

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

A Bill

SENATE BILL 770

5 By: Senator Teague
6 By: Representative Ingram
7

For An Act To Be Entitled

10 AN ACT TO CLARIFY THAT PARTIAL REPLACEMENT OF
11 MANUFACTURING MACHINERY AND EQUIPMENT THAT
12 IMPROVE MANUFACTURING EFFICIENCY, MODERNIZE
13 EXISTING MACHINERY, OR ECONOMICALLY OR PHYSICALLY
14 EXPAND AN EXISTING FACILITY, INCLUDING THE
15 MACHINERY AND EQUIPMENT THAT ACT AS A MOLD OR DIE
16 TO DETERMINE THE PHYSICAL CHARACTERISTICS OF A
17 PRODUCT, ARE EXEMPT FROM THE SALES AND USE TAX;
18 AND FOR OTHER PURPOSES.

Subtitle

20
21 TO CLARIFY THAT PARTIAL REPLACEMENT OF
22 MANUFACTURING MACHINERY AND EQUIPMENT
23 THAT IMPROVE MANUFACTURING EFFICIENCY
24 ARE EXEMPT FROM THE SALES AND USE TAX.
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27 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:
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29 SECTION 1. Arkansas Code Section 26-52-402(a)(2), concerning machinery
30 and equipment exempt from the sales and use tax, is amended to read as
31 follows:

32 (2)(A) Machinery purchased to replace existing machinery and
33 used directly in producing, manufacturing, fabricating, assembling,
34 processing, finishing, or packaging of articles of commerce at manufacturing
35 or processing plants or facilities in this state will be exempt under this
36 subdivision (a)(2).



1 (B)(i)(a) As used in subdivision (a)(2)(A) of this
 2 section, “machinery purchased to replace existing machinery” means that
 3 substantially all of the machinery and equipment required to perform an
 4 essential function is physically replaced with new machinery.

5 ~~(ii)(b)~~ As used in subdivision (a)(2)(B)(i)(a) of
 6 this section, “substantially” is intended to exclude routine repairs and
 7 maintenance and partial replacements that do not improve efficiency or extend
 8 the useful life of the entire machine, but it is not intended to mean that
 9 foundations and minor components that can be economically adapted, rebuilt,
 10 or refurbished must be completely replaced when replacement would be more
 11 expensive or impracticable than adapting, rebuilding, or refurbishing the old
 12 foundation or minor components.

13 (ii) “Machinery purchased to replace existing
 14 machinery” includes partial replacements of machinery or machinery components
 15 that:

16 (a) Improve efficiency;

17 (b) Extend the useful life of an entire
 18 machine;

19 (c) Modernize old, inefficient, less
 20 technologically advanced, or technologically obsolete machinery or equipment;

21 (d) Result in an economic expansion of an
 22 existing manufacturing or processing plant or facility within the state by
 23 increasing:

24 (1) Production;

25 (2) Employment; or

26 (3) The number of different types
 27 or models of property that can be manufactured; or

28 (e) Physically expand a manufacturing or
 29 processing plant or facility.

30 (C) It is the intent of this subdivision (a)(2) to provide
 31 the exemptions in subdivision (a)(1) of this section and this subdivision
 32 (a)(2) as incentives to encourage the location of new manufacturing plants in
 33 Arkansas, the expansion of existing manufacturing plants in Arkansas, and the
 34 modernization of existing manufacturing plants in Arkansas through the
 35 replacement of old, inefficient, less technologically advanced, or
 36 technologically obsolete machinery and equipment;

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 2 SECTION 2. Arkansas Code § 26-52-402(c)(2)(B), concerning the
 3 definition of machinery and equipment exempt from sales and use tax, is
 4 amended to read as follows:

5 (B) Machinery and equipment “used directly” in the
 6 manufacturing process ~~shall include, but shall not be limited to~~ includes
 7 without limitation, the following:

8 (i) ~~Molds and dies, frames, cavities, and forms~~ that
 9 determine the physical characteristics of the finished product or its
 10 packaging material at any stage of the manufacturing process;

11 (ii) Dies, tools, and devices attached to or a part
 12 of a unit of machinery that determine the physical characteristics of the
 13 finished product or its packaging material at any stage of the manufacturing
 14 process; and

15 ~~(ii)-(iii)~~ (iii) Testing equipment to measure the quality
 16 of the finished product at any stage of the manufacturing process;

17 ~~(iii)-(iv)~~ (iv) Computers and related peripheral equipment
 18 that directly control or measure the manufacturing process; and

19 ~~(iv)-(v)~~ (v) Machinery and equipment that produce steam,
 20 electricity, or chemical catalysts and solutions that are essential to the
 21 manufacturing process but which are consumed during the course of the
 22 manufacturing process and do not become necessary and integral parts of the
 23 finished product;

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 25 SECTION 3. Arkansas Code Section 26-53-114(a)(2), concerning the
 26 definition of machinery and equipment exempt from the compensating use tax,
 27 is amended to read as follows:

28 (2)(A) Machinery purchased to replace existing machinery ~~in its~~
 29 ~~entirety~~ and used directly in producing, manufacturing, fabricating,
 30 assembling, processing, finishing, or packaging of articles of commerce at
 31 manufacturing or processing plants or facilities in this state will be exempt
 32 under this section.

33 (B)(i)(a) As used in subdivision (a)(2)(A) of this
 34 section, “machinery purchased to replace existing machinery” means that
 35 substantially all of the machinery and equipment required to perform an
 36 essential function is physically replaced with new machinery.

1 ~~(ii)(b)~~ As used in subdivision (a)(2)(B)(i)(a)
 2 of this section, “substantially” is intended to exclude routine repairs and
 3 maintenance and partial replacements that do not improve efficiency or extend
 4 the useful life of the entire machine, but it is not intended to mean that
 5 foundations and minor components which can be economically adapted, rebuilt,
 6 or refurbished must be completely replaced when replacement would be more
 7 expensive or impracticable than adapting, rebuilding, or refurbishing the old
 8 foundation and minor components; ~~and.~~

9 (ii) “Machinery purchased to replace existing
 10 machinery” includes partial replacements of machinery or machinery components
 11 that:

12 (a) Improve efficiency;

13 (b) Extend the useful life of an entire
 14 machine;

15 (c) Modernize old, inefficient, less
 16 technologically advanced, or technologically obsolete machinery or equipment;

17 (d) Result in an economic expansion of an
 18 existing manufacturing or processing plant or facility within the state by
 19 increasing:

20 (1) Production;

21 (2) Employment; or

22 (3) The number of different types
 23 or models of property that can be manufactured; or

24 (e) Physically expand a manufacturing or
 25 processing plant or facility.

26 (C) It is the intent of this subdivision (a)(2) to provide
 27 the exemptions in subdivision (a)(1) of this section and this subdivision
 28 (a)(2) as incentives to encourage the location of new manufacturing plants in
 29 Arkansas, the expansion of existing manufacturing plants in Arkansas, and the
 30 modernization of existing manufacturing plants in Arkansas through the
 31 replacement of old, inefficient, less technologically advanced, or
 32 technologically obsolete machinery and equipment;

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 34 SECTION 4. Arkansas Code § 26-53-114(c)(3)(B), concerning exemption
 35 for certain machinery and equipment under the compensating use tax, is
 36 amended to read as follows:

1 (B) Further, machinery and equipment "used directly" in
 2 the manufacturing process ~~shall include, but shall not be limited to,~~includes
 3 without limitation the following:

4 (i) Molds and dies, frames, cavities, and forms that
 5 determine the physical characteristics of the ~~finished~~ product or its
 6 packaging materials, at any stage of the manufacturing process;

7 (ii) Dies, tools, and devices attached to or part of
 8 a unit of machinery that determine the physical characteristics of the
 9 product or its packaging material at any stage of the manufacturing process;

10 ~~(iii)~~(iii) Testing equipment to measure the quality
 11 of the finished product at any stage of the manufacturing process;

12 ~~(iii)~~(iv) Computers and related peripheral equipment
 13 that directly control or measure the manufacturing process; and

14 ~~(iv)~~(v) Machinery and equipment that produce steam,
 15 electricity, or chemical catalysts and solutions that are essential to the
 16 manufacturing process but which are consumed during the course of the
 17 manufacturing process and do not become necessary and integral parts of the
 18 finished product;

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 20 SECTION 5. EMERGENCY CLAUSE. It is found and determined by the General
 21 Assembly of the State of Arkansas that differences of opinion have developed
 22 between the Department of Finance and Administration and Arkansas
 23 manufacturers concerning the meaning of important sections of the
 24 manufacturing machinery and equipment sales and use tax exemption, including
 25 particularly the exemption for the purchase and installation of machinery and
 26 equipment to modernize and improve the efficiency of existing machinery and
 27 equipment, expand production or create new jobs that may not require the
 28 replacement of machines in their entirety, as well as the sales and use tax
 29 exemption for dies and molds used directly in manufacturing; that it is
 30 critical to encourage manufacturers to modernize and retool their plants as
 31 economically as possible in order to remain competitive and preserve Arkansas
 32 jobs; and that clarifications to confirm the intent and purpose of the
 33 manufacturing machinery and equipment sales and use tax exemption is
 34 appropriate. Therefore, an emergency is declared to exist and this act being
 35 immediately necessary for the preservation of the public peace, health, and
 36 safety shall become effective on:

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(1) The date of its approval by the Governor;

(2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or

(3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto.