

1 State of Arkansas
2 94th General Assembly
3 Regular Session, 2023
4

A Bill

HOUSE BILL 1317

5 By: Representative Pilkington
6 By: Senator J. Boyd
7

For An Act To Be Entitled

9 AN ACT TO AMEND THE SALES AND USE TAX APPLICABLE TO
10 NATURAL GAS, ELECTRICITY, AND COAL USED BY
11 MANUFACTURERS; TO PROVIDE FOR A REDUCED SALES AND USE
12 TAX RATE FOR NATURAL GAS, ELECTRICITY, AND COAL USED
13 BY A DATA CENTER; TO DECLARE AN EMERGENCY; AND FOR
14 OTHER PURPOSES.

Subtitle

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18 TO PROVIDE FOR A REDUCED SALES AND USE
19 TAX RATE FOR NATURAL GAS, ELECTRICITY,
20 AND COAL USED BY A DATA CENTER; AND TO
21 DECLARE AN EMERGENCY.
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24 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:
25

26 SECTION 1. Arkansas Code § 26-52-319 is amended to read as follows:

27 26-52-319. Natural gas, electricity, and coal used by manufacturers or
28 data centers – Definition.

29 (a)(1)(A) The gross receipts or gross proceeds tax levied in §§ 26-52-
30 301 and 26-52-302 and this section shall be levied at a rate of zero percent
31 (0%) on the sale of natural gas, electricity, and coal to a ~~manufacturer~~
32 (i) Manufacturer for use directly in the actual
33 manufacturing process; or
34 (ii) Data center.

35 (B) However, the sale of natural gas, electricity, and
36 coal to a manufacturer for use directly in the actual manufacturing process



1 or to a data center shall remain subject to the excise tax of one-eighth of
 2 one percent ($\frac{1}{8}$ of 1%) levied in Arkansas Constitution, Amendment 75, the
 3 temporary excise tax of one-half percent ($\frac{1}{2}\%$) levied in Arkansas
 4 Constitution, Amendment 91, and the excise tax of one-half percent ($\frac{1}{2}\%$)
 5 levied in Arkansas Constitution, Amendment 101.

6 (2) The taxes levied in this subsection shall be distributed as
 7 follows:

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

11 (B) Eight and five-tenths percent (8.5%) of the tax,
 12 interest, penalties, and costs received by the secretary 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 secretary shall be deposited
 16 into the Educational Adequacy Fund.

17 (3)(A) The excise tax levied in this section applies only to
 18 natural gas, electricity, and coal sold for use directly in the actual
 19 manufacturing process or sold for use by a data center.

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

23 (4) 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:

28 (1) ~~“manufacturer~~ Manufacturer” means a:

29 ~~(1)(A)~~ (A) Manufacturer classified within sectors 31 – 33 or
 30 code 115111 of the North American Industry Classification System, as in
 31 effect on January 1, 2011; or

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

36 (2)(A) "Data center" means a facility that:

1 (i) Primarily contains electronic equipment used to
2 process, store, and transmit digital information;

3 (ii) Is a free-standing structure or a facility
4 within a larger structure that uses environmental control equipment to
5 maintain the proper conditions for the operation of electronic equipment; and

6 (iii) Has either:

7 (a) Redundant capacity components and
8 redundant distribution paths that serve the computer equipment and protect
9 against most physical events; or

10 (b) Redundant capacity components, active
11 redundant distribution paths to serve the computer equipment, and protection
12 against almost all physical events.

13 (B) "Data center" does not include a facility that is used
14 for cryptocurrency operations.

15 (c)(1) Except as otherwise provided in this subsection, the tax rate
16 under subsection (a) of this section does not apply to a manufacturer as
17 defined in subdivision ~~(b)-(2)~~(b)(1)(B) of this section.

18 (2) In lieu of the tax rate under subsection (a) of this
19 section, the excise tax rate levied on the gross receipts or gross proceeds
20 derived from the sale of natural gas and electricity to a manufacturer as
21 defined in subdivision ~~(b)-(2)~~(b)(1)(B) of this section to operate a new or
22 existing facility that uses combined-cycle gas turbine technology is one
23 percent (1%).

24 (3) The taxes levied in this subsection shall be distributed in
25 the same manner as stated in subsection (a) of this section.

26 (d) Natural gas and electricity subject to the reduced tax rate levied
27 in this section shall be separately metered from natural gas and electricity
28 used for any other purpose by the manufacturer or the data center or
29 otherwise established under subsection (f) of this section.

30 (e) Before the sale of natural gas, electricity, or coal at the
31 reduced excise tax rate levied in this section, the secretary may require a
32 seller of natural gas, electricity, or coal to obtain a certificate from the
33 consumer, in the form prescribed by the secretary, certifying that the
34 manufacturer or the data center is eligible to purchase natural gas,
35 electricity, and coal at the reduced excise tax rate.

36 (f) The secretary shall promulgate rules for the proper administration

1 of this section.

2 (g) The gross receipts or gross proceeds derived from the sale of
 3 natural gas, electricity, and coal to a manufacturer or a data center under
 4 this section shall continue to be subject to:

- 5 (1) The excise taxes levied under the Arkansas Constitution; and
- 6 (2) All municipal and county gross receipts taxes.

7 (h) All existing exemptions from the gross receipts tax levied by this
 8 chapter and the compensating use tax levied by the Arkansas Compensating Tax
 9 Act of 1949, § 26-53-101 et seq., for natural gas, electricity, and coal used
 10 in manufacturing, in data center operations, or for other purposes that are
 11 otherwise provided by law shall continue in effect.

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13 SECTION 2. Arkansas Code § 26-53-148 is amended to read as follows:

14 26-53-148. Natural gas electricity, and coal used by manufacturers or
 15 data centers – Definition.

16 (a)(1)(A) The compensating use tax levied in §§ 26-53-106 and 26-53-
 17 107 and this section shall be levied at a rate of zero percent (0%) on
 18 natural gas, electricity, and coal purchased by a: ~~manufacturer~~

19 (i) Manufacturer for use directly in the actual
 20 manufacturing process; or

21 (ii) Data center.

22 (B) However, natural gas, electricity, and coal purchased
 23 by a manufacturer for use directly in the actual manufacturing process or by
 24 a data center shall remain subject to the excise tax of one-eighth of one
 25 percent (1/8 of 1%) levied in Arkansas Constitution, Amendment 75, the
 26 temporary excise tax of one-half percent (1/2%) levied in Arkansas
 27 Constitution, Amendment 91, and the excise tax of one-half percent (1/2%)
 28 levied in Arkansas Constitution, Amendment 101.

29 (2) The taxes levied in this subsection shall be distributed as
 30 follows:

31 (A) Seventy-six and six-tenths percent (76.6%) of the tax,
 32 interest, penalties, and costs received by the Secretary of the Department of
 33 Finance and Administration shall be deposited as general revenues;

34 (B) Eight and five-tenths percent (8.5%) of the tax,
 35 interest, penalties, and costs received by the secretary shall be deposited
 36 into the Property Tax Relief Trust Fund; and

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

4 (3)(A) The excise tax levied in this section applies only to
5 natural gas, electricity, and coal purchased for use directly in the actual
6 manufacturing process or for use by a data center.

7 (B) Natural gas, electricity, and coal purchased for any
8 other purpose shall be subject to the full compensating use tax levied under
9 §§ 26-53-106 and 26-53-107.

10 (4) The excise tax levied in this section shall be collected,
11 reported, and paid in the same manner and at the same time as is prescribed
12 by law for the collection, reporting, and payment of all other Arkansas
13 compensating use taxes.

14 (b) As used in this section:

15 (1) ~~“manufacturer~~ Manufacturer” means a:

16 ~~(1)(A)~~ Manufacturer classified within sectors 31 – 33 or
17 code 115111 of the North American Industry Classification System, as in
18 effect on January 1, 2011; or

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

23 (2)(A) “Data center” means a facility that:

24 (i) Primarily contains electronic equipment used to
25 process, store, and transmit digital information;

26 (ii) Is a free-standing structure or a facility
27 within a larger structure that uses environmental control equipment to
28 maintain the proper conditions for the operation of electronic equipment; and

29 (iii) Has either:

30 (a) Redundant capacity components and
31 redundant distribution paths that serve the computer equipment and protect
32 against most physical events; or

33 (b) Redundant capacity components, active
34 redundant distribution paths to serve the computer equipment, and protection
35 against almost all physical events.

36 (B) “Data center” does not include a facility that is used

1 for cryptocurrency operations.

2 (c)(1) Except as otherwise provided in this subsection, the tax rate
3 under subsection (a) of this section does not apply to a manufacturer as
4 defined in subdivision ~~(b)(2)~~(b)(1)(B) of this section.

5 (2) In lieu of the tax rate under subsection (a) of this
6 section, the excise tax rate levied on the sales price of natural gas and
7 electricity purchased by a manufacturer as defined in subdivision
8 ~~(b)(2)~~(b)(1)(B) of this section to operate a new or existing facility that
9 uses combined-cycle gas turbine technology is one percent (1%).

10 (3) The taxes levied in this subsection shall be distributed in
11 the same manner as stated in subsection (a) of this section.

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

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

22 (f) The secretary shall promulgate rules for the proper administration
23 of this section.

24 (g) The purchase of natural gas, electricity, and coal by a
25 manufacturer or a data center shall continue to be subject to:

26 (1) The excise taxes levied under the Arkansas Constitution; and

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

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29 SECTION 3. EMERGENCY CLAUSE. It is found and determined by the
30 General Assembly of the State of Arkansas that it is in the best interests of
31 the state to attract and incentivize the data center industry to locate in
32 Arkansas by supporting pending economic development projects that are time-
33 sensitive to site selection and market price determinants in the data center
34 industry; that the data center industry is heavily reliant on and highly
35 sensitive to electric utility costs; that this act will make Arkansas more
36 attractive and prepared to accept large-scale development of data center

1 industry; and that this act is immediately necessary because this act will
 2 provide economic development efforts involved with data center projects with
 3 the flexibility and expeditious support required to establish the industry in
 4 Arkansas. Therefore, an emergency is declared to exist, and this act being
 5 immediately necessary for the preservation of the public peace, health, and
 6 safety shall become 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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