

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

1 State of Arkansas *As Engrossed: H1/31/13 H2/14/13 H3/1/13*

2 89th General Assembly

# A Bill

3 Regular Session, 2013

HOUSE BILL 1039

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5 By: Representatives Wardlaw, Wren, Ballinger, Biviano, Branscum, Catlett, Deffenbaugh, D. Douglas,  
6 Eubanks, Gillam, Gossage, Hawthorne, Hillman, Lampkin, Mayberry, McCrary, B. Overbey, Perry,  
7 Ratliff, Rice, Scott, Slinkard, Talley, T. Thompson, Vines, Westerman, Wright, *Alexander, D. Altes, C.*  
8 *Armstrong, E. Armstrong, Baine, Baltz, Barnett, Bragg, Broadaway, Carnine, Copenhaver, Cozart, J.*  
9 *Dickinson, Ferguson, Fite, Hammer, Harris, Hickerson, Hodges, Holcomb, Jean, Kizzia, Lea, Leding,*  
10 *Lowery, Magie, McElroy, McGill, Murdock, Richey, Steel, W. Wagner, D. Whitaker, Williams, Word,*  
11 *Hopper, Jett, Bell*

12 By: Senators *Teague, G. Stubblefield, B. King, E. Cheatham, Hester, Holland, U. Lindsey, Maloch, B.*  
13 *Pierce, J. Woods, D. Wyatt, J. Dismang, J. Hutchinson, Irvin, J. Key, Rapert, E. Williams, B. Sample, A.*  
14 *Clark*

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## For An Act To Be Entitled

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AN ACT TO *REDUCE* THE SALES AND USE TAX *ON* UTILITIES  
18 USED BY QUALIFYING AGRICULTURAL STRUCTURES AND  
19 QUALIFYING AQUACULTURE AND HORTICULTURE EQUIPMENT;  
20 AND FOR OTHER PURPOSES.

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## Subtitle

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*TO REDUCE THE SALES AND USE TAX ON*

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*UTILITIES USED BY QUALIFYING AGRICULTURAL*

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*STRUCTURES AND QUALIFYING AQUACULTURE AND*

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*HORTICULTURE EQUIPMENT.*

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

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SECTION 1. Arkansas Code Title 26, Chapter 52, Subchapter 4 is amended  
33 to add an additional section to read as follows:

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26-52-446. Utilities used for qualifying agricultural structures and  
35 qualifying aquaculture and horticulture equipment.

36

(a) As used in this section:



1 (1) "Aquaculture" means the active cultivation of domesticated  
2 fish;

3 (2) "Domesticated fish" means fish that are spawned, grown,  
4 managed, harvested, and marketed on an annual, semiannual, biennial, or  
5 short-term basis in waters that are confined within a pond, tank, or lake  
6 that is situated entirely on the premises of a single owner and that, except  
7 under abnormal flood conditions, are in no way connected by water or with any  
8 other:

9 (A) Flowing stream or body of water; or

10 (B) Body of water not situated on the premises of the  
11 owner;

12 (3)(A) "Horticulture" means the initial production and  
13 cultivation of fruits, vegetables, tree nuts, trees, shrubs, vines, and  
14 florist stock.

15 (B) "Horticulture" does not include the cultivation of  
16 fruits, vegetables, tree nuts, trees, shrubs, vines, and florist stock at a  
17 retail or wholesale facility from which the items are sold;

18 (4) "Qualifying agricultural structure" means the following:

19 (A) A poultry or livestock facility used for commercial  
20 production, including without limitation a broiler or turkey grow-out house,  
21 laying house, hatching unit, nursery unit, breeding house, farrowing unit,  
22 and feed-out house;

23 (B) A cattle and dairy facility, including without  
24 limitation a milking parlor, milk collection unit, and refrigeration unit;  
25 and

26 (C) A greenhouse used for commercial production;

27 (5) "Qualifying aquaculture or horticulture equipment" means:

28 (A) A cooling unit, collection unit, or irrigation  
29 equipment used in a commercial horticulture operation;

30 (B) Equipment used to pump and aerate a pond used in a  
31 commercial aquaculture operation; and

32 (C) A holding and sorting tank used in a commercial  
33 aquaculture operation;

34 (6) "Utility" means the following:

35 (A) Electricity;

36 (B) Liquefied petroleum gas; and

1                   (C) Natural gas.

2                   (b)(1)(A) Beginning January 1, 2014, the gross receipts tax levied by  
3 the Arkansas Gross Receipts Act of 1941, § 26-52-101 et seq., and the  
4 compensating use tax levied by the Arkansas Compensating Tax Act of 1949, §  
5 26-53-101 et seq., shall be levied at a rate of zero percent (0%) on the sale  
6 of electricity used by the following:

7                   (i) A qualifying agricultural structure used for a  
8 commercial purpose; and

9                   (ii) Qualifying aquaculture or horticulture  
10 equipment operated for a commercial purpose.

11                   (B) Beginning January 1, 2016, the gross receipts tax  
12 levied by the Arkansas Gross Receipts Act of 1941, § 26-52-101 et seq., and  
13 the compensating use tax levied by the Arkansas Compensating Tax Act of 1949,  
14 § 26-53-101 et seq., shall be levied at a rate of zero percent (0%) on the  
15 sale of liquefied petroleum gas or natural gas used by the following:

16                   (i) A qualifying agricultural structure used for a  
17 commercial purpose; and

18                   (ii) Qualifying aquaculture or horticulture  
19 equipment operated for a commercial purpose.

20                   (2) However, the sale of a utility for a purpose stated in  
21 subdivision (b)(1) of this section shall remain subject to the excise tax of  
22 one-eighth of one percent (1/8 of 1%) levied in Amendment 75 to the Arkansas  
23 Constitution and the temporary excise tax of one-half percent (1/2%) levied  
24 in Amendment 91 to the Arkansas Constitution.

25                   (3) A utility sold for any purpose other than the purposes  
26 stated in subdivision (b)(1) of this section is subject to the full gross  
27 receipts tax levied by the Arkansas Gross Receipts Act of 1941, § 26-52-101  
28 et seq., and the full compensating use tax levied by the Arkansas  
29 Compensating Tax Act of 1949, § 26-53-101 et seq.

30                   (c)(1) A utility subject to the reduced tax rate provided under this  
31 section shall be separately metered from a utility used for any other purpose  
32 by the taxpayer.

33                   (2) However, the rules promulgated under subsection (e) of this  
34 section may establish additional or alternate requirements for the metering  
35 of utilities under this section.

36                   (d) Before allowing the levy of the reduced tax rate for of a utility

1 under this section, the Director of the Department of Finance and  
2 Administration may require a seller of a utility to obtain a certificate from  
3 the taxpayer, in the form prescribed by the director, certifying that the  
4 taxpayer is eligible for the reduced tax rate.

5 (e) To claim the reduced tax rate provided under this section, a  
6 taxpayer eligible for the reduced tax rate shall apply to the Department of  
7 Finance and Administration for a refund of the sales tax paid in excess of  
8 the reduced tax rate.

9 (f) The director shall promulgate rules for the proper administration  
10 of this section.

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13 /s/Wardlaw  
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