

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

A Bill

HOUSE BILL 1905

4
5 By: Representatives L. Cowling, Davenport, House, King, Lea, Lindsey, Lovell, S. Malone, Powers,
6 Cole
7 By: Senators Teague, D. Wyatt

For An Act To Be Entitled

11 AN ACT TO GRADUALLY REDUCE THE SALES AND USE TAX
12 ON UTILITIES THAT ARE USED BY QUALIFYING
13 AGRICULTURAL STRUCTURES AND QUALIFYING
14 AGRICULTURE, HORTICULTURE, AND AQUACULTURE
15 EQUIPMENT; AND FOR OTHER PURPOSES.

Subtitle

18 TO GRADUALLY REDUCE THE SALES AND USE
19 TAX ON UTILITIES THAT ARE USED BY
20 QUALIFYING AGRICULTURAL STRUCTURES AND
21 QUALIFYING AGRICULTURE, HORTICULTURE,
22 AND AQUACULTURE EQUIPMENT.

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

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

29 26-52-322. Reduced sales tax rate for utilities used by qualifying
30 agricultural structures and by qualifying agriculture, horticulture, and
31 aquaculture equipment.

32 (a) As used in this section:

33 (1) "Qualifying agriculture, horticulture, or aquaculture
34 equipment" means:

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



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

3 (C) A holding and sorting tank used in a commercial
 4 aquaculture operation; and

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

7 (2) "Qualifying agricultural structure" means:

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

12 (B) A commercial milking facility, including without
 13 limitation a milking parlor, a milk collection unit, and a refrigeration
 14 unit; and

15 (3) "Utility" means:

16 (A) Liquified petroleum gas;

17 (B) Natural gas; or

18 (C) Electricity.

19 (b)(1) Beginning July 1, 2010, in lieu of the gross receipts or gross
 20 proceeds tax levied in §§ 26-52-301 and 26-52-302(a)-(d), there is levied an
 21 excise tax on the gross receipts or gross proceeds derived from the sale of a
 22 utility used by a qualifying agricultural structure for a commercial purpose
 23 or qualifying agriculture, horticulture, or aquaculture equipment for a
 24 commercial purpose at the rate of four and seven-eighths percent (4.875%).

25 (2) Beginning July 1, 2011, and ending on June 30, 2012, the
 26 excise tax rate levied in subdivision (b)(1) of this section shall be imposed
 27 at the rate of three and seven-eighths percent (3.875%).

28 (3) Beginning July 1, 2012, and ending on June 30, 2013, the
 29 excise tax rate levied in subdivision (b)(1) of this section shall be imposed
 30 at the rate of two and seven-eighths percent (2.875%).

31 (4) Beginning July 1, 2013, and ending on June 30, 2014, the
 32 excise tax rate levied in subdivision (b)(1) of this section shall be imposed
 33 at the rate of one and seven-eighths percent (1.875%).

34 (5) Beginning July 1, 2014, and ending on June 30, 2015, the
 35 excise tax rate levied in subdivision (b)(1) of this section shall be imposed
 36 at the rate of seven-eighths percent (0.875%).

1 (6) Beginning July 1, 2015, the excise tax rate levied in
 2 subdivision (b)(1) of this section shall be imposed at the rate of one-eighth
 3 percent (0.125%).

4 (c) The excise tax levied in subsection (b) of this section shall be
 5 distributed as follows:

6 (1) Seventy-six and six-tenths percent (76.6%) of the tax,
 7 interest, penalties, and costs received by the Director of the Department of
 8 Finance and Administration shall be deposited into the State Treasury as
 9 general revenues;

10 (2) Eight and five-tenths percent (8.5%) of the tax, interest,
 11 penalties, and costs received by the director shall be deposited into the
 12 Property Tax Relief Trust Fund; and

13 (3) Fourteen and nine-tenths percent (14.9%) of the tax,
 14 interest, penalties, and costs received by the director shall be deposited
 15 into the Educational Adequacy Fund.

16 (d)(1) The excise tax levied in this section applies only to a utility
 17 sold for use by a qualifying agricultural structure operated for commercial
 18 purposes or qualifying agriculture, horticulture, or aquaculture equipment
 19 operated for commercial purposes.

20 (2) A utility sold for any other purpose is subject to the full
 21 gross receipts or gross proceeds tax levied under §§ 26-52-301 and 26-52-
 22 302(a)-(d).

23 (e) The excise tax levied in this section shall be collected,
 24 reported, and paid in the same manner and at the same time as is prescribed
 25 by law for the collection, reporting, and payment of all other Arkansas gross
 26 receipts taxes.

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

31 (g) Before the purchase of a utility at the reduced excise tax rate
 32 levied in this section, the director may require any seller of a utility to
 33 obtain a certificate from the taxpayer in the form prescribed by the
 34 director, certifying that the taxpayer is eligible to purchase the utility at
 35 the reduced excise tax rate.

36 (h) The director shall promulgate rules for the proper administration

1 of this section.

2 (i) The gross receipts or gross proceeds derived from the sale of a
3 utility to a taxpayer for use by a qualifying agricultural structure or
4 qualifying agriculture, horticulture, or aquaculture equipment shall continue
5 to be subject to:

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

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

9
10 SECTION 2. Arkansas Code Title 26, Chapter 53, Subchapter 1 is amended
11 to add an additional section to read as follows:

12 26-53-149. Reduced sales tax rate for utilities used by qualifying
13 agricultural structures and by qualifying agriculture, horticulture, and
14 aquaculture equipment.

15 (a) As used in this section:

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

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

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

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

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

26 (2) "Qualifying agricultural structure" means:

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

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

34 (3) "Utility" means:

35 (A) Liquified petroleum gas;

36 (B) Natural gas; or

1 (C) Electricity.

2 (b)(1) Beginning July 1, 2010, in lieu of the compensating use tax
3 levied in §§ 26-53-106 and 26-53-107(a)-(d), there is levied an excise tax on
4 the sales price of a utility purchased for use by a qualifying agricultural
5 structure or by qualifying agriculture, horticulture, or aquaculture
6 equipment at the rate of four and seven-eighths percent (4.875%).

7 (2) Beginning July 1, 2011, and ending on June 30, 2012, the
8 excise tax rate levied in subdivision (b)(1) of this section shall be imposed
9 at the rate of three and seven-eighths percent (3.875%).

10 (3) Beginning July 1, 2012, and ending on June 30 2013, the
11 excise tax rate levied in subdivision (b)(1) of this section shall be imposed
12 at the rate of two and seven-eighths percent (2.875%).

13 (4) Beginning July 1, 2013, and ending on June 30 2014, the
14 excise tax rate levied in subdivision (b)(1) of this section shall be imposed
15 at the rate of one and seven-eighths percent (1.875%).

16 (5) Beginning July 1, 2014, and ending on June 30 2015, the
17 excise tax rate levied in subdivision (b)(1) of this section shall be imposed
18 at the rate of seven-eighths percent (0.875%).

19 (6) Beginning July 1, 2015, the excise tax rate levied in
20 subdivision (b)(1) of this section shall be imposed at the rate of one-eighth
21 percent (0.125%).

22 (c) The excise taxes levied in subsection (b) of this section shall be
23 distributed as follows:

24 (1) Seventy-six and six-tenths percent (76.6%) of the tax,
25 interest, penalties, and costs received by the Director of the Department of
26 Finance and Administration shall be deposited into the State Treasury as
27 general revenues;

28 (2) Eight and five-tenths percent (8.5%) of the tax, interest,
29 penalties, and costs received by the director shall be deposited into the
30 Property Tax Relief Trust Fund; and

31 (3) Fourteen and nine-tenths percent (14.9%) of the tax,
32 interest, penalties, and costs received by the director shall be deposited
33 into the Educational Adequacy Fund.

34 (d)(1) The excise tax levied in this section applies only to a utility
35 purchased for use by a qualifying agricultural structure operated for
36 commercial purposes or qualifying agriculture, horticulture, or aquaculture

1 equipment operated for commercial purposes.

2 (2) A utility purchased for any other purpose is subject to the
 3 full compensating use tax levied under §§ 26-53-106 and 26-53-107(a)-(d).

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

8 (f) A utility subject to the reduced excise tax rate levied in this
 9 section shall be separately metered from a utility used for any other purpose
 10 by the taxpayer, or as otherwise established by the rules issued under
 11 subsection (h) of this section.

12 (g) Before the purchase of a utility at the reduced excise tax rate
 13 levied in this section, the director may require any seller of a utility to
 14 obtain a certificate from the consumer in the form prescribed by the
 15 director, certifying that the taxpayer is eligible to purchase the utility at
 16 the reduced excise tax rate.

17 (h) The director shall promulgate rules for the proper administration
 18 of this section.

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

21 (1) The excise tax levied under Arkansas Constitution, Amendment
 22 75, § 2; and

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

24
 25 SECTION 3. EMERGENCY CLAUSE. It is found and determined by the
 26 General Assembly of the State of Arkansas that agricultural, horticultural,
 27 and aquacultural businesses in this state have suffered losses due to sharp
 28 increases in energy costs; that these businesses are unable to set the price
 29 for the products they produce and are particularly vulnerable to price
 30 volatility; that the current sales and use tax on utilities consumed by these
 31 businesses located within this state creates a competitive disadvantage; that
 32 this act is intended to address that problem by providing a reduced tax rate
 33 on utilities consumed by agricultural, horticultural, and aquacultural
 34 businesses located in this state; and that this act is necessary to prevent
 35 the loss of agricultural, horticultural, and aquacultural jobs. Therefore,
 36 an emergency is hereby declared to exist and this act being necessary for the

1 preservation of public peace, health, and safety shall become effective on
2 July 1, 2009.

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