

1 INTERIM STUDY PROPOSAL 2011-130

2 State of Arkansas  
3 88th General Assembly  
4 Regular Session, 2011

*As Engrossed: H3/16/11*  
**A Bill**

HOUSE BILL 2064

5  
6 By: Representatives L. Cowling, King, *D. Altes, Barnett, Bell, Benedict, Branscum, J. Burris, Carnine,*  
7 *Collins, Dale, Deffenbaugh, Eubanks, Gillam, Harris, Hickerson, Hopper, Jean, Johnston, Kerr,*  
8 *Lampkin, Lea, Lenderman, Linck, Lindsey, S. Malone, Mauch, McCrary, S. Meeks, Rice, Shepherd,*  
9 *Stewart, Stubblefield, Summers, T. Thompson, Wardlaw, Wren*  
10 *By: Senators Files, Hendren, Holland, B. Sample, E. Williams*

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

13 **For An Act To Be Entitled**

14 AN ACT TO GRADUALLY REDUCE THE SALES AND USE TAX ON  
15 UTILITIES THAT ARE USED BY QUALIFYING AGRICULTURAL  
16 STRUCTURES AND QUALIFYING AGRICULTURE, HORTICULTURE,  
17 AND AQUACULTURE EQUIPMENT; AND FOR OTHER PURPOSES.

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20 **Subtitle**

21 TO GRADUALLY REDUCE THE SALES AND USE TAX  
22 ON UTILITIES THAT ARE USED BY QUALIFYING  
23 AGRICULTURAL STRUCTURES AND QUALIFYING  
24 AGRICULTURE, HORTICULTURE, AND  
25 AQUACULTURE EQUIPMENT.

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

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30 SECTION 1. Arkansas Code Title 26, Chapter 52, Subchapter 3 is amended  
31 to add an additional section to read as follows:

32 26-52-323. Reduced sales tax rate for utilities used by qualifying  
33 agricultural structures and by qualifying agriculture, horticulture, and  
34 aquaculture equipment.

35 (a) As used in this section:

1           (1) "Qualifying agriculture, horticulture, or aquaculture  
2 equipment" means:

3                   (A) A cooling unit, a collection unit, or irrigation  
4 equipment used in a commercial horticulture operation;

5                   (B) Equipment used to pump and aerate a pond used in a  
6 commercial aquaculture operation;

7                   (C) A holding and sorting tank used in a commercial  
8 aquaculture operation; and

9                   (D) An on-farm grain dryer and agricultural irrigation  
10 used for a commercial purpose;

11           (2) "Qualifying agricultural structure" means:

12                   (A) Confinement housing for poultry or livestock used for  
13 commercial production, including without limitation a broiler or turkey grow-  
14 out house, laying house, hatching unit, nursery unit, breeding house,  
15 farrowing unit, feed-out house, and the equipment and renovations necessary  
16 to utilize the confinement housing for the commercial production of poultry  
17 or livestock; and

18                   (B) A commercial milking facility, including without  
19 limitation a milking parlor, a milk collection unit, and a refrigeration  
20 unit; and

21           (3) "Utility" means:

22                   (A) Liquefied petroleum gas;

23                   (B) Natural gas; or

24                   (C) Electricity.

25           (b)(1) Beginning July 1, 2011, in lieu of the gross receipts or gross  
26 proceeds taxes levied in §§ 26-52-301 and 26-52-302, there is levied an  
27 excise tax on the gross receipts or gross proceeds derived from the sale of a  
28 utility used by a qualifying agricultural structure for a commercial purpose  
29 or qualifying agriculture, horticulture, or aquaculture equipment for a  
30 commercial purpose at the rate of four percent (4%).

31           (2) Beginning July 1, 2012, the excise tax rate levied in  
32 subdivision (b)(1) of this section shall be imposed at the rate of two and  
33 five-eighths percent (2.625%).

34           (c) The excise tax levied in subsection (b) of this section shall be  
35 distributed as follows:

1           (1) Seventy-six and six-tenths percent (76.6%) of the tax,  
2 interest, penalties, and costs received by the Director of the Department of  
3 Finance and Administration shall be deposited into the State Treasury as  
4 general revenues;

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

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

11           (d) The excise tax levied in this section applies only to a utility  
12 sold for use by a qualifying agricultural structure for a commercial purpose  
13 or qualifying agriculture, horticulture, or aquaculture equipment operated  
14 for a commercial purpose.

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

19           (f) A utility subject to the reduced excise tax rate levied in this  
20 section shall be separately metered from a utility used for any other purpose  
21 by the taxpayer, or as otherwise established by the rules issued under  
22 subsection (h) of this section.

23           (g) Before the purchase of a utility at the reduced excise tax rate  
24 levied in this section, the director may require a seller of a utility to  
25 obtain a certificate from the taxpayer in the form prescribed by the  
26 director, certifying that the taxpayer is eligible to purchase the utility at  
27 the reduced excise tax rate.

28           (h) The director shall promulgate rules for the proper administration  
29 of this section.

30           (i) The gross receipts or gross proceeds derived from the sale of a  
31 utility to a taxpayer for use by a qualifying agricultural structure for a  
32 commercial purpose or qualifying agriculture, horticulture, or aquaculture  
33 equipment operated for a commercial purpose shall continue to be subject to:

34           (1) The excise tax levied under Arkansas Constitution, Amendment  
35 75, § 2; and

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

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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. Reduced compensating use tax rate for utilities used by  
5 qualifying agricultural structures and by qualifying agriculture,  
6 horticulture, and aquaculture equipment.

7 (a) As used in this section:

8 (1) "Qualifying agriculture, horticulture, or aquaculture  
9 equipment" means:

10 (A) A cooling unit, a collection unit, or irrigation  
11 equipment used in a commercial horticulture operation;

12 (B) Equipment used to pump and aerate a pond used in a  
13 commercial aquaculture operation;

14 (C) A holding and sorting tank used in a commercial  
15 aquaculture operation; and

16 (D) An on-farm grain dryer and agricultural irrigation  
17 used for a commercial purpose;

18 (2) "Qualifying agricultural structure" means:

19 (A) Confinement housing for poultry or livestock used for  
20 commercial production, including without limitation a broiler or turkey grow-  
21 out house, laying house, hatching unit, nursery unit, breeding house,  
22 farrowing unit, feed-out house, and the equipment and renovations necessary  
23 to utilize the confinement housing for the commercial production of poultry  
24 or livestock; and

25 (B) A commercial milking facility, including without  
26 limitation a milking parlor, a milk collection unit, and a refrigeration  
27 unit; and

28 (3) "Utility" means:

29 (A) Liquefied petroleum gas;

30 (B) Natural gas; or

31 (C) Electricity.

32 (b)(1) Beginning July 1, 2011, in lieu of the compensating use taxes  
33 levied in §§ 26-53-106 and 26-53-107, there is levied an excise tax on the  
34 sales price of a utility purchased for use by a qualifying agricultural  
35 structure for a commercial purpose or qualifying agriculture, horticulture,

1 or aquaculture equipment for a commercial purpose at the rate of four percent  
2 (4%).

3 (2) Beginning July 1, 2012, the excise tax rate levied in  
4 subdivision (b)(1) of this section shall be imposed at the rate of two and  
5 five-eighths percent (2.625%).

6 (c) The excise taxes levied in subsection (b) of this section shall be  
7 distributed as follows:

8 (1) Seventy-six and six-tenths percent (76.6%) of the tax,  
9 interest, penalties, and costs received by the Director of the Department of  
10 Finance and Administration shall be deposited into the State Treasury as  
11 general revenues;

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

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

18 (d) The excise tax levied in this section applies only to a utility  
19 purchased for use by a qualifying agricultural structure for a commercial  
20 purpose or qualifying agriculture, horticulture, or aquaculture equipment  
21 operated for a commercial purpose.

22 (e) The excise tax levied in this section shall be collected,  
23 reported, and paid in the same manner and at the same time as is prescribed  
24 by law for the collection, reporting, and payment of all other Arkansas  
25 compensating use taxes.

26 (f) A utility subject to the reduced excise tax rate levied in this  
27 section shall be separately metered from a utility used for any other purpose  
28 by the taxpayer, or as otherwise established by the rules issued under  
29 subsection (h) of this section.

30 (g) Before the purchase of a utility at the reduced excise tax rate  
31 levied in this section, the director may require a seller of a utility to  
32 obtain a certificate from the consumer in the form prescribed by the  
33 director, certifying that the taxpayer is eligible to purchase the utility at  
34 the reduced excise tax rate.

35 (h) The director shall promulgate rules for the proper administration  
36 of this section.

1           (i) The purchase of a utility that qualifies for the reduced excise  
2 tax rate levied in this section shall continue to be subject to:

3                   (1) The excise tax levied under Arkansas Constitution, Amendment  
4 75, § 2; and

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

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7           SECTION 3. EMERGENCY CLAUSE. It is found and determined by the  
8 General Assembly of the State of Arkansas that agricultural, horticultural,  
9 and aquacultural businesses in this state have suffered losses due to sharp  
10 increases in energy costs; that these businesses are unable to set the price  
11 for the products they produce and are particularly vulnerable to price  
12 volatility; that the current sales and use tax on utilities consumed by these  
13 businesses located within this state creates a competitive disadvantage; that  
14 this act is intended to address that problem by providing a reduced tax rate  
15 on utilities consumed by agricultural, horticultural, and aquacultural  
16 businesses located in this state; and that this act is necessary to prevent  
17 the loss of agricultural, horticultural, and aquacultural jobs. Therefore,  
18 an emergency is hereby declared to exist and this act being necessary for the  
19 preservation of public peace, health, and safety shall become effective on  
20 July 1, 2011.

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22                                   /s/L. Cowling  
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33 Referred by the Arkansas House of Representatives

34 Prepared by: JLL/VJF

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