer investment tax credits for commercial wind power. Utah offers a Renewable Energy Development Incentive (REDI) that provides up to a 100% credit against new state taxes owed on the investment. The credit can be against income tax and sales and use tax. Montana offers a 35% investment tax credit that is limited by the federal tax credit so as not to exceed 60% of the project cost, but the limit does not apply to investment on state or tribal lands.

While income taxes do impact projects economics, the effect is less noticed over the life of the project in comparison to the upfront impacts of sales tax. And most of the states that do levy a corporate income tax offer sizeable incentives for renewable energy.

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<sup>1</sup> Based on \$60/MWhr power price and a 40% net capacity factor.

## WHAT'S IN IT FOR WYOMING?

In short, by making the cost of developing and producing energy from wind in Wyoming high relative to other states, Wyoming risks forfeiting available revenue streams to those states in which the cost of doing business is lower.

Perhaps rather than asking “what’s in it for Wyoming?” the question should be “what’s at stake for Wyoming”? Wyoming’s best wind resources tend to lie in counties in the state where historically, extractive mineral revenues are minimal or non-existent. The wind energy industry represents the best opportunity for these economically disadvantaged communities to experience some of the benefits of Wyoming’s energy industry. These benefits include not only tax revenues from wind farms, but also the economic development, and creation of perhaps dozens of good, well-paying jobs within these small towns. While other states in the region are vying for wind energy development to the benefit of their rural communities by providing economic incentives for this clean, renewable resource, Wyoming is eliminating existing incentives and considering more taxes. The result of these new tax policies would be the possible loss of the industry’s benefits to Wyoming’s poorer communities.

Numerous factors beyond the control of Wyoming lawmakers will likely play a major role in the state’s economic future. For example, the inability to permit coal plants nationally and federal Cap-and-Trade legislation affecting coal, oil and gas have the potential to reduce Wyoming’s most significant tax revenue sources over the long term. Wind power, if established in Wyoming, represents a hedge against the uncertainty of market forces beyond local control.

## RECOMMENDATION

WPPC suggests that the Legislative Task Force ask the Legislative Service Office to compile a matrix of tax positions from neighboring states. Many states are providing tax rebates, exemptions and other incentives in order to attract more wind investment. A definitive picture of these options would help Wyoming lawmakers ensure that their tax policy choices will not put Wyoming wind energy development at a competitive disadvantage.

WPPC recommends that the Task Force draft legislation to re-establish the Sales Tax exemption on for wind energy development.

If an excise tax is imposed, all other state and local sales and property taxes should be waived and partial rebates should be provided for transmission costs.

In addition, WPPC also suggests that if the Legislature considers a generation tax, they might also consider providing flexibility to counties or other local government to negotiate “Payment in

Lieu of Tax” (PILOT) agreements with the developers. (These are not to be confused with the federal Payment in Lieu of Taxes program known as PILT.) Wind Energy developers typically work closely with local governments on issues regarding road maintenance, economic development, permitting and taxes and WPPC suggests that local decision makers have the best understanding of the needs and requirements for their county. PILOT agreements exist in other states and allow counties to negotiate the best deal for their communities. It is not uncommon for these agreements to enable local governments to generate tens of millions of dollars over the life of the project, including small to medium sized projects.

As an example, the State of Iowa passed a statute allowing a county to pass an ordinance assessing wind energy equipment at a special valuation beginning at 0% of net acquisition cost in the first assessment year and increasing annually by five percentage points to a maximum of 30% in the 7<sup>th</sup> and succeeding years. Such incentives have enabled Iowa to emerge as number two in the U.S. in installed wind energy capacity. While the Iowa statute may not be a perfect fit for the State of Wyoming, this serves as an example of where the state government has given local governments the flexibility to opt out of an otherwise state-mandated policy so that the local governments have control of their own destinies.

Appendix A – Sales Electricity Generation Tax Comparison By State

SALES TAX							
Description	WY	WY Post Exemption Period	CO	ID	UT	MT	SD
Wind Turbines	E	T	E	RT	E	NST	RT
Tower	E	T	E	RT	E	NST	RT
Padmount Transformers	E	T	E	RT	E	NST	RT
Substation (Transformers)	E	T	T	RT	E	NST	RT
Collection System	E	T	T	RT	E	NST	RT
O & M Facilities	T	T	T	T	T	NST	RT
Roads	T	T	T	T	T	NST	RT
Replacement parts (Turbine)	T	T	E	RT	T	NST	T
Replacement parts (Tower)	T	T	E	RT	T	NST	T
Replacement parts (Padmount Transformers)	T	T	E	RT	T	NST	T
Replacement parts Substation (Transformers)	T	T	T	RT	T	NST	T
Replacement parts (Collection System)	T	T	T	RT	T	NST	T
<b>State and County sales tax rate</b>	<b>6%</b>	<b>6%</b>	<b>3.65-4.85%</b>	<b>6%</b>	<b>5.3-5.85%</b>	<b>0%</b>	<b>4%</b>

ELECTRICITY TAX							
Additional Tax Imposed on Production of Electricity	WY	WY Post Exemption Period	CO	ID	UT	MT	SD
Generation of electricity Tax( Electricity Wholesale & License tax) (See State Specific notes below)	E	E	E	T	E	T	T
Annual Gross Receipts Tax on wind projects	E	E	E	E	E	E	T

<b>Legend:</b>	
T	Taxable
E	Exempt
RT	Taxable but Rebate available for portion of taxable amount paid
NST	No Sales Tax

**Notes:**

Construction of O & M Building and Roads are usually billed in Lump Sum Contract and **no sales tax can be collected by the contractor.**

If materials and labor are billed separately stated, the **materials for the roads and O & M building are taxable**

**Colorado:**

Such components include, but are not limited, wind turbine generators, rotors and blades, solar modules, trackers, supporting structures or racks, inverters, towers and foundations, plus balance of system components including wiring, control systems, switchgears and generator step-up transformers.

For this exemption “components” shall not include any components beyond the step-up transformers located at the production site, labor, energy storage devices or remote monitoring systems.

**Utah:**

Eligible facilities must use renewable energy to produce electricity and have a production capacity of 20kW or greater. A facility that has its generation capacity increased by one more MW as a result of the machinery or equipment may also be eligible for the exemption.

Equipment eligible for the exemption includes wind turbines, generating equipment, control and monitoring systems, power lines, substation equipment, lighting, fencing, pipes and other equipment for locating powers lines and poles.

Equipment not eligible for the exemption includes tools and other equipment used in the construction of a new facility, contracted services required for construction and routine maintenance activities and equipment utilized or acquired after the project is operational.

**Wyoming:**

The exemption provided shall be limited to the acquisition of equipment used in the a project to make it operational up to the point of interconnection with an existing transmission grid including wind turbines, generating equipment, control and monitoring systems, power lines, substation equipment, lighting, fencing, pipes and other equipment for locating power lines and poles.

**Idaho:**

Machinery and equipment “directly” used in generating electricity if it provides a part of the process that captures the energy of the fuel cells, low impact hydro, wind, geothermal resources, biomass, cogeneration, sun, or landfill gas, converts that energy to electricity, and stores, transforms, or transmits that electricity for entry in or operation in parallel with electric transmission and distribution systems.

[Idaho Code §63-3622QQ(2)(d) .]

§ 63-3622QQ is effective until 7-1-2011 pursuant to L. 2005, c. 355, § 2.

**Electricity Energy License Tax:**

Basis and rate of tax. The license tax is based on kilowatt hours of electricity or electrical energy generated. The tax is levied at the rate of ½ mill per kilowatt hour.

## **Montana:**

Montana has no sales tax.

### **Wholesale Energy Transaction Tax**

This tax is imposed at a rate of .015 cents per kilowatt hour of electricity transmitted within Montana and by a Montana transmission service provider. To qualify for the energy equipment exemption the generation facilities must be powered by an alternative renewable energy. Machinery and equipment used in a generation facility that has a nameplate capacity of less than one megawatt of electrical energy is exempt from taxation for five years after the generations of electricity begins.

## **South Dakota:**

**Contractors' excise tax** is calculated on total gross receipts. Gross receipts are defined as the total amount received including, but not limited to, sales tax, use, and contractor's excise tax, materials, labor, profit, owner-furnished material, and any other expenses. Gross receipts for qualified utility projects do not include owner-furnished material.

Annual Gross Receipts Tax on wind projects: Any company owning or holding under lease, or otherwise, real or personal property used, or intended for use, as a wind farm producing power for the first time on or after July 1, 2007, shall pay an annual tax of two percent of the gross receipts of the wind farm. For purposes of this section, the gross receipts of the wind farm is its production of electricity in kilowatt hours multiplied by the South Dakota electricity base rate of \$0.0475 per kilowatt hour in 2008, with the electricity base rate of \$0.0475 per kilowatt hour increasing by 2.5 percent on an annual basis thereafter, as determined by the secretary.

## Appendix B - Property Tax Comparison By State

		Estimates Used			
Original Cost:	250,000,000	Operation Date:	01-01-2010	Cost \$/kW:	2500
Plant size (MW):	100	CF:	0.40	Power Price:	60
Gross Revenue:	21,024,000				
Electricity Production (MWh):	350,400				

### Wyoming

State	County	Original Cost	Percentage Good	Assessed Value	Level of Assessment	Assessed Valuation	Mill Levy	Tax Due
WY	Average	250,000,000	100.00%	250,000,000	11.50%	28,750,000	67.40	1,937,750

(Average)

### Montana - Class 14 property

State	County	Original Cost	Percentage Good	Assessed Value	Level of Assessment	Assessed Valuation	Mill Levy	Tax Due
MT	Carbon	250,000,000	100.00%	250,000,000	3.00%	7,500,000	54.624	409,680

(Average)

### Utah - Centrally Assessed - Utilities

State	County	Original Cost	Percentage Good	Assessed Value	Level of Assessment	Assessed Valuation	Mill Levy	Tax Due
UT	Rich	250,000,000	100.00%	250,000,000	100.00%	250,000,000	6.000	1,500,000

(Average)

HB 430 effective Jan 1, 2009, allows businesses to negotiate a property tax abatement of some of all of the property tax for up to 30 years with local government entity.

Renewable Energy Development Incentive (REDI) is a refundable tax credit for up to 100% of state taxes paid (includes state, corporate, sales and withholding taxes)

**Colorado - Centrally Assessed - Based on Plant Size**

State	County	Plant Size kw	Percentage Good	Threshold Rate/kw	Level of Assessment	Assessed Valuation	Mill Levy	Tax Due
CO	Prowers	100,000	84.41%	420	28.13%	9,972,704	59.121	589,596

(Average)

**Idaho**

State	County	Gross Revenue					Mill Levy	Tax Due
ID	State	21,024,000					3.00%	630,720

(Average)

**South Dakota - Centrally Assessed - Two Taxes**

**Nameplate Capacity Tax**

State	County	Plant Size kw	Percentage Good	Threshold Rate/kw	Level of Assessment	Assessed Valuation	Mill Levy	Tax Due
SD	N/A	100,000					3.000	300,000

**Gross Receipts Tax**

State	County	Electricity Production (kWh)		SD Electricity Base Rate		SD Gross Receipts	Mill Levy	Tax Due
SD	N/A	350,400,000		0.0511		17,905,440	2.00%	358,109

**Gross Receipts Tax - Rebate**

State	County	Tax Due	Percentage Allowed					Tax Due
SD	N/A	358,109	90.00%					(322,298)

**Gross Receipts Tax Due after rebate:** 35,811

Effective rate: 335,811

Appendix C - 20 Year Property Tax Forecast

<b>Assumptions:</b>	
MW Rating:	100
Cost Per MW:	\$2,500,000
Facility Cost:	\$250,000,000
Representative Tax Rate:	7.00%

Original Cost	Tax Year	Trending Multiplier	Trended Value	Depreciation Factor	Depreciated Value	Assessment Ratio	Assessed Value	Estimated Tax Rate	Estimated Tax Liability
\$250,000,000	2010	1.0000	\$250,000,000	97%	\$242,500,000	11.5%	\$27,887,500	7.00%	\$1,952,125
\$250,000,000	2011	1.0350	\$258,750,000	93%	\$240,637,500	11.5%	\$27,673,313	7.00%	\$1,937,132
\$250,000,000	2012	1.0700	\$267,500,000	90%	\$240,750,000	11.5%	\$27,686,250	7.00%	\$1,938,038
\$250,000,000	2013	1.1050	\$276,250,000	86%	\$237,575,000	11.5%	\$27,321,125	7.00%	\$1,912,479
\$250,000,000	2014	1.1400	\$285,000,000	82%	\$233,700,000	11.5%	\$26,875,500	7.00%	\$1,881,285
\$250,000,000	2015	1.1750	\$293,750,000	78%	\$229,125,000	11.5%	\$26,349,375	7.00%	\$1,844,456
\$250,000,000	2016	1.2100	\$302,500,000	74%	\$223,850,000	11.5%	\$25,742,750	7.00%	\$1,801,993
\$250,000,000	2017	1.2450	\$311,250,000	70%	\$217,875,000	11.5%	\$25,055,625	7.00%	\$1,753,894
\$250,000,000	2018	1.2800	\$320,000,000	65%	\$208,000,000	11.5%	\$23,920,000	7.00%	\$1,674,400
\$250,000,000	2019	1.3150	\$328,750,000	60%	\$197,250,000	11.5%	\$22,683,750	7.00%	\$1,587,863
\$250,000,000	2020	1.3500	\$337,500,000	55%	\$185,625,000	11.5%	\$21,346,875	7.00%	\$1,494,281
\$250,000,000	2021	1.3850	\$346,250,000	50%	\$173,125,000	11.5%	\$19,909,375	7.00%	\$1,393,656
\$250,000,000	2022	1.4200	\$355,000,000	45%	\$159,750,000	11.5%	\$18,371,250	7.00%	\$1,285,988
\$250,000,000	2023	1.4550	\$363,750,000	40%	\$145,500,000	11.5%	\$16,732,500	7.00%	\$1,171,275
\$250,000,000	2024	1.4900	\$372,500,000	35%	\$130,375,000	11.5%	\$14,993,125	7.00%	\$1,049,519
\$250,000,000	2025	1.5250	\$381,250,000	31%	\$118,187,500	11.5%	\$13,591,563	7.00%	\$951,409
\$250,000,000	2026	1.5600	\$390,000,000	27%	\$105,300,000	11.5%	\$12,109,500	7.00%	\$847,665
\$250,000,000	2027	1.5950	\$398,750,000	24%	\$95,700,000	11.5%	\$11,005,500	7.00%	\$770,385
\$250,000,000	2028	1.6300	\$407,500,000	22%	\$89,650,000	11.5%	\$10,309,750	7.00%	\$721,683
\$250,000,000	2029	1.6650	\$416,250,000	21%	\$87,412,500	11.5%	\$10,052,438	7.00%	\$703,671
\$250,000,000	2030	1.7000	\$425,000,000	20%	\$85,000,000	11.5%	\$9,775,000	7.00%	\$684,250

Appendix D – Corporate Income Tax Comparison By State

STATE	CORP INCOME TAX RATE	CREDITS/INCENTIVES
Colorado	4.63% (flat)	None
Idaho	7.6% (flat)	None
Montana	6.75% (flat)	35% investment tax credit
South Dakota	0	N/A
Utah	5.0% (flat)	Up to 100% inv. tax credit
Wyoming	0	N/A