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4

As Engrossed: S4/18/13

A Bill

SENATE BILL 334

5 By: Senator Files
6 By: Representative Wren
7

For An Act To Be Entitled

9 AN ACT CONCERNING THE SALES AND USE TAX RELATING TO
10 THE PARTIAL REPLACEMENT AND REPAIR OF MACHINERY AND
11 EQUIPMENT USED DIRECTLY IN MANUFACTURING; TO REDUCE
12 THE SALES AND USE TAX RELATING TO THE PARTIAL
13 REPLACEMENT AND REPAIR OF MACHINERY AND EQUIPMENT
14 USED DIRECTLY IN MANUFACTURING; TO PROVIDE A REFUND
15 MECHANISM FOR THE SALES AND USE TAX PAID IN RELATION
16 TO THE PARTIAL REPLACEMENT AND REPAIR OF MACHINERY
17 AND EQUIPMENT USED DIRECTLY IN MANUFACTURING; AND FOR
18 OTHER PURPOSES.

Subtitle

21 *TO REDUCE THE SALES AND USE TAX RELATING*
22 *TO THE PARTIAL REPLACEMENT AND REPAIR OF*
23 *MACHINERY AND EQUIPMENT USED DIRECTLY IN*
24 *MANUFACTURING; AND TO PROVIDE A REFUND*
25 *MECHANISM FOR CERTAIN SALES AND USE*
26 *TAXES.*

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

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32 SECTION 1. Arkansas Code Title 26, Chapter 52, Subchapter 4 is amended
33 to add an additional section to read as follows:

34 26-52-446. Partial replacement and repair of certain machinery and
35 equipment.

36 (a) The taxes levied under §§ 26-52-301 and 26-52-302 on the gross



1 receipts or gross proceeds from the sale of the following are subject to a
2 refund as provided in this section:

3 (1) Machinery and equipment purchased to modify, replace, or
4 repair, either in whole or in part, existing machinery or equipment used
5 directly in producing, manufacturing, fabricating, assembling, processing,
6 finishing, or packaging articles of commerce at a manufacturing or processing
7 plant or facility in this state; and

8 (2) Service relating to the initial installation, alteration,
9 addition, cleaning, refinishing, replacement, or repair of machinery or
10 equipment described in subdivision (a)(1) of this section.

11 (b) Beginning July 1, 2014, the taxes levied under §§ 26-52-301 and
12 26-52-302 that are subject to a refund under this section are the taxes in
13 excess of four and seven-eighths percent (4.875%).

14 (c) The excise tax of one-eighth of one percent (1/8 of 1%) levied in
15 Arkansas Constitution, Amendment 75 and the temporary excise tax of one-half
16 percent (0.5%) levied in Arkansas Constitution, Amendment 91 are not subject
17 to refund under this section.

18 (d) As used in this section:

19 (1) "Manufacturing" or "processing" means the same as defined
20 under § 26-52-402(b) and includes activities described in subsection (a) of
21 this section, both independently and collectively; and

22 (2) "Used directly" means the same as defined under § 26-52-
23 402(c).

24 (e) All existing excise tax exemptions, including without limitation
25 exemptions under §§ 26-52-402 and 26-53-114, remain in full force and effect
26 and are not limited by this section.

27 (f) To claim the benefit of the tax refund under this section, a
28 taxpayer shall hold a direct pay sales and use tax permit from the Department
29 of Finance and Administration and shall claim the tax refund under the direct
30 pay permit.

31 (g) The following provisions of the Arkansas Tax Procedure Act, § 26-
32 18-101 et seq., apply to claims for a refund under this section:

33 (1) The time limitations that apply to claims for a refund of an
34 overpayment of state tax; and

35 (2) The procedures that apply to the disallowance or proposed
36 disallowance of claims for a refund.

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2 SECTION 2. Arkansas Code Title 26, Chapter 53, Subchapter 1 is amended
3 to add an additional section to read as follows:

4 26-53-149. Partial replacement and repair of certain machinery and
5 equipment.

6 (a) The taxes levied under §§ 26-53-106 and 26-53-107 on the privilege
7 of storing, using, distributing, or consuming the following within this state
8 are subject to a refund as provided in this section:

9 (1) Machinery and equipment purchased to modify, replace, or
10 repair, either in whole or in part, existing machinery or equipment used
11 directly in producing, manufacturing, fabricating, assembling, processing,
12 finishing, or packaging articles of commerce at a manufacturing or processing
13 plant or facility in this state; and

14 (2) Service relating to the initial installation, alteration,
15 addition, cleaning, refinishing, replacement, or repair of machinery or
16 equipment described in subdivision (a)(1) of this section.

17 (b) Beginning July 1, 2014, the taxes levied under §§ 26-53-106 and
18 26-53-107 that are subject to a refund under this section are the taxes in
19 excess of four and seven-eighths percent (4.875%).

20 (c) The excise tax of one-eighth of one percent (1/8 of 1%) levied in
21 Arkansas Constitution, Amendment 75 and the temporary excise tax of one-half
22 percent (0.5%) levied in Arkansas Constitution, Amendment 91 are not subject
23 to refund under this section.

24 (d) As used in this section:

25 (1) "Manufacturing" or "processing" means the same as defined
26 under § 26-53-114(b) and includes activities described in subsection (a) of
27 this section, both independently and collectively; and

28 (2) "Used directly" means the same as defined under § 26-53-
29 114(c).

30 (e) All existing excise tax exemptions, including without limitation
31 exemptions under §§ 26-52-402 and 26-53-114, remain in full force and effect
32 and are not limited by this section.

33 (f) To claim the benefit of the tax refund under this section, a
34 taxpayer shall hold a direct pay sales and use tax permit from the Department
35 of Finance and Administration and shall claim the tax refund under the direct
36 pay permit.

1 (g) The following provisions of the Arkansas Tax Procedure Act, § 26-
2 18-101 et seq., apply to claims for a refund under this section:

3 (1) The time limitations that apply to claims for a refund of an
4 overpayment of state tax; and

5 (2) The procedures that apply to the disallowance or proposed
6 disallowance of claims for a refund.

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8 SECTION 3. *Arkansas Code Title 15, Chapter 4, is amended to add an*
9 *additional subchapter to read as follows:*

10 Subchapter 35 – Incentives for Major Maintenance and Improvement Projects
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12 15-4-3501. Increased tax refund for major maintenance and improvement
13 projects.

14 (a) A taxpayer that is eligible for a refund of excise taxes under §
15 26-52-446 or § 26-53-149 is eligible for a refund of one hundred percent
16 (100%) of the sales and use taxes levied in §§ 26-52-301, 26-52-302, 26-53-
17 106, and 26-53-107 on the tangible personal property and services subject to
18 §§ 26-52-446 and 26-53-149 for projects that meet the following requirements:

19 (1) The taxpayer has entered into a financial incentive
20 agreement with the Arkansas Economic Development Commission for the project;
21 and

22 (2) The taxpayer expends at least three million dollars
23 (\$3,000,000) on an approved project that includes the purchase of tangible
24 personal property and services that are either exempt or subject to a partial
25 refund of tax under § 26-52-402, § 26-52-446, § 26-53-114, or § 26-53-149.

26 (b) A taxpayer shall file with the commission an application for the
27 increased refund for major maintenance and improvement projects provided in
28 this section.

29 (c) The increased refund of sales and use taxes for major maintenance
30 and improvement projects provided in this section is a discretionary
31 incentive and is not available unless offered by the Director of the Arkansas
32 Economic Development Commission.

33 (d) The Director of the Arkansas Economic Development Commission shall
34 forward the taxpayer's application, financial incentive agreement, any other
35 pertinent documentation, and a written copy of the determination under this
36 subsection to the Director of the Department of Finance and Administration if

1 the Director of the Arkansas Economic Development Commission:

2 (1) Determines that the taxpayer is eligible for the increased
3 refund for major maintenance and improvement projects provided for in this
4 section;

5 (2) Determines that the taxpayer has provided reasonable proof
6 that there will be a positive return on the taxpayer's investment in the
7 major maintenance and improvement project that is sufficient to offset the
8 taxes refunded under this section;

9 (3) Determines that the taxpayer has provided a defined scope,
10 beginning date, and ending date for the major maintenance and improvement
11 project;

12 (4) Determines that the refund is reasonably necessary for the
13 taxpayer to remain competitive and preserve Arkansas jobs; and

14 (5) Agrees to provide the incentive under this section.

15 (e) A taxpayer that has been approved for the increased refund for
16 major maintenance and improvement projects provided for in this section may
17 make changes in a major maintenance and improvement project by written
18 amendment to the project plan filed with the commission as part of the
19 financial incentive agreement required under this section.

20 (f) Except as otherwise provided in this section, a refund under this
21 section is subject to the Arkansas Tax Procedure Act, § 26-18-101 et seq., in
22 the same manner as other refunds permitted under § 26-18-507.

23 (g) An expenditure shall not qualify for both the increased refund for
24 major maintenance and improvement projects under this section and the
25 retention tax credit provided for in § 15-4-2706(c).

26 (h) The Director of the Arkansas Economic Development Commission and
27 the Director of the Arkansas Department of Finance and Administration may
28 promulgate rules necessary to implement this section.

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30 SECTION 4. EFFECTIVE DATE. This act is effective on and after July 1,
31 2014.

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33 /s/Files
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