

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.

1 State of Arkansas  
2 87th General Assembly  
3 Regular Session, 2009  
4

As Engrossed: H3/11/09

# A Bill

HOUSE BILL 1624

5 By: Representatives Dunn, *Lowery, Maloch, M. Burris*, Baird, Barnett, Breedlove, J. Burris, Carnine,  
6 Carter, Clemmer, Dale, Dismang, English, Garner, Glidewell, R. Green, Hopper, D. Hutchinson, Hyde,  
7 Kerr, King, Lea, S. Malone, M. Martin, Moore, Pennartz, Reynolds, Rice, J. Roebuck, Wells, *Ragland*  
8

## For An Act To Be Entitled

11 AN ACT TO PROMOTE ECONOMIC DEVELOPMENT WITHIN THE  
12 STATE BY EXEMPTING FROM THE STATE SALES TAX FUEL AND  
13 ENERGY USED OR CONSUMED IN MANUFACTURING;  
14 AND FOR OTHER PURPOSES.  
15

### Subtitle

17 TO PROMOTE ECONOMIC DEVELOPMENT WITHIN  
18 THE STATE BY EXEMPTING FROM THE STATE  
19 SALES TAX FUEL AND ENERGY USED OR  
20 CONSUMED IN MANUFACTURING.  
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), concerning natural gas and*  
26 *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-~~eights~~*  
34 *eighths percent (3.875%).*

35 *(3)(A) Beginning July 1, 2009, the tax rate levied in*  
36 *subdivision (a)(1) of this section shall be imposed at the rate of three and*



1 one-eighth percent (3.125%).

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

7 (ii) When the director determines that the amount of  
8 tax savings resulting from the determination described in subdivision  
9 (a)(3)(B)(i) of this section plus any use tax savings described in § 26-53-  
10 148(a)(3)(B) would reach twenty-seven million dollars (\$27,000,000) during a  
11 fiscal year, the director shall not process any mrefund claims through a  
12 refund process during the fiscal year for taxpayers seeking to claim the  
13 reduced tax rate provided by this section. The amount of twenty-seven million  
14 dollars (\$27,000,000) is intended to cover the accumulated but unclaimed  
15 reduction of sales and use tax on natural gas and electricity as provided by  
16 Act 185 of 2007 (Ark. Code 26-52-319 and Ark. Code 26-53-148) as well as the  
17 additional reduction provided by this Act.

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

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

34 (ii) The statute of limitations for refunds and  
35 amended returns under § 26-18-306(h)(i)(1)(A) is extended for one (1) year to  
36 allow the payment of a refund under the process provided in subdivision

1 (a)(3)(C)(i) of this section.

2 ~~(3)(4)~~ The taxes levied in this subsection (a) shall be  
3 distributed as follows:

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

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

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

13 ~~(4)(5)~~(A) The excise tax levied in this section applies only to  
14 natural gas and electricity sold for use directly in the actual manufacturing  
15 process.

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

19 ~~(5)(6)~~ The excise tax levied in this section shall be collected,  
20 reported, and paid in the same manner and at the same time as is prescribed  
21 by law for the collection, reporting, and payment of all other Arkansas gross  
22 receipts taxes.

23  
24 SECTION 2. Arkansas Code § 26-53-148 is amended to read as follows:

25 26-53-148. Natural gas and electricity used by manufacturers.

26 (a)(1) Beginning July 1, 2007, in lieu of the tax levied in §§ 26-53-  
27 106 and 26-53-107(a)-(d), there is levied an excise tax on the sales price of  
28 natural gas and electricity purchased by a manufacturer for use directly in  
29 the actual manufacturing process at the rate of four and three-eighths  
30 percent (4.375%).

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

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

1                   (B)(i) The Director of the Department of Finance and  
2 Administration shall monitor the amount of tax savings received by all  
3 taxpayers as a result of the reduction in the tax rate from that levied in §§  
4 26-53-106 and 26-53-107 to that levied in subdivision (a)(3)(A) of this  
5 section.

6                   (ii) When the director determines that the amount of  
7 tax savings resulting from the determination described in subdivision  
8 (a)(3)(B)(i) of this section plus any gross receipts tax savings described in  
9 § 26-52-319(a)(3)(B) would reach twenty-seven million dollars (\$27,000,000)  
10 during a fiscal year, the director shall not process any further refund  
11 claims through a refund process during the fiscal year for taxpayers seeking  
12 to claim the reduced tax rate provided by this section. The amount of twenty-  
13 seven million dollars (\$27,000,000) is intended to cover the accumulated but  
14 unclaimed reduction of sales and use tax on natural gas and electricity as  
15 provided by Act 185 of 2007 (Ark. Code 26-52-319 and Ark. Code 26-53-148) as  
16 well as the additional reduction provided by this section.

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

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

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

1           ~~(3)~~(4) The taxes levied in subsection (a) of this section shall  
2 be distributed as follows:

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

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

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

12           ~~(4)~~(5)(A) The excise tax levied in this section applies only to  
13 natural gas and electricity purchased for use directly in the actual  
14 manufacturing process.

15           (B) Natural gas and electricity purchased for any other  
16 purpose shall be subject to the full compensating use tax levied under §§ 26-  
17 53-106 and 26-53-107(a)-(d).

18           ~~(5)~~(6) The excise tax levied in this section shall be collected,  
19 reported, and paid in the same manner and at the same time as is prescribed  
20 by law for the collection, reporting, and payment of all other Arkansas  
21 compensating use taxes.

22  
23           SECTION 3. EMERGENCY CLAUSE. It is found and determined by the  
24 General Assembly that manufacturers in this state have suffered losses due to  
25 sharp increases in energy costs; that these manufacturers are unable to set  
26 the price for the products they produce and are particularly vulnerable to  
27 price volatility; that the current sales and use tax on utilities consumed by  
28 these manufacturers located within this state creates a competitive  
29 disadvantage; that this act is intended to address that problem by providing  
30 a reduced tax rate on utilities consumed by manufacturers located in this  
31 state; and that this act is necessary to prevent the loss of manufacturing  
32 jobs. Therefore, an emergency is hereby declared to exist and this act being  
33 necessary for the preservation of public peace, health, and safety shall  
34 become effective on July 1, 2009.

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36                                   /s/ Dunn