

Stricken language would be deleted from and underlined language would be added to present law.  
Act 1441 of the Regular Session

State of Arkansas *As Engrossed: H1/31/13 H2/14/13 H3/1/13 H3/5/13 H3/13/13 S4/16/13 S4/18/13*

89th General Assembly

# A Bill

Regular Session, 2013

HOUSE BILL 1039

By: Representatives Wardlaw, Wren, Ballinger, Biviano, Branscum, Catlett, Deffenbaugh, D. Douglas, Eubanks, Gillam, Gossage, Hawthorne, Hillman, Lampkin, Mayberry, McCrary, B. Overbey, Perry, Ratliff, Rice, Scott, Slinkard, Talley, T. Thompson, Vines, Westerman, Wright, *Alexander, D. Altes, C. Armstrong, E. Armstrong, Baine, Baltz, Barnett, Bragg, Broadaway, Carnine, Copenhaver, Cozart, J. Dickinson, Ferguson, Fite, Hammer, Harris, Hickerson, Hodges, Holcomb, Jean, Kizzia, Lea, Leding, Lowery, Magie, McElroy, McGill, Murdock, Richey, Steel, W. Wagner, D. Whitaker, Williams, Word, Hopper, Jett, Bell*

By: Senators *Teague, G. Stubblefield, B. King, E. Cheatham, Hester, Holland, U. Lindsey, Maloch, B. Pierce, J. Woods, D. Wyatt, J. Dismang, J. Hutchinson, Irvin, J. Key, Rapert, E. Williams, B. Sample, A. Clark*

## For An Act To Be Entitled

AN ACT TO *CREATE AN EXEMPTION FROM THE SALES AND USE TAX FOR UTILITIES USED BY QUALIFYING AGRICULTURAL STRUCTURES AND QUALIFYING AQUACULTURE AND HORTICULTURE EQUIPMENT; AND FOR OTHER PURPOSES.*

## Subtitle

*TO CREATE AN EXEMPTION FROM THE SALES AND USE TAX FOR UTILITIES USED BY QUALIFYING AGRICULTURAL STRUCTURES AND QUALIFYING AQUACULTURE AND HORTICULTURE EQUIPMENT.*

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:

SECTION 1. Arkansas Code Title 26, Chapter 52, Subchapter 4 is amended to add an additional section to read as follows:

26-52-446. Utilities used for qualifying agricultural structures and qualifying aquaculture and horticulture equipment.

(a) As used in this section:



(1) "Aquaculture" means the active cultivation of domesticated fish;

(2) "Domesticated fish" means fish that are spawned, grown, managed, harvested, and marketed on an annual, semiannual, biennial, or short-term basis in waters that are confined within a pond, tank, or lake that is situated entirely on the premises of a single owner and that, except under abnormal flood conditions, are in no way connected by water or with any other:

(A) Flowing stream or body of water; or

(B) Body of water not situated on the premises of the owner;

(3)(A) "Horticulture" means the initial production and cultivation of fruits, vegetables, tree nuts, trees, shrubs, vines, and florist stock.

(B) "Horticulture" does not include the cultivation of fruits, vegetables, tree nuts, trees, shrubs, vines, and florist stock at a retail or wholesale facility from which the items are sold;

(4) "Qualifying agricultural structure" means the following:

(A) A poultry or livestock facility used for commercial production, including without limitation a broiler or turkey grow-out house, laying house, hatching unit, nursery unit, breeding house, farrowing unit, and feed-out house;

(B) A cattle and dairy facility, including without limitation a milking parlor, milk collection unit, and refrigeration unit; and

(C) A greenhouse used for commercial production;

(5) "Qualifying aquaculture or horticulture equipment" means:

(A) A cooling unit, collection unit, or irrigation equipment used in a commercial horticulture operation;

(B) Equipment used to pump and aerate a pond used in a commercial aquaculture operation; and

(C) A holding and sorting tank used in a commercial aquaculture operation;

(6) "Utility" means the following:

(A) Electricity;

(B) Liquefied petroleum gas; and

(C) Natural gas.

(b)(1) Beginning January 1, 2014, the gross receipts or gross proceeds derived from the sale of a utility used by the following are exempt from the gross receipts tax levied by the Arkansas Gross Receipts Act of 1941, § 26-52-101 et seq., and the compensating use tax levied by the Arkansas Compensating Tax Act of 1949, § 26-53-101 et seq.:

(A) A qualifying agricultural structure used for a commercial purpose; and

(B) Qualifying aquaculture or horticulture equipment operated for a commercial purpose.

(2) A utility sold for any purpose other than the purposes stated in subdivision (b)(1) of this section is subject to the full gross receipts tax levied by the Arkansas Gross Receipts Act of 1941, § 26-52-101 et seq., and the full compensating use tax levied by the Arkansas Compensating Tax Act of 1949, § 26-53-101 et seq.

(c)(1) A utility subject to the exemption provided under this section shall be separately metered from a utility used for any other purpose by the taxpayer.

(2) However, the rules promulgated under subsection (e) of this section may establish additional or alternate requirements for the metering of utilities under this section.

(d) Before allowing the exemption of a utility under this section, the Director of the Department of Finance and Administration may require a seller of a utility to obtain a certificate from the taxpayer, in the form prescribed by the director, certifying that the taxpayer is eligible for the exemption.

(e) The director shall promulgate rules for the proper administration of this section.

/s/Wardlaw

**APPROVED: 04/22/2013**