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2 88th General Assembly
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4

As Engrossed: S2/15/11

A Bill

SENATE BILL 275

5 By: Senators B. Sample, G. Baker, Burnett, J. Dismang, Files, Fletcher, G. Jeffress, J. Jeffress, M.
6 Lamoureux, Rapert, J. Taylor, Teague, *J. Hutchinson, Luker*
7

For An Act To Be Entitled

9 AN ACT TO PROVIDE AN INCENTIVE TO ENCOURAGE THE
10 BUILDING AND OPERATING OF HIGH-EFFICIENCY ELECTRIC
11 POWER *GENERATORS UTILIZING COMBINED-CYCLE TECHNOLOGY*
12 *BY* REVISING THE DEFINITION OF “MANUFACTURER” FOR THE
13 PURPOSE OF REDUCING THE EXCISE TAX RATE ON NATURAL
14 GAS AND ELECTRICITY USED IN MANUFACTURING SUBJECT TO
15 A PHASE-IN OF THE REDUCED RATE OF TAX; TO DECLARE AN
16 EMERGENCY; AND FOR OTHER PURPOSES.
17
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Subtitle

19 TO ENCOURAGE THE BUILDING AND OPERATING
20 OF HIGH-EFFICIENCY ELECTRIC POWER
21 GENERATORS BY REVISING THE DEFINITION OF
22 “MANUFACTURER” TO REDUCE THE TAX ON
23 NATURAL GAS AND ELECTRICITY USED IN
24 MANUFACTURING; TO DECLARE AN EMERGENCY.
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28 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:
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30 SECTION 1. DO NOT CODIFY. The General Assembly finds that:

31 (1) There will be a need for additional electrical generation in
32 the state to supply the utilities that serve state individuals and industry;

33 (2) Natural gas for electrical generation is the cleanest and
34 most efficient energy produced from fossil fuel used to generate electricity,
35 and it is in the best interest of the state to encourage the use of this
36 technology for generating electricity;



1 (3) The state is at a competitive disadvantage compared to the
2 surrounding states to attract the building and operating of high-efficiency
3 electric power generators because the state imposes a six percent (6%) sales
4 tax on the purchase of natural gas used to generate the electricity;

5 (4) The state has an abundant supply of natural gas at low cost
6 to power *high-efficiency, combined-cycle technology electric* power
7 generators, and the disadvantage of the high tax should be removed as an
8 incentive to utilities and private industry to construct and operate high-
9 efficiency generating facilities; and

10 (5) Other manufacturers in the state enjoy a tax reduction on
11 natural gas used in manufacturing, and these *high-efficiency, combined-cycle*
12 technology electric power generators that manufacture electricity for resale
13 on the wholesale market should be granted the same exemption as other
14 manufacturers.

15
16 SECTION 2. Arkansas Code § 26-52-319(b)-(f), concerning the sales tax
17 on natural gas and electricity used by manufacturers, is amended to read as
18 follows:

19 (b) As used in this section, "manufacturer" means a ~~manufacturer~~:

20 (1) Manufacturer classified within sectors 31 through 33 of the
21 North American Industry Classification System, as in effect on January 1,
22 2007~~+~~; and

23 (2) Generator of electric power classified within sector 22 of
24 the North American Industry Classification System, as in effect on January 1,
25 2011, that uses natural gas to operate a *new or existing generating facility*
26 that uses *combined-cycle gas turbine technology*.

27 (c) In lieu of the tax rate under subsection (a) of this section, the
28 excise tax rate levied on the gross receipts or gross proceeds derived from
29 the sale of natural gas and electricity to a manufacturer as defined in
30 subdivision (b)(2) of this section is as follows:

31 (1) Beginning July 1, 2011, five and one-fourth percent (5
32 1/4%);

33 (2) Beginning July 1, 2012, four and one-fourth percent (4
34 1/4%); and

35 (3) Beginning July 1, 2013, the rate under subsection (a) of
36 this section.

1 ~~(e)~~ (d) Natural gas and electricity subject to the reduced tax rate
2 levied in this section shall be separately metered from natural gas and
3 electricity used for any other purpose by the manufacturer or otherwise
4 established ~~in accordance with the rules issued~~ under subsection ~~(e)~~ (f) of
5 this section.

6 ~~(d)~~ (e) ~~Prior to~~ Before the sale of natural gas or electricity at the
7 reduced excise tax rate levied in this section, the director may require any
8 seller of natural gas or electricity to obtain a certificate from the
9 consumer, in the form prescribed by the director, certifying that the
10 manufacturer is eligible to purchase natural gas and electricity at the
11 reduced excise tax rate.

12 ~~(e)~~ (f) The director shall ~~have and be invested with full power and~~
13 ~~authority to~~ promulgate rules for the proper administration of this section.

14 ~~(f)~~ (g) The gross receipts or gross proceeds derived from the sale of
15 natural gas and electricity to a manufacturer shall continue to be subject
16 to:

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

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

20
21 SECTION 3. Arkansas Code § 26-53-148(b)-(f), concerning the
22 compensating use tax on natural gas and electricity used by manufacturers, is
23 amended to read as follows:

24 (b) As used in this section, "manufacturer" means a ~~manufacturer:~~

25 (1) Manufacturer classified within sectors 31 through 33 of the
26 North American Industry Classification System, as in effect on January 1,
27 2007; and

28 (2) Generator of electric power classified within sector 22 of
29 the North American Industry Classification System, as in effect on January 1,
30 2011, that uses natural gas to operate a new or existing generating facility
31 that uses combined-cycle gas turbine technology.

32 (c) In lieu of the tax rate under subsection (a) of this section, the
33 excise tax rate levied on the gross receipts or gross proceeds derived from
34 the sale of natural gas and electricity to a manufacturer as defined in
35 subdivision (b)(2) of this section is as follows:

36 (1) Beginning July 1, 2011, five and one-fourth percent (5

1 1/4%);

2 (2) Beginning July 1, 2012, four and one-fourth percent (4

3 1/4%); and

4 (3) Beginning July 1, 2013, the rate under subsection (a) of

5 this section.

6 ~~(e)~~ (d) Natural gas and electricity subject to the reduced tax rate
7 levied in this section shall be separately metered from natural gas and
8 electricity used for any other purpose by the manufacturer or otherwise
9 established ~~in accordance with the rules issued~~ under subsection ~~(e)~~ (f) of
10 this section.

11 ~~(d)~~ (e) ~~Prior to~~ Before purchasing any natural gas or electricity at
12 the reduced excise tax rate levied in this section, the director may require
13 any seller of natural gas or electricity to obtain a certificate from the
14 consumer, in the form prescribed by the director, certifying that the
15 manufacturer is eligible to purchase natural gas and electricity at the
16 reduced excise tax rate.

17 ~~(e)~~ (f) The director shall ~~have and be invested with full power and~~
18 ~~authority to~~ promulgate rules for the proper administration of this section.

19 ~~(f)~~ (g) The purchase of natural gas and electricity by a manufacturer
20 shall continue to be subject to:

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

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

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25 SECTION 4. EMERGENCY CLAUSE. It is found and determined by the
26 General Assembly of the State of Arkansas that there *is* a need for *additional*
27 *clean and efficient electric* generating capacity in the state; that the state
28 should provide an incentive for the construction and operation of high-
29 efficiency electric generating facilities to fill that need; that the sales
30 and use taxes that the state imposes on natural gas used in high-efficiency
31 electric generating facilities far exceed the taxes imposed by most
32 surrounding states; that electric power generation has historically been
33 treated as manufacturing for sales and use tax purposes in the state; that
34 the state has an interest in encouraging the use of clean and efficient
35 generating *technologies pending the development of alternate energy*
36 *technologies; and that including high-efficiency power generation in the*

1 definition of “manufacturing” for purposes of the reduced sales and use tax
2 on natural gas will stabilize the tax burden, preserve the funding source,
3 and encourage the use of natural gas in high-efficiency power generating
4 facilities in the state. Therefore, an emergency is declared to exist and
5 this act being necessary for the preservation of the public peace, health,
6 and safety shall become effective on July 1, 2011.

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