

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 Enrolled: H3/18/09 H3/27/09 H4/1/09

# 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.  
22  
23  
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) Liquefied 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) 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 (e) 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 (f) A utility subject to the reduced excise tax rate levied in this  
24 section shall be separately metered from a utility used for any other purpose  
25 by the taxpayer, or as otherwise established by the rules issued under  
26 subsection (h) of this section.

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

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

34 (i) The gross receipts or gross proceeds derived from the sale of a  
35 utility to a taxpayer for use by a qualifying agricultural structure or  
36 qualifying agriculture, horticulture, or aquaculture equipment shall continue

1 to be subject to:

2 (1) The excise tax levied under Arkansas Constitution, Amendment  
3 75, § 2; and

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

5  
6 SECTION 2. Arkansas Code Title 26, Chapter 53, Subchapter 1 is amended  
7 to add an additional section to read as follows:

8 26-53-149. Reduced sales tax rate for utilities used by qualifying  
9 agricultural structures and by qualifying agriculture, horticulture, and  
10 aquaculture equipment.

11 (a) As used in this section:

12 (1) "Qualifying agriculture, horticulture, or aquaculture  
13 equipment" means:

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

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

18 (C) A holding and sorting tank used in a commercial  
19 aquaculture operation; and

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

22 (2) "Qualifying agricultural structure" means:

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

27 (B) A commercial milking facility, including without  
28 limitation a milking parlor, a milk collection unit, and a refrigeration  
29 unit; and

30 (3) "Utility" means:

31 (A) Liquified petroleum gas;

32 (B) Natural gas; or

33 (C) Electricity.

34 (b)(1) Beginning July 1, 2010, in lieu of the compensating use tax  
35 levied in §§ 26-53-106 and 26-53-107(a)-(d), there is levied an excise tax on  
36 the sales price of a utility purchased for use by a qualifying agricultural

1 structure or by qualifying agriculture, horticulture, or aquaculture  
2 equipment for a commercial purpose at the rate of five and three-eighths  
3 percent (5.375%).

4 (2) Beginning July 1, 2011, and ending on June 30, 2012, the  
5 excise tax rate levied in subdivision (b)(1) of this section shall be imposed  
6 at the rate of four and three-eighths percent (4.375%).

7 (3) Beginning July 1, 2012, and ending on June 30 2013, the  
8 excise tax rate levied in subdivision (b)(1) of this section shall be imposed  
9 at the rate of three and three-eighths percent (3.375%).

10 (4) Beginning July 1, 2013, and ending on June 30 2014, the  
11 excise tax rate levied in subdivision (b)(1) of this section shall be imposed  
12 at the rate of two and three-eighths percent (2.375%).

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

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

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

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

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

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

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

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

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

36 (C) Thirty-four and forty-one hundredths percent (34.41%)

1 of the tax, interest, penalties, and costs received by the director shall be  
2 deposited into the Educational Adequacy Fund.

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

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

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

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

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

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

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

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

23 (5) Beginning July 1, 2014:

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

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

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

34 (e) The excise tax levied in this section shall be collected,  
35 reported, and paid in the same manner and at the same time as is prescribed  
36 by law for the collection, reporting, and payment of all other Arkansas

1 compensating use taxes.

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

6 (g) Before the purchase of a utility at the reduced excise tax rate  
7 levied in this section, the director may require any seller of a utility to  
8 obtain a certificate from the consumer in the form prescribed by the  
9 director, certifying that the taxpayer is eligible to purchase the utility at  
10 the reduced excise tax rate.

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

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

15 (1) The excise tax levied under Arkansas Constitution, Amendment  
16 75, § 2; and

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

18  
19 SECTION 3. EMERGENCY CLAUSE. It is found and determined by the  
20 General Assembly of the State of Arkansas that agricultural, horticultural,  
21 and aquacultural businesses in this state have suffered losses due to sharp  
22 increases in energy costs; that these businesses are unable to set the price  
23 for the products they produce and are particularly vulnerable to price  
24 volatility; that the current sales and use tax on utilities consumed by these  
25 businesses located within this state creates a competitive disadvantage; that  
26 this act is intended to address that problem by providing a reduced tax rate  
27 on utilities consumed by agricultural, horticultural, and aquacultural  
28 businesses located in this state; and that this act is necessary to prevent  
29 the loss of agricultural, horticultural, and aquacultural jobs. Therefore,  
30 an emergency is hereby declared to exist and this act being necessary for the  
31 preservation of public peace, health, and safety shall become effective on  
32 July 1, 2009.

33  
34 */s/ L. Cowling*