

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 88th General Assembly
3 Regular Session, 2011
4
5 By: Representative Jean

A Bill

HOUSE BILL 1052

For An Act To Be Entitled

8 AN ACT TO DECREASE THE SALES AND USE TAX ON NATURAL
9 GAS AND ELECTRICITY USED BY MANUFACTURERS; TO DECLARE
10 AN EMERGENCY; AND FOR OTHER PURPOSES.

Subtitle

13 TO DECREASE THE SALES AND USE TAX ON
14 NATURAL GAS AND ELECTRICITY USED BY
15 MANUFACTURERS AND TO DECLARE AN
16 EMERGENCY.

17
18
19 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:

20
21 SECTION 1. Arkansas Code § 26-52-319(a)-(b), concerning natural gas
22 and electricity used by manufacturers, is amended to read as follows:

23 (a)(1) Beginning July 1, 2007, in lieu of the gross receipts or gross
24 proceeds tax levied in §§ 26-52-301 and 26-52-302~~(a)-(d)~~, there is levied an
25 excise tax on the gross receipts or gross proceeds derived from the sale of
26 natural gas and electricity to a manufacturer for use directly in the actual
27 manufacturing process at the rate of four and three-eighths percent (4.375%).

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

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

34 (B)(i) The Director of the Department of Finance and
35 Administration shall monitor the amount of tax savings received by all
36 taxpayers as a result of the reduction in the tax rate from that levied in §§



1 26-52-301 and 26-52-302 to that levied in subdivision (a)(3)(A) of this
2 section.

3 (ii) When the director determines that the amount of
4 tax savings resulting from the determination described in subdivision
5 (a)(3)(B)(i) of this section plus any use tax savings described in § 26-53-
6 148(a)(3)(B) would reach twenty-seven million dollars (\$27,000,000) during a
7 fiscal year, the director shall not process any further refund claims through
8 a refund process during the fiscal year for taxpayers seeking to claim the
9 reduced tax rate provided by this section. The amount of twenty-seven million
10 dollars (\$27,000,000) is intended to cover the accumulated but unclaimed
11 reduction of sales and use tax on natural gas and electricity as provided by
12 Acts 2007, No. 185, as well as the additional reduction provided by Acts
13 2009, No. 695.

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

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

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

34 (4)(A) Beginning July 1, 2011, the tax rate levied in
35 subdivision (a)(1) of this section shall be imposed at the rate of two and
36 five-eighths percent (2.625%).

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 26-52-301 and 26-52-302 to that levied in subdivision (a)(4)(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)(4)(B)(i) of this section plus any use tax savings described in § 26-53-
9 148(a)(4)(B) would reach twenty-seven million dollars (\$27,000,000) during a
10 fiscal year, the director shall not process any further refund claims through
11 a refund process during the fiscal year for taxpayers seeking to claim the
12 reduced tax rate provided by this section. The amount of twenty-seven million
13 dollars (\$27,000,000) is intended to cover the accumulated but unclaimed
14 reduction of sales and use tax on natural gas and electricity as provided by
15 this section.

16 (iii) If the director determines that discontinuing
17 refund payments as provided in subdivision (a)(4)(B)(ii) of this section is
18 insufficient to prevent the amount of tax savings from exceeding twenty-seven
19 million dollars (\$27,000,000) during a fiscal year, the director may decline
20 to accept any amended return filed by a taxpayer to claim an overpayment
21 resulting from the reduced tax rate provided by this section for a period
22 other than the period for which a tax return is currently due.

23 (C)(i) Refund requests and amended returns filed with the
24 director to claim the overpayment resulting from the reduced rate in
25 subdivision (a)(4)(A) of this section shall be processed in the order they
26 are received by the director. A taxpayer that does not receive a refund after
27 the refund and amended return process has ceased under subdivision (a)(4)(B)
28 of this section shall be given priority to receive a refund during the
29 subsequent fiscal year. The unpaid refunds from the prior fiscal year shall
30 be processed before any refund claims filed in the current fiscal year to
31 claim the benefit of this section.

32 (ii) The statute of limitations for refunds and
33 amended returns under § 26-18-306(i)(1)(A) is extended for one (1) year to
34 allow the payment of a refund under the process provided in subdivision
35 (a)(4)(C)(i) of this section.

36 ~~(4)(5)~~ The taxes levied in this subsection ~~(a)~~ shall be

1 distributed as follows:

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

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

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

11 ~~(5)-(A)~~(6)(A) The excise tax levied in this section applies only
12 to natural gas and electricity sold for use directly in the actual
13 manufacturing process.

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

17 ~~(6)(7)~~ The excise tax levied in this section shall be collected,
18 reported, and paid in the same manner and at the same time as is prescribed
19 by law for the collection, reporting, and payment of all other Arkansas gross
20 receipts taxes.

21 (b) As used in this section, "manufacturer" means a manufacturer
22 classified within sectors 31 through 33 of the North American Industry
23 Classification System, as in effect on ~~January 1, 2007~~ January 1, 2011.

24
25 SECTION 2. Arkansas Code § 26-53-148(a)-(b), concerning natural gas
26 and electricity used by manufacturers, is amended to read as follows:

27 (a)(1) Beginning July 1, 2007, in lieu of the tax levied in §§ 26-53-
28 106 and 26-53-107~~(a)-(d)~~, there is levied an excise tax on the sales price of
29 natural gas and electricity purchased by a manufacturer for use directly in
30 the actual manufacturing process at the rate of four and three-eighths
31 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-
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 26-53-106 and 26-53-107 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 gross receipts tax savings described in
10 § 26-52-319(a)(3)(B) would reach twenty-seven million dollars (\$27,000,000)
11 during a fiscal year, the director shall not process any further refund
12 claims through a refund process during the fiscal year for taxpayers seeking
13 to claim the reduced tax rate provided by this section. The amount of twenty-
14 seven million dollars (\$27,000,000) is intended to cover the accumulated but
15 unclaimed reduction of sales and use tax on natural gas and electricity as
16 provided by Acts 2007, No. 185, as well as the additional reduction provided
17 by Acts 2009, No. 695.

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 will be processed in the order they are
28 received by the director. A taxpayer that does not receive a refund after the
29 refund and amended return process has ceased under subdivision (a)(3)(B) of
30 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(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 (4)(A) Beginning July 1, 2011, the tax rate levied in
3 subdivision (a)(1) of this section shall be imposed at the rate of two and
4 five-eighths percent (2.625%).

5 (B)(i) The Director of the Department of Finance and
6 Administration shall monitor the amount of tax savings received by all
7 taxpayers as a result of the reduction in the tax rate from that levied in §§
8 26-53-106 and 26-53-107 to that levied in subdivision (a)(4)(A) of this
9 section.

10 (ii) When the director determines that the amount of
11 tax savings resulting from the determination described in subdivision
12 (a)(4)(B)(i) of this section plus any gross receipts tax savings described in
13 § 26-52-319(a)(4)(B) would reach twenty-seven million dollars (\$27,000,000)
14 during a fiscal year, the director shall not process any further refund
15 claims through a refund process during the fiscal year for taxpayers seeking
16 to claim the reduced tax rate provided by this section. The amount of twenty-
17 seven million dollars (\$27,000,000) is intended to cover the accumulated but
18 unclaimed reduction of sales and use tax on natural gas and electricity as
19 provided by this section.

20 (iii) If the director determines that discontinuing
21 refund payments as provided in subdivision (a)(4)(B)(ii) of this section is
22 insufficient to prevent the amount of tax savings from exceeding twenty-seven
23 million dollars (\$27,000,000) during a fiscal year, the director may decline
24 to accept any amended return filed by a taxpayer to claim an overpayment
25 resulting from the reduced tax rate provided by this section for a period
26 other than the period for which a tax return is currently due.

27 (C)(i) Refund requests and amended returns filed with the
28 director to claim the overpayment resulting from the reduced rate in
29 subdivision (a)(4)(A) of this section will be processed in the order they are
30 received by the director. A taxpayer that does not receive a refund after the
31 refund and amended return process has ceased under subdivision (a)(4)(B) of
32 this section shall be given priority to receive a refund during the
33 subsequent fiscal year. The unpaid refunds from the prior fiscal year shall
34 be processed before any refund claims filed in the current fiscal year to
35 claim the benefit of this section.

36 (ii) The statute of limitations for refunds and

1 amended returns under § 26-18-306(i)(1)(A) is extended for one (1) year to
 2 allow the payment of a refund under the process provided in subdivision
 3 (a)(4)(C)(i) of this section.

4 ~~(4)(5)~~ The taxes levied in this subsection ~~(a) of this section~~
 5 shall be distributed as follows:

6 (A) Seventy-six and six-tenths percent (76.6%) of the tax,
 7 interest, penalties, and costs received by the director shall be deposited as
 8 general revenues;

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

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

15 ~~(5)(A)(6)(A)~~ The excise tax levied in this section applies only
 16 to natural gas and electricity purchased for use directly in the actual
 17 manufacturing process.

18 (B) Natural gas and electricity purchased for any other
 19 purpose shall be subject to the full compensating use tax levied under §§ 26-
 20 53-106 and 26-53-107~~(a)-(d)~~.

21 ~~(6)(7)~~ The excise tax levied in this section shall be collected,
 22 reported, and paid in the same manner and at the same time as is prescribed
 23 by law for the collection, reporting, and payment of all other Arkansas
 24 compensating use taxes.

25 (b) As used in this section, "manufacturer" means a manufacturer
 26 classified within sectors 31 through 33 of the North American Industry
 27 Classification System, as in effect on ~~January 1, 2007~~ January 1, 2011.

28
 29 SECTION 3. EMERGENCY CLAUSE. It is found and determined by the
 30 General Assembly of the State of Arkansas that the cost of manufacturing
 31 continues to climb; that Arkansas' unemployment rate is extremely high; that
 32 the economy has dramatically affected manufacturers and resulted in lay-offs;
 33 that decreasing the sales and use tax on natural gas and electricity used by
 34 manufacturers would provide manufacturers with a way to increase the number
 35 of employees; and that this, in turn, would increase production and provide
 36 lucrative employment for Arkansans. Therefore, an emergency is declared to

1 exist and this act being necessary for the preservation of the public peace,
2 health, and safety shall become effective on July 1, 2011.

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