

Date of Hearing: May 1, 2019

ASSEMBLY COMMITTEE ON LOCAL GOVERNMENT

Cecilia Aguiar-Curry, Chair

AB 1208 (Ting) – As Amended March 25, 2019

SUBJECT: Utility user taxes: exemption: clean energy resource.

SUMMARY: Extends, until January 1, 2027, a utility user’s tax (UUT) exemption for the consumption of electricity generated by a clean energy resource located on a customer’s premises and used solely for the customer or the customer’s tenants, and adds to the definition of “clean energy resource” a device or technology used for a renewable electrical storage facility.

FISCAL EFFECT: None

COMMENTS:

- 1) **Background.** A city may impose a UUT on the consumption of utility services, including, but not limited to, electricity, gas, water, sewer, telephone, sanitation and cable television. The city determines the rate of the tax and the use of its proceeds. UUTs can be imposed as a special tax dedicated for a specific purpose, or a general tax to be used for whatever purpose the city council decides. UUTs are levied by the city, collected by the utility as part of its regular billing, and then remitted to the city. A county may levy a UUT on the consumption of electricity, gas, water, sewer, telephone, telegraph and cable television services in the unincorporated area.

In most jurisdictions, UUTs provide vital funding for municipal or county services. Reduced funding by the state and other sources of funding for local governments over the last several decades have increased the popularity of UUTs, which are most commonly used to fund police, fire, parks, and libraries.

- 2) **UUT Exemption.** AB 792 (Mullin), Chapter 534, Statutes of 2013, exempted from any UUT imposed by a local jurisdiction a customer’s consumption of electricity generated by a clean energy resource that is located on the customer’s premises and used solely for the customer or the customer’s tenants. The argument for this UUT exemption was made by energy firms that use third-party ownership and power purchase agreements (PPA) to finance distributed generation (DG) renewable systems. These are financing arrangements in which the renewable energy system is owned by a third party and the property owner is responsible only for paying for the power generated by the system. Companies using these business models were concerned over the lack of clarity in the law at the time and the potential application of a UUT to the payments that a property owner makes under such terms.

AB 792 defined “clean energy resource” to mean either of the following:

- a) A device or technology used for a renewable electrical generation facility that uses biomass, solar thermal, photovoltaic, wind, geothermal, fuel cells using renewable fuels, small hydroelectric generation of 30 megawatts or less, digester gas, municipal solid waste conversion, landfill gas, ocean wave, ocean thermal, or tidal current, and any additions or enhancements to the facility using that technology; or,

- b) Any technology that meets all of the following requirements:
- i) The emissions standards adopted by the State Air Resources Board pursuant to the distributed generation certification program requirements, as specified;
 - ii) Produces de minimis emissions of sulfur oxides and nitrogen oxides;
 - iii) The greenhouse gases emission performance standard established by the Public Utilities Commission, as specified;
 - iv) Has a total electrical efficiency of not less than 45%;
 - v) Is sized to meet the generator's onsite electrical demand;
 - vi) Has parallel operation to the electrical distribution grid;
 - vii) Utilizes renewable or nonrenewable fuel; and,
 - viii) Pays any applicable UUT for nonrenewable fuels used in electricity generation.

The provisions of AB 792 sunset on January 1, 2020.

- 3) **Bill Summary and Author's Statement.** This bill extends, until January 1, 2027, the sunset date on the UUT exemption authorized by AB 792, and adds to the definition of "clean energy resource" a device or technology used for a renewable electrical storage facility. According to the author, "California needs to keep aggressively pushing renewable clean energy generation, including integration of storage capacity. This bill simply extends the sunset date on the prohibition on local jurisdictions to impose a UUT on clean electricity."

This bill is sponsored by the California Solar and Storage Association.

- 4) **Committee Amendment.** The definition of a "renewable electrical generation facility" under existing law that this bill seeks to amend is as follows:

The facility uses biomass, solar thermal, photovoltaic, wind, geothermal, fuel cells using renewable fuels, small hydroelectric generation of 30 megawatts or less, digester gas, municipal solid waste conversion, landfill gas, ocean wave, ocean thermal, or tidal current, *and any additions or enhancements to the facility using that technology.*

It is not clear why this bill's addition of "storage" is necessary. The Committee may wish to remove this language from the bill.

- 5) **Arguments in Support.** The California Solar and Storage Association, sponsor of this bill, states, "The extension of UUT to DG would be very difficult to implement as it could be very time consuming and challenging for a local government to accurately account for energy that is used by a customer behind their own meter. This could lead to certain customers being disadvantaged over others given the ambiguity and complexity of application to different financing models. Simply the potential for this tax to be implemented would also cause uncertainty to potential customers looking to install solar. In addition, this new tax on

unsuspecting existing solar owners could be jarring. Lastly, this UUT exemption has been in statute since 2013 pursuant to AB 792 (Mullin). At that time, no local governments were applying the UUT to DG. This bill, AB 1208, would simply extend the existing exemption. This bill will provide consistent treatment of UUT for all customers self-supplying electricity from clean distributed generation.”

- 6) **Arguments in Opposition.** The City of Pasadena, in opposition, writes, “The City’s voters approved the UUT in 2008. Local voters elect city council members to make public policy in response to local needs. Deciding how to apply local taxes to generate local revenues is precisely what council members are elected to do. Exempting all renewable DG electricity from UUTs, particularly on a permanent basis, erodes local officials’ ability to manage local affairs by making it more difficult for them to raise general fund revenues. Local elected officials, and the voters to whom they are accountable, are in the best position to judge the merits of imposing a UUT on renewable DG systems. AB 792 from 2013 unnecessarily substituted a one-size-fits-all standard for local officials’ informed judgement about what is best for their communities. While this bill has a noble stated goal, it has far-reaching revenue implications that is expected to be severely damaging for cities.”

REGISTERED SUPPORT / OPPOSITION:

Support

California Solar and Storage Association [SPONSOR]

Borrego Solar

ENGIE Services

Solar Energy Industries Association

Sunrun Inc.

Tesla

Vivint Solar

Opposition

City of Pasadena

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