

Stricken language would be deleted from present law. Underlined language would be added to present law.

1 State of Arkansas  
2 81st General Assembly  
3 Regular Session, 1997  
4 By: Representative T. Smith

As Engrossed: H2/4/97

# A Bill

HOUSE BILL 1250

## For An Act To Be Entitled

"AN ACT TO EXEMPT MACHINERY AND EQUIPMENT USED DIRECTLY IN  
REPROCESSING ARTICLES OF COMMERCE AT MANUFACTURING OR PROCESSING  
PLANTS FROM SALES AND USE TAX; AND FOR OTHER PURPOSES."

### Subtitle

"TO EXEMPT MACHINERY AND EQUIPMENT USED  
IN REPROCESSING ARTICLES OF COMMERCE AT  
MANUFACTURING OR PROCESSING PLANTS FROM  
SALES TAX."

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

SECTION 1. Arkansas Code §26-52-402 is amended to read as follows:

"§ 26-52-402. Certain machinery and equipment.

(a) There is specifically exempted from the tax imposed by this act,  
the following:

(1)(A) Gross receipts or gross proceeds derived from the sale of  
tangible personal property consisting of machinery and equipment used directly  
in producing, manufacturing, fabricating, assembling, processing, finishing,  
or packaging of articles of commerce at manufacturing or processing plants or  
facilities in the State of Arkansas, including facilities and plants for  
manufacturing of feed, processing of poultry or eggs, or both, and livestock,  
and the hatching of poultry, but only to the extent that the machinery and  
equipment is purchased and used for the purposes set forth in this  
subdivision;

(B) The machinery and equipment will be exempt under this subdivision if  
it is purchased and used to create new manufacturing or processing plants or  
facilities within this state or to expand existing manufacturing or processing

1 plants or facilities within this state;

2 (2)(A) Machinery purchased to replace existing machinery and used  
3 directly in producing, manufacturing, fabricating, assembling, processing,  
4 finishing, or packaging of articles of commerce at manufacturing or processing  
5 plants or facilities in this state will be exempt under this subdivision;

6 (B)(i) "Machinery purchased to replace existing machinery" means that  
7 substantially all of the machinery and equipment required to perform an  
8 essential function is physically replaced with new machinery that performs the  
9 essential function more efficiently or with a longer useful life than the old  
10 machinery being replaced;

11 (ii) The term "substantially" is intended to exclude routine repairs  
12 and maintenance and partial replacements that do not improve efficiency or  
13 extend the useful life of the entire machine, but it is not intended to mean  
14 that foundations and minor components that can be economically adapted,  
15 rebuilt, or refurbished must be completely replaced when replacement would be  
16 more expensive or impracticable than adapting, rebuilding, or refurbishing the  
17 old foundation or minor components;

18 (C) It is the intent of subdivision (a)(2) of this section to provide  
19 the foregoing exemptions as incentives to encourage the location of new  
20 manufacturing plants in Arkansas, the expansion of existing manufacturing  
21 plants in Arkansas, and the modernization of existing manufacturing plants in  
22 Arkansas through the replacement of old, inefficient, or technologically  
23 obsolete machinery and equipment; and

24 (3) Gross receipts or gross proceeds derived from the sale of tangible  
25 personal property consisting of machinery and equipment required by state law  
26 or regulations to be installed and utilized by manufacturing and processing  
27 plants or facilities in this state to prevent or reduce air or water pollution  
28 or contamination which might otherwise result from the operation of the plant  
29 or facility.

30 (b) For the purposes of this section, the terms "manufacturing" or  
31 "processing," as used herein, refer to and include those operations commonly  
32 understood within their ordinary meaning and shall also include mining,  
33 quarrying, refining, extracting oil and gas, cotton ginning, the drying of  
34 rice, soybeans, and other grains and the manufacturing of feed, the processing  
35 of poultry or eggs and livestock and the hatching of poultry, and printing of  
36 all kinds, types, and characters, including the services of overprinting, and

1 photographic processing incidental to printing, the processing of scrap metal  
2 into grades and bales for further processing into steel and other metals, and  
3 the rebuilding or remanufacturing of used parts and retreading of tires for  
4 automobiles, trucks, and other mobile equipment powered by electrical or  
5 internal combustion engines or motors if the rebuilt or remanufactured parts  
6 or retreaded tires are not sold directly to the consumer but are sold for  
7 resale, and the production of protective coatings which increase the quality  
8 and durability of a finished product.

9 (c)(1) It is the intent of this section to exempt only such machinery  
10 and equipment as shall be utilized directly in the actual manufacturing or  
11 processing operation at any time from the initial stage where actual  
12 manufacturing or processing begins through the completion of the finished  
13 article of commerce and the packaging of the finished end product. The term  
14 "directly" as used in this act is to limit the exemption to only the machinery  
15 and equipment used in actual production during processing, fabricating, or  
16 assembling raw materials or semifinished materials into the form in which such  
17 personal property is to be sold in the commercial market.

18 (2) For purposes of this subsection, the following definitions, specific  
19 inclusions, and specific exclusions shall apply and represent the intent of  
20 the General Assembly as to its interpretation of the term "used directly":

21 (A) Machinery and equipment used in actual production includes machinery  
22 and equipment that meet all other applicable requirements and which cause a  
23 recognizable and measurable mechanical, chemical, electrical, or electronic  
24 action to take place as a necessary and integral part of manufacturing, the  
25 absence of which would cause the manufacturing operation to cease. "Directly"  
26 does not mean that the machinery and equipment must come into direct physical  
27 contact with any of the materials that become necessary and integral parts of  
28 the finished product. Machinery and equipment which handle raw, semifinished,  
29 or finished materials or property before the manufacturing process begins are  
30 not utilized directly in the manufacturing process. Machinery and equipment  
31 which are necessary for purposes of storing the finished product are not  
32 utilized directly in the manufacturing process. Machinery and equipment used  
33 to transport or handle a product while manufacturing is taking place are used  
34 directly;

35 (B) Machinery and equipment "used directly" in the manufacturing process  
36 shall include, but shall not be limited to, the following:

1 (i) Molds and dies that determine the physical characteristics of the  
2 finished product or its packaging material;

3 (ii) Testing equipment to measure the quality of the finished product;

4 (iii) Computers and related peripheral equipment that directly control  
5 or measure the manufacturing process;

6 (iv) Machinery and equipment that produce steam, electricity, or  
7 chemical catalysts and solutions that are essential to the manufacturing  
8 process but which are consumed during the course of the manufacturing process  
9 and do not become necessary and integral part of the finished product;

10 (C) Machinery and equipment "used directly" in the manufacturing process  
11 shall not include the following:

12 (i) Hand tools;

13 (ii) Machinery, equipment, and tools used in maintaining and repairing  
14 any type of machinery and equipment;

15 (iii) Transportation equipment, including conveyors, used solely before  
16 or after the manufacturing process has been started or completed;

17 (iv) Office machines and equipment including computers and related  
18 peripheral equipment not directly used in controlling or measuring the  
19 manufacturing process;

20 (v) Buildings;

21 (vi) Machinery and equipment used in administrative, accounting, sales,  
22 or other such activities of the business;

23 (vii) All furniture; and

24 (viii) All other machinery and equipment not used directly in  
25 manufacturing or processing operations as defined herein.

26 (ix) Machinery and equipment used by a manufacturer to produce or repair  
27 replacement dies, molds, repair parts, or replacement parts used or consumed  
28 in the manufacturer's own manufacturing process.

29 (3) Gross receipts and gross proceeds derived from the rental or lease  
30 of specialized equipment used in the filming of a motion picture which  
31 qualifies for the tax incentives provided by § 26-4-201 et seq.

32 (d) The Director of the Department of Finance and Administration shall  
33 have and be invested with full power and authority to promulgate rules and  
34 regulations for the orderly and efficient administration of this section."

35

36 SECTION 2. Arkansas Code § 26-53-114(b) relating to exemptions for

1 certain machinery and equipment from use tax is amended to read as follows:

2

3       "(b) For the purpose of this section, the terms 'manufacturing' and  
4 'processing' refer to and include those operations commonly understood within  
5 their ordinary meaning and shall also include mining, quarrying, refining,  
6 extracting oil and gas, cotton ginning, the drying of rice, soybeans, and  
7 other grains; and the manufacturing of feed, processing of poultry and eggs  
8 and the hatching of poultry; and printing of all kinds, types, and characters,  
9 including the services of overprinting and photographic processes incidental  
10 to printing; the processing of scrap metal into grades and bales for further  
11 processing into steel and other metals and the rebuilding or remanufacturing  
12 of used parts and retreading of tires for automobiles, trucks, and other  
13 mobile equipment powered by electrical or internal combustion engines or  
14 motors if the rebuilt or remanufactured parts or retreaded tires are not sold  
15 directly to the consumer but are sold for resale, and the production of  
16 protective coatings which increase the quality and durability of a finished  
17 product."

18

19       SECTION 3. All provisions of this act of a general and permanent nature  
20 are amendatory to the Arkansas Code of 1987 Annotated and the Arkansas Code  
21 Revision Commission shall incorporate the same in the Code.

22

23       SECTION 4. If any provision of this act or the application thereof to  
24 any person or circumstance is held invalid, such invalidity shall not affect  
25 other provisions or applications of the act which can be given effect without  
26 the invalid provision or application, and to this end the provisions of this  
27 act are declared to be severable.

28

29       SECTION 5. All laws and parts of laws in conflict with this act are  
30 hereby repealed.

31

32

/s/Rep. T. Smith

33

34

35

36