

AMENDED IN SENATE JUNE 1, 2011

CALIFORNIA LEGISLATURE—2011–12 REGULAR SESSION

ASSEMBLY BILL

No. 1422

Introduced by ~~Committee on Revenue and Taxation~~ (Assembly Members ~~Perea (Chair), Beall, Charles Calderon, Cedillo, Fuentes, and Gordon~~) Assembly Member *Perea*

March 22, 2011

An act to ~~amend Sections 69.5, 1150, 1154, 2821, and 5303 of~~ *add and repeal Section 6377* of the Revenue and Taxation Code, relating to taxation, *to take effect immediately, tax levy.*

LEGISLATIVE COUNSEL'S DIGEST

AB 1422, as amended, ~~Committee on Revenue and Taxation~~ *Perea*. ~~Property taxation. Sales and use taxes: exemption: manufacturing and research and development.~~

The Sales and Use Tax Law imposes a tax on retailers measured by the gross receipts from the sale of tangible personal property sold at retail in this state, or on the storage, use, or other consumption in this state of tangible personal property purchased from a retailer for storage, use, or other consumption in this state. That law provides various exemptions from those taxes.

This bill would exempt from those taxes the sale of, and the storage, use, or other consumption in this state, of tangible personal property, as defined, purchased for use by a qualified person, as defined, primarily in any stage of manufacturing, processing, refining, fabricating, or recycling of property; in research and development; to maintain, repair, measure, or test specified property; and by a contractor for use in a construction contract with a qualified person, as specified.

The Bradley-Burns Uniform Local Sales and Use Tax Law authorizes counties and cities to impose local sales and use taxes in conformity with the Sales and Use Tax Law, and the Transactions and Use Tax Law authorizes districts, as specified, to impose transactions and use taxes in conformity with the Sales and Use Tax Law. Exemptions from state sales and use taxes are incorporated in these laws.

This bill would specify that this exemption does not apply to local sales and use taxes, transactions and use taxes, specified state sales and use taxes. This bill would further specify, for a qualified person that is not a new trade or business, that this exemption only applies to 20% of other specified state sales and use taxes.

This bill would take effect immediately as a tax levy, but would be operative only so long as state sales and use taxes at the rate of 1% that are enacted during the 2011–12 Legislative Sessions are operative.

~~Existing property tax law allows a person over the age of 55 years or a severely and permanently disabled person to transfer the base year value of his or her property, if that property is eligible for the homeowners' exemption, to any replacement dwelling of equal or lesser value, as specified. This law requires an owner to notify the assessor in writing of the completion of new construction to a replacement dwelling within 30 days of completion.~~

~~This bill would extend the amount of time that an owner has to notify the assessor of the completion of new construction to within 6 months of completion.~~

~~Existing property tax law requires the personal property of an aircraft be taxed at its fair market value, and the California Constitution requires property subject to ad valorem property taxation to be assessed in the county in which it is situated. This law defines “certificated aircraft,” “air taxi,” and “aircraft.”~~

~~This bill would replace obsolete statutory references to the “Civil Aeronautics Board of the United States” with the “Federal Aviation Administration,” would delete other obsolete statutory references to the “California Public Utilities Commission” in these definitions, and would make other technical, nonsubstantive changes.~~

~~Existing property tax law authorizes any person filing an affidavit of interest to apply to the tax collector to have any parcel separately valued on the current roll for the purpose of paying taxes, and requires the application to be made during the current fiscal year and to set forth specific information describing the parcel sought to be separately valued. Existing law authorizes a county, upon approval of the board of~~

supervisors, to prohibit these applications during the 10 working days preceding each tax installment delinquency date and during the 10 working days preceding June 30 of each year.

This bill would instead authorize the county to allow these applications between July 1 and March 31.

Vote: majority. Appropriation: no. Fiscal committee: ~~no~~ yes. State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 6377 is added to the Revenue and
2 Taxation Code, to read:

3 6377. (a) (1) There are exempted from the taxes imposed by
4 this part the gross receipts from the sale of, and the storage, use,
5 or other consumption in this state of, any of the following:

6 (A) Tangible personal property purchased for use by a qualified
7 person to be used primarily in any stage of the manufacturing,
8 processing, refining, fabricating, or recycling of tangible personal
9 property, beginning at the point any raw materials are received
10 by the qualified person and introduced into the process and ending
11 at the point at which the manufacturing, processing, refining,
12 fabricating, or recycling has altered the property to its completed
13 form, including packaging, if required.

14 (B) Tangible personal property purchased for use by a qualified
15 person to be used primarily in research and development.

16 (C) Tangible personal property purchased for use by a qualified
17 person to be used primarily to maintain, repair, measure, or test
18 any property described in subparagraph (A) or (B).

19 (D) Tangible personal property purchased by a contractor for
20 use in the performance of a construction contract for a qualified
21 person who will use the tangible personal property as an integral
22 part of the manufacturing, processing, refining, fabricating, or
23 recycling process, or as a research or storage facility for use in
24 connection with the manufacturing process.

25 (2) The exemption described in paragraph (1) shall not apply
26 to the gross receipts from the sale of, or the storage, use, or other
27 consumption of tangible personal property that is used primarily
28 in administration, general management, or marketing.

29 (b) For purposes of this section:

1 (1) “Acquire” includes any gift, inheritance, transfer incident
2 to divorce, or any other transfer, whether or not for consideration.

3 (2) “Fabricating” means to make, build, create, produce, or
4 assemble components or property to work in a new or different
5 manner.

6 (3) “Manufacturing” means the activity of converting or
7 conditioning tangible personal property by changing the form,
8 composition, quality, or character of the property for ultimate sale
9 at retail or use in the manufacturing of a product to be ultimately
10 sold at retail. Manufacturing includes any improvements to
11 tangible personal property that result in a greater service life or
12 greater functionality than that of the original property.

13 (4) “Primarily” means tangible personal property used 50
14 percent or more of the time in an activity described in paragraph
15 (1) of subdivision (a).

16 (5) “Process” means the period beginning at the point at which
17 any raw materials are received by the qualified person and
18 introduced into the manufacturing, processing, refining,
19 fabricating, or recycling activity of the qualified person and ending
20 at the point at which the manufacturing, processing, refining,
21 fabricating, or recycling activity of the qualified person has altered
22 tangible personal property to its completed form, including
23 packaging, if required. Raw materials shall be considered to have
24 been introduced into the process when the raw materials are stored
25 on the same premises where the qualified person’s manufacturing,
26 processing, refining, fabricating, or recycling activity is conducted.
27 Raw materials that are stored on premises other than where the
28 qualified person’s manufacturing, processing, refining, fabricating,
29 or recycling activity is conducted, shall not be considered to have
30 been introduced into the manufacturing, processing, refining,
31 fabricating, or recycling process.

32 (6) “Processing” means the physical application of the materials
33 and labor necessary to modify or change the characteristics of
34 property.

35 (7) “Qualified person” means a person that is either of the
36 following:

37 (A) A new trade or business that is primarily engaged in those
38 lines of business classified in Codes 3111 to 3399, inclusive, of
39 the North American Industry Classification System (NAICS)
40 published by the United States Office of Management and Budget

1 (OMB), 2007 edition. In determining whether a trade or business
2 activity qualifies as a new trade or business, the following rules
3 shall apply:

4 (i) In any case where a person purchases or otherwise acquires
5 all or any portion of the assets of an existing trade or business
6 (irrespective of the form of entity) that is doing business in this
7 state (within the meaning of Section 23101), the trade or business
8 thereafter conducted by that person (or any related person) shall
9 not be treated as a new business if the aggregate fair market value
10 of the acquired assets (including, real, personal, tangible, and
11 intangible property) used by that person (or any related person)
12 in the conduct of his or her trade or business exceeds 20 percent
13 of the aggregate fair market value of the total assets of the trade
14 or business being conducted by the person (or any related person).
15 For purposes of this subparagraph only, the following rules shall
16 apply:

17 (I) The determination of the relative fair market values of the
18 acquired assets and the total assets shall be made as of the last
19 day of the month following the quarterly period in which the person
20 (or any related person) first uses any of the acquired trade or
21 business assets in his or her business activity.

22 (II) Any acquired assets that constituted property described in
23 Section 1221(a) of the Internal Revenue Code in the hands of the
24 transferor shall not be treated as assets acquired from an existing
25 trade or business, unless those assets also constitute property
26 described in Section 1221(a) of the Internal Revenue Code in the
27 hands of the acquiring person (or related person).

28 (ii) In any case where a person (or any related person) is
29 engaged in one or more trade or business activities in this state,
30 or has been engaged in one or more trade or business activities
31 in this state within the preceding 36 months (“prior trade or
32 business activity”), and thereafter commences an additional trade
33 or business activity in this state, the additional trade or business
34 activity shall only be treated as a new business if the additional
35 trade or business activity is classified under a different division
36 of the NAICS published by the United States OMB, 2007 edition,
37 than are any of the person’s (or any related person’s) current or
38 prior trade or business activities in this state.

39 (iii) In any case where a person, including all related persons,
40 is engaged in trade or business activities wholly outside of this

1 state and that person first commences doing business in this state
2 (within the meaning of Section 23101) on or after the effective date
3 of the act adding this section (other than by purchase or other
4 acquisition described in clause (i)), the trade or business activity
5 shall be treated as a new business.

6 (iv) In any case where the legal form under which a trade or
7 business activity is being conducted is changed, the change in form
8 shall be disregarded and the determination of whether the trade
9 or business activity is a new business shall be made by treating
10 the person as having purchased or otherwise acquired all or any
11 portion of the assets of an existing trade or business under the
12 rules of clause (i).

13 (B) A trade or business, other than a new trade or business
14 described in subparagraph (A), that is primarily engaged in those
15 lines of business classified in Codes 3111 to 3399, inclusive, of
16 the NAICS published by the United States OMB, 2007 edition.

17 (8) “Qualified person” shall not include a person that is either
18 of the following:

19 (i) A new trade or business when the person has conducted
20 business activities in a new trade or business for three or more
21 years.

22 (ii) An apportioning trade or business described in subdivision
23 (b) of Section 25128.

24 (9) “Refining” means the process of converting a natural
25 resource to an intermediate or finished product.

26 (10) “Related person” means any person that is related to that
27 person under either Section 267 or 318 of the Internal Revenue
28 Code.

29 (11) “Research and development” means those activities that
30 are described in Section 174 of the Internal Revenue Code or in
31 any regulations thereunder.

32 (12) “Tangible personal property” includes, but is not limited
33 to, all of the following:

34 (A) Machinery and equipment, including component parts and
35 contrivances such as belts, shafts, moving parts, and operating
36 structures.

37 (B) All equipment or devices used or required to operate,
38 control, regulate, or maintain the machinery, including, without
39 limitation, computers, data processing equipment, and computer
40 software, together with all repair and replacement parts with a

1 *useful life of one or more years therefor, whether purchased*
2 *separately or in conjunction with a complete machine and*
3 *regardless of whether the machine or component parts are*
4 *assembled by the taxpayer or another party.*

5 *(C) Property used in pollution control that meets or exceeds*
6 *standards established by this state or any local or regional*
7 *governmental agency within this state.*

8 *(D) Special purpose buildings and foundations used as an*
9 *integral part of the manufacturing, processing, refining, or*
10 *fabricating process, or that constitute a research or storage facility*
11 *used during the manufacturing process. Buildings used solely for*
12 *warehousing purposes after completion of the manufacturing*
13 *process are not included.*

14 *(E) Property used in recycling.*

15 *(13) "Tangible personal property" does not include any of the*
16 *following:*

17 *(A) Consumables with a useful life of less than one year.*

18 *(B) Furniture, inventory, equipment used in the extraction*
19 *process, or equipment used to store finished products that have*
20 *completed the manufacturing process.*

21 *(14) "Useful life" for tangible personal property that a qualified*
22 *person treats as having a useful life of one or more years for state*
23 *income or franchise tax purposes shall be deemed to have a useful*
24 *life of one or more years for purposes of this section. Useful life*
25 *for tangible personal property that a qualified person treats as*
26 *having a useful life of less than one year for state income or*
27 *franchise tax purposes shall be deemed to have a useful life of less*
28 *than one year for purposes of this section.*

29 *(c) No exemption shall be allowed under this section unless the*
30 *purchaser furnishes the retailer with an exemption certificate,*
31 *completed in accordance with any instructions or regulations as*
32 *the board may prescribe, and the retailer subsequently furnishes*
33 *the board with a copy of the exemption certificate. The exemption*
34 *certificate shall contain the sales price of the tangible personal*
35 *property that the sale of, or the storage, use or other consumption*
36 *of, is exempt pursuant to subdivision (a).*

37 *(d) (1) For a qualified person described in subparagraph (B)*
38 *of paragraph (7) of subdivision (b), the exemption established by*
39 *this section shall apply only with respect to 20 percent of any tax*
40 *levied pursuant to Sections 6051, 6051.3, 6201, and 6201.3.*

1 (2) Notwithstanding any provision of the Bradley-Burns Uniform
2 Local Sales and Use Tax Law (Part 1.5 (commencing with Section
3 7200)) or the Transactions and Use Tax Law (Part 1.6
4 (commencing with Section 7251)), the exemption established by
5 this section shall not apply with respect to any tax levied by a
6 county, city, or district pursuant to, or in accordance with, either
7 of those laws, any tax levied pursuant to Sections 6051.2, 6051.5,
8 6201.2, and 6201.5, or pursuant to Section 35 of Article XIII of
9 the California Constitution.

10 (e) Notwithstanding subdivision (a), the exemption provided by
11 this section shall not apply to any sale or use of property which,
12 within one year from the date of purchase, is either removed from
13 California or converted from an exempt use under subdivision (a)
14 to some other use not qualifying for the exemption.

15 (f) If a purchaser certifies in writing to the seller that the
16 property purchased without payment of the tax will be used in a
17 manner entitling the seller to regard the gross receipts from the
18 sale as exempt from the sales tax pursuant to this section, and
19 within one year from the date of purchase, the purchaser (1)
20 removes that property outside California, (2) converts that property
21 for use in a manner not qualifying for the exemption, or (3) uses
22 that property in a manner not qualifying for the exemption, the
23 purchaser shall be liable for payment of sales tax, with applicable
24 interest, as if the purchaser were a retailer making a retail sale
25 of the property at the time the property is so removed, converted,
26 or used, and the sales price of the property to the purchaser shall
27 be deemed the gross receipts from that retail sale.

28 (g) At the time necessary information technologies and
29 electronic data warehousing capabilities of the board are
30 sufficiently established, the board shall determine an efficient
31 means by which qualified persons may electronically apply for,
32 and receive, an exemption certificate that contains information
33 that would assist retailers in complying with this part with respect
34 to the exemption described by this section.

35 (h) This section shall be operative only so long as either an
36 extension of the sales and use taxes described in subdivision (a)
37 of Sections 6051.7 and 6201.7, as those sections read on January
38 1, 2011, or other state sales and use taxes at a rate of 1 percent,
39 that are enacted during the 2011–12 Legislative Session, whether
40 during the regular session or during an extraordinary session, are

1 *operative. This section is repealed as of the date that those*
2 *extensions or other state sales and use taxes at the rate of 1*
3 *percent, are inoperative.*

4 *SEC. 2. This act provides for a tax levy within the meaning of*
5 *Article IV of the Constitution and shall go into immediate effect.*

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**All matter omitted in this version of the bill
appears in the bill as introduced in the
Assembly, March 22, 2011. (JR11)**

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