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 ~~one percentage point (1%) of the 5.875%~~ 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. ~~To qualify for this refund, a taxpayer shall hold a direct pay or a limited direct pay sales and use tax permit from the Arkansas Department of Finance and Administration (DFA).~~ 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;
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).

QUESTIONNAIRE FOR FILING PROPOSED RULES AND REGULATIONS WITH THE ARKANSAS LEGISLATIVE COUNCIL

DEPARTMENT/AGENCY Arkansas Economic Development Commission

DIVISION Strategic Planning and Research

DIVISION DIRECTOR Kurt Naumann

CONTACT PERSON Kurt Naumann

ADDRESS 900 West Capitol; Little Rock, AR 72201

PHONE NO. 501-682-7308 **FAX NO.** 501-682-7499 **E-MAIL** knaumann@arkansasedc.com

NAME OF PRESENTER AT COMMITTEE MEETING Kurt Naumann

PRESENTER E-MAIL knaumann@arkansasedc.com

INSTRUCTIONS

A. Please make copies of this form for future use.
B. Please answer each question <u>completely</u> using layman terms. You may use additional sheets, if necessary.
C. If you have a method of indexing your rules, please give the proposed citation after "Short Title of this Rule" below.
D. Submit two (2) copies of this questionnaire and financial impact statement attached to the front of two (2) copies of the proposed rule and required documents. Mail or deliver to:

Donna K. Davis
Administrative Rules Review Section
Arkansas Legislative Council
Bureau of Legislative Research
One Capitol Mall, 5th Floor
Little Rock, AR 72201

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1. What is the short title of this rule? Replacement and Repair of Manufacturing Machinery and Equipment Sales and Use Tax Refund

2. What is the subject of the proposed rule?

This rule implements changes required as a result of Act 465 of 2017 as follows:

1. Provides the new 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 applicable to purchases of replacement and repair of manufacturing machinery and equipment:
   a. Beginning July 1, 2014, four and seven-eighths percent (4.875%);
   b. Beginning July 1, 2018, three and seven-eighths percent (3.875%);
   c. Beginning July 1, 2019, two and seven-eighths percent (2.875);
   d. Beginning July 1, 2020, one and seven-eighths percent (1.875%);
   e. Beginning July 1, 2021, seven-eighths percent (0.875%); and
   f. 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.
2. Establishes a sunset date of June 30, 2022 for the discretionary incentive program administered by the Arkansas Economic Development Commission that 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. (Note: businesses can choose either option; until June 30, 2022-there will be no need for the AEDC program since the full exemption will be in place as of June 30, 2022.).

3. Is this rule required to comply with a federal statute, rule, or regulation? Yes ☐ No X

If yes, please provide the federal rule, regulation, and/or statute citation.

4. Was this rule filed under the emergency provisions of the Administrative Procedure Act?

Yes ☐ No X

If yes, what is the effective date of the emergency rule?

When does the emergency rule expire?

Will this emergency rule be promulgated under the permanent provisions of the Administrative Procedure Act?

Yes ☐ No ☐

5. Is this a new rule? Yes ☐ No X

If yes, please provide a brief summary explaining the regulation.

Does this repeal an existing rule? Yes ☐ No X

If yes, a copy of the repealed rule is to be included with your completed questionnaire. If it is being replaced with a new rule, please provide a summary of the rule giving an explanation of what the rule does. _____

Is this an amendment to an existing rule? Yes X No ☐

If yes, please attach a mark-up showing the changes in the existing rule and a summary of the substantive changes. **Note: The summary should explain what the amendment does, and the mark-up copy should be clearly labeled "mark-up."** This rule implements changes required as a result of Act 465 of 2017 as follows:

3. Provides the new 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 applicable to purchases of replacement and repair of manufacturing machinery and equipment:
   a. Beginning July 1, 2014, four and seven-eighths percent (4.875%);
   b. Beginning July 1, 2018, three and seven-eighths percent (3.875%);
   c. Beginning July 1, 2019, two and seven-eighths percent (2.875);
   d. Beginning July 1, 2020, one and seven-eighths percent (1.875%);
   e. Beginning July 1, 2021, seven-eighths percent (0.875%); and
   f. 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.
4. Establishes a sunset date of June 30, 2022 for the discretionary incentive program administered by the Arkansas Economic Development Commission that 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. (Note: businesses can choose either option; until June 30, 2022-there will be no need for the AEDC program since the full exemption will be in place as of June 30, 2022.).

6. Cite the state law that grants the authority for this proposed rule? If codified, please give the Arkansas Code citation. <u>§ 15-4-209(b)(5) enabling legislation rule making authority and § 15-4-3501(h) to promulgate rules under Act 1404 of 2013.</u>

7. What is the purpose of this proposed rule? Why is it necessary? <u>This rule implements changes required as a result of Act 465 of 2017.</u>

8. Please provide the address where this rule is publicly accessible in electronic form via the Internet as required by Arkansas Code § 25-19-108(b). <u>www.arkansasedc.com</u>

9. Will a public hearing be held on this proposed rule? Yes <u>X</u> No ☐
   If yes, please complete the following:

   Date: July 28, 2017

   Time: 10:00 a.m.

   Place: Arkansas Economic Development Commission, Suite 400; 900 West Capitol, Second Floor; LR 72201

10. When does the public comment period expire for permanent promulgation? (Must provide a date.)
    July 28, 2017

11. What is the proposed effective date of this proposed rule? (Must provide a date.)
    October 1, 2017

12. Please provide a copy of the notice required under Ark. Code Ann. § 25-15-204(a), and proof of the publication of said notice. <u>Attached</u>

13. Please provide proof of filing the rule with the Secretary of State and the Arkansas State Library as required pursuant to Ark. Code Ann. § 25-15-204(e). <u>Attached</u>

14. Please give the names of persons, groups, or organizations that you expect to comment on these rules? Please provide their position (for or against) if known. <u>None</u>

<u>FINANCIAL IMPACT STATEMENT</u>

PLEASE ANSWER ALL QUESTIONS COMPLETELY

DEPARTMENT Arkansas Economic Development Commission

DIVISION Strategic Planning and Research

PERSON COMPLETING THIS STATEMENT Kurt Naumann

TELEPHONE 501-682-7308 **FAX** 501-682-7499 **EMAIL:** knaumann@arkansasedc.com

To comply with Ark. Code Ann. § 25-15-204(e), please complete the following Financial Impact Statement and file two copies with the questionnaire and proposed rules.

SHORT TITLE OF THIS RULE Replacement and Repair of Manufacturing Machinery and Equipment Sales and Use Tax Refund

1. Does this proposed, amended, or repealed rule have a financial impact? Yes ☐ No X

2. Is the rule based on the best reasonably obtainable scientific, technical, economic, or other evidence and information available concerning the need for, consequences of, and alternatives to the rule? Yes X No ☐

3. In consideration of the alternatives to this rule, was this rule determined by the agency to be the least costly rule considered? Yes X No ☐

   If an agency is proposing a more costly rule, please state the following:

   (a) How the additional benefits of the more costly rule justify its additional cost;

   (b) The reason for adoption of the more costly rule;

   (c) Whether the more costly rule is based on the interests of public health, safety, or welfare, and if so, please explain; and;

   (d) Whether the reason is within the scope of the agency's statutory authority; and if so, please explain.

4. If the purpose of this rule is to implement a federal rule or regulation, please state the following:

   (a) What is the cost to implement the federal rule or regulation?

Current Fiscal Year		**Next Fiscal Year**	
General Revenue		General Revenue	
Federal Funds		Federal Funds	
Cash Funds		Cash Funds	
Special Revenue		Special Revenue	
Other (Identify)		Other (Identify)	
Total		Total	

   (b) What is the additional cost of the state rule?

Current Fiscal Year		**Next Fiscal Year**	
General Revenue		General Revenue	
Federal Funds		Federal Funds	
Cash Funds		Cash Funds	
Special Revenue		Special Revenue	
Other (Identify)	$250 (Legal Advertisement)	Other (Identify)	

Total $250 Total $0

5. What is the total estimated cost by fiscal year to any private individual, entity and business subject to the proposed, amended, or repealed rule? Identify the entity(ies) subject to the proposed rule and explain how they are affected.

Current Fiscal Year	**Next Fiscal Year**
$ $0	$ 0

6. What is the total estimated cost by fiscal year to state, county, and municipal government to implement this rule? Is this the cost of the program or grant? Please explain how the government is affected.

Current Fiscal Year	**Next Fiscal Year**
$ $0	$ 0

7. With respect to the agency's answers to Questions #5 and #6 above, is there a new or increased cost or obligation of at least one hundred thousand dollars ($100,000) per year to a private individual, private entity, private business, state government, county government, municipal government, or to two (2) or more of those entities combined?

Yes ☐ No X

If YES, the agency is required by Ark. Code Ann. § 25-15-204(e)(4) to file written findings at the time of filing the financial impact statement. The written findings shall be filed simultaneously with the financial impact statement and shall include, without limitation, the following:

(1) a statement of the rule's basis and purpose;

(2) the problem the agency seeks to address with the proposed rule, including a statement of whether a rule is required by statute;

(3) a description of the factual evidence that:
- (a) justifies the agency's need for the proposed rule; and
- (b) describes how the benefits of the rule meet the relevant statutory objectives and justify the rule's costs;

(4) a list of less costly alternatives to the proposed rule and the reasons why the alternatives do not adequately address the problem to be solved by the proposed rule;

(5) a list of alternatives to the proposed rule that were suggested as a result of public comment and the reasons why the alternatives do not adequately address the problem to be solved by the proposed rule;

(6) a statement of whether existing rules have created or contributed to the problem the agency seeks to address with the proposed rule and, if existing rules have created or contributed to the problem, an explanation of why amendment or repeal of the rule creating or contributing to the problem is not a sufficient response; and

(7) an agency plan for review of the rule no less than every ten (10) years to determine whether, based upon the evidence, there remains a need for the rule including, without limitation, whether:

(a) the rule is achieving the statutory objectives;

(b) the benefits of the rule continue to justify its costs; and

(c) the rule can be amended or repealed to reduce costs while continuing to achieve the statutory objectives.