

# ARKANSAS SENATE

88th General Assembly - Regular Session, 2011

## Amendment Form

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### Subtitle of Senate Bill No. 275

TO ENCOURAGE THE BUILDING AND OPERATING OF HIGH-EFFICIENCY ELECTRIC  
POWER GENERATORS BY REVISING THE DEFINITION OF "MANUFACTURER" TO  
REDUCE THE TAX ON NATURAL GAS AND ELECTRICITY USED IN  
MANUFACTURING; TO DECLARE AN EMERGENCY.

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### Amendment No. 2 to Senate Bill No. 275

Amend Senate Bill No. 275 as engrossed, S2/15/11 (version: 2/15/2011 09:33:55 AM)

Add Representative Jean as a cosponsor of the bill

AND

Delete the title in its entirety and substitute the following:

"AN ACT TO DECREASE THE SALES AND USE TAX ON NATURAL GAS AND ELECTRICITY USED BY  
MANUFACTURERS; TO DECLARE AN EMERGENCY; AND FOR OTHER PURPOSES."

AND

Delete the subtitle in its entirety and substitute the following:

"TO DECREASE THE SALES AND USE TAX ON  
NATURAL GAS AND ELECTRICITY USED BY  
MANUFACTURERS AND TO DECLARE AN  
EMERGENCY."

AND

Delete everything after the enacting clause and substitute the following:

"SECTION 1. DO NOT CODIFY. The General Assembly finds that:

(1) The cost of manufacturing continues to climb;

(2) The state unemployment rate is extremely high, and the economy has dramatically  
affected manufacturers, which has resulted in numerous layoffs;



(3) Decreasing the sales and use tax rate on natural gas and electricity used by manufacturers would increase employment and production, which, in turn, would provide more lucrative employment opportunities for Arkansans;

(4) There is a need for additional electrical generation in the state to supply the utilities that serve state individuals and industry;

(5) Natural gas-fired, combined-cycle generation is the cleanest and most efficient energy produced from fossil fuel used to generate electricity, and it is in the best interest of the state to encourage the use of this technology for generating electricity;

(6) The state is at a competitive disadvantage compared to the surrounding states to attract and retain the building and operating of high-efficiency electric power generators because the state imposes a six percent (6%) sales tax on the purchase of natural gas used to generate the electricity;

(7) The state has an abundant supply of natural gas to power high-efficiency, combined-cycle technology electric power generators, and the disadvantage of the high tax should be removed as an incentive to utilities and private industry to construct and operate high-efficiency generating facilities; and

(8) Other manufacturers in the state enjoy a tax reduction on natural gas used in manufacturing, and these high-efficiency, combined-cycle technology electric power generators that manufacture electricity for resale on the wholesale market should be granted the same exemption as other manufacturers.

SECTION 2. Arkansas Code § 26-52-319 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 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 Acts 2007, No. 185, as well as the additional reduction provided by Acts 2009, No. 695.

(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(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.

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

(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)(4)(A) of this section.

(ii) When the director determines that the amount of tax savings resulting from the determination described in subdivision (a)(4)(B)(i) of this section plus any use tax savings described in § 26-53-148(a)(4)(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 this section.

(iii) If the director determines that discontinuing refund payments as provided in subdivision (a)(4)(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)(4)(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)(4)(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(i)(1)(A) is extended for one (1) year to allow the payment of a refund under the process provided in subdivision (a)(4)(C)(i) of this section.

~~(4)~~ (5) 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 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.

~~(5)(A)~~ (6)(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)~~.

~~(6)~~ (7) 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.

(b) As used in this section, "manufacturer" means a ~~manufacturer~~;

(1) Manufacturer classified within sectors 31 through 33 of the North American Industry Classification System, as in effect on ~~January 1, 2007~~ January 1, 2011; or

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

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

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

(A) Beginning July 1, 2011, five and one-eighth percent (5.125%);

(B) Beginning July 1, 2012, four and one-eighth percent (4.125%); and

(C) Beginning July 1, 2013, the rate under subsection (a) of this section.

~~(e)~~ (d) Natural gas and electricity subject to the reduced tax rate levied in this section shall be separately metered from natural gas and electricity used for any other purpose by the manufacturer or otherwise established in accordance with the rules issued under subsection ~~(e)~~ (f) of this section.

~~(d)~~ (e) ~~Prior to~~ Before the sale of natural gas or electricity at the reduced excise tax rate levied in this section, the director may require any seller of natural gas or electricity to obtain a certificate from the consumer, in the form prescribed by the director, certifying that the manufacturer is eligible to purchase natural gas and electricity at the reduced excise tax rate.

~~(e)~~ (f) The director shall ~~have and be invested with full power and authority to~~ promulgate rules for the proper administration of this section.

~~(f)~~ (g) The gross receipts or gross proceeds derived from the sale of natural gas and electricity to a manufacturer shall continue to be subject to:

(1) The excise tax levied under the Arkansas Constitution, Amendment 75, § 2; and

(2) All municipal and county gross receipts taxes.

~~(g)~~ (h) All existing exemptions from the gross receipts tax levied by this chapter and the compensating use tax levied by the Arkansas Compensating Tax Act of 1949, § 26-53-101 et seq., for natural gas or electricity used in manufacturing or for other purposes that are otherwise provided by law shall continue in effect.

SECTION 3. Arkansas Code § 26-53-148 is amended to read as follows:

(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 Acts 2007, No. 185, as well as the additional reduction provided by Acts 2009, No. 695.

(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 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(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.

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

(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)(4)(A) of this section.

(ii) When the director determines that the amount of tax savings resulting from the determination described in subdivision (a)(4)(B)(i) of this section plus any gross receipts tax savings described in § 26-52-319(a)(4)(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 this section.

(iii) If the director determines that discontinuing refund payments as provided in subdivision (a)(4)(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)(4)(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)(4)(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(i)(1)(A) is extended for one (1) year to allow the payment of a refund under the process provided in subdivision (a)(4)(C)(i) of this section.

(4) (5) The taxes levied in this 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 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.

~~(5)(A)~~ (6)(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)~~.

~~(6)~~ (7) 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.

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

(1) Manufacturer classified within sectors 31 through 33 of the North American Industry Classification System, as in effect on ~~January 1, 2007~~, January 1, 2011; or

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

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

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

(A) Beginning July 1, 2011, five and one-eighth percent (5.125%);

(B) Beginning July 1, 2012, four and one-eighth percent (4.125%); and

(C) Beginning July 1, 2013, the rate under subsection (a) of this section.

~~(e)~~ (d) Natural gas and electricity subject to the reduced tax rate levied in this section shall be separately metered from natural gas and electricity used for any other purpose by the manufacturer or otherwise established ~~in accordance with the rules issued~~ under subsection ~~(e)~~ (f) of this section.

~~(d)~~ (e) Prior to ~~Before~~ purchasing any natural gas or electricity at the reduced excise tax rate levied in this section, the director may require any seller of natural gas or electricity to obtain a certificate from the consumer, in the form prescribed by the director, certifying that the manufacturer is eligible to purchase natural gas and electricity at the reduced excise tax rate.

~~(e)~~ (f) The director shall ~~have and be invested with full power and authority to~~ promulgate rules for the proper administration of this section.

~~(f)~~ (g) The purchase of natural gas and electricity by a manufacturer shall continue to be subject to:

(1) The excise tax levied under the Arkansas Constitution, Amendment 75, § 2; and

(2) All municipal and county compensating use taxes.

SECTION 4. EMERGENCY CLAUSE. It is found and determined by the General Assembly of the State of Arkansas that the cost of manufacturing continues to climb; that the Arkansas unemployment rate is extremely high; that the economy has dramatically affected manufacturers and resulted in layoffs; that decreasing the sales and use tax on natural gas and electricity used by manufacturers would provide manufacturers with a way to increase the number of employees and that this, in turn, would increase production and provide lucrative employment for Arkansans. Therefore, an emergency is declared to exist and this act being necessary for the preservation of the public peace, health, and safety shall become effective on July 1, 2011."

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

By: Senator B. Sample

JLL/JLL - 02/15/11 03:43

JLL093

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Secretary