

1 State of Arkansas
2 88th General Assembly
3 Regular Session, 2011

A Bill

SENATE BILL 963

4
5 By: Senator Hendren
6

For An Act To Be Entitled

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

14
15 TO DECREASE THE SALES AND USE TAX ON
16 NATURAL GAS AND ELECTRICITY USED BY
17 POULTRY GROWERS AND OTHER MANUFACTURERS.
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20 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:
21

22 SECTION 1. DO NOT CODIFY. The General Assembly finds that:

23 (1) The cost of manufacturing continues to climb;

24 (2) The state unemployment rate is extremely high, and the
25 economy has dramatically affected manufacturers, which has resulted in
26 numerous layoffs;

27 (3) Decreasing the sales and use tax rate on natural gas and
28 electricity used by manufacturers would increase employment and production,
29 which, in turn, would provide more lucrative employment opportunities for
30 Arkansans;

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

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



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

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

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

16
17 SECTION 2. Arkansas Code § 26-52-319 is amended to read as follows:

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

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

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

29 (B)(i) The Director of the Department of Finance and
30 Administration shall monitor the amount of tax savings received by all
31 taxpayers as a result of the reduction in the tax rate from that levied in §§
32 26-52-301 and 26-52-302 to that levied in subdivision (a)(3)(A) of this
33 section.

34 (ii) When the director determines that the amount of
35 tax savings resulting from the determination described in subdivision
36 (a)(3)(B)(i) of this section plus any use tax savings described in § 26-53-

1 148(a)(3)(B) would reach twenty-seven million dollars (\$27,000,000) during a
2 fiscal year, the director shall not process any further refund claims through
3 a refund process during the fiscal year for taxpayers seeking to claim the
4 reduced tax rate provided by this section. The amount of twenty-seven million
5 dollars (\$27,000,000) is intended to cover the accumulated but unclaimed
6 reduction of sales and use tax on natural gas and electricity as provided by
7 Acts 2007, No. 185, as well as the additional reduction provided by Acts
8 2009, No. 695.

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

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

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

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

32 (B)(i) The Director of the Department of Finance and
33 Administration shall monitor the amount of tax savings received by all
34 taxpayers as a result of the reduction in the tax rate from that levied in §§
35 26-52-301 and 26-52-302 to that levied in subdivision (a)(4)(A) of this
36 section.

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

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

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

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

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

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

(B) Eight and five-tenths percent (8.5%) of the tax,

1 interest, penalties, and costs received by the director shall be deposited
2 into the Property Tax Relief Trust Fund; and

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

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

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

12 ~~(6)~~ (7) The excise tax levied in this section shall be
13 collected, reported, and paid in the same manner and at the same time as is
14 prescribed by law for the collection, reporting, and payment of all other
15 Arkansas gross receipts taxes.

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

17 (1) Manufacturer classified within sectors 31 through 33 of the
18 North American Industry Classification System, as in effect on January 1,
19 2007. January 1, 2011;

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

24 (3) Poultry grower.

25 (c)(1) Except as provided in subdivision (c)(2)(C) of this section,
26 the tax rate under subsection (a) of this section does not apply to a
27 manufacturer as defined in subdivision (b)(2) of this section.

28 (2) In lieu of the tax rate under subsection (a) of this
29 section, the excise tax rate levied on the gross receipts or gross proceeds
30 derived from the sale of natural gas and electricity to a manufacturer as
31 defined in subdivision (b)(2) of this section to operate a new or existing
32 facility that uses combined-cycle gas turbine technology is as follows:

33 (A) Beginning July 1, 2011, five and one-eighth percent
34 (5.125%);

35 (B) Beginning July 1, 2012, four and one-eighth percent
36 (4.125%); and

1 (C) Beginning July 1, 2013, the rate under subsection (a)
 2 of this section.

3 (3)(A) The amount of tax savings described in subdivision
 4 (a)(4)(B)(i) of this section does not include any tax savings received by a
 5 manufacturer as defined in subdivision (b)(2) of this section.

6 (B) Manufacturers as defined in subdivision (b)(2) of this
 7 section are not subject to the dollar limitations on refunds and amended
 8 returns stated in subsection (a) of this section.

9 (4) The taxes levied in this subsection shall be distributed in
 10 the same manner as set out in subsection (a) of this section.

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

16 ~~(d)~~ (e) ~~Prior to~~ Before the sale of natural gas or electricity at the
 17 reduced excise tax rate levied in this section, the director may require any
 18 seller of natural gas or electricity to obtain a certificate from the
 19 consumer, in the form prescribed by the director, certifying that the
 20 manufacturer is eligible to purchase natural gas and electricity at the
 21 reduced excise tax rate.

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

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

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

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

30 ~~(g)~~ (h) All existing exemptions from the gross receipts tax levied by
 31 this chapter and the compensating use tax levied by the Arkansas Compensating
 32 Tax Act of 1949, § 26-53-101 et seq., for natural gas or electricity used in
 33 manufacturing or for other purposes that are otherwise provided by law shall
 34 continue in effect.

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 36 SECTION 3. Arkansas Code § 26-53-148 is amended to read as follows:

1 (a)(1) Beginning July 1, 2007, in lieu of the tax levied in §§ 26-53-
2 106 and 26-53-107~~(a)-(d)~~, there is levied an excise tax on the sales price of
3 natural gas and electricity purchased by a manufacturer for use directly in
4 the actual manufacturing process at the rate of four and three-eighths
5 percent (4.375%).

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

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

12 (B)(i) The Director of the Department of Finance and
13 Administration shall monitor the amount of tax savings received by all
14 taxpayers as a result of the reduction in the tax rate from that levied in §§
15 26-53-106 and 26-53-107 to that levied in subdivision (a)(3)(A) of this
16 section.

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

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

35 (C)(i) Refund requests and amended returns filed with the
36 director to claim the overpayment resulting from the reduced rate in

subdivision (a)(3)(A) of this section will be processed in the order they are received by the director. A taxpayer that does not receive a refund after the refund and amended return process has ceased under subdivision (a)(3)(B) of this section shall be given priority to receive a refund during the subsequent fiscal year. The unpaid refunds from the prior fiscal year shall be processed before any refund claims filed in the current fiscal year to claim the benefit of this section.

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

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

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

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

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

1 (C)(i) Refund requests and amended returns filed with the
 2 director to claim the overpayment resulting from the reduced rate in
 3 subdivision (a)(4)(A) of this section will be processed in the order they are
 4 received by the director. A taxpayer that does not receive a refund after the
 5 refund and amended return process has ceased under subdivision (a)(4)(B) of
 6 this section shall be given priority to receive a refund during the
 7 subsequent fiscal year. The unpaid refunds from the prior fiscal year shall
 8 be processed before any refund claims filed in the current fiscal year to
 9 claim the benefit of this section.

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

14 ~~(4)~~ (5) The taxes levied in this subsection ~~(a)~~ of this section
 15 shall be distributed as follows:

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

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

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

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

28 (B) Natural gas and electricity purchased for any other
 29 purpose shall be subject to the full compensating use tax levied under §§ 26-
 30 53-106 and 26-53-107~~(a)-(d)~~.

31 ~~(6)~~ (7) The excise tax levied in this section shall be
 32 collected, reported, and paid in the same manner and at the same time as is
 33 prescribed by law for the collection, reporting, and payment of all other
 34 Arkansas compensating use taxes.

35 (b) As used in this section, "manufacturer" means a ~~manufacturer~~;

36 (1) Manufacturer classified within sectors 31 through 33 of the

1 North American Industry Classification System, as in effect on ~~January 1,~~
2 ~~2007.~~ January 1, 2011;

3 (2) Generator of electric power classified within sector 22 of
4 the North American Industry Classification System, as in effect on January 1,
5 2011, that uses natural gas to operate a new or existing generating facility
6 that uses combined-cycle gas turbine technology; or

7 (3) Poultry grower.

8 (c)(1) Except as provided in subdivision (c)(2)(C) of this section,
9 the tax rate under subsection (a) of this section does not apply to a
10 manufacturer as defined in subdivision (b)(2) of this section.

11 (2) In lieu of the tax rate under subsection (a) of this
12 section, the excise tax rate levied on the sales price of natural gas and
13 electricity purchased by a manufacturer as defined in subdivision (b)(2) of
14 this section to operate a new or existing facility that uses combined-cycle
15 gas turbine technology is as follows:

16 (A) Beginning July 1, 2011, five and one-eighth percent
17 (5.125%);

18 (B) Beginning July 1, 2012, four and one-eighth percent
19 (4.125%); and

20 (C) Beginning July 1, 2013, the rate under subsection (a)
21 of this section.

22 (3)(A) The amount of tax savings described in subdivision
23 (a)(4)(B)(i) of this section does not include any tax savings received by a
24 manufacturer as defined in subdivision (b)(2) of this section.

25 (B) Manufacturers as defined in subdivision (b)(2) of this
26 section are not subject to the dollar limitations on refunds and amended
27 returns stated in subsection (a) of this section.

28 (4) The taxes levied in this subsection shall be distributed in
29 the same manner as set out in subsection (a) of this section.

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

35 ~~(d)~~ (e) ~~Prior to~~ Before purchasing any natural gas or electricity at
36 the reduced excise tax rate levied in this section, the director may require

1 any seller of natural gas or electricity to obtain a certificate from the
2 consumer, in the form prescribed by the director, certifying that the
3 manufacturer is eligible to purchase natural gas and electricity at the
4 reduced excise tax rate.

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

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

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

11 (2) All municipal and county compensating use taxes.
12

13 SECTION 4. EMERGENCY CLAUSE. It is found and determined by the
14 General Assembly of the State of Arkansas that the cost of manufacturing
15 continues to climb; that the Arkansas unemployment rate is extremely high;
16 that the economy has dramatically affected manufacturers and resulted in
17 layoffs; that decreasing the sales and use tax on natural gas and electricity
18 used by manufacturers would provide manufacturers with a way to increase the
19 number of employees and that this, in turn, would increase production and
20 provide lucrative employment for Arkansans. Therefore, an emergency is
21 declared to exist and this act being necessary for the preservation of the
22 public peace, health, and safety shall become effective on July 1, 2011.
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