

State of Arkansas
94th General Assembly
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A Bill

HOUSE BILL 1317

By: Representative Pilkington

By: Senator J. Boyd

For An Act To Be Entitled

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

Subtitle

TO PROVIDE FOR A REDUCED SALES AND USE TAX RATE FOR NATURAL GAS, ELECTRICITY, AND COAL USED BY A DATA CENTER; AND TO DECLARE AN EMERGENCY.

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

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

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

(a)(1)(A) 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, electricity, and coal to a ~~manufacturer~~

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

(ii) Data center.

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



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

(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 Secretary of the Department of Finance and Administration shall be deposited as general revenues;

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

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

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

(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:

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

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

~~(2)(B)~~ (B) 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; and

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

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

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

(iii) Has either:

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

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

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

(c)(1) Except as otherwise provided in this subsection, the tax rate under subsection (a) of this section does not apply to a manufacturer as defined in subdivision ~~(b)-(2)~~(b)(1)(B) 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)~~(b)(1)(B) of this section to operate a new or existing facility that uses combined-cycle gas turbine technology is one percent (1%).

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

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

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

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

of this section.

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

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

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

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

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

(a)(1)(A) 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, electricity, and coal purchased by a: ~~manufacturer~~

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

(ii) Data center.

(B) However, natural gas, electricity, and coal purchased by a manufacturer for use directly in the actual manufacturing process or by a data center shall remain subject to the excise tax of one-eighth of one percent ($\frac{1}{8}$ of 1%) levied in Arkansas Constitution, Amendment 75, the temporary excise tax of one-half percent ($\frac{1}{2}$ %) levied in Arkansas Constitution, Amendment 91, and the excise tax of one-half percent ($\frac{1}{2}$ %) levied in Arkansas Constitution, Amendment 101.

(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 Secretary of the Department of Finance and Administration shall be deposited as general revenues;

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

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

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

(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:

(1) "manufacturer Manufacturer" means a:

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

~~(2)(B)~~ 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; and

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

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

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

(iii) Has either:

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

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

(B) "Data center" does not include a facility that is used

for cryptocurrency operations.

(c)(1) Except as otherwise provided in this subsection, the tax rate under subsection (a) of this section does not apply to a manufacturer as defined in subdivision ~~(b)(2)~~(b)(1)(B) 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)~~(b)(1)(B) of this section to operate a new or existing facility that uses combined-cycle gas turbine technology is one percent (1%).

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

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

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

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

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

- (1) The excise taxes levied under the Arkansas Constitution; and
- (2) All municipal and county compensating use taxes.

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

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

(1) The date of its approval by the Governor;

(2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or

(3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto.