

54:30A-80 to 54:30A-87

LEGISLATIVE HISTORY CHECKLIST

WJSA 54:30A-80 to 54:30A-87 (Electricity - Sale - Out of state - Tax - Utility rate stabilization fund)

LAWS OF 1979 CHAPTER 235

Bill No. A1525

Sponsor(s) Gewertz and others

Date Introduced June 22, 1978

Committee: Assembly Taxation

Senate Revenue, Finance and Appropriations

Amended during passage Yes ~~XB~~ Amendments during passage denoted by asterisks

Date of Passage: Assembly Jan. 25, 1979

Senate May 7, 1979

Date of approval Nov. 1, 1979

Following statements are attached if available:

Sponsor statement	Yes	<del>XB</del>
Committee Statement: Assembly	Yes	<del>XB</del>
Senate	Yes	<del>XB</del>
Fiscal Note	<del>YES</del>	No
Veto message	<del>YES</del>	No
Message on signing	Yes	<del>XB</del>

Following were printed:

Reports	<del>YES</del>	No
Hearings	<del>YES</del>	No

Pennsylvania Statute cited in sponsor's statement:  
Pa. Stat. Ann. Tit. 72 §8101 (Purdon)

Assembly

235 79  
11-1-79

[SECOND OFFICIAL COPY REPRINT]

ASSEMBLY, No. 1525

STATE OF NEW JERSEY

INTRODUCED JUNE 22, 1978

By Assemblymen GEWERTZ, GORMAN, RAND, NEWMAN,  
SCHUCK, DOYLE, Assemblywoman CROCE, and Assembly-  
man HERMAN

Referred to Committee on Taxation

AN Act providing for the taxation of gross receipts derived from  
the sale of electric energy produced in the State and sold out  
of State, providing for the establishing of a Utility Rate Stabili-  
zation Fund and the paying of subsidies to utility companies to  
reduce utility rate increases caused by the taxation of the sale  
of electric energy in New Jersey by other states.

1 BE IT ENACTED *by the Senate and General Assembly of the State*  
2 *of New Jersey:*

1 1. As used in this act "electric light company, water power  
2 company and hydroelectric company" means any company orga-  
3 nized or to be organized pursuant to the laws of any state for the  
4 purpose of constructing, maintaining and operating works for  
5 the supply and distribution of electricity for electric light, heat  
6 or power.

1 2. a. Every electric light company, water power company and  
2 hydroelectric company now or hereafter incorporated or organized  
3 by or under any law of this State, or now or hereafter organized  
4 or incorporated by any other state or by the United States or any  
5 foreign government and doing business in this State, and every  
6 limited partnership, association, joint-stock association, copartner-  
7 ship, person or persons, engaged in electric light and power busi-  
8 ness, water power business and hydroelectric business in this State,  
9 shall pay to the State Treasurer, through the Division of Taxation,  
10 a tax of \***[\$0.03]**\* \*\$0.045\* upon each dollar of the gross receipts  
11 of the corporation, company or association, limited partnership,  
12 joint-stock association copartnership, person or persons, received

EXPLANATION—Matter enclosed in bold-faced brackets [thus] in the above bill  
is not enacted and is intended to be omitted in the law.

13 from the sales of electric energy produced in New Jersey and  
 14 \***made**\* \*sold\* outside of New Jersey according to the following  
 15 apportionment formula. The gross receipts from all sales of elec-  
 16 tricity of the producer shall be apportioned to the State of New  
 17 Jersey by the ratio of the producer's operating and maintenance  
 18 expenses in New Jersey and depreciation attributable to property  
 19 in New Jersey to the producer's total operating and maintenance  
 20 expenses and depreciation.

21 b. Payment of Tax; Reports. The said taxes imposed under  
 22 subsection **[(a)]** *a.* shall be paid **[within the time pre-**  
 23 **scribed by law]** *annually commencing on or before April 15,*  
 23A *1980 and on or before April 15 of each year thereafter*, and  
 23B for the purpose of ascertaining the amount of the same, it shall  
 24 be the duty of the treasurer or other proper officer of the said  
 25 company, copartnership, limited partnership, association, joint-  
 26 stock association or corporation, or person or persons, to transmit  
 27 to the Division of Taxation on or before April 15<sup>\*\*</sup>, *1980 and on*  
 28 *or before April 15<sup>\*\*</sup>* of each year *thereafter* an annual report,  
 29 and under oath or affirmation, of the amount of gross receipts  
 29A of the said companies, copartnerships, coporations, associ-  
 30 ations, joint-stock associations, limited partnerships, person or per-  
 31 sons, derived from all sources, and of gross receipts from business  
 32 done wholly within this State and in the case of electric energy pro-  
 33 ducers that transmit energy to other states, a compilation of the  
 34 relevant information regarding operating and maintenance ex-  
 35 penses and depreciation, during the period of 12 months immedi-  
 36 ately preceding January 1 of each year. It shall be the further  
 37 duty of the treasurer or other proper officer of every such corpo-  
 38 ration or association and every individual liable by law to report  
 39 or pay said taxes imposed under subsection a. except municipali-  
 40 ties to transmit to the Division of Taxation *within 60 days from*  
 40A *the date of enactment of this act and* on or before April 30  
 41 of each year *thereafter*, a tentative report in like form and  
 42 manner for each 12-month period beginning January 1, of each  
 43 year. The tentative report shall set forth (i) the amount of gross  
 44 receipts received in the period of 12 months next preceding and  
 45 reported in the annual report; or (ii) the gross receipts received  
 46 in the first 3 months of the current period of 12 months; and (iii)  
 47 such other information as the Division of Taxation may require.

48 c. Tax computation. Upon the date its tentative report is re-  
 49 quired to be made, for the year **[1978]** *1979* and each year  
 50 thereafter the corporation, association or individual making a

51 tentative report shall transmit such report to the Division of Taxa-  
 52 tion on account of the tax due for the current period of 12 months  
 53 and compute and make payment of the tentative tax with such  
 53A report. *\*\*Such "tentative tax" shall be allowed as a credit on the*  
 53B *annual report which shall be filed in the year next succeeding the*  
 53C *year that the "tentative tax" is paid.\*\**

54 d. Time to file reports. The time for filing annual reports may  
 55 be extended, estimated settlements may be made by the Division  
 56 of Taxation if reports are not filed, and the penalties for failing  
 57 to file reports and pay the taxes imposed under subsection  
 58 **[(a)]** *\*\*a.\*\** shall be as prescribed by the laws defining the  
 59 powers and duties of the Division of Taxation. In any case where  
 60 the works of any corporation, company, copartnership, association,  
 61 joint-stock association, limited partnership, person or persons are  
 62 operated by another corporation, company, copartnership, associa-  
 63 tion, joint-stock association, limited partnership, person or persons,  
 64 the taxes imposed under subsection **[(a)]** *\*\*a.\*\** shall be  
 65 apportioned between the corporation, companies, copartnerships,  
 66 associations, joint-stock associations, limited partnerships, person  
 67 or persons in accordance with the terms of their respective leases  
 68 or agreements, but for the payment of the said taxes the State  
 69 shall first look to the corporation, company, copartnership, associa-  
 70 tion, joint-stock association, limited partnership, person or per-  
 71 sons operating the works, and upon payment by the said company,  
 72 corporation, copartnership, association, joint-stock association,  
 73 limited partnership, person or persons of a tax upon the receipts,  
 74 as herein provided, derived from the operation thereof, no other  
 75 corporation, company, copartnership, association, joint-stock  
 76 association, limited partnership, person or persons shall be held  
 77 liable for any tax imposed under subsection **[(a)]** *\*\*a.\*\** upon  
 78 the proportion of said receipts received by said corporation, com-  
 79 pany, copartnership, association, joint-stock association, limited  
 79A partnership, person or persons for the use of said works.

80 e. Application to municipalities. This act shall be construed to  
 81 apply to municipalities, and to impose a tax upon the gross receipts  
 82 derived from any municipality owned or operated public utility  
 83 or from any public utility service furnished by any municipality,  
 84 except that gross receipts shall be exempt from the tax, to the  
 85 extent that such gross receipts are derived from business done  
 86 inside the limits of the municipality, owning or operating the public  
 87 utility or furnishing the public utility service.

1 3. The revenue collected by the Division of Taxation pursuant  
2 to this act shall be deposited with the State Treasurer in a special  
3 Utility Rate Stabilization Fund established by the treasurer.

1 4. a. Whenever any electric light company, water power com-  
2 pany or hydroelectric company applies to the Board of Public  
3 Utilities for a rate increase based in whole or in part on an increase  
4 in costs resulting from taxes paid to another state on the gross  
5 receipts from the sales of electricity produced in that state and sold  
6 in New Jersey, and the board verifies the authenticity of said in-  
7 creased costs, said company may apply to the State Treasurer for  
8 payment of a subsidy to offset such increased costs in whole or in  
9 part and shall be granted such subsidy from the Utility Rate  
10 Stabilization Fund in such percentage as the treasurer determines  
11 is equitable and as the amount deposited in the fund shall allow. The  
12 treasurer, after consultation with the Board of Public Utilities,  
13 may adopt appropriate regulations or take other necessary actions  
14 to insure that revenues provided from the fund are utilized for  
15 rate relief.

16 b. The amount of rate increase requested by any electric light  
17 company, water power company or hydroelectric company based  
18 on an increase in costs due in whole or in part to an increase in  
19 taxes or set forth in subsection a. of this section shall be denied or  
20 reduced in direct proportion as the subsidy paid pursuant to sub-  
21 section a. offsets the increase in costs resulting from the tax  
22 increase.

1 5. Any company subject to the gross receipts tax imposed by this  
2 act may deduct from their tax liability under this act, taxes they  
3 have paid on their gross receipts, within the same tax period, pur-  
4 suant to P. L. 1940, c. 4 (C. 54:30A-16 et seq.) and P. L. 1940, c. 5  
5 (C. 54: 30A-49) et seq.).

1 *\*\*6. a. Any taxpayer failing to file a return or to pay any tax to*  
2 *the director within the time required by this act shall be subject to*  
3 *penalties and interest as provided in the State Tax Uniform Pro-*  
4 *cedure Law, Subtitle 9 of Title 54 of the Revised Statutes, but the*  
5 *director, if satisfied that the delay was excusable, may remit all or*  
6 *any part of such penalties, but not interest, at the rate of 9% per*  
7 *annum. Unpaid penalties and interest may be determined, assessed,*  
8 *collected and received in the same manner as the tax imposed by this*  
9 *act.*

10 *b. Any person failing to file a return required by this act, or*  
11 *filing or causing to be filed, or making or causing to be made, or*  
12 *giving or causing to be given any return, certificate, affidavit,*

13 representation, information, testimony or statement required or  
14 authorized by this act, which is willfully false, and such data in  
15 connection therewith as the director by regulation or otherwise may  
16 require, shall, in addition to any other penalties herein or elsewhere  
17 prescribed, be guilty of a misdemeanor, punishment for which shall  
18 be a fine of not more than \$1,000.00 or imprisonment for not more  
19 than 1 year, or both such fine and imprisonment.

20 c. Where, before the expiration of the period prescribed herein  
21 for the assessment of an additional tax, a taxpayer has consented  
22 in writing that such period be extended the amount of such addi-  
23 tional tax due may be determined at any time within such extended  
24 period. The period so extended may be further extended by subse-  
25 quent consents in writing made before the expiration of the  
26 extended period.

1 7. Notwithstanding the provisions of P. L. 1945, c. 162, s. 3(e)  
2 (C. 54:10A-3(e)), any corporation which is subject to the tax  
3 imposed under this act shall not be exempt from the tax imposed  
4 under the "Corporation Business Tax Act," P. L. 1945, c. 162  
5 (C. 54:10A-1 et seq.).\*\*

1 \*\*[6.]\*\* \*\*8.\*\* This act shall take effect \*\*[on the first day of  
2 the month following enactment]\*\* \*\*immediately and shall be  
3 applicable to gross receipts received on and after January 1,  
4 1979\*\* and shall remain in effect only as long as Public Law 340  
5 (Act 100 of 1977) of the Commonwealth of Pennsylvania or  
6 comparable legislation remains in effect.

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10 Stabilization Fund in such percentage as the treasurer determines  
 11 is equitable and as the amount deposited in the fund shall allow. The  
 12 treasurer, after consultation with the Board of Public Utilities,  
 13 may adopt appropriate regulations or take other necessary actions  
 14 to insure that revenues provided from the fund are utilized for  
 15 rate relief.

16 b. The amount of rate increase requested by any electric light  
 17 company, water power company or hydroelectric company based  
 18 on an increase in costs due in whole or in part to an increase in  
 19 taxes or set forth in subsection a. of this section shall be denied or  
 20 reduced in direct proportion as the subsidy paid pursuant to sub-  
 21 section a. offsets the increase in costs resulting from the tax  
 22 increase.

1 5. Any company subject to the gross receipts tax imposed by this  
 2 act may deduct from their tax liability under this act, taxes they  
 3 have paid on their gross receipts, within the same tax period, pur-  
 4 suant to P. L. 1940, c. 4 (C. 54:30A-16 et seq.) and P. L. 1940, c. 5  
 5 (C. 54: 30A-49) et seq.).

1 6. This act shall take effect on the first day of the month follow-  
 2 ing enactment and shall remain in effect only as long as Public Law  
 3 340 (Act 100 of 1977) of the Commonwealth of Pennsylvania or  
 4 comparable legislation remains in effect.

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#### STATEMENT

The Commonwealth of Pennsylvania recently imposed a tax on gross receipts of utility companies based on the sale of electricity produced in Pennsylvania but sold out of the State. It is estimated that Pennsylvania will realize \$10,000,000.00 in tax receipts from this tax based on sales of electricity in New Jersey. Utility companies are expected to increase their rates to New Jersey consumers in such amount as it is necessary to offset their \$10,000,000.00 tax increase.

This bill imposes a gross receipts tax on electricity produce in New Jersey and sold out of state. The revenue derived from this tax will be deposited in a Utility Rate Stabilization Fund and used to alleviate utility rate increases based on out of state gross receipt taxes. The legislation is made expressly contingent upon the continuance of the Pennsylvania tax.

A1525 (1979)

ASSEMBLY TAXATION COMMITTEE

STATEMENT TO

ASSEMBLY, No. 1525

STATE OF NEW JERSEY

DATED: DECEMBER 11, 1978

The Assembly Committee on Taxation released Assembly Bill No. 1525 with several amendments. The first to raise the 3% tax to 4½% which will bring it in line with the legislation in Pennsylvania. The second amendment deletes the word "made" on line 13 of section 2.a. and inserts the word "sold."

Considerable discussion revolved around the amount of money which might be generated. However, the sponsor, Mr. Gewertz, indicated that it was not the intention of the bill to be a revenue raising measure, but rather to attempt to recoup for New Jersey consumers some of the cost incurred by New Jersey Public Utilities in paying the Pennsylvania tax.



SENATE REVENUE, FINANCE AND APPROPRIATIONS  
COMMITTEE

STATEMENT TO  
**ASSEMBLY, No. 1525**  
[OFFICIAL COPY REPRINT]

**STATE OF NEW JERSEY**

DATED: APRIL 23, 1979

Assembly Bill No. 1525 (OCR) imposes a 4½% tax on the gross receipts of electric energy produced in but sold outside of New Jersey. The amount of the tax is determined by first multiplying the gross receipts from the sale of all electricity by the percentage that the producers operating and maintenance expenses in New Jersey and depreciation attributable to property in New Jersey is to the producers total operating and maintenance expenses and depreciation. The resulting dollar amount is then multiplied by 4½% to determine the tax liability.

Taxes are due and payable on or before each April 15 based on gross receipts of the prior year ending December 31. In the case where a power plant is owned by one corporation but operated by another, the bill directs the State to first look to the operator for the payment of taxes due.

The taxes paid are to be deposited in a Utility Rate Stabilization Fund. The fund is to be used to offset rate increases that are in whole or in part the result of gross receipts taxes paid to another State on the sales of electricity produced in that State and sold in New Jersey. The amount of the payment from the Fund shall be determined by the State Treasurer.

Companies now paying the New Jersey Franchise and Gross Receipts Taxes are exempt from the tax established by this bill.

This bill shall be effective only as long as P. L. 340 (Act 100 of 1977) of the Commonwealth of Pennsylvania or comparable legislation remains in effect.

COMMITTEE AMENDMENTS

Technical amendments were found necessary for the bill. The tax will be levied against 1979 gross receipts rather than 1978. If applied against 1978 gross receipts, the tax would in effect be retroactive one year.

Pennsylvania has a general provision in law that permits estimated (tentative) tax payments to be credited against the final tax when due. An amendment incorporates a credit provision in this bill where before there was none.

The bill has no penalty provision for non-payment of the tax. An amendment is included that incorporates the applicable provisions of the State Tax Uniform Procedure Law.

The Corporation Business Tax Act contains a provision that might be construed to exempt the companies who pay that tax from paying the tax established by this bill. There is an amendment that specifically *does not* exempt those companies from paying the tax established by this bill.

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FROM THE OFFICE OF THE GOVERNOR

FOR IMMEDIATE RELEASE

NOVEMBER 1, 1979

FOR FURTHER INFORMATION

KATHRYN FORSYTH

Governor Brendan Byrne today signed a bill establishing a 4-1/2% tax on gross receipts derived from the sale of electrical energy produced in New Jersey and sold outside the state.

The bill, A-1525, was sponsored by Assemblyman Kenneth Gewertz (D-Gloucester) and Assemblywomen Mary Keating Croce and Barbara Berman (both D-Camden). The Governor signed the measure in a public ceremony at Cherry Hill High School West.

In 1977, the Commonwealth of Pennsylvania enacted a law taxing the sale of electricity generated in Pennsylvania for use in other states. A-1525 dedicates the tax revenues its enactment will generate to a Utility Rate Stabilization Fund which will subsidize utilities forced to pay the Pennsylvania tax.

The validity of the Pennsylvania law is currently being challenged in federal court on the grounds that it unconstitutionally restricts interstate commerce, and the act signed today is expressly contingent upon the continuance of the Pennsylvania law.

A statement of the Governor on the signing of A-1525 is attached.

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STATEMENT OF GOVERNOR BYRNE ON SIGNING A-1525

This bill imposes a 4 1/2% gross receipts tax on electricity produced in New Jersey and sold out of state. The revenue derived from this tax will be deposited in a Utility Rate Stabilization Fund and used to alleviate utility rate increases caused by the taxation by other states of electricity produced in those states and sold in New Jersey. The legislation is expressly contingent upon the continuation of similar legislation in Pennsylvania.

The bill responds to the enactment by the Commonwealth of Pennsylvania of a tax on the gross receipts of utility companies based on the sale of electricity produced in Pennsylvania and sold out of state. It is estimated that Pennsylvania will realize \$10 million from this tax based on sales of electricity in New Jersey. Utility companies are expected to increase their rates to New Jersey consumers to offset their \$10 million tax increase.

I am signing this bill aware of the constitutional questions which are associated with this legislation. I would hope that the present litigation by New Jersey utilities which addresses the legality of the Pennsylvania statute is resolved swiftly in their favor. We have announced our intention to the court to participate in that litigation through the Attorney General. However, it is my judgment that while the lawsuit remains unresolved the State of New Jersey must take steps such as the enactment of A-1525 to protect our residents from this unwarranted effort at taxation. While I do not favor retaliatory legislation, it is my duty to protect the residents of New Jersey to the full extent permitted by law. New Jersey cannot be in a position to lose both ways. If this kind of legislation is permissible, we will use it.