

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 2007-216

State of Arkansas

*As Engrossed: H2/27/07*

86th General Assembly

**A Bill**

Regular Session, 2007

HOUSE BILL 1417

By: Representatives Sullivan, T. Baker, Berry, E. Brown, Cooper, L. Cowling, Davenport, Dickinson, George, R. Green, Hall, House, King, Lamoureux, Maloch, M. Martin, Maxwell, Medley, Norton, Overbey, Patterson, Pierce, Ragland, Rogers, Stewart, Sumpter, Walters, Webb, Wells, Woods

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 REDUCE THE SALES AND USE TAX ON UTILITIES THAT ARE USED BY QUALIFYING AGRICULTURAL STRUCTURES AND QUALIFYING AGRICULTURE, HORTICULTURE, AND AQUACULTURE EQUIPMENT; AND FOR OTHER PURPOSES.

**Subtitle**

TO REDUCE THE SALES AND USE TAX ON UTILITIES THAT ARE USED BY QUALIFYING AGRICULTURAL STRUCTURES AND QUALIFYING AGRICULTURE, HORTICULTURE, AND AQUACULTURE EQUIPMENT.

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

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

*26-52-319. Reduced sales tax rate for utilities used by qualifying agricultural structures and by qualifying agriculture, horticulture, and aquaculture equipment.*

*(a) As used in this section:*

*(1) "Qualifying agriculture, horticulture, or aquaculture*



1 equipment" means:

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

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

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

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

10 (2) "Qualifying agricultural structure" means:

11 (A) Confinement housing for poultry or livestock used for  
12 commercial production, including without limitation, a broiler or turkey  
13 grow-out house, laying house, hatching unit, nursery unit, breeding house,  
14 farrowing unit, and feed-out house; and

15 (B) A commercial milking facility, including without  
16 limitation, a milking parlor, a milk collection unit, and a refrigeration  
17 unit; and

18 (3) "Utility" means:

19 (A) Liquified-petroleum gas;

20 (B) Natural gas; or

21 (C) Electricity.

22 (b)(1) Beginning July 1, 2007, in lieu of the gross receipts or gross  
23 proceeds tax levied in §§ 26-52-301 and 26-52-302(a), (b), (c), and (d),  
24 there is levied an excise tax on the gross receipts or gross proceeds derived  
25 from the sale of a utility used by a qualifying agricultural structure for a  
26 commercial purpose or a qualifying agriculture, horticulture, or aquaculture  
27 equipment for a commercial purpose at the rate of four and seven-eighths  
28 percent (4.875%).

29 (2) Beginning July 1, 2008, and ending on June 30, 2009, the  
30 excise tax rate levied in subdivision (b)(1) of this section shall be imposed  
31 at the rate of three and seven-eighths percent (3.875%).

32 (3) Beginning July 1, 2009, the excise tax rate levied in  
33 subdivision (b)(1) of this section shall be imposed at the rate of two and  
34 seven-eighths percent (2.875%).

35 (4) The excise tax levied in this subsection (b) shall be  
36 distributed as follows:

1                   (A) 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 as general revenues;

4                   (B) Eight and one-half percent (8.5%) of the tax,  
5 interest, penalties, and costs received by the director shall be deposited  
6 into the Property Tax Relief Trust Fund; and

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

10                   (5)(A) The excise tax levied in this section shall apply only to  
11 a utility sold for use by a qualifying agricultural structure operated for  
12 commercial purposes or a qualifying agriculture, horticulture, or aquaculture  
13 equipment operated for commercial purposes.

14                   (B) A utility sold for any other purpose shall be subject  
15 to the full gross receipts or gross proceeds tax levied under §§ 26-52-301  
16 and 26-52-302(a), (b), (c), and (d).

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

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

30                   (e) The director shall promulgate rules for the proper administration  
31 of this section.

32                   (f) The gross receipts or gross proceeds derived from the sale of a  
33 utility to a taxpayer for use by a qualifying agricultural structure or  
34 qualifying agriculture, horticulture, or aquaculture equipment shall continue  
35 to be subject to:

36                   (1) The excise tax levied under the Arkansas Constitution,

1 Amendment 75, § 2; and

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

3  
4 SECTION 2. Arkansas Code Title 26, Chapter 53, Subchapter 1 is amended  
5 to add an additional section to read as follows:

6 26-53-148. Reduced sales tax rate for utilities used by qualifying  
7 agricultural structures and by qualifying agriculture, horticulture, and  
8 aquaculture equipment.

9 (a) As used in this section:

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

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

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

16 (C) A holding and sorting tank used in a commercial  
17 aquaculture operation; and

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

20 (2) "Qualifying agricultural structure" means:

21 (A) Confinement housing for poultry or livestock used for  
22 commercial production, including without limitation, a broiler or turkey  
23 grow-out house, laying house, hatching unit, nursery unit, breeding house,  
24 farrowing unit, and feed-out house; 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, 2007, in lieu of the compensating use tax  
33 levied in §§ 26-53-106 and 26-53-107(a), (b), (c), and (d), there is levied  
34 an excise tax on the sales price of a utility purchased for use by a  
35 qualifying agricultural structure or by qualifying agriculture, horticulture,  
36 or aquaculture equipment at the rate of four and seven-eighths percent

1 (4.875%).

2 (2) Beginning July 1, 2008 and ending on June 30, 2009, the  
3 excise tax rate levied in subdivision (b)(1) of this section shall be imposed  
4 at the rate of three and seven-eighths percent (3.875%).

5 (3) Beginning July 1, 2009, the excise tax rate levied in  
6 subdivision (b)(1) of this section shall be imposed at the rate of two and  
7 seven-eighths percent (2.875%).

8 (4) The excise taxes levied in this subsection (b) shall be  
9 distributed as follows:

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

13 (B) Eight and one-half percent (8.5%) of the tax,  
14 interest, penalties, and costs received by the director shall be deposited  
15 into the Property Tax Relief Trust Fund; and

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

19 (5)(A) The excise tax levied in this section shall apply only to  
20 a utility purchased for use by a qualifying agricultural structure operated  
21 for commercial purposes or a qualifying agriculture, horticulture, or  
22 aquaculture equipment operated for commercial purposes.

23 (B) A utility purchased for any other purpose shall be  
24 subject to the full compensating use tax levied under §§ 26-53-106 and 26-53-  
25 107(a), (b), (c), and (d).

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

30 (c) A utility subject to the reduced excise tax rate levied in this  
31 section shall be separately metered from a utility used for any other purpose  
32 by the taxpayer, or as otherwise established by the rules issued under  
33 subsection (e) of this section.

34 (d) Prior to the purchase of a utility at the reduced excise tax rate  
35 levied in this section, the director may require any seller of a utility to  
36 obtain a certificate from the consumer, in the form prescribed by the

1 director, certifying that the taxpayer is eligible to purchase the utility at  
2 the reduced excise tax rate.

3 (e) The director shall promulgate rules for the proper administration  
4 of this section.

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

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

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

10  
11 SECTION 3. EMERGENCY CLAUSE. It is found and determined by the  
12 General Assembly of the State of Arkansas that agricultural, horticultural,  
13 and aquacultural businesses in this state have suffered losses due to sharp  
14 increases in energy costs; that these businesses are unable to set the price  
15 for the products they produce and are particularly vulnerable to price  
16 volatility; that the current sales and use tax on utilities consumed by these  
17 businesses located within this state creates a competitive disadvantage; that  
18 this act is intended to address that problem by providing a reduced tax rate  
19 on utilities consumed by agricultural, horticultural, and aquacultural  
20 businesses located in this state; and that this act is necessary to prevent  
21 the loss of agricultural, horticultural, and aquacultural jobs. Therefore,  
22 an emergency is hereby declared to exist and this act being necessary for the  
23 preservation of public peace, health, and safety shall become effective on  
24 July 1, 2007.

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26 /s/ Sullivan, et al  
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36 Filed Date: 01/15/2008 By: MMC\RCK