

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: H3/18/09 H3/27/09

A Bill

HOUSE BILL 1905

5 By: Representatives L. Cowling, Davenport, House, King, Lea, Lindsey, Lovell, S. Malone, Powers,
6 Cole

7 By: Senators Teague, D. Wyatt
8
9

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.
16

Subtitle

17 TO GRADUALLY REDUCE THE SALES AND USE
18 TAX ON UTILITIES THAT ARE USED BY
19 QUALIFYING AGRICULTURAL STRUCTURES AND
20 QUALIFYING AGRICULTURE, HORTICULTURE,
21 AND AQUACULTURE EQUIPMENT.
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24

25 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:
26

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 five and three-eighths percent (5.375%).

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 four and three-eighths percent (4.375%).

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 three and three-eighths percent (3.375%).

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 two and three-eighths percent (2.375%).

34 (5) Beginning July 1, 2014, the excise tax rate levied in
35 subdivision (b)(1) of this section shall be imposed at the rate of one and
36 three-eighths percent (1.375%).

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

3 (1) Beginning July 1, 2010, and ending on June 30, 2011:

4 (A) Sixty-one and twenty-eight hundredths percent (61.28%)
5 of the tax, interest, penalties, and costs received by the Director of the
6 Department of Finance and Administration shall be deposited into the State
7 Treasury as general revenues;

8 (B) Fourteen and sixty-five thousandths percent (14.065%) of the
9 tax, interest, penalties, and costs received by the director shall be
10 deposited into the Property Tax Relief Trust Fund; and

11 (C) Twenty-four and six hundred fifty-five thousandths percent
12 (24.655%) of the tax, interest, penalties, and costs received by the director
13 shall be deposited into the Educational Adequacy Fund.

14 (2) Beginning July 1, 2011, and ending on June 30, 2012:

15 (A) Forty-five and ninety-six hundredths percent (45.96%)
16 of the tax, interest, penalties, and costs received by the director shall be
17 deposited into the State Treasury as general revenues;

18 (B) Nineteen and sixty-three hundredths percent (19.63%)
19 of the tax, interest, penalties, and costs received by the director shall be
20 deposited into the Property Tax Relief Trust Fund; and

21 (C) Thirty-four and forty-one hundredths percent (34.41%)
22 of the tax, interest, penalties, and costs received by the director shall be
23 deposited into the Educational Adequacy Fund.

24 (3) Beginning July 1, 2012, and ending on June 30, 2013:

25 (A) Thirty and sixty-four hundredths percent (30.64%) of
26 the tax, interest, penalties, and costs received by the director shall be
27 deposited into the State Treasury as general revenues;

28 (B) Twenty-five and one hundred ninety-five thousandths
29 percent (25.195%) of the tax, interest, penalties, and costs received by the
30 director shall be deposited into the Property Tax Relief Trust Fund; and

31 (C) Forty-four and one hundred sixty-five thousandths
32 percent (44.165%) of the tax, interest, penalties, and costs received by the
33 director shall be deposited into the Educational Adequacy Fund.

34 (4) Beginning July 1, 2013, and ending on June 30, 2014:

35 (A) Fifteen and thirty-two hundredths percent (15.32%) of
36 the tax, interest, penalties, and costs received by the director shall be

1 deposited into the State Treasury as general revenues;

2 (B) Thirty and seventy-six hundredths percent (30.76%) of
3 the tax, interest, penalties, and costs received by the director shall be
4 deposited into the Property Tax Relief Trust Fund; and

5 (C) Fifty-three and ninety-two hundredths percent (53.92%)
6 of the tax, interest, penalties, and costs received by the director shall be
7 deposited into the Educational Adequacy Fund.

8 (5) Beginning July 1, 2014:

9 (A) Thirty-six and three hundred twenty-five thousandths
10 percent (36.325%) of the tax, interest, penalties, and costs received by the
11 director shall be deposited into the Property Tax Relief Trust Fund; and

12 (B) Sixty-three and six hundred seventy-five thousandths
13 percent (63.675%) of the tax, interest, penalties, and costs received by the
14 director shall be deposited into the Educational Adequacy Fund.

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

19 (2) A utility sold for any other purpose is subject to the gross
20 receipts or gross proceeds tax levied under §§ 26-52-301 and 26-52-302(a)-(d)
21 or, if applicable, § 26-52-319.

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

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

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

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

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

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

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

8
9 SECTION 2. Arkansas Code Title 26, Chapter 53, Subchapter 1 is amended
10 to add an additional section to read as follows:

11 26-53-149. Reduced sales tax rate for utilities used by qualifying
12 agricultural structures and by qualifying agriculture, horticulture, and
13 aquaculture equipment.

14 (a) As used in this section:

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

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

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

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

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

25 (2) "Qualifying agricultural structure" means:

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

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

33 (3) "Utility" means:

34 (A) Liquefied petroleum gas;

35 (B) Natural gas; or

36 (C) Electricity.

1 (b)(1) Beginning July 1, 2010, in lieu of the compensating use tax
2 levied in §§ 26-53-106 and 26-53-107(a)-(d), there is levied an excise tax on
3 the sales price of a utility purchased for use by a qualifying agricultural
4 structure or by qualifying agriculture, horticulture, or aquaculture
5 equipment for a commercial purpose at the rate of five and three-eighths
6 percent (5.375%).

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 four and three-eighths percent (4.375%).

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 three and three-eighths percent (3.375%).

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 two and three-eighths percent (2.375%).

16 (5) Beginning July 1, 2014, the excise tax rate levied in
17 subdivision (b)(1) of this section shall be imposed at the rate of one and
18 three-eighths percent (1.375%).

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

21 (1) Beginning July 1, 2010, and ending on June 30, 2011:

22 (A) Sixty-one and twenty-eight hundredths percent (61.28%)
23 of the tax, interest, penalties, and costs received by the Director of the
24 Department of Finance and Administration shall be deposited into the State
25 Treasury as general revenues;

26 (B) Fourteen and sixty-five thousandths percent (14.065%)
27 of the tax, interest, penalties, and costs received by the director shall be
28 deposited into the Property Tax Relief Trust Fund; and

29 (C) Twenty-four and six hundred fifty-five thousandths
30 percent (24.655%) of the tax, interest, penalties, and costs received by the
31 director shall be deposited into the Educational Adequacy Fund.

32 (2) Beginning July 1, 2011, and ending on June 30, 2012:

33 (A) Forty-five and ninety-six hundredths percent (45.96%)
34 of the tax, interest, penalties, and costs received by the director shall be
35 deposited into the State Treasury as general revenues;

36 (B) Nineteen and sixty-three hundredths percent (19.63%)

1 of the tax, interest, penalties, and costs received by the director shall be
2 deposited into the Property Tax Relief Trust Fund; and

3 (C) Thirty-four and forty-one hundredths percent (34.41%)
4 of the tax, interest, penalties, and costs received by the director shall be
5 deposited into the Educational Adequacy Fund.

6 (3) Beginning July 1, 2012, and ending on June 30, 2013:

7 (A) Thirty and sixty-four hundredths percent (30.64%) of
8 the tax, interest, penalties, and costs received by the director shall be
9 deposited into the State Treasury as general revenues;

10 (B) Twenty-five and one hundred ninety-five thousandths
11 percent (25.195%) of the tax, interest, penalties, and costs received by the
12 director shall be deposited into the Property Tax Relief Trust Fund; and

13 (C) Forty-four and one hundred sixty-five thousandths
14 percent (44.165%) of the tax, interest, penalties, and costs received by the
15 director shall be deposited into the Educational Adequacy Fund.

16 (4) Beginning July 1, 2013, and ending on June 30, 2014:

17 (A) Fifteen and thirty-two hundredths percent (15.32%) of
18 the tax, interest, penalties, and costs received by the director shall be
19 deposited into the State Treasury as general revenues;

20 (B) Thirty and seventy-six hundredths percent (30.76%) of
21 the tax, interest, penalties, and costs received by the director shall be
22 deposited into the Property Tax Relief Trust Fund; and

23 (C) Fifty-three and ninety-two hundredths percent (53.92%)
24 of the tax, interest, penalties, and costs received by the director shall be
25 deposited into the Educational Adequacy Fund.

26 (5) Beginning July 1, 2014:

27 (A) Thirty-six and three hundred twenty-five thousandths
28 percent (36.325%) of the tax, interest, penalties, and costs received by the
29 director shall be deposited into the Property Tax Relief Trust Fund; and

30 (B) Sixty-three and six hundred seventy-five thousandths
31 percent (63.675%) of the tax, interest, penalties, and costs received by the
32 director shall be deposited into the Educational Adequacy Fund.

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

1 (2) A utility purchased for any other purpose is subject to the
2 compensating use tax levied under §§ 26-53-106 and 26-53-107(a)-(d) or, if
3 applicable, § 26-53-148.

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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/s/ L. Cowling