

1 State of Arkansas  
2 89th General Assembly  
3 Regular Session, 2013  
4

# A Bill

SENATE BILL 334

5 By: Senator Files  
6 By: Representative Wren  
7

## For An Act To Be Entitled

9 AN ACT CONCERNING THE SALES AND USE TAX RELATING TO  
10 THE PARTIAL REPLACEMENT AND REPAIR OF MACHINERY AND  
11 EQUIPMENT USED DIRECTLY IN MANUFACTURING; TO REDUCE  
12 THE SALES AND USE TAX RELATING TO THE PARTIAL  
13 REPLACEMENT AND REPAIR OF MACHINERY AND EQUIPMENT  
14 USED DIRECTLY IN MANUFACTURING; TO PROVIDE A REFUND  
15 MECHANISM FOR THE SALES AND USE TAX PAID IN RELATION  
16 TO THE PARTIAL REPLACEMENT AND REPAIR OF MACHINERY  
17 AND EQUIPMENT USED DIRECTLY IN MANUFACTURING; TO  
18 DECLARE AN EMERGENCY; AND FOR OTHER PURPOSES.  
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## Subtitle

21 TO REDUCE THE SALES AND USE TAX RELATING  
22 TO THE PARTIAL REPLACEMENT AND REPAIR OF  
23 MACHINERY AND EQUIPMENT USED DIRECTLY IN  
24 MANUFACTURING; TO PROVIDE A REFUND  
25 MECHANISM FOR CERTAIN SALES AND USE  
26 TAXES; AND TO DECLARE AN EMERGENCY.  
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30 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:  
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32 SECTION 1. Arkansas Code Title 26, Chapter 52, Subchapter 4 is amended  
33 to add an additional section to read as follows:

34 26-52-446. Partial replacement and repair of certain machinery and  
35 equipment.

36 (a) The taxes levied under §§ 26-52-301 and 26-52-302 on the gross



1 receipts or gross proceeds from the sale of the following are subject to a  
2 refund as provided in this section:

3 (1) Machinery and equipment purchased to modify, replace, or  
4 repair, either in whole or in part, existing machinery or equipment used  
5 directly in producing, manufacturing, fabricating, assembling, processing,  
6 finishing, or packaging articles of commerce at a manufacturing or processing  
7 plant or facility in this state; and

8 (2) Service relating to the initial installation, alteration,  
9 addition, cleaning, refinishing, replacement, or repair of machinery or  
10 equipment described in subdivision (a)(1) of this section.

11 (b)(1) The taxes levied under §§ 26-52-301 and 26-52-302 that are  
12 subject to refund under this section are the taxes in excess of the following  
13 rates:

14 (A) Beginning July 1, 2013, four and seven-eighths percent  
15 (4.875%);

16 (B) Beginning July 1, 2014, three and seven-eighths  
17 percent (3.875%);

18 (C) Beginning July 1, 2015, two and seven-eighths percent  
19 (2.875%);

20 (D) Beginning July 1, 2016, one and seven-eighths percent  
21 (1.875%); and

22 (E) Beginning July 1, 2017, seven-eighths percent  
23 (0.875%).

24 (2) Beginning on and after July 1, 2018, one hundred percent  
25 (100%) of the taxes levied under §§ 26-52-301 and 26-52-302 are subject to  
26 refund under this section.

27 (c) The excise tax of one-eighth of one percent (1/8 of 1%) levied in  
28 Arkansas Constitution, Amendment 75 and the temporary excise tax of one-half  
29 percent (0.5%) levied in Arkansas Constitution, Amendment 91 are not subject  
30 to refund under this section.

31 (d) As used in this section:

32 (1) "Manufacturing" or "processing" means the same as defined  
33 under § 26-52-402(b) and includes activities described in subsection (a) of  
34 this section, both independently and collectively; and

35 (2) "Used directly" means the same as defined under § 26-52-  
36 402(c).

1 (e) All existing excise tax exemptions, including without limitation  
 2 exemptions under §§ 26-52-402 and 26-53-114, remain in full force and effect  
 3 and are not limited by this section.

4 (f)(1) A taxpayer that is required to file a tax return under § 26-52-  
 5 501, § 26-52-509, or § 26-53-125 may file with the Director of the Department  
 6 of Finance and Administration a claim for a refund under this section in  
 7 connection with the required excise tax return and offset the amount of  
 8 refund claimed against any sales or use tax due to be remitted with the  
 9 return.

10 (2) A taxpayer that qualifies for a refund under this section  
 11 and is not required to file a sales or use tax return under § 26-52-501, §  
 12 26-52-509, or § 26-53-125 may file with the director a claim for a refund  
 13 under this section.

14 (g) The following provisions of the Arkansas Tax Procedure Act, § 26-  
 15 18-101 et seq., apply to claims for a refund under this section:

16 (1) The time limitations that apply to claims for a refund of an  
 17 overpayment of state tax; and

18 (2) The procedures that apply to the disallowance or proposed  
 19 disallowance of claims for a refund.

20 (h) A taxpayer, seller, or vendor of property or services that is  
 21 required to collect or remit taxes levied under §§ 26-52-401 and 26-52-402  
 22 and is found as the result of an audit not to have collected or remitted the  
 23 required taxes shall be assessed only for taxes that are not subject to a  
 24 refund under this section.

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 26 SECTION 2. Arkansas Code Title 26, Chapter 53, Subchapter 1 is amended  
 27 to add an additional section to read as follows:

28 26-53-149. Partial replacement and repair of certain machinery and  
 29 equipment.

30 (a) The taxes levied under §§ 26-53-106 and 26-53-107 on the privilege  
 31 of storing, using, distributing, or consuming the following within this state  
 32 are subject to a refund as provided in this section:

33 (1) Machinery and equipment purchased to modify, replace, or  
 34 repair, either in whole or in part, existing machinery or equipment used  
 35 directly in producing, manufacturing, fabricating, assembling, processing,  
 36 finishing, or packaging articles of commerce at a manufacturing or processing

1 plant or facility in this state; and

2 (2) Service relating to the initial installation, alteration,  
 3 addition, cleaning, refinishing, replacement, or repair of machinery or  
 4 equipment described in subdivision (a)(1) of this section.

5 (b)(1) The taxes levied under §§ 26-53-106 and 26-53-107 that are  
 6 subject to refund under this section are the taxes in excess of the following  
 7 rates:

8 (A) Beginning July 1, 2013, four and seven-eighths percent  
 9 (4.875%);

10 (B) Beginning July 1, 2014, three and seven-eighths  
 11 percent (3.875%);

12 (C) Beginning July 1, 2015, two and seven-eighths percent  
 13 (2.875%);

14 (D) Beginning July 1, 2016, one and seven-eighths percent  
 15 (1.875%); and

16 (E) Beginning July 1, 2017, seven-eighths percent  
 17 (0.875%).

18 (2) Beginning on and after July 1, 2018, one hundred percent  
 19 (100%) of the taxes levied under §§ 26-53-106 and 26-53-107 are subject to  
 20 refund under this section.

21 (c) The excise tax of one-eighth of one percent (1/8 of 1%) levied in  
 22 Arkansas Constitution, Amendment 75 and the temporary excise tax of one-half  
 23 percent (0.5%) levied in Arkansas Constitution, Amendment 91 are not subject  
 24 to refund under this section.

25 (d) As used in this section:

26 (1) "Manufacturing" or "processing" means the same as defined  
 27 under § 26-53-114(b) and includes activities described in subsection (a) of  
 28 this section, both independently and collectively; and

29 (2) "Used directly" means the same as defined under § 26-53-  
 30 114(c).

31 (e) All existing excise tax exemptions, including without limitation  
 32 exemptions under §§ 26-52-402 and 26-53-114, remain in full force and effect  
 33 and are not limited by this section.

34 (f)(1) A taxpayer that is required to file a tax return under § 26-52-  
 35 501, § 26-52-509, or § 26-53-125 may file with the Director of the Department  
 36 of Finance and Administration a claim for a refund under this section in

1 connection with the required excise tax return and offset the amount of  
2 refund claimed against any sales or use tax due to be remitted with the  
3 return.

4 (2) A taxpayer that qualifies for a refund under this section  
5 and is not required to file a sales or use tax return under § 26-52-501, §  
6 26-52-509, or § 26-53-125 may file with the director a claim for a refund  
7 under this section.

8 (g) The following provisions of the Arkansas Tax Procedure Act, § 26-  
9 18-101 et seq., apply to claims for a refund under this section:

10 (1) The time limitations that apply to claims for a refund of an  
11 overpayment of state tax; and

12 (2) The procedures that apply to the disallowance or proposed  
13 disallowance of claims for a refund.

14 (h) A taxpayer, seller, or vendor of property or services that is  
15 required to collect or remit taxes levied under §§ 26-53-106 and 26-53-107  
16 and is found as the result of an audit not to have collected or remitted the  
17 required taxes shall be assessed only for taxes that are not subject to a  
18 refund under this section.

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20 SECTION 3. EMERGENCY CLAUSE. It is found and determined by the  
21 General Assembly of the State of Arkansas that most states exempt  
22 modifications, partial replacements, and repairs of manufacturing machinery  
23 and equipment from sales and use tax; that other states apply a reduced rate  
24 to modifications, partial replacements, and repairs; that Arkansas taxes most  
25 modifications, partial replacements, and repairs at the full tax rate of six  
26 percent (6%); that the Arkansas Business and Economic Development Incentives  
27 Study conducted by Fluor Global Location Strategies and presented to the  
28 Arkansas Bureau of Legislative Research in 2006 classified Arkansas as the  
29 single "worst" of the twelve states in the southeast region on the taxation  
30 of industrial materials used in manufacturing; that Alabama, Mississippi,  
31 North Carolina, and other states have phased in exemptions for modifications,  
32 partial replacements, and repairs of manufacturing machinery and equipment  
33 over time; that under the Streamlined Sales and Use Tax Agreement to which  
34 Arkansas is a party, reductions in sales and use tax must be implemented  
35 through a refund mechanism until a complete exemption is achieved; and that  
36 this act is immediately necessary because Arkansas, in imposing a full tax on

1 many types of manufacturing modifications, partial replacements and repairs,  
2 is not competitive with surrounding states and states in the southeast  
3 region, which costs the state present and future jobs. Therefore, an  
4 emergency is declared to exist, and this act being immediately necessary for  
5 the preservation of the public peace, health, and safety shall become  
6 effective on:

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

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

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

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