

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 691 of the Regular Session

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

As Engrossed: H3/11/09 H3/13/09

A Bill

HOUSE BILL 1624

5 By: Representatives Dunn, *Lowery, Maloch, M. Burris*, Baird, Barnett, Breedlove, J. Burris, Carnine,
6 Carter, Clemmer, Dale, Dismang, English, Garner, Glidewell, R. Green, Hopper, D. Hutchinson, Hyde,
7 Kerr, King, Lea, S. Malone, M. Martin, Moore, Pennartz, Reynolds, Rice, J. Roebuck, Wells, *Ragland*
8
9

For An Act To Be Entitled

10 AN ACT TO PROMOTE ECONOMIC DEVELOPMENT WITHIN THE
11 STATE BY EXEMPTING FROM THE STATE SALES TAX FUEL AND
12 ENERGY USED OR CONSUMED IN MANUFACTURING;
13 AND FOR OTHER PURPOSES.
14

Subtitle

15 TO PROMOTE ECONOMIC DEVELOPMENT WITHIN
16 THE STATE BY EXEMPTING FROM THE STATE
17 SALES TAX FUEL AND ENERGY USED OR
18 CONSUMED IN MANUFACTURING.
19
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22

23 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:
24

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

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

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-~~eights~~*
34 *eighths percent (3.875%).*

35 *(3)(A) Beginning July 1, 2009, the tax rate levied in*



1 subdivision (a)(1) of this section shall be imposed at the rate of three and
2 one-eighth percent (3.125%).

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

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

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

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

35 (ii) The statute of limitations for refunds and
36 amended returns under § 26-18-306(h)(i)(1)(A) is extended for one (1) year to

1 allow the payment of a refund under the process provided in subdivision
 2 (a)(3)(C)(i) of this section.

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

5 (A) Seventy-six and six-tenths percent (76.6%) of the tax,
 6 interest, penalties, and costs received by the Director of the Department of
 7 Finance and Administration shall be deposited as general revenues;

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

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

14 ~~(4)(5)~~(A) The excise tax levied in this section applies only to
 15 natural gas and electricity sold for use directly in the actual manufacturing
 16 process.

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

20 ~~(5)(6)~~ The excise tax levied in this section shall be collected,
 21 reported, and paid in the same manner and at the same time as is prescribed
 22 by law for the collection, reporting, and payment of all other Arkansas gross
 23 receipts taxes.

24
 25 SECTION 2. Arkansas Code § 26-53-148 is amended to read as follows:

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

27 (a)(1) Beginning July 1, 2007, in lieu of the tax levied in §§ 26-53-
 28 106 and 26-53-107(a)-(d), there is levied an excise tax on the sales price of
 29 natural gas and electricity purchased by a manufacturer for use directly in
 30 the actual manufacturing process at the rate of four and three-eighths
 31 percent (4.375%).

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-eighths
 34 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 26-53-106 and 26-53-107 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 gross receipts tax savings described in
10 § 26-52-319(a)(3)(B) would reach twenty-seven million dollars (\$27,000,000)
11 during a fiscal year, the director shall not process any further refund
12 claims through a refund process during the fiscal year for taxpayers seeking
13 to claim the reduced tax rate provided by this section. The amount of twenty-
14 seven million dollars (\$27,000,000) is intended to cover the accumulated but
15 unclaimed reduction of sales and use tax on natural gas and electricity as
16 provided by Act 185 of 2007 (Ark. Code 26-52-319 and Ark. Code 26-53-148) as
17 well as the additional reduction provided by this section.

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

34 (ii) The statute of limitations for refunds and
35 amended returns under § 26-18-306(h)(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 ~~(3)(4)~~ The taxes levied in subsection (a) of this section shall
3 be distributed as follows:

4 (A) Seventy-six and six-tenths percent (76.6%) of the tax,
5 interest, penalties, and costs received by the Director of the Department of
6 Finance and Administration shall be deposited as general revenues;

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

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

13 ~~(4)(5)~~(A) The excise tax levied in this section applies only to
14 natural gas and electricity purchased for use directly in the actual
15 manufacturing process.

16 (B) Natural gas and electricity purchased for any other
17 purpose shall be subject to the full compensating use tax levied under §§ 26-
18 53-106 and 26-53-107(a)-(d).

19 ~~(5)(6)~~ The excise tax levied in this section shall be collected,
20 reported, and paid in the same manner and at the same time as is prescribed
21 by law for the collection, reporting, and payment of all other Arkansas
22 compensating use taxes.

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

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/s/ Du

APPROVED: 3/30/2009n