

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 2009-126

State of Arkansas

As Engrossed: H3/18/09

87th General Assembly

A Bill

Regular Session, 2009

HOUSE BILL 1914

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 UTILITIES FOR
AGRICULTURAL BUSINESSES BY REDUCING THE SALES AND
USE TAX ON THE PURCHASE PRICE AND LEVYING A
SPECIAL EXCISE TAX BASED ON THE VOLUME OF THE
UTILITY SOLD; AND FOR OTHER PURPOSES.

Subtitle

TO STABILIZE THE TAX ON UTILITIES FOR
AGRICULTURAL BUSINESSES BY REDUCING THE
SALES AND USE TAX ON THE PURCHASE PRICE
AND LEVYING A SPECIAL EXCISE TAX BASED
ON THE VOLUME OF THE UTILITY SOLD.

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 agricultural utilities 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:

SECTION 2. Arkansas Code § 26-52-302 is amended to read as follows:
26-52-302. Additional taxes levied.



1 (a)(1) In addition to the excise tax levied upon the gross proceeds or
2 gross receipts derived from all sales by this chapter, except for food and
3 food ingredients that are taxed under § 26-52-317 and agricultural utilities
4 that are taxed under § 26-52-322, there is levied an excise tax of one
5 percent (1%) upon all taxable sales of property and services subject to the
6 tax levied in this chapter.

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

10 (3) In computing gross receipts or gross proceeds as defined in
11 § 26-52-103, a deduction shall be allowed for bad debts resulting from the
12 sale of tangible personal property.

13 (b)(1) In addition to the excise tax levied upon the gross proceeds or
14 gross receipts derived from all sales by this chapter, except for food and
15 food ingredients that are taxed under § 26-52-317 and agricultural utilities
16 that are taxed under § 26-52-322, there is hereby levied an excise tax of
17 one-half of one percent (0.5%) upon all taxable sales of property and
18 services subject to the tax levied in this chapter.

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

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

25 (c)(1) Except for food and food ingredients that are taxed under § 26-
26 52-317 and agricultural utilities that are taxed under § 26-52-322, there is
27 levied an additional excise tax of one-half of one percent (0.5%) upon all
28 taxable sales of property and services subject to the tax levied by this
29 chapter.

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

33 (d)(1) Except for food and food ingredients that are taxed under § 26-
34 52-317 and agricultural utilities that are taxed under § 26-52-322, there is
35 levied an additional excise tax of seven-eighths of one percent (0.875%) upon
36 all taxable sales of property and services subject to the tax levied by this

1 chapter.

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

5
6 SECTION 3. Arkansas Code § 26-52-319(a)(4)(B), concerning the natural
7 gas and electricity used by manufacturers, is amended to read as follows:

8 (B) Natural Except as provided in § 26-52-322, natural gas
9 and electricity sold for any other purpose shall be subject to the full gross
10 receipts or gross proceeds tax levied under §§ 26-52-301 and 26-52-302(a)-
11 (d).

12
13 SECTION 4. Arkansas Code Title 26, Chapter 52, Subchapter 3 is amended
14 to add an additional section to read as follows:

15 26-52-322. Agricultural utilities.

16 (a) As used in this section:

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

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

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

23 (C) A holding and sorting tank used in a commercial
24 aquaculture operation; and

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

27 (2) "Qualifying agricultural structure" means:

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

32 (B) A commercial milking facility, including without
33 limitation, a milking parlor, a milk collection unit, and a refrigeration
34 unit; and

35 (3) "Utility" means:

36 (A) Liquified-petroleum gas;

1 (B) Natural gas; or

2 (C) Electricity.

3 (b)(1) Beginning July 1, 2009, in lieu of the gross receipts or gross
4 proceeds tax levied in §§ 26-52-301 and 26-52-302(a)-(d), there is levied an
5 excise tax on the gross receipts or gross proceeds derived from the sale of a
6 utility delivered by the seller and used by a qualifying agricultural
7 structure for a commercial purpose or a qualifying agriculture, horticulture,
8 or aquaculture equipment for a commercial purpose at the rate of one-eighth
9 percent (0.125%) to be distributed as follows:

10 (A) Seventy-six and six-tenths percent (76.6%) of the
11 taxes, interest, penalties, and costs received by the Director of the
12 Department of Finance and Administration under this subdivision (b)(1) shall
13 be deposited into the State Treasury as general revenues;

14 (B) Eight and five-tenths percent (8.5%) of the taxes,
15 interest, penalties, and costs received by the director under this
16 subdivision (b)(1) shall be deposited into the Property Tax Relief Trust
17 Fund; and

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

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

25 (B) Except as provided in § 26-52-319, a utility sold for
26 any other purpose shall be subject to the full gross receipts or gross
27 proceeds tax levied under §§ 26-52-301 and 26-52-302(a)-(d).

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

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

36 (d) Before the purchase of a utility at the reduced excise tax rate

1 levied in this section, the director may require any seller of a utility to
2 obtain a certificate from the taxpayer, in the form prescribed by the
3 director, certifying that the taxpayer is eligible to purchase the utility at
4 the reduced excise tax rate.

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

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

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

13 (2) All municipal and county gross receipts taxes.
14

15 SECTION 5. Arkansas Code § 26-53-106(a), concerning the imposition and
16 rate of consumer use tax, is amended to read as follows:

17 (a) There is levied and there shall be collected from every person in
18 this state a tax or excise for the privilege of storing, using, distributing,
19 or consuming within this state any article of tangible personal property or
20 taxable service purchased for storage, use, distribution, or consumption in
21 this state at the rate of three percent (3%) of the sales price of the
22 property except for food and food ingredients that are taxed under § 26-53-
23 145 and agricultural utilities that are taxed under § 26-53-149.
24

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

27 (a)(1) In addition to the excise tax levied upon the privilege of
28 storing, using, distributing, or consuming tangible personal property and
29 taxable services within this state by this subchapter there is levied an
30 excise tax of one percent (1%) upon all tangible personal property and
31 taxable services subject to the tax levied in this subchapter except for food
32 and food ingredients that are taxed under § 26-53-145 and agricultural
33 utilities that are taxed under § 26-53-149.

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

1 (b)(1) In addition to the excise tax levied upon the privilege of
2 storing, using, distributing, or consuming tangible personal property and
3 taxable services within the state by this subchapter, there is levied an
4 excise tax of one-half of one percent (0.5%) upon all tangible personal
5 property and taxable services subject to the tax levied in this subchapter
6 except for food and food ingredients that are taxed under § 26-53-145 and
7 agricultural utilities that are taxed under § 26-53-149.

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

11 (c)(1) There is levied an additional excise tax of one-half of one
12 percent (0.5%) upon all tangible personal property and taxable services
13 subject to the tax levied by this subchapter except for food and food
14 ingredients that are taxed under § 26-53-145 and agricultural utilities that
15 are taxed under § 26-53-149.

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

19 (d)(1) There is levied an additional excise tax of seven-eighths of
20 one percent (0.875%) upon all tangible personal property and taxable services
21 subject to the tax levied by this subchapter except for food and food
22 ingredients that are taxed under § 26-53-145 and agricultural utilities that
23 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 this subchapter for the
26 collection, reporting, and payment of Arkansas compensating taxes.

27
28 SECTION 7. Arkansas Code § 26-53-148(a)(4)(B), concerning the natural
29 gas and electricity used by manufacturers, is amended to read as follows:

30 (B) ~~Natural~~ Except as provided in 26-53-149, natural gas
31 and electricity purchased for any other purpose shall be subject to the full
32 compensating use tax levied under §§ 26-53-106 and 26-53-107(a)-(d).

33
34 SECTION 8. Arkansas Code Title 26, Chapter 53, Subchapter 1 is amended
35 to add an additional section to read as follows:

36 26-53-149. Agricultural utilities.

1 (a) As used in this section:

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

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

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

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

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

12 (2) "Qualifying agricultural structure" means:

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

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

20 (3) "Utility" means:

21 (A) Liquified-petroleum gas;

22 (B) Natural gas; or

23 (C) Electricity.

24 (b)(1) Beginning July 1, 2009, in lieu of the compensating use tax
25 levied in §§ 26-53-106 and 26-53-107(a)-(d), there is levied an excise tax on
26 the sales price of a utility delivered by the seller and used by a qualifying
27 agricultural structure for a commercial purpose or a qualifying agriculture,
28 horticulture, or aquaculture equipment for a commercial purpose at the rate
29 of one-eighth percent (0.125%) 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 (b)(1) shall
33 be deposited into the State Treasury 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 (b)(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 (b)(1) shall be deposited into the Educational Adequacy Fund.

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

9 (B) Except as provided in § 26-53-148, a utility purchased
10 for any other purpose shall be subject to the full compensating use tax
11 levied under §§ 26-53-106 and 26-53-107(a)-(d).

12 (3) The excise tax levied in this section shall be collected,
13 reported, and paid in the same manner and at the same time as is prescribed
14 by law for the collection, reporting, and payment of all other Arkansas
15 compensating use taxes.

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

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

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

27 (f) The compensating use tax derived from the sale of a utility to a
28 taxpayer for use by a qualifying agricultural structure or qualifying
29 agriculture, horticulture, or aquaculture equipment shall continue to be
30 subject to:

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

33 (2) All municipal and county compensating use taxes.
34

35 SECTION 9. Arkansas Code Title 26, Chapter 63 is amended to add a new
36 subchapter to read as follows:

1 SUBCHAPTER 5. ADDITIONAL TAX ON AGRICULTURAL UTILITIES.

2 26-64-501. Tax on agricultural utilities.

3 (a) As used in this section:

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

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

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

10 (C) A holding and sorting tank used in a commercial
11 aquaculture operation; and

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

14 (2) "Qualifying agricultural structure" means:

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

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

22 (3) "Utility" means:

23 (A) Liquefied-petroleum gas;

24 (B) Natural gas; or

25 (C) Electricity.

26 (b) Beginning July 1, 2009, there is levied an additional excise tax on
27 the sale of a utility delivered by the seller and sold, used, or utilized in
28 this state by a qualifying agricultural structure for a commercial purpose or
29 a qualifying agriculture, horticulture, or aquaculture equipment for a
30 commercial purpose as follows:

31 (1) Three hundred twenty-two one-thousandth cents per kilowatt
32 (.322¢/kW) on electricity;

33 (2) Six hundred two one-thousandth cents per one thousand cubic
34 feet (.602¢/Mcf) on natural gas; and

35 (3) One hundred one one-thousandth cents per gallon (.101¢/gal)
36 on propane gas.

1 (c) The excise taxes levied in subsection (b) of this section shall be
2 deposited as follows:

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

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

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

13 (d) The excise tax levied in subsection (b) of this section for a
14 month shall be reported by the seller on or before the twentieth day of the
15 following month on forms to be prescribed by the Director of the Department
16 of Finance and Administration.

17 (e) An exemption that applies to the tax levied under § 26-52-322 or §
18 26-53-149 applies to the excise tax levied under subsection (b) of this
19 section,

20
21 SECTION 10. EMERGENCY CLAUSE. It is found and determined by the
22 General Assembly of the State of Arkansas that agricultural, horticultural,
23 and aquacultural businesses in this state have suffered losses due to sharp
24 increases in energy costs; that these businesses are unable to set the price
25 for the products they produce and are particularly vulnerable to price
26 volatility; that the traditional method of utility taxation has resulted in
27 astronomic increases in the cost to these businesses; that a change in the
28 manner in which tax is paid on utilities is necessary in order to stabilize
29 the tax cost to these businesses; that the current sales and use tax on
30 utilities consumed by these businesses located within this state creates a
31 competitive disadvantage; that this act is intended to address that problem
32 by providing a more stable tax rate on utilities consumed by agricultural,
33 horticultural, and aquacultural businesses located in this state; and that
34 this act is necessary to prevent the loss of agricultural, horticultural, and
35 aquacultural jobs. Therefore, an emergency is hereby declared to exist, and
36 this act being necessary for the preservation of public peace, health, and

1 safety shall become effective on July 1, 20

2

3

/s/ L. Cowling

4

5

6

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: 04/09/2009 By: MMC\VJF