Stricken language would be deleted from and underlined language would be added to the law as it existed prior to this session of the General Assembly.

State of Arkansas
87th General Assembly
Regular Session, 2009

A Bill

HOUSE BILL 1915

By: Representative L. Cowling

For An Act To Be Entitled

AN ACT TO STABILIZE THE TAX ON ELECTRICITY, NATURAL GAS, AND PROPANE GAS BY REDUCING THE SALES TAX ON THE PURCHASE PRICE AND LEVYING A SPECIAL EXCISE TAX BASED ON THE VOLUME OF ELECTRICITY, NATURAL GAS, AND PROPANE GAS PURCHASED; AND FOR OTHER PURPOSES.

Subtitle

TO STABILIZE THE TAX ON ELECTRICITY, NATURAL GAS, AND PROPANE GAS BY REDUCING THE SALES TAX ON THE PURCHASE PRICE AND LEVYING A SPECIAL EXCISE TAX BASED ON THE VOLUME OF ELECTRICITY, NATURAL GAS, AND PROPANE GAS PURCHASED.

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

SECTION 1. The introductory language of Arkansas Code § 26-52-301, concerning the levy of the sales tax, is amended to read as follows:

Except for food and food ingredients that are taxed under § 26-52-317 <u>and electricity, natural gas, and propane gas that are taxed under § 26-52-322</u>, there is levied an excise tax of three percent (3%) upon the gross proceeds or gross receipts derived from all sales to any person of the following:

SECTION 2. Arkansas Code § 26-52-301(2), concerning the levy of the sales tax, is amended to read as follows:

(2) ~~Natural or artificial~~ Artificial gas except propane gas, ~~electricity,~~ water, ice, steam, or any other utility or publice service, except transportation services, sewer services, and sanitation or garbage collection services;

SECTION 3. Arkansas Code § 26-52-302. Additional taxes levied.

(a)(1) In addition to the excise tax levied upon the gross proceeds or gross receipts derived from all sales by this chapter, except for food and food ingredients that are taxed under § 26-52-317 and electricity, natural gas, and propane gas that are taxed under § 26-52-322, there is levied an excise tax of one percent (1%) upon all taxable sales of property and services subject to the tax levied in this chapter.

(2) This tax shall be collected, reported, and paid in the same manner and at the same time as is prescribed by law for the collection, reporting, and payment of all other Arkansas gross receipts taxes.

(3) In computing gross receipts or gross proceeds as defined in § 26-52-103, a deduction shall be allowed for bad debts resulting from the sale of tangible personal property.

(b)(1) In addition to the excise tax levied upon the gross proceeds or gross receipts derived from all sales by this chapter, except for food and food ingredients that are taxed under § 26-52-317 and electricity, natural gas, and propane gas that are taxed under § 26-52-322, there is hereby levied an excise tax of one-half of one percent (0.5%) upon all taxable sales of property and services subject to the tax levied in this chapter.

(2) This tax shall be collected, reported, and paid in the same manner and at the same time as is prescribed by law for the collection, reporting, and payment of all other Arkansas gross receipts taxes.

(3) However, in computing gross receipts or gross proceeds as defined in § 26-52-103, a deduction shall be allowed for bad debts resulting from the sale of tangible personal property.

(c)(1) Except for food and food ingredients that are taxed under § 26-52-317 and electricity, natural gas, and propane gas that are taxed under § 26-52-322, there is levied an additional excise tax of one-half of one percent (0.5%) upon all taxable sales of property and services subject to the tax levied by this chapter.

(2) The tax shall be collected, reported, and paid in the same

manner and at the same time as is prescribed by this chapter, for the collection, reporting, and payment of Arkansas gross receipts taxes.

(d)(1) Except for food and food ingredients that are taxed under § 26-52-317 and electricity, natural gas, and propane gas that are taxed under § 26-52-322, there is levied an additional excise tax of seven-eighths of one percent (0.875%) upon all taxable sales of property and services subject to the tax levied by this chapter.

(2) The tax shall be collected, reported, and paid in the same manner and at the same time as prescribed by this chapter, for the collection, reporting, and payment of Arkansas gross receipts taxes.

SECTION 4. Arkansas Code § 26-52-319(a)(4)(B), concerning natural gas and electricity used by manufacturers, is amended to read as follows:

(B) Natural gas and electricity sold for any other purpose shall be subject to the ~~full~~ gross receipts or gross proceeds tax levied under §~~§ 26-52-301 and 26-52-302(a)-(d)~~ 26-52-322.

SECTION 5. Arkansas Code Title 26, Chapter 52, Subchapter 3 is amended to add an additional section to read as follows:

26-52-322. Electricity, natural gas, and propane gas.

(a)(1) Except as provided in subdivision (a)(2)(A) of this section, beginning July 1, 2009, in lieu of the gross receipts or gross proceeds taxes levied on electricity, natural gas, and propane gas delivered by the seller under §§ 26-52-301 and 26-52-302, there is levied a tax on the gross receipts or gross proceeds derived from the sale of electricity, natural gas, and propane gas that is delivered by the seller at the rate of three-eighths percent (0.375%) to be distributed as follows:

(A) Seventy-six and six-tenths percent (76.6%) of the taxes, interest, penalties, and costs received by the Director of the Department of Finance and Administration under this subdivision (a)(1) shall be deposited as general revenues;

(B) Eight and five-tenths percent (8.5%) of the taxes, interest, penalties, and costs received by the director under this subdivision (a)(1) shall be deposited into the Property Tax Relief Trust Fund; and

(C) Fourteen and nine-tenths percent (14.9%) of the taxes, interest, penalties, and costs received by the director under this subdivision (a)(1) shall be deposited into the Educational Adequacy Fund.

(2)(A) Electricity and natural gas sold to a manufacturer for use directly in the actual manufacturing process and subject to the gross receipts or gross proceeds tax levied under § 26-52-319, is not subject to the tax levied in subdivision (a)(1) of this section.

(B) As used in this subdivision (a)(2), “manufacturer” means a manufacturer classified within sectors 31 through 33 of the North American Industry Classification System, as in effect on January 1, 2007.

(C) A manufacturer that purchases electricity or natural gas subject to the reduced tax rate levied in subdivision (a)(1) of this section shall separately meter the electricity and natural gas used by the manufacturer in the actual manufacturing process under § 26-52-319.

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

(c) The gross receipts or gross proceeds derived from the sale of electricity, natural gas, and propane gas shall continue to be subject to the:

(1) Excise tax levied under Arkansas Constitution, Amendment 75, § 2; and

(2) All municipal and county gross receipts taxes.

(d) The Department of Finance and Administration shall promulgate rules to implement this section.

SECTION 6. Arkansas Code § 26-53-106(a), concerning the imposition and rate of consumer use tax, is amended to read as follows:

(a) There is levied and there shall be collected from every person in this state a tax or excise for the privilege of storing, using, distributing, or consuming within this state any article of tangible personal property or taxable service purchased for storage, use, distribution, or consumption in this state at the rate of three percent (3%) of the sales price of the property except for food and food ingredients that are taxed under § 26-53-145 and electricity, natural gas, and propane gas that are taxed under § 26-53-149.

SECTION 7. Arkansas Code § 26-53-107 is amended to read as follows:

26-53-107. Additional taxes levied.

(a)(1) In addition to the excise tax levied upon the privilege of storing, using, distributing, or consuming tangible personal property and taxable services within this state by this subchapter there is levied an excise tax of one percent (1%) upon all tangible personal property and taxable services subject to the tax levied in this subchapter except for food and food ingredients that are taxed under § 26-53-145 and electricity, natural gas, and propane gas that are taxed under § 26-53-149.

(2) The tax shall be collected, reported, and paid in the same manner and at the same time as is prescribed by law for the collection, reporting, and payment of state compensating taxes.

(b)(1) In addition to the excise tax levied upon the privilege of storing, using, distributing, or consuming tangible personal property and taxable services within the state by this subchapter, there is levied an excise tax of one-half of one percent (0.5%) upon all tangible personal property and taxable services subject to the tax levied in this subchapter except for food and food ingredients that are taxed under § 26-53-145 and electricity, natural gas, and propane gas that are taxed under § 26-53-149.

(2) The tax shall be collected, reported, and paid in the same manner and at the same time as is prescribed by law for the collection, reporting, and payment of Arkansas compensating taxes.

(c)(1) There is levied an additional excise tax of one-half of one percent (0.5%) upon all tangible personal property and taxable services subject to the tax levied by this subchapter except for food and food ingredients that are taxed under § 26-53-145 and electricity, natural gas, and propane gas that are taxed under § 26-53-149.

(2) The tax shall be collected, reported, and paid in the same manner and at the same time as is prescribed by this subchapter for the collection, reporting, and payment of Arkansas compensating taxes.

(d)(1) There is levied an additional excise tax of seven-eighths of one percent (0.875%) upon all tangible personal property and taxable services subject to the tax levied by this subchapter except for food and food ingredients that are taxed under § 26-53-145 and electricity, natural gas, and propane gas that are taxed under § 26-53-149 .

(2) The tax shall be collected, reported, and paid in the same manner and at the same time as is prescribed by this subchapter for the collection, reporting, and payment of Arkansas compensating taxes.

SECTION 8. Arkansas Code § 26-53-108, the introductory paragraph concerning the imposition of compensating use tax on certain personal property, is amended to read as follows:

~~A~~ Except as provided in § 26-53-149, a state compensating tax in the amount of three percent (3%) of the gross purchase price is levied on the following described personal property:

SECTION 9. Arkansas Code § 26-53-148(a)(4)(B), concerning the natural gas and electricity used by manufacturers, is amended to read as follows:

(B) Natural gas and electricity purchased for any other purpose shall be subject to the ~~full~~ compensating use tax levied under §~~§ 26-53-106 and 26-53-107(a)-(d)~~ 26-53-149.

SECTION 10. Arkansas Code Title 26, Chapter 53, Subchapter 1 is amended to add an additional section to read as follows:

26-53-149. Electricity, natural gas, and propane gas.

(a)(1) Except as provided in subdivision (a)(2)(A) of this section, beginning July 1, 2009, in lieu of the tax levied on electricity, natural gas, and propane gas delivered by the seller under §§ 26-53-106 and 26-53-107, there is levied an excise tax on the sales price of electricity, natural gas, and propane gas that is delivered by the seller at the rate of three-eighths percent (0.375%) to be distributed as follows:

(A) Seventy-six and six-tenths percent (76.6%) of the taxes, interest, penalties, and costs received by the Director of the Department of Finance and Administration under this subdivision (a)(1) shall be deposited as general revenues;

(B) Eight and five-tenths percent (8.5%) of the taxes, interest, penalties, and costs received by the director under this subdivision (a)(1) shall be deposited into the Property Tax Relief Trust Fund; and

(C) Fourteen and nine-tenths percent (14.9%) of the taxes, interest, penalties, and costs received by the director under this subdivision (a)(1) shall be deposited into the Educational Adequacy Fund.

(2)(A) Electricity and natural gas sold to a manufacturer for use directly in the actual manufacturing process and subject to the excise tax levied under § 26-53-148, is not subject to the tax levied in subdivision (a)(1) of this section.

(B) As used in this subdivision (a)(2), "manufacturer" means a manufacturer classified within sectors 31 through 33 of the North American Industry Classification System, as in effect on January 1, 2007.

(C) A manufacturer that purchases electricity or natural gas subject to the reduced tax rate levied in subdivision (a)(1) of this section shall separately meter the electricity and natural gas used by the manufacturer in the actual manufacturing process under § 26-53-148.

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

(c) The purchase of electricity, natural gas, and propane gas shall continue to be subject to the:

(1) Excise tax levied under Arkansas Constitution, Amendment 75, § 2; and

(2) All municipal and county compensating use taxes.

(d) The Department of Finance and Administration shall promulgate rules to implement the provisions of this section.

SECTION 11. Arkansas Code Title 26, Chapter 63 is amended to add a new subchapter to read as follows:

SUBCHAPTER 5. ADDITIONAL TAX ON ELECTRICITY, NATURAL GAS, AND PROPANE GAS.

26-64-501. Tax on electricity, natural gas, and propane gas.

(a) Beginning July 1, 2009, there is levied an additional tax on electricity, natural gas, and propane gas delivered by the seller and sold, used, or utilized in this state as follows:

(1) Seven one-thousandth cents per kilowatt (.007¢/kW) on electricity;

(2) Twenty-four cents per one thousand cubic feet (24¢/Mcf) on natural gas; and

(3) Six cents per gallon (6¢/gal) on propane gas.

(b) The excise taxes levied in subsection (a) of this section shall be deposited as follows:

(1) Seventy-six and six-tenths percent (76.6%) of the taxes, interest, penalties, and costs received by the Director of the Department of Finance and Administration under this section shall be deposited as general revenues;

(2) Eight and five-tenths percent (8.5%) of the taxes, interest, penalties, and costs received by the director under this section shall be deposited into the Property Tax Relief Trust Fund; and

(3) Fourteen and nine-tenths percent (14.9%) of the taxes, interest, penalties, and costs received by the director under this section shall be deposited into the Educational Adequacy Fund.

(c) The excise taxes levied in subsection (a) of this section for a month shall be reported by the seller on or before the twentieth day of the following month on forms to be prescribed by the Director of the Department of Finance and Administration.

(d)(1) Electricity and natural gas sold to a manufacturer for use directly in the actual manufacturing process and subject to the excise tax levied under § 26-52-319 or § 26-53-148 is not subject to the tax levied in subsection (a) of this section.

(2 As used in this subdivision (d)(1), "manufacturer" means a manufacturer classified within sectors 31 through 33 of the North American Industry Classification System, as in effect on January 1, 2007.

(e) Any exemption that applies to the tax levied under §§ 26-52-322 or 26-53-149 shall apply to the tax levied under subsection (a) of this section,

SECTION 12. EMERGENCY CLAUSE. It is found and determined by the General Assembly of the State of Arkansas that due to sharp increases in utility prices, the traditional method of utility taxation has resulted in astronomic increases in the cost of heating and cooling homes and businesses, that this increase in utility costs has created a burdensome price increase for Arkansas consumers; that a change in the manner in which tax is paid on electricity, natural gas, and propane gas is necessary in order to stabilize the tax cost to Arkansas consumers; and that this act is necessary in order to provide tax relief as soon as reasonably possible. Therefore, an emergency is declared to exist, and this act being necessary for the preservation of the public peace, health, and safety shall become effective on July 1, 2009.