

House Bill 86

By: Representatives Williams of the 4<sup>th</sup>, Rynders of the 152<sup>nd</sup>, Dickson of the 6<sup>th</sup>, Peake of the 137<sup>th</sup>, Parsons of the 42<sup>nd</sup>, and others

A BILL TO BE ENTITLED  
AN ACT

1 To amend Code Section 48-83-3 of the Official Code of Georgia Annotated, relating to  
2 exemptions from sales and use tax, so as to provide for an exemption regarding the sale or  
3 use of energy for manufacturing; to provide for definitions to provide for procedures,  
4 conditions, and limitations; to provide an effective date; to repeal conflicting laws; and for  
5 other purposes.

6 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

7 **SECTION 1.**

8 Title 48 of the Official Code of Georgia Annotated, relating to revenue and taxation, is  
9 amended in Code Section 48-8-3, relating to exemptions from sales and use tax by revising  
10 paragraph (70.1) as follows:

11 ~~“(70.1)(A) For the period commencing July 1, 2008, and concluding on December 31,~~  
12 ~~2010, the sale of natural or artificial gas, No. 2 fuel oil, No. 6 fuel oil, propane, petroleum~~  
13 ~~coke, and coal used directly or indirectly in the manufacture or processing, in a~~  
14 ~~manufacturing plant located in this state, of tangible personal property primarily for~~  
15 ~~resale, and the fuel cost recovery component of retail electric rates used directly or~~  
16 ~~indirectly in the manufacture or processing, in a manufacturing plant located in this state,~~  
17 ~~of tangible personal property primarily for resale.~~

18 ~~(B) The exemption provided for in subparagraph (A) of this paragraph shall not apply~~  
19 ~~to the first \$7.60 per decatherm of the sales price or cost price of natural or artificial~~  
20 ~~gas, the first \$2.48 per gallon of the sales price or cost price of No. 2 fuel oil, the first~~  
21 ~~\$1.72 per gallon of the sales price or cost price of No. 6 fuel oil, the first \$1.44 per~~  
22 ~~gallon of the sales price or cost price of propane, the first \$57.90 per ton of petroleum~~  
23 ~~coke, the first \$57.90 per ton of coal, or the first 3.44¢ per kilowatt hour of the fuel cost~~  
24 ~~recovery component of retail electricity rates whether such fuel recovery charges are~~  
25 ~~charged separately or are embedded in such electric rates. Dealers with such embedded~~  
26 ~~rates may exempt from the electricity sales upon which the sales tax is calculated no~~

27 more than the amount, if any, by which the fuel cost recovery charge approved by the  
 28 Georgia Public Service Commission for transmission customers of electric utilities  
 29 regulated by the Georgia Public Service Commission exceeds 3.44¢ per kilowatt hour.

30 ~~(C)(i) For the purposes of this paragraph, the term 'local sales and use tax' shall mean~~  
 31 ~~any sales tax, use tax, or local sales and use tax which is levied and imposed in an~~  
 32 ~~area consisting of less than the entire state, however authorized, including, but not~~  
 33 ~~limited to, such taxes authorized by or pursuant to constitutional amendment; by or~~  
 34 ~~pursuant to Section 25 of an Act approved March 10, 1965 (Ga. L. 1965, p. 2243), as~~  
 35 ~~amended, the 'Metropolitan Atlanta Rapid Transit Authority Act of 1965'; or by or~~  
 36 ~~pursuant to Article 2, 2A, 3, or 4 of this chapter.~~

37 ~~(ii) The exemption provided for in subparagraph (A) of this paragraph shall not apply~~  
 38 ~~to any local sales and use tax levied or imposed at any time.~~

39 ~~(D) Any person making a sale of items qualifying for exemption under subparagraph~~  
 40 ~~(A) of this paragraph shall be relieved of the burden of proving such qualification if the~~  
 41 ~~person receives in good faith a certificate from the purchaser certifying that the~~  
 42 ~~purchase is exempt under this paragraph.~~

43 ~~(E) Any person who qualifies for this exemption shall notify and certify to the person~~  
 44 ~~making the qualified sale that this exemption is applicable to the sale;~~

45 (A)(i) The sale of energy used directly or indirectly in the manufacture of tangible  
 46 personal property includes energy used to operate exempt machinery or equipment,  
 47 to create conditions necessary for the manufacture of tangible personal property, or  
 48 to perform an actual part of the manufacture of tangible personal property.

49 (ii) The sale of energy used directly or indirectly in the manufacture of tangible  
 50 personal property includes energy used in administrative or other ancillary activities  
 51 that are located and performed at the manufacturing plant as long as such activities  
 52 primarily benefit such manufacture of tangible personal property.

53 (iii) The sale of energy used directly or indirectly in the manufacture of tangible  
 54 personal property includes energy used in related operations that convey, transport,  
 55 handle, or store raw materials or finished goods at the manufacturing plant. Energy  
 56 used for heating, cooling, ventilation, illumination, fire safety or prevention, and  
 57 personal comfort and convenience of the manufacturer's employees at the  
 58 manufacturing plant is also considered to be used directly or indirectly in the  
 59 manufacture of tangible personal property.

60 (B) As used in this Code section, the term:

61 (i) 'Energy' means natural or artificial gas, oil, gasoline, electricity, solid fuel, wood,  
 62 waste, ice, steam, water, and other materials used directly or indirectly for heat, light,

63 power, refrigeration, climate control, processing, or any other use in any phase of the  
 64 manufacture of tangible personal property.

65 (ii) 'Manufacture of tangible personal property,' used synonymously with the term  
 66 'manufacturing,' means a manufacturing operation, series of continuous  
 67 manufacturing operations, or series of integrated manufacturing operations, engaged  
 68 in at a manufacturing plant or among manufacturing plants to change, process,  
 69 transform, or convert industrial materials by physical or chemical means, into articles  
 70 of tangible personal property for sale, for promotional use, or for further  
 71 manufacturing that have a different form, configuration, utility, composition, or  
 72 character. The term includes, but is not limited to, the storage, preparation, or  
 73 treatment of industrial materials; assembly of finished units of tangible personal  
 74 property to form a new unit or units of tangible personal property; movement of  
 75 industrial materials and work in process from one manufacturing operation to another;  
 76 temporary storage between two points in a continuous manufacturing operation;  
 77 random and sample testing that occurs at a manufacturing plant; and a packaging  
 78 operation that occurs at a manufacturing plant.

79 (iii) 'Manufacturer' means a person or business, or a location of a person or business  
 80 that is engaged in the manufacture of tangible personal property for sale or further  
 81 manufacturing. To be considered a manufacturer, the person or business, or the  
 82 location of a person or business, must be:

83 (I) Classified as a manufacturer under the 2007 North American Industrial  
 84 Classification System Sectors 21, 31, 32, or 33; or specific North American  
 85 Industrial Classification Systems codes 22111, or 511110; or

86 (II) Generally regarded as being a manufacturer.

87 Businesses that are primarily engaged in providing personal or professional services,  
 88 or in the operation of retail outlets, generally including, but not limited to, grocery  
 89 stores, pharmacies, bakeries, or restaurants, are not considered manufacturers.

90 (iv) 'Manufacturing plant' means any facility, site, or other area where a manufacturer  
 91 engages in the manufacture of tangible personal property."

92 **SECTION 3.**

93 This Act shall become effective on July 1, 2012.

94 **SECTION 4.**

95 All laws and parts of laws in conflict with this Act are repealed.