

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.

INTERIM STUDY PROPOSAL 2009-108

State of Arkansas
87th General Assembly
Regular Session, 2009

A Bill

HOUSE BILL 1915

By: Representative L. Cowling

Filed with: House Interim Committee on Revenue and Taxation
pursuant to A.C.A. §10-3-217.

For An Act To Be Entitled

AN ACT TO STABILIZE THE TAX ON ELECTRICITY,
NATURAL GAS, AND PROPANE GAS BY REDUCING THE
SALES TAX ON THE PURCHASE PRICE AND LEVYING A
SPECIAL EXCISE TAX BASED ON THE VOLUME OF
ELECTRICITY, NATURAL GAS, AND PROPANE GAS
PURCHASED; AND FOR OTHER PURPOSES.

Subtitle

TO STABILIZE THE TAX ON ELECTRICITY,
NATURAL GAS, AND PROPANE GAS BY REDUCING
THE SALES TAX ON THE PURCHASE PRICE AND
LEVYING A SPECIAL EXCISE TAX BASED ON
THE VOLUME OF ELECTRICITY, NATURAL GAS,
AND PROPANE GAS PURCHASED.

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

SECTION 1. The introductory language of Arkansas Code § 26-52-301,
concerning the levy of the sales tax, is amended to read as follows:

Except for food and food ingredients that are taxed under § 26-52-317
and electricity, natural gas, and propane gas that are taxed under § 26-52-
322, there is levied an excise tax of three percent (3%) upon the gross
proceeds or gross receipts derived from all sales to any person of the
following:



1
2 SECTION 2. Arkansas Code § 26-52-301(2), concerning the levy of the
3 sales tax, is amended to read as follows:

4 (2) ~~Natural or artificial~~ Artificial gas except propane gas,
5 ~~electricity,~~ water, ice, steam, or any other utility or public service,
6 except transportation services, sewer services, and sanitation or garbage
7 collection services;

8
9 SECTION 3. Arkansas Code § 26-52-302. Additional taxes levied.

10 (a)(1) In addition to the excise tax levied upon the gross proceeds or
11 gross receipts derived from all sales by this chapter, except for food and
12 food ingredients that are taxed under § 26-52-317 and electricity, natural
13 gas, and propane gas that are taxed under § 26-52-322, there is levied an
14 excise tax of one percent (1%) upon all taxable sales of property and
15 services subject to the tax levied in this chapter.

16 (2) This tax shall be collected, reported, and paid in the same
17 manner and at the same time as is prescribed by law for the collection,
18 reporting, and payment of all other Arkansas gross receipts taxes.

19 (3) In computing gross receipts or gross proceeds as defined in
20 § 26-52-103, a deduction shall be allowed for bad debts resulting from the
21 sale of tangible personal property.

22 (b)(1) In addition to the excise tax levied upon the gross proceeds or
23 gross receipts derived from all sales by this chapter, except for food and
24 food ingredients that are taxed under § 26-52-317 and electricity, natural
25 gas, and propane gas that are taxed under § 26-52-322, there is hereby levied
26 an excise tax of one-half of one percent (0.5%) upon all taxable sales of
27 property and services subject to the tax levied in this chapter.

28 (2) This tax shall be collected, reported, and paid in the same
29 manner and at the same time as is prescribed by law for the collection,
30 reporting, and payment of all other Arkansas gross receipts taxes.

31 (3) However, in computing gross receipts or gross proceeds as
32 defined in § 26-52-103, a deduction shall be allowed for bad debts resulting
33 from the sale of tangible personal property.

34 (c)(1) Except for food and food ingredients that are taxed under § 26-
35 52-317 and electricity, natural gas, and propane gas that are taxed under §
36 26-52-322, there is levied an additional excise tax of one-half of one

1 percent (0.5%) upon all taxable sales of property and services subject to the
2 tax levied by this chapter.

3 (2) The tax shall be collected, reported, and paid in the same
4 manner and at the same time as is prescribed by this chapter, for the
5 collection, reporting, and payment of Arkansas gross receipts taxes.

6 (d)(1) Except for food and food ingredients that are taxed under § 26-
7 52-317 and electricity, natural gas, and propane gas that are taxed under §
8 26-52-322, there is levied an additional excise tax of seven-eighths of one
9 percent (0.875%) upon all taxable sales of property and services subject to
10 the tax levied by this chapter.

11 (2) The tax shall be collected, reported, and paid in the same
12 manner and at the same time as prescribed by this chapter, for the
13 collection, reporting, and payment of Arkansas gross receipts taxes.
14

15 SECTION 4. Arkansas Code § 26-52-319(a)(4)(B), concerning natural gas
16 and electricity used by manufacturers, is amended to read as follows:

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)~~ 26-52-322.
20

21 SECTION 5. Arkansas Code Title 26, Chapter 52, Subchapter 3 is amended
22 to add an additional section to read as follows:

23 26-52-322. Electricity, natural gas, and propane gas.

24 (a)(1) Except as provided in subdivision (a)(2)(A) of this section,
25 beginning July 1, 2009, in lieu of the gross receipts or gross proceeds taxes
26 levied on electricity, natural gas, and propane gas delivered by the seller
27 under §§ 26-52-301 and 26-52-302, there is levied a tax on the gross receipts
28 or gross proceeds derived from the sale of electricity, natural gas, and
29 propane gas that is delivered by the seller at the rate of three-eighths
30 percent (0.375%) to be distributed as follows:

31 (A) Seventy-six and six-tenths percent (76.6%) of the
32 taxes, interest, penalties, and costs received by the Director of the
33 Department of Finance and Administration under this subdivision (a)(1) shall
34 be deposited as general revenues;

35 (B) Eight and five-tenths percent (8.5%) of the taxes,
36 interest, penalties, and costs received by the director under this

1 subdivision (a)(1) shall be deposited into the Property Tax Relief Trust
2 Fund; and

3 (C) Fourteen and nine-tenths percent (14.9%) of the taxes,
4 interest, penalties, and costs received by the director under this
5 subdivision (a)(1) shall be deposited into the Educational Adequacy Fund.

6 (2)(A) Electricity and natural gas sold to a manufacturer for
7 use directly in the actual manufacturing process and subject to the gross
8 receipts or gross proceeds tax levied under § 26-52-319, is not subject to
9 the tax levied in subdivision (a)(1) of this section.

10 (B) As used in this subdivision (a)(2), "manufacturer"
11 means a manufacturer classified within sectors 31 through 33 of the North
12 American Industry Classification System, as in effect on January 1, 2007.

13 (C) A manufacturer that purchases electricity or natural
14 gas subject to the reduced tax rate levied in subdivision (a)(1) of this
15 section shall separately meter the electricity and natural gas used by the
16 manufacturer in the actual manufacturing process under § 26-52-319.

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

21 (c) The gross receipts or gross proceeds derived from the sale of
22 electricity, natural gas, and propane gas shall continue to be subject to
23 the:

24 (1) Excise tax levied under Arkansas Constitution, Amendment 75,
25 § 2; and

26 (2) All municipal and county gross receipts taxes.

27 (d) The Department of Finance and Administration shall promulgate
28 rules to implement this section.

29
30 SECTION 6. Arkansas Code § 26-53-106(a), concerning the imposition and
31 rate of consumer use tax, is amended to read as follows:

32 (a) There is levied and there shall be collected from every person in
33 this state a tax or excise for the privilege of storing, using, distributing,
34 or consuming within this state any article of tangible personal property or
35 taxable service purchased for storage, use, distribution, or consumption in
36 this state at the rate of three percent (3%) of the sales price of the

1 property except for food and food ingredients that are taxed under § 26-53-
2 145 and electricity, natural gas, and propane gas that are taxed under § 26-
3 53-149.

4
5 SECTION 7. Arkansas Code § 26-53-107 is amended to read as follows:
6 26-53-107. Additional taxes levied.

7 (a)(1) In addition to the excise tax levied upon the privilege of
8 storing, using, distributing, or consuming tangible personal property and
9 taxable services within this state by this subchapter there is levied an
10 excise tax of one percent (1%) upon all tangible personal property and
11 taxable services subject to the tax levied in this subchapter except for food
12 and food ingredients that are taxed under § 26-53-145 and electricity,
13 natural gas, and propane gas that are taxed under § 26-53-149.

14 (2) The tax shall be collected, reported, and paid in the same
15 manner and at the same time as is prescribed by law for the collection,
16 reporting, and payment of state compensating taxes.

17 (b)(1) In addition to the excise tax levied upon the privilege of
18 storing, using, distributing, or consuming tangible personal property and
19 taxable services within the state by this subchapter, there is levied an
20 excise tax of one-half of one percent (0.5%) upon all tangible personal
21 property and taxable services subject to the tax levied in this subchapter
22 except for food and food ingredients that are taxed under § 26-53-145 and
23 electricity, natural gas, and propane gas that are taxed under § 26-53-149.

24 (2) The tax shall be collected, reported, and paid in the same
25 manner and at the same time as is prescribed by law for the collection,
26 reporting, and payment of Arkansas compensating taxes.

27 (c)(1) There is levied an additional excise tax of one-half of one
28 percent (0.5%) upon all tangible personal property and taxable services
29 subject to the tax levied by this subchapter except for food and food
30 ingredients that are taxed under § 26-53-145 and electricity, natural gas,
31 and propane gas that are taxed under § 26-53-149.

32 (2) The tax shall be collected, reported, and paid in the same
33 manner and at the same time as is prescribed by this subchapter for the
34 collection, reporting, and payment of Arkansas compensating taxes.

35 (d)(1) There is levied an additional excise tax of seven-eighths of
36 one percent (0.875%) upon all tangible personal property and taxable services

1 subject to the tax levied by this subchapter except for food and food
2 ingredients that are taxed under § 26-53-145 and electricity, natural gas,
3 and propane gas that are taxed under § 26-53-149 .

4 (2) The tax shall be collected, reported, and paid in the same
5 manner and at the same time as is prescribed by this subchapter for the
6 collection, reporting, and payment of Arkansas compensating taxes.

7
8 SECTION 8. Arkansas Code § 26-53-108, the introductory paragraph
9 concerning the imposition of compensating use tax on certain personal
10 property, is amended to read as follows:

11 A Except as provided in § 26-53-149, a state compensating tax in the
12 amount of three percent (3%) of the gross purchase price is levied on the
13 following described personal property:

14
15 SECTION 9. Arkansas Code § 26-53-148(a)(4)(B), concerning the natural
16 gas and electricity used by manufacturers, is amended to read as follows:

17 (B) Natural gas and electricity purchased for any other
18 purpose shall be subject to the ~~full~~ compensating use tax levied under ~~§§ 26-~~
19 ~~53-106 and 26-53-107(a)-(d)~~ 26-53-149.

20
21 SECTION 10. Arkansas Code Title 26, Chapter 53, Subchapter 1 is
22 amended to add an additional section to read as follows:

23 26-53-149. Electricity, natural gas, and propane gas.

24 (a)(1) Except as provided in subdivision (a)(2)(A) of this section,
25 beginning July 1, 2009, in lieu of the tax levied on electricity, natural
26 gas, and propane gas delivered by the seller under §§ 26-53-106 and 26-53-
27 107, there is levied an excise tax on the sales price of electricity, natural
28 gas, and propane gas that is delivered by the seller at the rate of three-
29 eighths percent (0.375%) to be distributed as follows:

30 (A) Seventy-six and six-tenths percent (76.6%) of the
31 taxes, interest, penalties, and costs received by the Director of the
32 Department of Finance and Administration under this subdivision (a)(1) shall
33 be deposited as general revenues;

34 (B) Eight and five-tenths percent (8.5%) of the taxes,
35 interest, penalties, and costs received by the director under this
36 subdivision (a)(1) shall be deposited into the Property Tax Relief Trust

1 Fund; and

2 (C) Fourteen and nine-tenths percent (14.9%) of the taxes,
3 interest, penalties, and costs received by the director under this
4 subdivision (a)(1) shall be deposited into the Educational Adequacy Fund.

5 (2)(A) Electricity and natural gas sold to a manufacturer for
6 use directly in the actual manufacturing process and subject to the excise
7 tax levied under § 26-53-148, is not subject to the tax levied in subdivision
8 (a)(1) of this section.

9 (B) As used in this subdivision (a)(2), "manufacturer"
10 means a manufacturer classified within sectors 31 through 33 of the North
11 American Industry Classification System, as in effect on January 1, 2007.

12 (C) A manufacturer that purchases electricity or natural
13 gas subject to the reduced tax rate levied in subdivision (a)(1) of this
14 section shall separately meter the electricity and natural gas used by the
15 manufacturer in the actual manufacturing process under § 26-53-148.

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

20 (c) The purchase of electricity, natural gas, and propane gas shall
21 continue to be subject to the:

22 (1) Excise tax levied under Arkansas Constitution, Amendment 75,
23 § 2; and

24 (2) All municipal and county compensating use taxes.

25 (d) The Department of Finance and Administration shall promulgate
26 rules to implement the provisions of this section.

27
28 SECTION 11. Arkansas Code Title 26, Chapter 63 is amended to add a new
29 subchapter to read as follows:

30 SUBCHAPTER 5. ADDITIONAL TAX ON ELECTRICITY, NATURAL GAS, AND PROPANE
31 GAS.

32 26-64-501. Tax on electricity, natural gas, and propane gas.

33 (a) Beginning July 1, 2009, there is levied an additional tax on
34 electricity, natural gas, and propane gas delivered by the seller and sold,
35 used, or utilized in this state as follows:

36 (1) Seven one-thousandth cents per kilowatt (.007¢/kW) on

1 electricity;

2 (2) Twenty-four cents per one thousand cubic feet (24¢/Mcf) on
3 natural gas; and

4 (3) Six cents per gallon (6¢/gal) on propane gas.

5 (b) The excise taxes levied in subsection (a) of this section shall be
6 deposited as follows:

7 (1) Seventy-six and six-tenths percent (76.6%) of the taxes,
8 interest, penalties, and costs received by the Director of the Department of
9 Finance and Administration under this section shall be deposited as general
10 revenues;

11 (2) Eight and five-tenths percent (8.5%) of the taxes, interest,
12 penalties, and costs received by the director under this section shall be
13 deposited into the Property Tax Relief Trust Fund; and

14 (3) Fourteen and nine-tenths percent (14.9%) of the taxes,
15 interest, penalties, and costs received by the director under this section
16 shall be deposited into the Educational Adequacy Fund.

17 (c) The excise taxes levied in subsection (a) of this section for a
18 month shall be reported by the seller on or before the twentieth day of the
19 following month on forms to be prescribed by the Director of the Department
20 of Finance and Administration.

21 (d)(1) Electricity and natural gas sold to a manufacturer for use
22 directly in the actual manufacturing process and subject to the excise tax
23 levied under § 26-52-319 or § 26-53-148 is not subject to the tax levied in
24 subsection (a) of this section.

25 (2) As used in this subdivision (d)(1), "manufacturer" means a
26 manufacturer classified within sectors 31 through 33 of the North American
27 Industry Classification System, as in effect on January 1, 2007.

28 (e) Any exemption that applies to the tax levied under §§ 26-52-322 or
29 26-53-149 shall apply to the tax levied under subsection (a) of this section,
30

31 SECTION 12. EMERGENCY CLAUSE. It is found and determined by the
32 General Assembly of the State of Arkansas that due to sharp increases in
33 utility prices, the traditional method of utility taxation has resulted in
34 astronomic increases in the cost of heating and cooling homes and businesses,
35 that this increase in utility costs has created a burdensome price increase
36 for Arkansas consumers; that a change in the manner in which tax is paid on

1 electricity, natural gas, and propane gas is necessary in order to stabilize
2 the tax cost to Arkansas consumers; and that this act is necessary in order
3 to provide tax relief as soon as reasonably possible. Therefore, an
4 emergency is declared to exist, and this act being necessary for the
5 preservation of the public peace, health, and safety shall become effective
6 on July 1, 2009.

7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34
35
36

Filed Date: 04/07/2009 By: MMC\VJF