

Stricken language would be deleted from and underlined language would be added to the law as it existed prior to this session of the General Assembly.

Act 695 of the Regular Session

1 State of Arkansas  
2 87th General Assembly  
3 Regular Session, 2009  
4

As Engrossed: S3/12/09

A Bill

SENATE BILL 875

5 By: Senators Horn, Faris, Altes, Trusty  
6  
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8 **For An Act To Be Entitled**

9 AN ACT TO REDUCE THE SALES AND USE TAX RATE ON  
10 UTILITIES USED BY A MANUFACTURER; AND FOR OTHER  
11 PURPOSES.  
12

13 **Subtitle**

14 TO REDUCE THE SALES AND USE TAX RATE ON  
15 UTILITIES USED BY A MANUFACTURER.  
16  
17

18 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:  
19

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

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

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

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

33 *(B)(i) The Director of the Department of Finance and*  
34 *Administration shall monitor the amount of tax savings received by all*  
35 *taxpayers as a result of the reduction in the tax rate from that levied in §§*



1 26-52-301 and 26-52-302 to that levied in subdivision (a)(3)(A) of this  
2 section.

3 (ii) When the director determines that the amount of  
4 tax savings resulting from the determination described in subdivision  
5 (a)(3)(B)(i) of this section plus any use tax savings described in § 26-53-  
6 148(a)(3)(B) would reach twenty-seven million dollars (\$27,000,000) during a  
7 fiscal year, the director shall not process any further refund claims through  
8 a refund process during the fiscal year for taxpayers seeking to claim the  
9 reduced tax rate provided by this section. The amount of twenty-seven million  
10 dollars (\$27,000,000) is intended to cover the accumulated but unclaimed  
11 reduction of sales and use tax on natural gas and electricity as provided by  
12 Act 185 of 2007 (Ark. Code 26-52-319 and Ark. Code 26-53-148) as well as the  
13 additional reduction provided by this Act.

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

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

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

34 ~~(3)~~(4) The taxes levied in this subsection (a) shall be  
35 distributed as follows:

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

1 interest, penalties, and costs received by the Director of the Department of  
2 Finance and Administration shall be deposited as 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 ~~(4)(5)~~(A) The excise tax levied in this section applies only to  
10 natural gas and electricity sold for use directly in the actual manufacturing  
11 process.

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

15 ~~(5)(6)~~ The excise tax levied in this section shall be collected,  
16 reported, and paid in the same manner and at the same time as is prescribed  
17 by law for the collection, reporting, and payment of all other Arkansas gross  
18 receipts taxes.

19  
20 SECTION 2. Arkansas Code § 26-53-148 is amended to read as follows:

21 26-53-148. Natural gas and electricity used by manufacturers.

22 (a)(1) Beginning July 1, 2007, in lieu of the tax levied in §§ 26-53-  
23 106 and 26-53-107(a)-(d), there is levied an excise tax on the sales price of  
24 natural gas and electricity purchased by a manufacturer for use directly in  
25 the actual manufacturing process at the rate of four and three-eighths  
26 percent (4.375%).

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

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

33 (B)(i) The Director of the Department of Finance and  
34 Administration shall monitor the amount of tax savings received by all  
35 taxpayers as a result of the reduction in the tax rate from that levied in §§  
36 26-53-106 and 26-53-107 to that levied in subdivision (a)(3)(A) of this

1 section.

2 (ii) When the director determines that the amount of  
3 tax savings resulting from the determination described in subdivision  
4 (a)(3)(B)(i) of this section plus any gross receipts tax savings described in  
5 § 26-52-319(a)(3)(B) would reach twenty-seven million dollars (\$27,000,000)  
6 during a fiscal year, the director shall not process any further refund  
7 claims through a refund process during the fiscal year for taxpayers seeking  
8 to claim the reduced tax rate provided by this section. The amount of twenty-  
9 seven million dollars (\$27,000,000) is intended to cover the accumulated but  
10 unclaimed reduction of sales and use tax on natural gas and electricity as  
11 provided by Act 185 of 2007 (Ark. Code 26-52-319 and Ark. Code 26-53-148) as  
12 well as the additional reduction provided by this section.

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

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

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

33 ~~(3)(4)~~ The taxes levied in subsection (a) of this section shall  
34 be distributed as follows:

35 (A) Seventy-six and six-tenths percent (76.6%) of the tax,  
36 interest, penalties, and costs received by the Director of the Department of

1 Finance and Administration shall be deposited as general revenues;

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

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

8 ~~(4)~~(5) (A) The excise tax levied in this section applies only to  
9 natural gas and electricity purchased for use directly in the actual  
10 manufacturing process.

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

14 ~~(5)~~(6) The excise tax levied in this section shall be collected,  
15 reported, and paid in the same manner and at the same time as is prescribed  
16 by law for the collection, reporting, and payment of all other Arkansas  
17 compensating use taxes.

18  
19 SECTION 3. EMERGENCY CLAUSE. It is found and determined by the  
20 General Assembly that manufacturers in this state have suffered losses due to  
21 sharp increases in energy costs; that these manufacturers are unable to set  
22 the price for the products they produce and are particularly vulnerable to  
23 price volatility; that the current sales and use tax on utilities consumed by  
24 these manufacturers located within this state creates a competitive  
25 disadvantage; that this act is intended to address that problem by providing  
26 a reduced tax rate on utilities consumed by manufacturers located in this  
27 state; and that this act is necessary to prevent the loss of manufacturing  
28 jobs. Therefore, an emergency is hereby declared to exist and this act being  
29 necessary for the preservation of public peace, health, and safety shall  
30 become effective on July 1, 2009.

31 /s/ Horn

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33 APPROVED: 3/30/2009  
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