

ARKANSAS SENATE
87th General Assembly - Regular Session, 2009
Amendment Form

Subtitle of Senate Bill No. 875

"TO REDUCE THE SALES AND USE TAX RATE ON UTILITIES USED BY A
MANUFACTURER."

Amendment No. 2 to Senate Bill No. 875.

Amend Senate Bill No. 875 as originally introduced:

Add Senators Faris, Altes, Trusty as cosponsors of the bill

AND

Delete all the language after the enacting clause and substitute the following:

"SECTION 1: Arkansas Code § 26-52-319(a), 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 ~~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 Administration shall monitor the amount of tax savings received by all taxpayers as a result of the reduction in the tax rate from that levied in §§ 26-52-301 and 26-52-302 to that levied in subdivision (a)(3)(A) of this section.

(ii) When the director determines that the amount of tax savings resulting from the determination described in subdivision (a)(3)(B)(i) of this section plus any use tax savings described in § 26-53-148(a)(3)(B) would reach twenty-seven million dollars (\$27,000,000) during a fiscal year, the director shall not process any further refund claims through a refund process during the fiscal year for taxpayers seeking to claim the reduced tax rate provided by this section. The amount of twenty-seven million



dollars (\$27,000,000) is intended to cover the accumulated but unclaimed reduction of sales and use tax on natural gas and electricity as provided by Act 185 of 2007 (Ark. Code 26-52-319 and Ark. Code 26-53-148) as well as the additional reduction provided by this Act.

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

(C)(i) Refund requests and amended returns filed with the director to claim the overpayment resulting from the reduced rate in subdivision (a)(3)(A) of this section shall 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)(3)(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(h)(i)(1)(A) is extended for one (1) year to allow the payment of a refund under the process provided in subdivision (a)(3)(C)(i) of this section.

~~(3)~~(4) 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 of the Department of Finance and Administration 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.

~~(4)~~(5)(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).

~~(5)~~(6) 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.

SECTION 2. Arkansas Code § 26-53-148 is amended to read as follows:
26-53-148. Natural gas and electricity used by manufacturers.

(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%).

(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 Administration shall monitor the amount of tax savings received by all taxpayers as a result of the reduction in the tax rate from that levied in §§ 26-53-106 and 26-53-107 to that levied in subdivision (a)(3)(A) of this section.

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

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

(C)(i) Refund requests and amended returns filed with the Director of the Department of Finance to claim the overpayment resulting from the reduced rate in subdivision (a)(3)(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)(3)(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(h)(1)(A) is extended for one (1) year to allow the payment of a refund under the process provided in subdivision (a)(3)(C)(i) of this section.

~~(3)(4)~~ The taxes levied in 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 of the Department of Finance and Administration 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.

~~(4)~~(5)(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).

~~(5)~~(6) 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.

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

The Amendment was read the first time, rules suspended and read the second time and _____

By: Senator Horn

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Secretary