

State of Arkansas  
88th General Assembly  
Regular Session, 2011

# A Bill

HOUSE BILL 2228

By: Representative L. Cowling

## For An Act To Be Entitled

AN ACT TO GRADUALLY REDUCE THE SALES AND USE TAX  
LEVIED ON NATURAL GAS AND ELECTRICITY USED BY  
MANUFACTURERS; TO DECLARE AN EMERGENCY; AND FOR OTHER  
PURPOSES.

## Subtitle

TO GRADUALLY REDUCE THE SALES AND USE TAX  
LEVIED ON NATURAL GAS AND ELECTRICITY  
USED BY MANUFACTURERS AND TO DECLARE AN  
EMERGENCY.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:

SECTION 1. Arkansas Code § 26-52-319(a)-(b), concerning natural gas and electricity used by manufacturers, is amended to read as follows:

(a)(1) Beginning July 1, 2007, in lieu of the gross receipts or gross proceeds tax levied in §§ 26-52-301 and 26-52-302~~(a)-(d)~~, there is levied an excise tax on the gross receipts or gross proceeds derived from the sale of natural gas and electricity to a manufacturer for use directly in the actual manufacturing process at the rate of four and three-eighths percent (4.375%).

(2) Beginning July 1, 2008, the tax rate levied in subdivision (a)(1) of this section shall be imposed at the rate of three and seven-eighths percent (3.875%).

(3)(A) Beginning July 1, 2009, the tax rate levied in subdivision (a)(1) of this section shall be imposed at the rate of three and one-eighth percent (3.125%).

(B)(i) The Director of the Department of Finance and



1 Administration shall monitor the amount of tax savings received by all  
2 taxpayers as a result of the reduction in the tax rate from that levied in §§  
3 26-52-301 and 26-52-302 to that levied in subdivision (a)(3)(A) of this  
4 section.

5 (ii) When the director determines that the amount of  
6 tax savings resulting from the determination described in subdivision  
7 (a)(3)(B)(i) of this section plus any use tax savings described in § 26-53-  
8 148(a)(3)(B) would reach twenty-seven million dollars (\$27,000,000) during a  
9 fiscal year, the director shall not process any further refund claims through  
10 a refund process during the fiscal year for taxpayers seeking to claim the  
11 reduced tax rate provided by this section. The amount of twenty-seven million  
12 dollars (\$27,000,000) is intended to cover the accumulated but unclaimed  
13 reduction of sales and use tax on natural gas and electricity as provided by  
14 Acts 2007, No. 185, as well as the additional reduction provided by Acts  
15 2009, No. 695.

16 (iii) If the director determines that discontinuing  
17 refund payments as provided in subdivision (a)(3)(B)(ii) of this section is  
18 insufficient to prevent the amount of tax savings from exceeding twenty-seven  
19 million dollars (\$27,000,000) during a fiscal year, the director may decline  
20 to accept any amended return filed by a taxpayer to claim an overpayment  
21 resulting from the reduced tax rate provided by this section for a period  
22 other than the period for which a tax return is currently due.

23 (C)(i) Refund requests and amended returns filed with the  
24 director to claim the overpayment resulting from the reduced rate in  
25 subdivision (a)(3)(A) of this section shall be processed in the order they  
26 are received by the director. A taxpayer that does not receive a refund after  
27 the refund and amended return process has ceased under subdivision (a)(3)(B)  
28 of this section shall be given priority to receive a refund during the  
29 subsequent fiscal year. The unpaid refunds from the prior fiscal year shall  
30 be processed before any refund claims filed in the current fiscal year to  
31 claim the benefit of this section.

32 (ii) The statute of limitations for refunds and  
33 amended returns under § 26-18-306(i)(1)(A) is extended for one (1) year to  
34 allow the payment of a refund under the process provided in subdivision  
35 (a)(3)(C)(i) of this section.

36 (4)(A)(i) Beginning July 1, 2011, the tax rate levied in

1 subdivision (a)(1) of this section shall be imposed at the rate of two and  
2 seven-eighths percent (2.875%).

3 (ii) Beginning July 1, 2012, the tax rate levied in  
4 subdivision (a)(1) of this section shall be imposed at the rate of two and  
5 five-eighths percent (2.625%).

6 (B)(i) The Director of the Department of Finance and  
7 Administration shall monitor the amount of tax savings received by all  
8 taxpayers as a result of the reduction in the tax rate from that levied in §§  
9 26-52-301 and 26-52-302 to that levied in subdivision (a)(4)(A) of this  
10 section.

11 (ii) When the director determines that the amount of  
12 tax savings resulting from the determination described in subdivision  
13 (a)(4)(B)(i) of this section plus any use tax savings described in § 26-53-  
14 148(a)(4)(B) would reach twenty-seven million dollars (\$27,000,000) during a  
15 fiscal year, the director shall not process any further refund claims through  
16 a refund process during the fiscal year for taxpayers seeking to claim the  
17 reduced tax rate provided by this section. The amount of twenty-seven million  
18 dollars (\$27,000,000) is intended to cover the accumulated but unclaimed  
19 reduction of sales and use tax on natural gas and electricity as provided by  
20 this section.

21 (iii) If the director determines that discontinuing  
22 refund payments as provided in subdivision (a)(4)(B)(ii) of this section is  
23 insufficient to prevent the amount of tax savings from exceeding twenty-seven  
24 million dollars (\$27,000,000) during a fiscal year, the director may decline  
25 to accept any amended return filed by a taxpayer to claim an overpayment  
26 resulting from the reduced tax rate provided by this section for a period  
27 other than the period for which a tax return is currently due.

28 (C)(i) Refund requests and amended returns filed with the  
29 director to claim the overpayment resulting from the reduced rate in  
30 subdivision (a)(4)(A) of this section shall be processed in the order they  
31 are received by the director. A taxpayer that does not receive a refund after  
32 the refund and amended return process has ceased under subdivision (a)(4)(B)  
33 of this section shall be given priority to receive a refund during the  
34 subsequent fiscal year. The unpaid refunds from the prior fiscal year shall  
35 be processed before any refund claims filed in the current fiscal year to  
36 claim the benefit of this section.

(ii) The statute of limitations for refunds and amended returns under § 26-18-306(i)(1)(A) is extended for one (1) year to allow the payment of a refund under the process provided in subdivision (a)(4)(C)(i) of this section.

~~(4)~~(5) The taxes levied in this subsection ~~(a)~~ shall be distributed as follows:

(A) Seventy-six and six-tenths percent (76.6%) of the tax, interest, penalties, and costs received by the director shall be deposited as general revenues;

(B) Eight and five-tenths percent (8.5%) of the tax, interest, penalties, and costs received by the director shall be deposited into the Property Tax Relief Trust Fund; and

(C) Fourteen and nine-tenths percent (14.9%) of the tax, interest, penalties, and costs received by the director shall be deposited into the Educational Adequacy Fund.

~~(5)~~~~(A)~~(6)(A) The excise tax levied in this section applies only to natural gas and electricity sold for use directly in the actual manufacturing process.

(B) Natural gas and electricity sold for any other purpose shall be subject to the full gross receipts or gross proceeds tax levied under §§ 26-52-301 and 26-52-302~~(a)-(d)~~.

~~(6)~~(7) The excise tax levied in this section shall be collected, reported, and paid in the same manner and at the same time as is prescribed by law for the collection, reporting, and payment of all other Arkansas gross receipts taxes.

(b) As used in this section, "manufacturer" means a manufacturer classified within sectors 31 through 33 of the North American Industry Classification System, as in effect on ~~January 1, 2007~~ January 1, 2011.

SECTION 2. Arkansas Code § 26-53-148(a)-(b), concerning natural gas and electricity used by manufacturers, is amended to read as follows:

(a)(1) Beginning July 1, 2007, in lieu of the tax levied in §§ 26-53-106 and 26-53-107~~(a)-(d)~~, there is levied an excise tax on the sales price of natural gas and electricity purchased by a manufacturer for use directly in the actual manufacturing process at the rate of four and three-eighths percent (4.375%).

1           (2) Beginning July 1, 2008, the tax rate levied in subdivision  
2 (a)(1) of this section shall be imposed at the rate of three and seven-  
3 eighths percent (3.875%).

4           (3)(A) Beginning July 1, 2009, the tax rate levied in  
5 subdivision (a)(1) of this section shall be imposed at the rate of three and  
6 one-eighth percent (3.125%).

7           (B)(i) The Director of the Department of Finance and  
8 Administration shall monitor the amount of tax savings received by all  
9 taxpayers as a result of the reduction in the tax rate from that levied in §§  
10 26-53-106 and 26-53-107 to that levied in subdivision (a)(3)(A) of this  
11 section.

12           (ii) When the director determines that the amount of  
13 tax savings resulting from the determination described in subdivision  
14 (a)(3)(B)(i) of this section plus any gross receipts tax savings described in  
15 § 26-52-319(a)(3)(B) would reach twenty-seven million dollars (\$27,000,000)  
16 during a fiscal year, the director shall not process any further refund  
17 claims through a refund process during the fiscal year for taxpayers seeking  
18 to claim the reduced tax rate provided by this section. The amount of twenty-  
19 seven million dollars (\$27,000,000) is intended to cover the accumulated but  
20 unclaimed reduction of sales and use tax on natural gas and electricity as  
21 provided by Acts 2007, No. 185, as well as the additional reduction provided  
22 by Acts 2009, No. 695.

23           (iii) If the director determines that discontinuing  
24 refund payments as provided in subdivision (a)(3)(B)(ii) of this section is  
25 insufficient to prevent the amount of tax savings from exceeding twenty-seven  
26 million dollars (\$27,000,000) during a fiscal year, the director may decline  
27 to accept any amended return filed by a taxpayer to claim an overpayment  
28 resulting from the reduced tax rate provided by this section for a period  
29 other than the period for which a tax return is currently due.

30           (C)(i) Refund requests and amended returns filed with the  
31 director to claim the overpayment resulting from the reduced rate in  
32 subdivision (a)(3)(A) of this section will be processed in the order they are  
33 received by the director. A taxpayer that does not receive a refund after the  
34 refund and amended return process has ceased under subdivision (a)(3)(B) of  
35 this section shall be given priority to receive a refund during the  
36 subsequent fiscal year. The unpaid refunds from the prior fiscal year shall

1 be processed before any refund claims filed in the current fiscal year to  
2 claim the benefit of this section.

3 (ii) The statute of limitations for refunds and  
4 amended returns under § 26-18-306(i)(1)(A) is extended for one (1) year to  
5 allow the payment of a refund under the process provided in subdivision  
6 (a)(3)(C)(i) of this section.

7 (4)(A)(i) Beginning July 1, 2011, the tax rate levied in  
8 subdivision (a)(1) of this section shall be imposed at the rate of two and  
9 seven-eighths percent (2.875%).

10 (ii) Beginning July 1, 2012, the tax rate levied in  
11 subdivision (a)(1) of this section shall be imposed at the rate of two and  
12 five-eighths percent (2.625%).

13 (B)(i) The Director of the Department of Finance and  
14 Administration shall monitor the amount of tax savings received by all  
15 taxpayers as a result of the reduction in the tax rate from that levied in §§  
16 26-53-106 and 26-53-107 to that levied in subdivision (a)(4)(A) of this  
17 section.

18 (ii) When the director determines that the amount of  
19 tax savings resulting from the determination described in subdivision  
20 (a)(4)(B)(i) of this section plus any gross receipts tax savings described in  
21 § 26-52-319(a)(4)(B) would reach twenty-seven million dollars (\$27,000,000)  
22 during a fiscal year, the director shall not process any further refund  
23 claims through a refund process during the fiscal year for taxpayers seeking  
24 to claim the reduced tax rate provided by this section. The amount of twenty-  
25 seven million dollars (\$27,000,000) is intended to cover the accumulated but  
26 unclaimed reduction of sales and use tax on natural gas and electricity as  
27 provided by this section.

28 (iii) If the director determines that discontinuing  
29 refund payments as provided in subdivision (a)(4)(B)(ii) of this section is  
30 insufficient to prevent the amount of tax savings from exceeding twenty-seven  
31 million dollars (\$27,000,000) during a fiscal year, the director may decline  
32 to accept any amended return filed by a taxpayer to claim an overpayment  
33 resulting from the reduced tax rate provided by this section for a period  
34 other than the period for which a tax return is currently due.

35 (C)(i) Refund requests and amended returns filed with the  
36 director to claim the overpayment resulting from the reduced rate in

subdivision (a)(4)(A) of this section will be processed in the order they are received by the director. A taxpayer that does not receive a refund after the refund and amended return process has ceased under subdivision (a)(4)(B) of this section shall be given priority to receive a refund during the subsequent fiscal year. The unpaid refunds from the prior fiscal year shall be processed before any refund claims filed in the current fiscal year to claim the benefit of this section.

(ii) The statute of limitations for refunds and amended returns under § 26-18-306(i)(1)(A) is extended for one (1) year to allow the payment of a refund under the process provided in subdivision (a)(4)(C)(i) of this section.

~~(4)(5)~~ The taxes levied in this subsection ~~(a) of this section~~ shall be distributed as follows:

(A) Seventy-six and six-tenths percent (76.6%) of the tax, interest, penalties, and costs received by the director shall be deposited as general revenues;

(B) Eight and five-tenths percent (8.5%) of the tax, interest, penalties, and costs received by the director shall be deposited into the Property Tax Relief Trust Fund; and

(C) Fourteen and nine-tenths percent (14.9%) of the tax, interest, penalties, and costs received by the director shall be deposited into the Educational Adequacy Fund.

~~(5)(A)(6)(A)~~ The excise tax levied in this section applies only to natural gas and electricity purchased for use directly in the actual manufacturing process.

(B) Natural gas and electricity purchased for any other purpose shall be subject to the full compensating use tax levied under §§ 26-53-106 and 26-53-107~~(a)-(d)~~.

~~(6)(7)~~ The excise tax levied in this section shall be collected, reported, and paid in the same manner and at the same time as is prescribed by law for the collection, reporting, and payment of all other Arkansas compensating use taxes.

(b) As used in this section, "manufacturer" means a manufacturer classified within sectors 31 through 33 of the North American Industry Classification System, as in effect on ~~January 1, 2007~~ January 1, 2011.

1       SECTION 3. EMERGENCY CLAUSE. It is found and determined by the  
2 General Assembly of the State of Arkansas that the cost of manufacturing  
3 continues to climb; that Arkansas' unemployment rate is extremely high; that  
4 the economy has dramatically affected manufacturers and resulted in lay-offs;  
5 that decreasing the sales and use tax on natural gas and electricity used by  
6 manufacturers would provide manufacturers with a way to increase the number  
7 of employees; and that this, in turn, would increase production and provide  
8 lucrative employment for Arkansans. Therefore, an emergency is declared to  
9 exist and this act being necessary for the preservation of the public peace,  
10 health, and safety shall become effective on July 1, 2011.