

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

As Engrossed: H2/14/11

A Bill

HOUSE BILL 1052

5 By: Representatives Jean, *D. Altes, Baird, Barnett, Bell, Benedict, Biviano, T. Bradford, J. Burris,*
6 *Carnine, Catlett, Cheatham, Clemmer, Collins, Collins-Smith, Dale, Deffenbaugh, J. Dickinson, J.*
7 *Edwards, English, Eubanks, Fielding, Garner, Gillam, Hammer, Harris, Hickerson, Hobbs, Hopper,*
8 *Hubbard, D. Hutchinson, Kerr, King, Lampkin, Lea, Linck, Lindsey, Love, S. Malone, Mauch, Mayberry,*
9 *D. Meeks, S. Meeks, Patterson, Ratliff, Rice, Sanders, Shepherd, Slinkard, G. Smith, Stewart, Stubblefield,*
10 *Summers, Vines, Wardlaw, Westerman, Woods, Wren, Wright*
11 By: Senator *M. Lamoureux*
12

For An Act To Be Entitled

14 AN ACT TO DECREASE THE SALES AND USE TAX ON NATURAL
15 GAS AND ELECTRICITY USED BY MANUFACTURERS; TO DECLARE
16 AN EMERGENCY; AND FOR OTHER PURPOSES.
17

Subtitle

19 TO DECREASE THE SALES AND USE TAX ON
20 NATURAL GAS AND ELECTRICITY USED BY
21 MANUFACTURERS AND TO DECLARE AN
22 EMERGENCY.
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24

25 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:
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27 SECTION 1. Arkansas Code § 26-52-319(a)-(b), concerning natural gas
28 and electricity used by manufacturers, is amended to read as follows:

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

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



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

4 (B)(i) The Director of the Department of Finance and
5 Administration shall monitor the amount of tax savings received by all
6 taxpayers as a result of the reduction in the tax rate from that levied in §§
7 26-52-301 and 26-52-302 to that levied in subdivision (a)(3)(A) of this
8 section.

9 (ii) When the director determines that the amount of
10 tax savings resulting from the determination described in subdivision
11 (a)(3)(B)(i) of this section plus any use tax savings described in § 26-53-
12 148(a)(3)(B) would reach twenty-seven million dollars (\$27,000,000) during a
13 fiscal year, the director shall not process any further refund claims through
14 a refund process during the fiscal year for taxpayers seeking to claim the
15 reduced tax rate provided by this section. The amount of twenty-seven million
16 dollars (\$27,000,000) is intended to cover the accumulated but unclaimed
17 reduction of sales and use tax on natural gas and electricity as provided by
18 Acts 2007, No. 185, as well as the additional reduction provided by Acts
19 2009, No. 695.

20 (iii) If the director determines that discontinuing
21 refund payments as provided in subdivision (a)(3)(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)(3)(A) of this section shall be processed in the order they
30 are received by the director. A taxpayer that does not receive a refund after
31 the refund and amended return process has ceased under subdivision (a)(3)(B)
32 of 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)(3)(C)(i) of this section.

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

7 (B)(i) The Director of the Department of Finance and
8 Administration shall monitor the amount of tax savings received by all
9 taxpayers as a result of the reduction in the tax rate from that levied in §§
10 26-52-301 and 26-52-302 to that levied in subdivision (a)(4)(A) of this
11 section.

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

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

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

1 claim the benefit of this section.

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

6 ~~(4)(5)~~ The taxes levied in this subsection ~~(a)~~ shall be
 7 distributed as follows:

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

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

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

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

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

23 ~~(6)(7)~~ 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 (b) As used in this section, "manufacturer" means a manufacturer
 28 classified within sectors 31 through 33 of the North American Industry
 29 Classification System, as in effect on ~~January 1, 2007~~ January 1, 2011.

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

33 (a)(1) Beginning July 1, 2007, in lieu of the tax levied in §§ 26-53-
 34 106 and 26-53-107~~(a)-(d)~~, there is levied an excise tax on the sales price of
 35 natural gas and electricity purchased by a manufacturer for use directly in
 36 the actual manufacturing process at the rate of four and three-eighths

1 percent (4.375%).

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

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

8 (B)(i) The Director of the Department of Finance and
9 Administration shall monitor the amount of tax savings received by all
10 taxpayers as a result of the reduction in the tax rate from that levied in §§
11 26-53-106 and 26-53-107 to that levied in subdivision (a)(3)(A) of this
12 section.

13 (ii) When the director determines that the amount of
14 tax savings resulting from the determination described in subdivision
15 (a)(3)(B)(i) of this section plus any gross receipts tax savings described in
16 § 26-52-319(a)(3)(B) would reach twenty-seven million dollars (\$27,000,000)
17 during a fiscal year, the director shall not process any further refund
18 claims through a refund process during the fiscal year for taxpayers seeking
19 to claim the reduced tax rate provided by this section. The amount of twenty-
20 seven million dollars (\$27,000,000) is intended to cover the accumulated but
21 unclaimed reduction of sales and use tax on natural gas and electricity as
22 provided by Acts 2007, No. 185, as well as the additional reduction provided
23 by Acts 2009, No. 695.

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

31 (C)(i) Refund requests and amended returns filed with the
32 director to claim the overpayment resulting from the reduced rate in
33 subdivision (a)(3)(A) of this section will be processed in the order they are
34 received by the director. A taxpayer that does not receive a refund after the
35 refund and amended return process has ceased under subdivision (a)(3)(B) of
36 this section shall be given priority to receive a refund during the

1 subsequent fiscal year. The unpaid refunds from the prior fiscal year shall
2 be processed before any refund claims filed in the current fiscal year to
3 claim the benefit of this section.

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

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

11 (B)(i) The Director of the Department of Finance and
12 Administration shall monitor the amount of tax savings received by all
13 taxpayers as a result of the reduction in the tax rate from that levied in §§
14 26-53-106 and 26-53-107 to that levied in subdivision (a)(4)(A) of this
15 section.

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

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

33 (C)(i) Refund requests and amended returns filed with the
34 director to claim the overpayment resulting from the reduced rate in
35 subdivision (a)(4)(A) of this section will be processed in the order they are
36 received by the director. A taxpayer that does not receive a refund after the

1 refund and amended return process has ceased under subdivision (a)(4)(B) of
2 this section shall be given priority to receive a refund during the
3 subsequent fiscal year. The unpaid refunds from the prior fiscal year shall
4 be processed before any refund claims filed in the current fiscal year to
5 claim the benefit of this section.

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

10 ~~(4)(5)~~ The taxes levied in this subsection ~~(a) of this section~~
11 shall be distributed as follows:

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

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

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

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

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

27 ~~(6)(7)~~ The excise tax levied in this section shall be collected,
28 reported, and paid in the same manner and at the same time as is prescribed
29 by law for the collection, reporting, and payment of all other Arkansas
30 compensating use taxes.

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

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35 SECTION 3. EMERGENCY CLAUSE. It is found and determined by the
36 General Assembly of the State of Arkansas that the cost of manufacturing

1 continues to climb; that Arkansas' unemployment rate is extremely high; that
2 the economy has dramatically affected manufacturers and resulted in lay-offs;
3 that decreasing the sales and use tax on natural gas and electricity used by
4 manufacturers would provide manufacturers with a way to increase the number
5 of employees; and that this, in turn, would increase production and provide
6 lucrative employment for Arkansans. Therefore, an emergency is declared to
7 exist and this act being necessary for the preservation of the public peace,
8 health, and safety shall become effective on July 1, 2011.

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10 */s/Jean*
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