

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 2009-127

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:



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

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

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

(a)(1) In addition to the excise tax levied upon the gross proceeds or gross receipts derived from all sales by this chapter, 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 one percent (1%) upon all taxable sales of property and services subject to the tax levied in this chapter.

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

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

(b)(1) In addition to the excise tax levied upon the gross proceeds or gross receipts derived from all sales by this chapter, 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 hereby levied an excise tax of one-half of one percent (0.5%) upon all taxable sales of property and services subject to the tax levied in this chapter.

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

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

(c)(1) 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 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.  
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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.  
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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.

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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.

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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.

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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:

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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.

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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.

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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,  
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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.

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