

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

A Bill

HOUSE BILL 2228

5
6 By: Representative L. Cowling

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

9 For An Act To Be Entitled

10 AN ACT TO GRADUALLY REDUCE THE SALES AND USE TAX
11 LEVIED ON NATURAL GAS AND ELECTRICITY USED BY
12 MANUFACTURERS; TO DECLARE AN EMERGENCY; AND FOR OTHER
13 PURPOSES.

14 15 16 Subtitle

17 TO GRADUALLY REDUCE THE SALES AND USE TAX
18 LEVIED ON NATURAL GAS AND ELECTRICITY
19 USED BY MANUFACTURERS AND TO DECLARE AN
20 EMERGENCY.

21
22
23 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:

24
25 SECTION 1. Arkansas Code § 26-52-319(a)-(b), concerning natural gas
26 and electricity used by manufacturers, is amended to read as follows:

27 (a)(1) Beginning July 1, 2007, in lieu of the gross receipts or gross
28 proceeds tax levied in §§ 26-52-301 and 26-52-302~~(a)-(d)~~, there is levied an
29 excise tax on the gross receipts or gross proceeds derived from the sale of
30 natural gas and electricity to a manufacturer for use directly in the actual
31 manufacturing process at the rate of four and three-eighths percent (4.375%).

32 (2) Beginning July 1, 2008, the tax rate levied in subdivision
33 (a)(1) of this section shall be imposed at the rate of three and seven-
34 eighths percent (3.875%).

1 (3)(A) Beginning July 1, 2009, the tax rate levied in
2 subdivision (a)(1) of this section shall be imposed at the rate of three and
3 one-eighth percent (3.125%).

4 (B)(i) The Director of the Department of Finance and
5 Administration shall monitor the amount of tax savings received by all
6 taxpayers as a result of the reduction in the tax rate from that levied in §§
7 26-52-301 and 26-52-302 to that levied in subdivision (a)(3)(A) of this
8 section.

9 (ii) When the director determines that the amount of
10 tax savings resulting from the determination described in subdivision
11 (a)(3)(B)(i) of this section plus any use tax savings described in § 26-53-
12 148(a)(3)(B) would reach twenty-seven million dollars (\$27,000,000) during a
13 fiscal year, the director shall not process any further refund claims through
14 a refund process during the fiscal year for taxpayers seeking to claim the
15 reduced tax rate provided by this section. The amount of twenty-seven million
16 dollars (\$27,000,000) is intended to cover the accumulated but unclaimed
17 reduction of sales and use tax on natural gas and electricity as provided by
18 Acts 2007, No. 185, as well as the additional reduction provided by Acts
19 2009, No. 695.

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

27 (C)(i) Refund requests and amended returns filed with the
28 director to claim the overpayment resulting from the reduced rate in
29 subdivision (a)(3)(A) of this section shall be processed in the order they
30 are received by the director. A taxpayer that does not receive a refund after
31 the refund and amended return process has ceased under subdivision (a)(3)(B)
32 of this section shall be given priority to receive a refund during the
33 subsequent fiscal year. The unpaid refunds from the prior fiscal year shall
34 be processed before any refund claims filed in the current fiscal year to
35 claim the benefit of this section.

1 (ii) The statute of limitations for refunds and
2 amended returns under § 26-18-306(i)(1)(A) is extended for one (1) year to
3 allow the payment of a refund under the process provided in subdivision
4 (a)(3)(C)(i) of this section.

5 (4)(A)(i) Beginning July 1, 2011, the tax rate levied in
6 subdivision (a)(1) of this section shall be imposed at the rate of two and
7 seven-eighths percent (2.875%).

8 (ii) Beginning July 1, 2012, the tax rate levied in
9 subdivision (a)(1) of this section shall be imposed at the rate of two and
10 five-eighths percent (2.625%).

11 (B)(i) The Director of the Department of Finance and
12 Administration shall monitor the amount of tax savings received by all
13 taxpayers as a result of the reduction in the tax rate from that levied in §§
14 26-52-301 and 26-52-302 to that levied in subdivision (a)(4)(A) of this
15 section.

16 (ii) When the director determines that the amount of
17 tax savings resulting from the determination described in subdivision
18 (a)(4)(B)(i) of this section plus any use tax savings described in § 26-53-
19 148(a)(4)(B) would reach twenty-seven million dollars (\$27,000,000) during a
20 fiscal year, the director shall not process any further refund claims through
21 a refund process during the fiscal year for taxpayers seeking to claim the
22 reduced tax rate provided by this section. The amount of twenty-seven million
23 dollars (\$27,000,000) is intended to cover the accumulated but unclaimed
24 reduction of sales and use tax on natural gas and electricity as provided by
25 this section.

26 (iii) If the director determines that discontinuing
27 refund payments as provided in subdivision (a)(4)(B)(ii) of this section is
28 insufficient to prevent the amount of tax savings from exceeding twenty-seven
29 million dollars (\$27,000,000) during a fiscal year, the director may decline
30 to accept any amended return filed by a taxpayer to claim an overpayment
31 resulting from the reduced tax rate provided by this section for a period
32 other than the period for which a tax return is currently due.

33 (C)(i) Refund requests and amended returns filed with the
34 director to claim the overpayment resulting from the reduced rate in
35 subdivision (a)(4)(A) of this section shall be processed in the order they
36 are received by the director. A taxpayer that does not receive a refund after

1 the refund and amended return process has ceased under subdivision (a)(4)(B)
 2 of this section shall be given priority to receive a refund during the
 3 subsequent fiscal year. The unpaid refunds from the prior fiscal year shall
 4 be processed before any refund claims filed in the current fiscal year to
 5 claim the benefit of this section.

6 (ii) The statute of limitations for refunds and
 7 amended returns under § 26-18-306(i)(1)(A) is extended for one (1) year to
 8 allow the payment of a refund under the process provided in subdivision
 9 (a)(4)(C)(i) of this section.

10 ~~(4)(5)~~ The taxes levied in this subsection ~~(a)~~ shall be
 11 distributed as follows:

12 (A) Seventy-six and six-tenths percent (76.6%) of the tax,
 13 interest, penalties, and costs received by the director shall be deposited as
 14 general revenues;

15 (B) Eight and five-tenths percent (8.5%) of the tax,
 16 interest, penalties, and costs received by the director shall be deposited
 17 into the Property Tax Relief Trust Fund; and

18 (C) Fourteen and nine-tenths percent (14.9%) of the tax,
 19 interest, penalties, and costs received by the director shall be deposited
 20 into the Educational Adequacy Fund.

21 ~~(5)(A)(6)(A)~~ The excise tax levied in this section applies only
 22 to natural gas and electricity sold for use directly in the actual
 23 manufacturing process.

24 (B) Natural gas and electricity sold for any other purpose
 25 shall be subject to the full gross receipts or gross proceeds tax levied
 26 under §§ 26-52-301 and 26-52-302~~(a)-(d)~~.

27 ~~(6)(7)~~ The excise tax levied in this section shall be collected,
 28 reported, and paid in the same manner and at the same time as is prescribed
 29 by law for the collection, reporting, and payment of all other Arkansas gross
 30 receipts taxes.

31 (b) As used in this section, "manufacturer" means a manufacturer
 32 classified within sectors 31 through 33 of the North American Industry
 33 Classification System, as in effect on ~~January 1, 2007~~ January 1, 2011.

34
 35 SECTION 2. Arkansas Code § 26-53-148(a)-(b), concerning natural gas
 36 and electricity used by manufacturers, is amended to read as follows:

1 (a)(1) Beginning July 1, 2007, in lieu of the tax levied in §§ 26-53-
2 106 and 26-53-107~~(a)-(d)~~, there is levied an excise tax on the sales price of
3 natural gas and electricity purchased by a manufacturer for use directly in
4 the actual manufacturing process at the rate of four and three-eighths
5 percent (4.375%).

6 (2) Beginning July 1, 2008, the tax rate levied in subdivision
7 (a)(1) of this section shall be imposed at the rate of three and seven-
8 eighths percent (3.875%).

9 (3)(A) Beginning July 1, 2009, the tax rate levied in
10 subdivision (a)(1) of this section shall be imposed at the rate of three and
11 one-eighth percent (3.125%).

12 (B)(i) The Director of the Department of Finance and
13 Administration shall monitor the amount of tax savings received by all
14 taxpayers as a result of the reduction in the tax rate from that levied in §§
15 26-53-106 and 26-53-107 to that levied in subdivision (a)(3)(A) of this
16 section.

17 (ii) When the director determines that the amount of
18 tax savings resulting from the determination described in subdivision
19 (a)(3)(B)(i) of this section plus any gross receipts tax savings described in
20 § 26-52-319(a)(3)(B) would reach twenty-seven million dollars (\$27,000,000)
21 during a fiscal year, the director shall not process any further refund
22 claims through a refund process during the fiscal year for taxpayers seeking
23 to claim the reduced tax rate provided by this section. The amount of twenty-
24 seven million dollars (\$27,000,000) is intended to cover the accumulated but
25 unclaimed reduction of sales and use tax on natural gas and electricity as
26 provided by Acts 2007, No. 185, as well as the additional reduction provided
27 by Acts 2009, No. 695.

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

35 (C)(i) Refund requests and amended returns filed with the
36 director to claim the overpayment resulting from the reduced rate in

1 subdivision (a)(3)(A) of this section will be processed in the order they are
2 received by the director. A taxpayer that does not receive a refund after the
3 refund and amended return process has ceased under subdivision (a)(3)(B) of
4 this section shall be given priority to receive a refund during the
5 subsequent fiscal year. The unpaid refunds from the prior fiscal year shall
6 be processed before any refund claims filed in the current fiscal year to
7 claim the benefit of this section.

8 (ii) The statute of limitations for refunds and
9 amended returns under § 26-18-306(i)(1)(A) is extended for one (1) year to
10 allow the payment of a refund under the process provided in subdivision
11 (a)(3)(C)(i) of this section.

12 (4)(A)(i) Beginning July 1, 2011, the tax rate levied in
13 subdivision (a)(1) of this section shall be imposed at the rate of two and
14 seven-eighths percent (2.875%).

15 (ii) Beginning July 1, 2012, the tax rate levied in
16 subdivision (a)(1) of this section shall be imposed at the rate of two and
17 five-eighths percent (2.625%).

18 (B)(i) The Director of the Department of Finance and
19 Administration shall monitor the amount of tax savings received by all
20 taxpayers as a result of the reduction in the tax rate from that levied in §§
21 26-53-106 and 26-53-107 to that levied in subdivision (a)(4)(A) of this
22 section.

23 (ii) When the director determines that the amount of
24 tax savings resulting from the determination described in subdivision
25 (a)(4)(B)(i) of this section plus any gross receipts tax savings described in
26 § 26-52-319(a)(4)(B) would reach twenty-seven million dollars (\$27,000,000)
27 during a fiscal year, the director shall not process any further refund
28 claims through a refund process during the fiscal year for taxpayers seeking
29 to claim the reduced tax rate provided by this section. The amount of twenty-
30 seven million dollars (\$27,000,000) is intended to cover the accumulated but
31 unclaimed reduction of sales and use tax on natural gas and electricity as
32 provided by this section.

33 (iii) If the director determines that discontinuing
34 refund payments as provided in subdivision (a)(4)(B)(ii) of this section is
35 insufficient to prevent the amount of tax savings from exceeding twenty-seven
36 million dollars (\$27,000,000) during a fiscal year, the director may decline

1 to accept any amended return filed by a taxpayer to claim an overpayment
 2 resulting from the reduced tax rate provided by this section for a period
 3 other than the period for which a tax return is currently due.

4 (C)(i) Refund requests and amended returns filed with the
 5 director to claim the overpayment resulting from the reduced rate in
 6 subdivision (a)(4)(A) of this section will be processed in the order they are
 7 received by the director. A taxpayer that does not receive a refund after the
 8 refund and amended return process has ceased under subdivision (a)(4)(B) of
 9 this section shall be given priority to receive a refund during the
 10 subsequent fiscal year. The unpaid refunds from the prior fiscal year shall
 11 be processed before any refund claims filed in the current fiscal year to
 12 claim the benefit of this section.

13 (ii) The statute of limitations for refunds and
 14 amended returns under § 26-18-306(i)(1)(A) is extended for one (1) year to
 15 allow the payment of a refund under the process provided in subdivision
 16 (a)(4)(C)(i) of this section.

17 ~~(4)(5)~~ The taxes levied in this subsection ~~(a) of this section~~
 18 shall be distributed as follows:

19 (A) Seventy-six and six-tenths percent (76.6%) of the tax,
 20 interest, penalties, and costs received by the director shall be deposited as
 21 general revenues;

22 (B) Eight and five-tenths percent (8.5%) of the tax,
 23 interest, penalties, and costs received by the director shall be deposited
 24 into the Property Tax Relief Trust Fund; and

25 (C) Fourteen and nine-tenths percent (14.9%) of the tax,
 26 interest, penalties, and costs received by the director shall be deposited
 27 into the Educational Adequacy Fund.

28 ~~(5)(A)(6)(A)~~ The excise tax levied in this section applies only
 29 to natural gas and electricity purchased for use directly in the actual
 30 manufacturing process.

31 (B) Natural gas and electricity purchased for any other
 32 purpose shall be subject to the full compensating use tax levied under §§ 26-
 33 53-106 and 26-53-107~~(a)-(d)~~.

34 ~~(6)(7)~~ The excise tax levied in this section shall be collected,
 35 reported, and paid in the same manner and at the same time as is prescribed

1 by law for the collection, reporting, and payment of all other Arkansas
2 compensating use taxes.

3 (b) As used in this section, "manufacturer" means a manufacturer
4 classified within sectors 31 through 33 of the North American Industry
5 Classification System, as in effect on ~~January 1, 2007~~ January 1, 2011.

6
7 SECTION 3. EMERGENCY CLAUSE. It is found and determined by the
8 General Assembly of the State of Arkansas that the cost of manufacturing
9 continues to climb; that Arkansas' unemployment rate is extremely high; that
10 the economy has dramatically affected manufacturers and resulted in lay-offs;
11 that decreasing the sales and use tax on natural gas and electricity used by
12 manufacturers would provide manufacturers with a way to increase the number
13 of employees; and that this, in turn, would increase production and provide
14 lucrative employment for Arkansans. Therefore, an emergency is declared to
15 exist and this act being necessary for the preservation of the public peace,
16 health, and safety shall become effective on July 1, 2011.

17
18 Referred by the Arkansas House of Representatives
19 Prepared by: JLL/VJF