

Stricken language would be deleted from and underlined language would be added to present law.

State of Arkansas *As Engrossed: H2/27/13 H2/28/13 H3/4/13 H3/6/13 H3/13/13*
H4/3/13

89th General Assembly
Regular Session, 2013

A Bill

HOUSE BILL 1218

By: Representatives Jean, *Alexander, D. Altes, C. Armstrong, E. Armstrong, Baine, Ballinger, Baltz, Barnett, Biviano, Bragg, Branscum, Broadaway, Carnine, Catlett, Clemmer, Copenhagen, Cozart, Dale, Deffenbaugh, J. Dickinson, Dotson, C. Douglas, D. Douglas, J. Edwards, Eubanks, Farrer, Ferguson, Fielding, Fite, Gillam, Gossage, Hammer, Harris, Hawthorne, Hickerson, Hillman, Hobbs, Hodges, Holcomb, Hopper, House, Jett, Kerr, Kizzia, Lampkin, Lea, Leding, Lenderman, Linck, Love, Lowery, S. Malone, Mayberry, McCrary, McElroy, McGill, McLean, D. Meeks, S. Meeks, Miller, Murdock, B. Overbey, Payton, Perry, Ratliff, Rice, Richey, Sabin, Scott, Shepherd, Slinkard, Steel, T. Thompson, Vines, W. Wagner, Wardlaw, Westerman, D. Whitaker, B. Wilkins, Williams, Womack, Wren, Wright*
By: Senators B. Sample, *Caldwell, E. Cheatham, J. Dismang, J. English, Hester, Hickey, Holland, J. Hutchinson, J. Key, B. King, U. Lindsey, Maloch, B. Pierce, Rapert, G. Stubblefield, Teague, J. Woods, D. Wyatt, A. Clark*

For An Act To Be Entitled

AN ACT TO REDUCE THE SALES AND USE TAX ON NATURAL GAS
AND ELECTRICITY USED BY MANUFACTURERS; TO DECLARE AN
EMERGENCY; AND FOR OTHER PURPOSES.

Subtitle

TO REDUCE THE SALES AND USE TAX ON
NATURAL GAS AND ELECTRICITY USED BY
MANUFACTURERS AND TO DECLARE AN
EMERGENCY.

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

SECTION 1. Arkansas Code § 26-52-319(a)-(c), concerning the sales tax on natural gas and electricity used by manufacturers, is amended to read as follows:

(a)(1)(A) Beginning July 1, ~~2007~~ 2013, in lieu of the gross receipts



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

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

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

~~(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 §§ 26-52-301 and 26-52-302 to that levied in subdivision (a)(3)(A) of this section.~~

~~(ii) When the director determines that the amount of tax savings resulting from the determination described in subdivision (a)(3)(B)(i) of this section plus any use tax savings described in § 26-53-148(a)(3)(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 Acts 2007, No. 185, as well as the additional reduction provided by Acts 2009, No. 695.~~

~~(iii) If the director determines that discontinuing refund payments as provided in subdivision (a)(3)(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)(3)(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)(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 §§ 26-52-301 and 26-52-302 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 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.~~

(B)(i) Beginning July 1, 2014, the gross receipts or gross proceeds tax levied in §§ 26-52-301 and 26-52-302 and this section shall be levied at a rate of zero percent (0%) on the sale of natural gas and electricity to a manufacturer for use directly in the actual manufacturing process.

(ii) However, the sale of natural gas and electricity to a manufacturer for use directly in the actual manufacturing process shall remain subject to the excise tax of one-eighth of one percent (1/8 of 1%) levied in Amendment 75 to the Arkansas Constitution and the temporary excise tax of one-half percent (1/2%) levied in Amendment 91 to the Arkansas Constitution.

~~(5) (2)~~ The taxes levied in this subsection 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, interest, penalties, and costs received by the director shall be deposited into the Property Tax Relief Trust Fund; and

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

~~(6)(A) (3)(A)~~ The excise tax levied in this section applies only

to natural gas and electricity sold for use directly in the actual manufacturing process.

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

~~(7)~~ (4) 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.

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

(1) Manufacturer classified within sectors 31 through 33 or sector 11511 of the North American Industry Classification System, as in effect on January 1, 2011; or

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

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

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

(A) Beginning January 1, 2012, five and ~~one-eighths~~ one-eighth percent (5.125%);

(B) Beginning January 1, 2013, four and ~~one-eighths~~ one-eighth percent (4.125%); ~~and~~

(C) Beginning January 1, 2014, two and five-eighths percent (2.625%); ~~and~~

(D) Beginning January 1, 2015, one percent (1%).

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

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

~~(4) (3) The taxes levied in this subsection shall be distributed in the same manner as set out stated in subsection (a) of this section.~~

SECTION 2. Arkansas Code § 26-53-148(a)-(c), concerning the compensating use tax on natural gas and electricity used by manufacturers, are amended to read as follows:

(a)(1)(A) Beginning July 1, ~~2007~~ 2013, in lieu of the tax levied in §§ 26-53-106 and 26-53-107, there is levied an excise tax on the sales price of natural gas and electricity purchased by a manufacturer for use directly in the actual manufacturing process at the rate of ~~four and three-eighths percent (4.375%)~~ one percent (1%).

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

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

~~(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)(3)(A) of this section.~~

~~(ii) When the director determines that the amount of tax savings resulting from the determination described in subdivision (a)(3)(B)(i) of this section plus any gross receipts tax savings described in § 26-52-319(a)(3)(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 Acts 2007, No. 185, as well as the additional reduction provided by Acts 2009, No. 695.~~

~~(iii) — If the director determines that discontinuing refund payments as provided in subdivision (a)(3)(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)(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.~~

~~(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 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)(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.~~

(B)(i) Beginning July 1, 2014, the compensating use tax levied in §§ 26-53-106 and 26-53-107 and this section shall be levied at a rate of zero percent (0%) on natural gas and electricity purchased by a manufacturer for use directly in the actual manufacturing process.

(ii) However, natural gas and electricity purchased by a manufacturer for use directly in the actual manufacturing process shall remain subject to the excise tax of one-eighth of one percent (1/8 of 1%) levied in Amendment 75 to the Arkansas Constitution and the temporary excise tax of one-half percent (1/2%) levied in Amendment 91 to the Arkansas Constitution.

~~(5) (2) The taxes levied in this subsection 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, interest, penalties, and costs received by the director shall be deposited into the Property Tax Relief Trust Fund; and

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

~~(6)(A)~~ (3)(A) The excise tax levied in this section applies only to natural gas and electricity purchased for use directly in the actual manufacturing process.

(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.

~~(7)~~ (4) 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.

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

(1) Manufacturer classified within sectors 31 through 33 or sector 11511 of the North American Industry Classification System, as in effect on January 1, 2011; or

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

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

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

(A) Beginning January 1, 2012, five and ~~one-eighth~~ one-eighth percent (5.125%);

(B) Beginning January 1, 2013, four and ~~one-eighths~~ one-eighth percent (4.125%); ~~and~~

(C) Beginning January 1, 2014, two and five-eighths percent (2.625%); ~~and~~

(D) Beginning January 1, 2015, one percent (1%).

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

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

~~(4)~~ (3) The taxes levied in this subsection shall be distributed in the same manner as ~~set out~~ stated in subsection (a) of this section.

SECTION 3. Arkansas Code § 19-5-1103(b), concerning the Property Tax Relief Trust Fund, is amended to read as follows:

(b) The fund shall consist of such revenues as generated by §§ 26-52-302(c), 26-52-317(c)(1)(B), ~~26-52-319(a)(3)(B)~~ 26-52-319(a)(2)(B), 26-53-107(c), 26-53-145(c)(1)(B), ~~26-53-148(a)(3)(B)~~ 26-53-148(a)(2)(B), 26-56-201(g)(1)(C), and 26-56-224(c)(2), and shall be used for such purposes as set out in § 26-26-310.

SECTION 4. Arkansas Code § 19-5-1227(b)(3), concerning the moneys included in the Educational Adequacy Fund, is amended to read as follows:

(3) The revenues generated by §§ 26-52-302(d), 26-52-316, 26-52-317(c)(1)(C), ~~26-52-319(a)(3)(G)~~ 26-52-319(a)(2)(C), 26-53-107(d), 145(c)(1)(C), ~~26-53-148(a)(3)(G)~~ 26-53-148(a)(2)(C), 26-56-201(g)(1)(B), 26-56-224(c)(3), and 26-57-1002(d)(1)(A)(ii); and

SECTION 5. Arkansas Code § 19-6-201(59), concerning the enumeration of general revenues, is amended to read as follows:

(59) Seventy-six and six-tenths percent (76.6%) of the tax, interest, penalties, and costs received on excise taxes levied on the gross receipts or gross proceeds derived from the sale of natural gas and electricity to a manufacturer for use directly in the actual manufacturing process, ~~§ 26-52-319(a)(3)(A)~~ 26-52-319(a)(1)(A);

SECTION 6. Arkansas Code § 19-6-201(61), concerning the enumeration of general revenues, is amended to read as follows:

(61) Seventy-six and six-tenths percent (76.6%) of the tax, interest, penalties, and costs received on excise taxes levied on the sales price of natural gas and electricity purchased by a manufacturer for use directly in the actual manufacturing process, § ~~26-53-148(a)(3)(A)~~ 26-53-148(a)(1)(A);

SECTION 7. EMERGENCY CLAUSE. It is found and determined by the General Assembly of the State of Arkansas that the costs of manufacturing continue to rise; that the Arkansas unemployment rate continues to be high; that the economy has dramatically affected manufacturers, resulting in layoffs of numerous Arkansans; that reducing the sales and use tax on natural gas and electricity used by manufacturers would provide manufacturers with additional revenues to support an increase in their number of employees, which would increase production and provide lucrative employment for Arkansans; and that this act is necessary to aid the continual recovery of the Arkansas economy. 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, 2013.

/s/Jean