

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

State of Arkansas  
89th General Assembly  
Regular Session, 2013

As Engrossed: S4/18/13  
**A Bill**

SENATE BILL 334

By: Senator Files  
By: Representative Wren

### **For An Act To Be Entitled**

AN ACT CONCERNING THE SALES AND USE TAX RELATING TO THE PARTIAL REPLACEMENT AND REPAIR OF MACHINERY AND EQUIPMENT USED DIRECTLY IN MANUFACTURING; TO REDUCE THE SALES AND USE TAX RELATING TO THE PARTIAL REPLACEMENT AND REPAIR OF MACHINERY AND EQUIPMENT USED DIRECTLY IN MANUFACTURING; TO PROVIDE A REFUND MECHANISM FOR THE SALES AND USE TAX PAID IN RELATION TO THE PARTIAL REPLACEMENT AND REPAIR OF MACHINERY AND EQUIPMENT USED DIRECTLY IN MANUFACTURING; AND FOR OTHER PURPOSES.

### **Subtitle**

*TO REDUCE THE SALES AND USE TAX RELATING TO THE PARTIAL REPLACEMENT AND REPAIR OF MACHINERY AND EQUIPMENT USED DIRECTLY IN MANUFACTURING; AND TO PROVIDE A REFUND MECHANISM FOR CERTAIN SALES AND USE TAXES.*

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. Partial replacement and repair of certain machinery and equipment.

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



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

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

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

*(b) Beginning July 1, 2014, the taxes levied under §§ 26-52-301 and 26-52-302 that are subject to a refund under this section are the taxes in excess of four and seven-eighths percent (4.875%).*

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

(d) As used in this section:

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

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

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

*(f) To claim the benefit of the tax refund under this section, a taxpayer shall hold a direct pay sales and use tax permit from the Department of Finance and Administration and shall claim the tax refund under the direct pay permit.*

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

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

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

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

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

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

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

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

(b) Beginning July 1, 2014, the taxes levied under §§ 26-53-106 and 26-53-107 that are subject to a refund under this section are the taxes in excess of four and seven-eighths percent (4.875%).

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

(d) As used in this section:

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

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

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

(f) To claim the benefit of the tax refund under this section, a taxpayer shall hold a direct pay sales and use tax permit from the Department of Finance and Administration and shall claim the tax refund under the direct pay permit.

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

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

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

*SECTION 3. Arkansas Code Title 15, Chapter 4, is amended to add an additional subchapter to read as follows:*

*Subchapter 35 – Incentives for Major Maintenance and Improvement Projects*

*15-4-3501. Increased tax refund for major maintenance and improvement projects.*

*(a) A taxpayer that is eligible for a refund of excise taxes under § 26-52-446 or § 26-53-149 is eligible for a refund of one hundred percent (100%) of the sales and use taxes levied in §§ 26-52-301, 26-52-302, 26-53-106, and 26-53-107 on the tangible personal property and services subject to §§ 26-52-446 and 26-53-149 for projects that meet the following requirements:*

*(1) The taxpayer has entered into a financial incentive agreement with the Arkansas Economic Development Commission for the project; and*

*(2) The taxpayer expends at least three million dollars (\$3,000,000) on an approved project that includes the purchase of tangible personal property and services that are either exempt or subject to a partial refund of tax under § 26-52-402, § 26-52-446, § 26-53-114, or § 26-53-149.*

*(b) A taxpayer shall file with the commission an application for the increased refund for major maintenance and improvement projects provided in this section.*

*(c) The increased refund of sales and use taxes for major maintenance and improvement projects provided in this section is a discretionary incentive and is not available unless offered by the Director of the Arkansas Economic Development Commission.*

*(d) The Director of the Arkansas Economic Development Commission shall forward the taxpayer's application, financial incentive agreement, any other pertinent documentation, and a written copy of the determination under this subsection to the Director of the Department of Finance and Administration if*

the Director of the Arkansas Economic Development Commission:

(1) Determines that the taxpayer is eligible for the increased refund for major maintenance and improvement projects provided for in this section;

(2) Determines that the taxpayer has provided reasonable proof that there will be a positive return on the taxpayer's investment in the major maintenance and improvement project that is sufficient to offset the taxes refunded under this section;

(3) Determines that the taxpayer has provided a defined scope, beginning date, and ending date for the major maintenance and improvement project;

(4) Determines that the refund is reasonably necessary for the taxpayer to remain competitive and preserve Arkansas jobs; and

(5) Agrees to provide the incentive under this section.

(e) A taxpayer that has been approved for the increased refund for major maintenance and improvement projects provided for in this section may make changes in a major maintenance and improvement project by written amendment to the project plan filed with the commission as part of the financial incentive agreement required under this section.

(f) Except as otherwise provided in this section, a refund under this section is subject to the Arkansas Tax Procedure Act, § 26-18-101 et seq., in the same manner as other refunds permitted under § 26-18-507.

(g) An expenditure shall not qualify for both the increased refund for major maintenance and improvement projects under this section and the retention tax credit provided for in § 15-4-2706(c).

(h) The Director of the Arkansas Economic Development Commission and the Director of the Arkansas Department of Finance and Administration may promulgate rules necessary to implement this section.

SECTION 4. EFFECTIVE DATE. This act is effective on and after July 1, 2014.

/s/Files