

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

A Bill

HOUSE BILL 2064

4
5 By: Representatives L. Cowling, King

For An Act To Be Entitled

8 AN ACT TO GRADUALLY REDUCE THE SALES AND USE TAX ON
9 UTILITIES THAT ARE USED BY QUALIFYING AGRICULTURAL
10 STRUCTURES AND QUALIFYING AGRICULTURE, HORTICULTURE,
11 AND AQUACULTURE EQUIPMENT; AND FOR OTHER PURPOSES.

Subtitle

15 TO GRADUALLY REDUCE THE SALES AND USE TAX
16 ON UTILITIES THAT ARE USED BY QUALIFYING
17 AGRICULTURAL STRUCTURES AND QUALIFYING
18 AGRICULTURE, HORTICULTURE, AND
19 AQUACULTURE EQUIPMENT.

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

24 SECTION 1. Arkansas Code Title 26, Chapter 52, Subchapter 3 is amended
25 to add an additional section to read as follows:

26 26-52-323. Reduced sales tax rate for utilities used by qualifying
27 agricultural structures and by qualifying agriculture, horticulture, and
28 aquaculture equipment.

29 (a) As used in this section:

30 (1) "Qualifying agriculture, horticulture, or aquaculture
31 equipment" means:

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

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

36 (C) A holding and sorting tank used in a commercial



1 aquaculture operation; and

2 (D) An on-farm grain dryer and agricultural irrigation
3 used for a commercial purpose;

4 (2) "Qualifying agricultural structure" means:

5 (A) Confinement housing for poultry or livestock used for
6 commercial production, including without limitation a broiler or turkey grow-
7 out house, laying house, hatching unit, nursery unit, breeding house,
8 farrowing unit, and feed-out house; and

9 (B) A commercial milking facility, including without
10 limitation a milking parlor, a milk collection unit, and a refrigeration
11 unit; and

12 (3) "Utility" means:

13 (A) Liquefied petroleum gas;

14 (B) Natural gas; or

15 (C) Electricity.

16 (b)(1) Beginning July 1, 2011, in lieu of the gross receipts or gross
17 proceeds taxes levied in §§ 26-52-301 and 26-52-302, there is levied an
18 excise tax on the gross receipts or gross proceeds derived from the sale of a
19 utility used by a qualifying agricultural structure for a commercial purpose
20 or qualifying agriculture, horticulture, or aquaculture equipment for a
21 commercial purpose at the rate of four percent (4%).

22 (2) Beginning July 1, 2012, the excise tax rate levied in
23 subdivision (b)(1) of this section shall be imposed at the rate of two and
24 five-eighths percent (2.625%).

25 (c) The excise tax levied in subsection (b) of this section shall be
26 distributed as follows:

27 (1) Seventy-six and six-tenths percent (76.6%) of the tax,
28 interest, penalties, and costs received by the Director of the Department of
29 Finance and Administration shall be deposited into the State Treasury as
30 general revenues;

31 (2) Eight and five-tenths percent (8.5%) of the tax, interest,
32 penalties, and costs received by the director shall be deposited into the
33 Property Tax Relief Trust Fund; and

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

1 (d) The excise tax levied in this section applies only to a utility
2 sold for use by a qualifying agricultural structure for a commercial purpose
3 or qualifying agriculture, horticulture, or aquaculture equipment operated
4 for a commercial purpose.

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

9 (f) A utility subject to the reduced excise tax rate levied in this
10 section shall be separately metered from a utility used for any other purpose
11 by the taxpayer, or as otherwise established by the rules issued under
12 subsection (h) of this section.

13 (g) Before the purchase of a utility at the reduced excise tax rate
14 levied in this section, the director may require a seller of a utility to
15 obtain a certificate from the taxpayer in the form prescribed by the
16 director, certifying that the taxpayer is eligible to purchase the utility at
17 the reduced excise tax rate.

18 (h) The director shall promulgate rules for the proper administration
19 of this section.

20 (i) The gross receipts or gross proceeds derived from the sale of a
21 utility to a taxpayer for use by a qualifying agricultural structure for a
22 commercial purpose or qualifying agriculture, horticulture, or aquaculture
23 equipment operated for a commercial purpose shall continue to be subject to:

24 (1) The excise tax levied under Arkansas Constitution, Amendment
25 75, § 2; and

26 (2) All municipal and county gross receipts taxes.

27
28 SECTION 2. Arkansas Code Title 26, Chapter 53, Subchapter 1 is amended
29 to add an additional section to read as follows:

30 26-53-149. Reduced compensating use tax rate for utilities used by
31 qualifying agricultural structures and by qualifying agriculture,
32 horticulture, and aquaculture equipment.

33 (a) As used in this section:

34 (1) "Qualifying agriculture, horticulture, or aquaculture
35 equipment" means:

36 (A) A cooling unit, a collection unit, or irrigation

1 equipment used in a commercial horticulture operation;

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

4 (C) A holding and sorting tank used in a commercial
 5 aquaculture operation; and

6 (D) An on-farm grain dryer and agricultural irrigation
 7 used for a commercial purpose;

8 (2) "Qualifying agricultural structure" means:

9 (A) Confinement housing for poultry or livestock used for
 10 commercial production, including without limitation a broiler or turkey grow-
 11 out house, laying house, hatching unit, nursery unit, breeding house,
 12 farrowing unit, and feed-out house; and

13 (B) A commercial milking facility, including without
 14 limitation a milking parlor, a milk collection unit, and a refrigeration
 15 unit; and

16 (3) "Utility" means:

17 (A) Liquefied petroleum gas;

18 (B) Natural gas; or

19 (C) Electricity.

20 (b)(1) Beginning July 1, 2011, in lieu of the compensating use taxes
 21 levied in §§ 26-53-106 and 26-53-107, there is levied an excise tax on the
 22 sales price of a utility purchased for use by a qualifying agricultural
 23 structure for a commercial purpose or qualifying agriculture, horticulture,
 24 or aquaculture equipment for a commercial purpose at the rate of four percent
 25 (4%).

26 (2) Beginning July 1, 2012, the excise tax rate levied in
 27 subdivision (b)(1) of this section shall be imposed at the rate of two and
 28 five-eighths percent (2.625%).

29 (c) The excise taxes levied in subsection (b) of this section shall be
 30 distributed as follows:

31 (1) Seventy-six and six-tenths percent (76.6%) of the tax,
 32 interest, penalties, and costs received by the Director of the Department of
 33 Finance and Administration shall be deposited into the State Treasury as
 34 general revenues;

35 (2) Eight and five-tenths percent (8.5%) of the tax, interest,
 36 penalties, and costs received by the director shall be deposited into the

1 Property Tax Relief Trust Fund; and

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

5 (d) The excise tax levied in this section applies only to a utility
6 purchased for use by a qualifying agricultural structure for a commercial
7 purpose or qualifying agriculture, horticulture, or aquaculture equipment
8 operated for a commercial purpose.

9 (e) The excise tax levied in this section shall be collected,
10 reported, and paid in the same manner and at the same time as is prescribed
11 by law for the collection, reporting, and payment of all other Arkansas
12 compensating use taxes.

13 (f) A utility subject to the reduced excise tax rate levied in this
14 section shall be separately metered from a utility used for any other purpose
15 by the taxpayer, or as otherwise established by the rules issued under
16 subsection (h) of this section.

17 (g) Before the purchase of a utility at the reduced excise tax rate
18 levied in this section, the director may require a seller of a utility to
19 obtain a certificate from the consumer in the form prescribed by the
20 director, certifying that the taxpayer is eligible to purchase the utility at
21 the reduced excise tax rate.

22 (h) The director shall promulgate rules for the proper administration
23 of this section.

24 (i) The purchase of a utility that qualifies for the reduced excise
25 tax rate levied in this section shall continue to be subject to:

26 (1) The excise tax levied under Arkansas Constitution, Amendment
27 75, § 2; and

28 (2) All municipal and county compensating use taxes.

29
30 SECTION 3. EMERGENCY CLAUSE. It is found and determined by the
31 General Assembly of the State of Arkansas that agricultural, horticultural,
32 and aquacultural businesses in this state have suffered losses due to sharp
33 increases in energy costs; that these businesses are unable to set the price
34 for the products they produce and are particularly vulnerable to price
35 volatility; that the current sales and use tax on utilities consumed by these
36 businesses located within this state creates a competitive disadvantage; that

1 this act is intended to address that problem by providing a reduced tax rate
2 on utilities consumed by agricultural, horticultural, and aquacultural
3 businesses located in this state; and that this act is necessary to prevent
4 the loss of agricultural, horticultural, and aquacultural jobs. Therefore,
5 an emergency is hereby declared to exist and this act being necessary for the
6 preservation of public peace, health, and safety shall become effective on
7 July 1, 2011.

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