

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.

1 State of Arkansas
2 88th General Assembly
3 Regular Session, 2011

A Bill

HOUSE BILL 1031

4
5 By: Representative D. Altes

For An Act To Be Entitled

8 AN ACT TO PROVIDE A SALES AND USE TAX EXEMPTION FOR
9 UTILITIES USED BY MANUFACTURERS IN THE MANUFACTURING
10 PROCESS; TO REPEAL THE LOWER TAX RATE FOR UTILITIES
11 USED BY A MANUFACTURER; TO DECLARE AN EMERGENCY; AND
12 FOR OTHER PURPOSES.

Subtitle

13
14 TO PROVIDE A SALES TAX EXEMPTION FOR
15 UTILITIES USED BY MANUFACTURERS IN THE
16 MANUFACTURING PROCESS; TO REPEAL THE
17 LOWER TAX RATE FOR UTILITIES USED IN
18 MANUFACTURING; AND TO DECLARE AN
19 EMERGENCY.
20

21
22
23 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:

24
25 SECTION 1. Arkansas Code § 26-52-319 is repealed.

26 ~~26-52-319. Natural gas and electricity used by manufacturers.~~

27 ~~(a)(1) Beginning July 1, 2007, in lieu of the gross receipts or gross~~
28 ~~proceeds tax levied in §§ 26-52-301 and 26-52-302(a)-(d), there is levied an~~
29 ~~excise tax on the gross receipts or gross proceeds derived from the sale of~~
30 ~~natural gas and electricity to a manufacturer for use directly in the actual~~
31 ~~manufacturing process at the rate of four and three eighths percent (4.375%).~~

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

35 ~~(3)(A) Beginning July 1, 2009, the tax rate levied in~~
36 ~~subdivision (a)(1) of this section shall be imposed at the rate of three and~~



1 ~~one-eighth percent (3.125%).~~

2 ~~(B)(i) The Director of the Department of Finance and~~
3 ~~Administration shall monitor the amount of tax savings received by all~~
4 ~~taxpayers as a result of the reduction in the tax rate from that levied in §§~~
5 ~~26-52-301 and 26-52-302 to that levied in subdivision (a)(3)(A) of this~~
6 ~~section.~~

7 ~~(ii) When the director determines that the amount of~~
8 ~~tax savings resulting from the determination described in subdivision~~
9 ~~(a)(3)(B)(i) of this section plus any use tax savings described in § 26-53-~~
10 ~~148(a)(3)(B) would reach twenty-seven million dollars (\$27,000,000) during a~~
11 ~~fiscal year, the director shall not process any further refund claims through~~
12 ~~a refund process during the fiscal year for taxpayers seeking to claim the~~
13 ~~reduced tax rate provided by this section. The amount of twenty-seven million~~
14 ~~dollars (\$27,000,000) is intended to cover the accumulated but unclaimed~~
15 ~~reduction of sales and use tax on natural gas and electricity as provided by~~
16 ~~Acts 2007, No. 185, as well as the additional reduction provided by Acts~~
17 ~~2009, No. 695.~~

18 ~~(iii) If the director determines that discontinuing~~
19 ~~refund payments as provided in subdivision (a)(3)(B)(ii) of this section is~~
20 ~~insufficient to prevent the amount of tax savings from exceeding twenty-seven~~
21 ~~million dollars (\$27,000,000) during a fiscal year, the director may decline~~
22 ~~to accept any amended return filed by a taxpayer to claim an overpayment~~
23 ~~resulting from the reduced tax rate provided by this section for a period~~
24 ~~other than the period for which a tax return is currently due.~~

25 ~~(C)(i) Refund requests and amended returns filed with the~~
26 ~~director to claim the overpayment resulting from the reduced rate in~~
27 ~~subdivision (a)(3)(A) of this section shall be processed in the order they~~
28 ~~are received by the director. A taxpayer that does not receive a refund after~~
29 ~~the refund and amended return process has ceased under subdivision (a)(3)(B)~~
30 ~~of this section shall be given priority to receive a refund during the~~
31 ~~subsequent fiscal year. The unpaid refunds from the prior fiscal year shall~~
32 ~~be processed before any refund claims filed in the current fiscal year to~~
33 ~~claim the benefit of this section.~~

34 ~~(ii) The statute of limitations for refunds and~~
35 ~~amended returns under § 26-18-306(i)(1)(A) is extended for one (1) year to~~
36 ~~allow the payment of a refund under the process provided in subdivision~~

1 ~~(a)(3)(C)(i) of this section.~~

2 ~~(4) The taxes levied in this subsection (a) shall be distributed~~
3 ~~as follows:~~

4 ~~(A) Seventy six and six tenths percent (76.6%) of the tax,~~
5 ~~interest, penalties, and costs received by the director shall be deposited as~~
6 ~~general revenues;~~

7 ~~(B) Eight and five tenths percent (8.5%) of the tax,~~
8 ~~interest, penalties, and costs received by the director shall be deposited~~
9 ~~into the Property Tax Relief Trust Fund; and~~

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

13 ~~(5)(A) The excise tax levied in this section applies only to~~
14 ~~natural gas and electricity sold for use directly in the actual manufacturing~~
15 ~~process.~~

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

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

23 ~~(b) As used in this section, "manufacturer" means a manufacturer~~
24 ~~classified within sectors 31 through 33 of the North American Industry~~
25 ~~Classification System, as in effect on January 1, 2007.~~

26 ~~(c) Natural gas and electricity subject to the reduced tax rate levied~~
27 ~~in this section shall be separately metered from natural gas and electricity~~
28 ~~used for any other purpose by the manufacturer or otherwise established in~~
29 ~~accordance with the rules issued under subsection (e) of this section.~~

30 ~~(d) Prior to the sale of natural gas or electricity at the reduced~~
31 ~~excise tax rate levied in this section, the director may require any seller~~
32 ~~of natural gas or electricity to obtain a certificate from the consumer, in~~
33 ~~the form prescribed by the director, certifying that the manufacturer is~~
34 ~~eligible to purchase natural gas and electricity at the reduced excise tax~~
35 ~~rate.~~

36 ~~(e) The director shall have and be invested with full power and~~

1 authority to promulgate rules for the proper administration of this section.

2 ~~(f) The gross receipts or gross proceeds derived from the sale of~~
 3 ~~natural gas and electricity to a manufacturer shall continue to be subject~~
 4 ~~to:~~

5 ~~(1) The excise tax levied under the Arkansas Constitution,~~
 6 ~~Amendment 75, § 2; and~~

7 ~~(2) All municipal and county gross receipts taxes.~~

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

13
 14 SECTION 2. Arkansas Code Title 26, Chapter 52, Subchapter 4 is amended
 15 to add an additional section to read as follows:

16 26-52-444. Utilities for manufacturing process.

17 (a) As used in this section, "manufacturer" means a manufacturer
 18 classified within sectors 31 through 33 of the North American Industry
 19 Classification System, as in effect on January 1, 2011.

20 (b) The gross receipts or gross proceeds derived from sales of natural
 21 gas and electricity to a manufacturer for use directly in the actual
 22 manufacturing process is exempt from the gross receipts tax levied by the
 23 Arkansas Gross Receipts Act of 1941, § 26-52-101 et seq., and the
 24 compensating use tax levied by the Arkansas Compensating Tax Act of 1949, §
 25 26-53-101 et seq.

26 (c)(1) The exemption in this section applies only to natural gas and
 27 electricity sold for use directly in the actual manufacturing process.

28 (2) Natural gas and electricity sold for any other purpose is
 29 subject to the full gross receipts or gross proceeds tax levied under §§ 26-
 30 52-301 and 26-52-302 or the compensating use tax levied under §§ 26-53-106
 31 and 26-53-107.

32 (d) Natural gas and electricity that qualifies for the exemption in
 33 this section shall be separately metered from natural gas and electricity
 34 used for any other purpose by the manufacturer or otherwise established in
 35 accordance with the rules issued under subsection (f) of this section.

36 (e) Before the sale of natural gas or electricity to a manufacturer

1 claiming the exemption in this section, the Director of Finance and
 2 Administration may require any seller of natural gas or electricity to obtain
 3 a certificate from the manufacturer, in the form prescribed by the director,
 4 certifying that the manufacturer qualifies for the exemption is this section.

5 (f) The director may promulgate rules for the proper administration of
 6 this section.

7
 8 SECTION 3. Arkansas Code § 26-53-148 is repealed.

9 ~~26-53-148. Natural gas and electricity used by manufacturers.~~

10 ~~(a)(1) Beginning July 1, 2007, in lieu of the tax levied in §§ 26-53-~~
 11 ~~106 and 26-53-107(a)-(d), there is levied an excise tax on the sales price of~~
 12 ~~natural gas and electricity purchased by a manufacturer for use directly in~~
 13 ~~the actual manufacturing process at the rate of four and three-eighths~~
 14 ~~percent (4.375%).~~

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

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

21 ~~(B)(i) The Director of the Department of Finance and~~
 22 ~~Administration shall monitor the amount of tax savings received by all~~
 23 ~~taxpayers as a result of the reduction in the tax rate from that levied in §§~~
 24 ~~26-53-106 and 26-53-107 to that levied in subdivision (a)(3)(A) of this~~
 25 ~~section.~~

26 ~~(ii) When the director determines that the amount of~~
 27 ~~tax savings resulting from the determination described in subdivision~~
 28 ~~(a)(3)(B)(i) of this section plus any gross receipts tax savings described in~~
 29 ~~§ 26-52-319(a)(3)(B) would reach twenty-seven million dollars (\$27,000,000)~~
 30 ~~during a fiscal year, the director shall not process any further refund~~
 31 ~~claims through a refund process during the fiscal year for taxpayers seeking~~
 32 ~~to claim the reduced tax rate provided by this section. The amount of twenty-~~
 33 ~~seven million dollars (\$27,000,000) is intended to cover the accumulated but~~
 34 ~~unclaimed reduction of sales and use tax on natural gas and electricity as~~
 35 ~~provided by Acts 2007, No. 185, as well as the additional reduction provided~~
 36 ~~by Acts 2009, No. 695.~~

1 ~~(iii) If the director determines that discontinuing~~
 2 ~~refund payments as provided in subdivision (a)(3)(B)(ii) of this section is~~
 3 ~~insufficient to prevent the amount of tax savings from exceeding twenty-seven~~
 4 ~~million dollars (\$27,000,000) during a fiscal year, the director may decline~~
 5 ~~to accept any amended return filed by a taxpayer to claim an overpayment~~
 6 ~~resulting from the reduced tax rate provided by this section for a period~~
 7 ~~other than the period for which a tax return is currently due.~~

8 ~~(C)(i) Refund requests and amended returns filed with the~~
 9 ~~director to claim the overpayment resulting from the reduced rate in~~
 10 ~~subdivision (a)(3)(A) of this section will be processed in the order they are~~
 11 ~~received by the director. A taxpayer that does not receive a refund after the~~
 12 ~~refund and amended return process has ceased under subdivision (a)(3)(B) of~~
 13 ~~this section shall be given priority to receive a refund during the~~
 14 ~~subsequent fiscal year. The unpaid refunds from the prior fiscal year shall~~
 15 ~~be processed before any refund claims filed in the current fiscal year to~~
 16 ~~claim the benefit of this section.~~

17 ~~(ii) The statute of limitations for refunds and~~
 18 ~~amended returns under § 26-18-306(i)(1)(A) is extended for one (1) year to~~
 19 ~~allow the payment of a refund under the process provided in subdivision~~
 20 ~~(a)(3)(C)(i) of this section.~~

21 ~~(4) The taxes levied in subsection (a) of this section shall be~~
 22 ~~distributed as follows:~~

23 ~~(A) Seventy-six and six-tenths percent (76.6%) of the tax,~~
 24 ~~interest, penalties, and costs received by the director shall be deposited as~~
 25 ~~general revenues;~~

26 ~~(B) Eight and five-tenths percent (8.5%) of the tax,~~
 27 ~~interest, penalties, and costs received by the director shall be deposited~~
 28 ~~into the Property Tax Relief Trust Fund; and~~

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

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

35 ~~(B) Natural gas and electricity purchased for any other~~
 36 ~~purpose shall be subject to the full compensating use tax levied under §§ 26-~~

1 ~~53-106 and 26-53-107(a)-(d).~~

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

6 ~~(b) As used in this section, "manufacturer" means a manufacturer~~
 7 ~~classified within sectors 31 through 33 of the North American Industry~~
 8 ~~Classification System, as in effect on January 1, 2007.~~

9 ~~(c) Natural gas and electricity subject to the reduced tax rate levied~~
 10 ~~in this section shall be separately metered from natural gas and electricity~~
 11 ~~used for any other purpose by the manufacturer or otherwise established in~~
 12 ~~accordance with the rules issued under subsection (c) of this section.~~

13 ~~(d) Prior to purchasing any natural gas or electricity at the reduced~~
 14 ~~excise tax rate levied in this section, the director may require any seller~~
 15 ~~of natural gas or electricity to obtain a certificate from the consumer, in~~
 16 ~~the form prescribed by the director, certifying that the manufacturer is~~
 17 ~~eligible to purchase natural gas and electricity at the reduced excise tax~~
 18 ~~rate.~~

19 ~~(e) The director shall have and be invested with full power and~~
 20 ~~authority to promulgate rules for the proper administration of this section.~~

21 ~~(f) The purchase of natural gas and electricity by a manufacturer~~
 22 ~~shall continue to be subject to:~~

23 ~~(1) The excise tax levied under the Arkansas Constitution,~~
 24 ~~Amendment 75, § 2; and~~

25 ~~(2) All municipal and county compensating use taxes.~~

26
 27 SECTION 4. EMERGENCY CLAUSE. It is found and determined by the
 28 General Assembly of the State of Arkansas that the rate of unemployment in
 29 Arkansas continues to be extremely high; that the economy has dramatically
 30 affected manufacturers and resulted in lay-offs; that providing manufacturers
 31 with an exemption on utilities would provide manufacturers with a way to
 32 increase the number of employees; and that this, in turn, would increase
 33 production and provide lucrative employment for Arkansans. Therefore, an
 34 emergency is declared to exist and this act being necessary for the
 35 preservation of the public peace, health, and safety shall become effective
 36 on July 1, 2011.