

Replacement and Repair of Manufacturing Machinery and Equipment Sales and Use Tax Refund (Act 1404 of 2013, as amended) Rules

I. Introduction

Overview

Act 1404 of 2013, as amended and codified in §§ 26-52-447, 26-53-149 and 15-4-3501, establishes two options by which certain state sales and use taxes relating to the partial replacement and repair of machinery and equipment used directly in manufacturing may be refunded to eligible taxpayers beginning July 1, 2014.

Act 465 of 2017 amended the refund options by:

- Increasing the refund available for taxes paid on purchases related to the repair and partial replacement of manufacturing machinery and equipment;
- Sunsetting the tax refund for major maintenance and improvement programs; and
- Phasing in an exemption from tax for purchases related to the repair and partial replacement of manufacturing machinery and equipment.

The first option, which provides for a graduated refund and subsequent exemption of sales and use taxes levied under §§ 26-52-301, 26-52-302, 26-53-106 and 26-53-107, may be claimed by a taxpayer for the purchase and installation of certain machinery and equipment used directly in manufacturing and processing. Taxes levied under §§ 26-52-301, 26-52-302, 26-53-106 and 26-53-107 subject to refund under this option are the taxes in excess of the following rates:

1. Beginning July 1, 2014, four and seven-eighths percent (4.875%);
2. Beginning July 1, 2018, three and seven-eighths percent (3.875%);
3. Beginning July 1, 2019, two and seven-eighths percent (2.875%);
4. Beginning July 1, 2020, one and seven-eighths percent (1.875%);
5. Beginning July 1, 2021, seven-eighths percent (0.875%); and
6. Beginning July 1, 2022, sales qualifying for the tax refund under this option are fully exempt from taxes levied under §§ 26-52-301, 26-52-302, 26-53-106 and 26-53-107.

The second option, which provides for an increased refund of all sales and use taxes (5.875%) levied under §§ 26-52-301, 26-52-302, 26-53-106 and 26-53-107, is a discretionary incentive that may be offered by the Executive Director of the Arkansas Economic Development Commission (AEDC) to a taxpayer who undertakes a major maintenance and improvement project to purchase and install certain machinery and equipment used directly in manufacturing and processing.

A taxpayer may apply for an increased refund for major maintenance and improvement projects under the second option through June 30, 2022. An application for an increased refund for major maintenance and improvement projects under the second option shall not be accepted on or after July 1, 2022.

To qualify for this discretionary refund, a taxpayer shall:

1. Be eligible for a refund of taxes under §§ 26-52-447 or 26-53-149 (partial replacement and repair of certain machinery and equipment);
2. Hold a direct pay or a limited direct pay sales and use tax permit from the DFA; and when claiming the refund, shall file their monthly direct pay sales and use tax report using the Department's electronic tax report filing system;
3. Enter into a financial incentive agreement with the AEDC for the major maintenance and improvement project prior to incurring project expenditures;
4. Expend at least \$3 million on an approved major maintenance and improvement project that includes the purchase of tangible personal property and services that are either exempt or subject to partial refund of tax under §§ 26-52-402, 26-52-447, 26-53-114, or 26-53-149;
5. File a completed Manufacturing Replacement and Repair Sales and Use Tax Refund Application with the AEDC; and
6. Receive approval from the Executive Director of the AEDC to receive the increased refund of sales and use taxes for the major maintenance and improvement project.

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 refund.

II. Rulemaking Authority

The AEDC and DFA have authority, at § 15-4-3501(h), to promulgate rules necessary to implement Act 1404 of 2013, as amended.

III. Effective Date

The effective date of Act 1404 of 2013 was July 1, 2014. The AEDC began accepting applications requesting an increased refund of all sales and use taxes levied pursuant to the replacement and repair of manufacturing machinery and equipment under §§ 26-52-301, 26-52-302, 26-53-106 and 26-53-107, beginning July 1, 2014.

IV. Definitions

1. "Certain machinery and equipment" means items taxable under §§ 26-52-301 and 26-52-302 on the sale of, and §§ 26-53-106 and 26-53-107 on the privilege of storing, using, distributing, or consuming within this state, the following :
 - A. 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
 - B. Service relating to the initial installation, alteration, addition, cleaning, refinishing, replacement, or repair of machinery or equipment as defined in IV. 1(A) above;
2. "Commission" means the Arkansas Economic Development Commission;
3. "Major maintenance and improvement project" means a project with a defined scope and beginning and ending dates, the range of which shall not exceed twenty-four (24) consecutive months, in which the taxpayer expends at least \$3 million on the purchase of tangible personal property and services subject to §§ 26-52-447 and 26-53-149 that are either exempt from or subject to a partial refund of tax under §§ 26-52-402, 26-52-447, 26-53-114, or 26-53-149. The ending date of the project may be extended so that the range of dates is increased to forty-eight (48) consecutive months only with the written approval of the Executive Director of the AEDC and the Director of the Arkansas Department of Finance and Administration;
4. "Manufacturing" or "processing" means the same as defined under § 26-53-114(b) for items taxable under §§ 26-53-106 and 26-53-107 and the same as defined under § 26-52-402(b) for items taxable under §§ 26-52-301 and 26-52-302;
5. "Positive return on taxpayer's investment" means information provided by the taxpayer requesting an increased refund of all sales and use taxes levied under §§ 26-52-301, 26-52-302, 26-53-106 and 26-53-107 that reasonably proves that any or all of the following dollar amounts, when calculated

cumulatively, will offset the amount of taxes refunded as a result of the major maintenance and improvement project:

- a. Enhanced or retained productivity (expressed in dollars);
 - b. Enhanced or retained revenue, sales or output (expressed in dollars);
 - c. Enhanced or retained employee compensation (expressed in dollars);
 - d. Enhanced or retained taxes paid (expressed in dollars); or
 - e. Any other quantifiable information requested by the AEDC that the taxpayer may provide as reasonable proof of positive return of the taxpayer's investment in the major maintenance and improvement project; and
6. "Used directly" means the same as defined under § 26-52-402(c), § 26-53-114(c) and Arkansas Gross Receipts Tax Rule GR-55.

V. Application and Approval Process for Discretionary 5.875% State Sales and Use Tax Refund

Prerequisite: Taxpayers shall hold a direct pay or a limited direct pay sales and use tax permit from the DFA prior to filing an application with the AEDC requesting approval of an increased tax refund for major maintenance and improvement projects.

1. A taxpayer submits to the AEDC Incentives Manager, a completed, signed Manufacturing Replacement and Repair Sales and Use Tax Refund Application, consisting of the following sections:
 - A. Applicant information including:
 - (i) The name, address, physical location and contact of the company for which the application is being submitted; and
 - (ii) A Statement of Project Need.
 - B. A Project Plan consisting of:
 - (i) Estimated start and completion dates of project;
 - (ii) A description of the project scope;
 - (iii) Project cost estimates; and
 - (iv) Data providing 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 refunded taxes.
 - C. Certifications
 - (i) Signature of company official; and
 - (ii) Contract disclosure.
2. The AEDC Incentives Manager reviews the application to determine that:

- A. The taxpayer holds a direct pay or a limited direct pay sales and use tax permit from the DFA;
 - B. The taxpayer is eligible for the increased refund for major maintenance and improvement projects provided for by Act 1404 of 2013, as amended;
 - C. 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 costs of the refund;
 - D. The taxpayer has provided a defined scope, beginning date, and ending date for the major maintenance and improvement project;
 - E. The refund is reasonably necessary for the taxpayer to remain competitive and preserve Arkansas jobs; and
 - F. Major maintenance and improvement eligible project expenditures will be at least \$3 million.
3.
 - A. If the AEDC determines that the application is complete and meets all requirements, the AEDC Incentives Manager prepares a financial incentive agreement and forwards one copy to the approved applicant for signature and return.
 - B. Unapproved applicants will be notified of the reasons for disapproval in writing by the AEDC.
 4. Upon receipt of the signed financial incentive agreement from the approved applicant, the AEDC Incentives Manager prepares an approval letter and forwards the financial incentive agreement and the approval letter to the Executive Director of the AEDC for signature.
 5. The Executive Director of the AEDC signs the financial incentive agreement and the approval letter and forwards each to the AEDC Incentives Manager for distribution.
 6. The AEDC Incentives Manager, on behalf of the Executive Director of the AEDC:
 - A. Forwards the taxpayer's approved application, financial incentive agreement, signed approval letter, and any other pertinent documentation to the DFA Director;
 - B. Forwards a copy of the executed financial incentive agreement and approval letter to the approved applicant; and
 - C. Retains copies of all original documents in AEDC files.
 7. The taxpayer shall contact DFA with questions regarding refund claims.
 8. A taxpayer that has been approved for the increased refund for major maintenance and improvement projects may request changes to the project plan only by written amendment submitted to and approved by the Executive Director of the AEDC.

VI. Combinability of Expenditures

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