

1 State of Arkansas  
2 89th General Assembly  
3 Regular Session, 2013  
4  
5 By: Representative Jean  
6 By: Senator B. Sample  
7

# A Bill

HOUSE BILL 1218

## For An Act To Be Entitled

9 AN ACT TO REDUCE THE SALES AND USE TAX ON NATURAL GAS  
10 AND ELECTRICITY USED BY MANUFACTURERS; TO DECLARE AN  
11 EMERGENCY; AND FOR OTHER PURPOSES.  
12  
13

## Subtitle

15 TO REDUCE THE SALES AND USE TAX ON  
16 NATURAL GAS AND ELECTRICITY USED BY  
17 MANUFACTURERS AND TO DECLARE AN  
18 EMERGENCY.  
19  
20

21 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:  
22

23 SECTION 1. Arkansas Code § 26-52-319(a)-(c), concerning the sales tax  
24 on natural gas and electricity used by manufacturers, is amended to read as  
25 follows:

26 (a)(1)(A) Beginning July 1, ~~2007~~ 2013, in lieu of the gross receipts  
27 or gross proceeds tax levied in §§ 26-52-301 and 26-52-302, there is levied  
28 an excise tax on the gross receipts or gross proceeds derived from the sale  
29 of natural gas and electricity to a manufacturer for use directly in the  
30 actual manufacturing process at the rate of ~~four and three eighths percent~~  
31 ~~(4.375%)~~ one percent (1%).

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

35 ~~(3)(A) Beginning July 1, 2009, the tax rate levied in~~  
36 ~~subdivision (a)(1) of this section shall be imposed at the rate of three and~~



1 ~~one-eighth percent (3.125%).~~

2 ~~(B)(i) The Director of the Department of Finance and~~  
3 ~~Administration shall monitor the amount of tax savings received by all~~  
4 ~~taxpayers as a result of the reduction in the tax rate from that levied in §§~~  
5 ~~26-52-301 and 26-52-302 to that levied in subdivision (a)(3)(A) of this~~  
6 ~~section.~~

7 ~~(ii) When the director determines that the amount of~~  
8 ~~tax savings resulting from the determination described in subdivision~~  
9 ~~(a)(3)(B)(i) of this section plus any use tax savings described in § 26-53-~~  
10 ~~148(a)(3)(B) would reach twenty-seven million dollars (\$27,000,000) during a~~  
11 ~~fiscal year, the director shall not process any further refund claims through~~  
12 ~~a refund process during the fiscal year for taxpayers seeking to claim the~~  
13 ~~reduced tax rate provided by this section. The amount of twenty-seven million~~  
14 ~~dollars (\$27,000,000) is intended to cover the accumulated but unclaimed~~  
15 ~~reduction of sales and use tax on natural gas and electricity as provided by~~  
16 ~~Acts 2007, No. 185, as well as the additional reduction provided by Acts~~  
17 ~~2009, No. 695.~~

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

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

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

1 ~~(a)(3)(C)(i) of this section.~~

2 ~~(4)(A) Beginning July 1, 2011, the tax rate levied in~~  
3 ~~subdivision (a)(1) of this section shall be imposed at the rate of two and~~  
4 ~~five-eighths percent (2.625%).~~

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

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

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

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

36 ~~(ii) The statute of limitations for refunds and~~

1 ~~amended returns under § 26-18-306(i)(1)(A) is extended for one (1) year to~~  
 2 ~~allow the payment of a refund under the process provided in subdivision~~  
 3 ~~(a)(4)(C)(i) of this section.~~

4 (B)(i) Beginning July 1, 2014, the sale of natural gas and  
 5 electricity to a manufacturer for use directly in the actual manufacturing  
 6 process is exempt from the gross receipts or gross proceeds tax levied in §§  
 7 26-52-301 and § 26-52-302 and this section.

8 (ii) However, the sale of natural gas and  
 9 electricity to a manufacturer for use directly in the actual manufacturing  
 10 process shall remain subject to the excise tax of one-eighth of one percent  
 11 (1/8 of 1%) levied in Amendment 75 to the Arkansas Constitution and the  
 12 temporary excise tax of one-half percent (1/2%) levied in Amendment 91 to the  
 13 Arkansas Constitution.

14 ~~(5)~~ (2) The taxes levied in this subsection shall be distributed  
 15 as follows:

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

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

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

25 ~~(6)(A)~~ (3)(A) The excise tax levied in this section applies only  
 26 to natural gas and electricity sold for use directly in the actual  
 27 manufacturing process.

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

31 ~~(7)~~ (4) The excise tax levied in this section shall be  
 32 collected, reported, and paid in the same manner and at the same time as is  
 33 prescribed by law for the collection, reporting, and payment of all other  
 34 Arkansas gross receipts taxes.

35 (b) As used in this section, "manufacturer" means a:

36 (1) Manufacturer classified within sectors 31 through 33 of the

1 North American Industry Classification System, as in effect on January 1,  
 2 2011; or

3 (2) Generator of electric power classified within sector 22 of  
 4 the North American Industry Classification System, as in effect on January 1,  
 5 2011, that uses natural gas to operate a new or existing generating facility  
 6 that uses combined-cycle gas turbine technology.

7 (c)(1) Except as otherwise provided in ~~subdivision (e)(2)(G) of this~~  
 8 ~~section~~ this subsection, the tax rate under subsection (a) of this section  
 9 does not apply to a manufacturer as defined in subdivision (b)(2) of this  
 10 section.

11 (2) In lieu of the tax rate under subsection (a) of this  
 12 section, the excise tax rate levied on the gross receipts or gross proceeds  
 13 derived from the sale of natural gas and electricity to a manufacturer as  
 14 defined in subdivision (b)(2) of this section to operate a new or existing  
 15 facility that uses combined-cycle gas turbine technology is as follows:

16 (A) Beginning January 1, 2012, five and ~~one-eighths~~ one-  
 17 eighth percent (5.125%);

18 (B) Beginning January 1, 2013, four and ~~one-eighths~~ one-  
 19 eighth percent (4.125%); ~~and~~

20 (C) Beginning January 1, 2014, two and five-eighths  
 21 percent (2.625%);

22 (D) Beginning January 1, 2015, one percent (1%); and

23 (E)(i) Beginning January 1, 2016, the sale of natural gas  
 24 and electricity to a manufacturer as defined in subdivision (b)(2) of this  
 25 section to operate a new or existing facility that uses combined-cycle gas  
 26 turbine technology is exempt from the gross receipts or gross proceeds tax  
 27 levied in §§ 26-52-301 and § 26-52-302 and this section.

28 (ii) However, the sale of natural gas and  
 29 electricity to a manufacturer as defined in subdivision (b)(2) of this  
 30 section to operate a new or existing facility that uses combined-cycle gas  
 31 turbine technology shall remain subject to the excise tax of one-eighth of  
 32 one percent (1/8 of 1%) levied in Amendment 75 to the Arkansas Constitution  
 33 and the temporary excise tax of one-half percent (1/2%) levied in Amendment  
 34 91 to the Arkansas Constitution.

35 ~~(3)(A) The amount of tax savings described in subdivision~~  
 36 ~~(a)(4)(B)(i) of this section does not include any tax savings received by a~~

1 ~~manufacturer as defined in subdivision (b)(2) of this section.~~

2 ~~(B) Manufacturers as defined in subdivision (b)(2) of this~~  
 3 ~~section are not subject to the dollar limitations on refunds and amended~~  
 4 ~~returns stated in subsection (a) of this section.~~

5 ~~(4)~~ (3) The taxes levied in this subsection shall be distributed  
 6 in the same manner as ~~set out~~ stated in subsection (a) of this section.

7  
 8 SECTION 2. Arkansas Code § 26-53-148(a)-(c), concerning the  
 9 compensating use tax on natural gas and electricity used by manufacturers,  
 10 are amended to read as follows:

11 (a)(1)(A) Beginning July 1, ~~2007~~ 2013, in lieu of the tax levied in §§  
 12 26-53-106 and 26-53-107, there is levied an excise tax on the sales price of  
 13 natural gas and electricity purchased by a manufacturer for use directly in  
 14 the actual manufacturing process at the rate of ~~four and three-eighths~~  
 15 ~~percent (4.375%)~~ one percent (1%).

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

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

22 ~~(B)(i) The Director of the Department of Finance and~~  
 23 ~~Administration shall monitor the amount of tax savings received by all~~  
 24 ~~taxpayers as a result of the reduction in the tax rate from that levied in §§~~  
 25 ~~26-53-106 and 26-53-107 to that levied in subdivision (a)(3)(A) of this~~  
 26 ~~section.~~

27 ~~(ii) When the director determines that the amount of~~  
 28 ~~tax savings resulting from the determination described in subdivision~~  
 29 ~~(a)(3)(B)(i) of this section plus any gross receipts tax savings described in~~  
 30 ~~§ 26-52-319(a)(3)(B) would reach twenty-seven million dollars (\$27,000,000)~~  
 31 ~~during a fiscal year, the director shall not process any further refund~~  
 32 ~~claims through a refund process during the fiscal year for taxpayers seeking~~  
 33 ~~to claim the reduced tax rate provided by this section. The amount of twenty-~~  
 34 ~~seven million dollars (\$27,000,000) is intended to cover the accumulated but~~  
 35 ~~unclaimed reduction of sales and use tax on natural gas and electricity as~~  
 36 ~~provided by Acts 2007, No. 185, as well as the additional reduction provided~~

1 ~~by Acts 2009, No. 695.~~

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

9 ~~(C)(i) Refund requests and amended returns filed with the~~  
10 ~~director to claim the overpayment resulting from the reduced rate in~~  
11 ~~subdivision (a)(3)(A) of this section will be processed in the order they are~~  
12 ~~received by the director. A taxpayer that does not receive a refund after the~~  
13 ~~refund and amended return process has ceased under subdivision (a)(3)(B) of~~  
14 ~~this section shall be given priority to receive a refund during the~~  
15 ~~subsequent fiscal year. The unpaid refunds from the prior fiscal year shall~~  
16 ~~be processed before any refund claims filed in the current fiscal year to~~  
17 ~~claim the benefit of this section.~~

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

22 ~~(4)(A) Beginning July 1, 2011, the tax rate levied in~~  
23 ~~subdivision (a)(1) of this section shall be imposed at the rate of two and~~  
24 ~~five-eighths percent (2.625%).~~

25 ~~(B)(i) The Director of the Department of Finance and~~  
26 ~~Administration shall monitor the amount of tax savings received by all~~  
27 ~~taxpayers as a result of the reduction in the tax rate from that levied in §§~~  
28 ~~26-53-106 and 26-53-107 to that levied in subdivision (a)(4)(A) of this~~  
29 ~~section.~~

30 ~~(ii) When the director determines that the amount of~~  
31 ~~tax savings resulting from the determination described in subdivision~~  
32 ~~(a)(4)(B)(i) of this section plus any gross receipts tax savings described in~~  
33 ~~§ 26-52-319(a)(4)(B) would reach twenty-seven million dollars (\$27,000,000)~~  
34 ~~during a fiscal year, the director shall not process any further refund~~  
35 ~~claims through a refund process during the fiscal year for taxpayers seeking~~  
36 ~~to claim the reduced tax rate provided by this section. The amount of twenty-~~

1 seven million dollars (\$27,000,000) is intended to cover the accumulated but  
 2 unclaimed reduction of sales and use tax on natural gas and electricity as  
 3 provided by this section.

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

11 ~~(C)(i) Refund requests and amended returns filed with the~~  
 12 ~~director to claim the overpayment resulting from the reduced rate in~~  
 13 ~~subdivision (a)(4)(A) of this section will be processed in the order they are~~  
 14 ~~received by the director. A taxpayer that does not receive a refund after the~~  
 15 ~~refund and amended return process has ceased under subdivision (a)(4)(B) of~~  
 16 ~~this section shall be given priority to receive a refund during the~~  
 17 ~~subsequent fiscal year. The unpaid refunds from the prior fiscal year shall~~  
 18 ~~be processed before any refund claims filed in the current fiscal year to~~  
 19 ~~claim the benefit of this section.~~

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

24 (B)(i) Beginning July 1, 2014, natural gas and electricity  
 25 purchased by a manufacturer for use directly in the actual manufacturing  
 26 process are exempt from the compensating use tax levied in §§ 26-53-106 and §  
 27 26-53-107 and this section.

28 (ii) However, natural gas and electricity purchased  
 29 by a manufacturer for use directly in the actual manufacturing process shall  
 30 remain subject to the excise tax of one-eighth of one percent (1/8 of 1%)  
 31 levied in Amendment 75 to the Arkansas Constitution and the temporary excise  
 32 tax of one-half percent (1/2%) levied in Amendment 91 to the Arkansas  
 33 Constitution.

34 ~~(5) (2)~~ The taxes levied in this subsection shall be distributed  
 35 as follows:

36 (A) Seventy-six and six-tenths percent (76.6%) of the tax,



1 interest, penalties, and costs received by the director shall be deposited as  
 2 general revenues;

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

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

9 ~~(6)(A)~~ (3)(A) The excise tax levied in this section applies only  
 10 to natural gas and electricity purchased for use directly in the actual  
 11 manufacturing process.

12 (B) Natural gas and electricity purchased for any other  
 13 purpose shall be subject to the full compensating use tax levied under §§ 26-  
 14 53-106 and 26-53-107.

15 ~~(7)~~ (4) The excise tax levied in this section shall be  
 16 collected, reported, and paid in the same manner and at the same time as is  
 17 prescribed by law for the collection, reporting, and payment of all other  
 18 Arkansas compensating use taxes.

19 (b) As used in this section, "manufacturer" means a:

20 (1) Manufacturer classified within sectors 31 through 33 of the  
 21 North American Industry Classification System, as in effect on January 1,  
 22 2011; or

23 (2) Generator of electric power classified within sector 22 of  
 24 the North American Industry Classification System, as in effect on January 1,  
 25 2011, that uses natural gas to operate a new or existing generating facility  
 26 that uses combined-cycle gas turbine technology.

27 (c)(1) Except as otherwise provided in ~~subdivision (e)(2)(C) of this~~  
 28 ~~section~~ this subsection, the tax rate under subsection (a) of this section  
 29 does not apply to a manufacturer as defined in subdivision (b)(2) of this  
 30 section.

31 (2) In lieu of the tax rate under subsection (a) of this  
 32 section, the excise tax rate levied on the sales price of natural gas and  
 33 electricity purchased by a manufacturer as defined in subdivision (b)(2) of  
 34 this section to operate a new or existing facility that uses combined-cycle  
 35 gas turbine technology is as follows:

36 (A) Beginning January 1, 2012, five and ~~one-eighth~~ one-

1 eighth percent (5.125%);

2 (B) Beginning January 1, 2013, four and ~~one-eighths~~ one-  
3 eighth percent (4.125%); ~~and~~

4 (C) Beginning January 1, 2014, two and five-eighths  
5 percent (2.625%);

6 (D) Beginning January 1, 2015, one percent (1%); and

7 (E)(i) Beginning January 1, 2016, natural gas and  
8 electricity purchased by a manufacturer as defined in subdivision (b)(2) of  
9 this section to operate a new or existing facility that uses combined-cycle  
10 gas turbine technology is exempt from the compensating use tax levied in §§  
11 26-53-106 and § 26-53-107 and this section.

12 (ii) However, natural gas and electricity purchased  
13 by a manufacturer as defined in subdivision (b)(2) of this section to operate  
14 a new or existing facility that uses combined-cycle gas turbine technology  
15 shall remain subject to the excise tax of one-eighth of one percent (1/8 of  
16 1%) levied in Amendment 75 to the Arkansas Constitution and the temporary  
17 excise tax of one-half percent (1/2%) levied in Amendment 91 to the Arkansas  
18 Constitution.

19 ~~(3)(A) The amount of tax savings described in subdivision~~  
20 ~~(a)(4)(B)(i) of this section does not include any tax savings received by a~~  
21 ~~manufacturer as defined in subdivision (b)(2) of this section.~~

22 ~~(B) Manufacturers as defined in subdivision (b)(2) of this~~  
23 ~~section are not subject to the dollar limitations on refunds and amended~~  
24 ~~returns stated in subsection (a) of this section.~~

25 ~~(4) (3)~~ The taxes levied in this subsection shall be distributed  
26 in the same manner as ~~set out~~ stated in subsection (a) of this section.

27  
28 SECTION 3. EMERGENCY CLAUSE. It is found and determined by the  
29 General Assembly of the State of Arkansas that the costs of manufacturing  
30 continue to rise; that the Arkansas unemployment rate continues to be high;  
31 that the economy has dramatically affected manufacturers, resulting in  
32 layoffs of numerous Arkansans; that reducing the sales and use tax on natural  
33 gas and electricity used by manufacturers would provide manufacturers with  
34 additional revenues to support an increase in their number of employees,  
35 which would increase production and provide lucrative employment for  
36 Arkansans; and that this act is necessary to aid the continual recovery of

1 the Arkansas economy. Therefore, an emergency is declared to exist, and this  
2 act being necessary for the preservation of the public peace, health, and  
3 safety shall become effective on July 1, 2013.

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