

AMENDED IN ASSEMBLY APRIL 10, 2012

CALIFORNIA LEGISLATURE—2011–12 REGULAR SESSION

ASSEMBLY BILL

No. 1911

Introduced by Assembly Member Donnelly
(Coauthors: Assembly Members Harkey, Jeffries, and Silva)
(Coauthor: Senator Strickland)

February 22, 2012

An act to add Section 6377.5 to the Revenue and Taxation Code, relating to taxation, to take effect immediately, tax levy.

LEGISLATIVE COUNSEL'S DIGEST

AB 1911, as amended, Donnelly. Sales and use taxes: exemption: manufacturing.

Existing sales and use tax laws impose taxes 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.

The bill would exempt from those taxes, on and after January 1, 2013, the gross receipts from the sale of, and the storage, use, or other consumption of, qualified tangible personal property purchased by a qualified person for use primarily in the manufacturing process, as specified, and qualified tangible personal property purchased by a contractor for specified purposes, as provided.

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 existing law authorizes districts, as specified, to impose transactions and use taxes in conformity with

the Transactions and Use Tax Law, which conforms to the Sales and Use Tax Law. Exemptions from state sales and use taxes are incorporated into these laws.

This bill would specify that this exemption does not apply to local sales and use taxes, transactions and use taxes, and specified state sales and use taxes from which revenues are deposited into the Local Public Safety Fund, the Local Revenue Fund, the Local Revenue Fund 2011, the Fiscal Recovery Fund, or the Public Transportation Account in the State Transportation Fund.

This bill would take effect immediately as a tax levy.

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

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

1 SECTION 1. It is the intent of the Legislature to enact a
2 competitive tax policy for manufacturers by providing for an
3 exemption from state sales and use taxes for the sale of, or the
4 storage, use, or other consumption of, manufacturing equipment
5 used in the manufacturing process.

6 SEC. 2. Section 6377.5 is added to the Revenue and Taxation
7 Code, to read:

8 6377.5. (a) On or after January 1, 2013, there are exempted
9 from the taxes imposed by this part the gross receipts from the sale
10 of, and the storage, use, or other consumption in this state of, any
11 of the following:

12 (1) Qualified tangible personal property purchased for use by
13 a qualified person to be used primarily in any stage of the
14 manufacturing, processing, refining, fabricating, or recycling of
15 property, beginning at the point raw materials are received by the
16 qualified person and introduced into the process and ending at the
17 point at which the manufacturing, processing, refining, fabricating,
18 or recycling has altered property to its completed form, including
19 packaging, if required.

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

1 (b) For purposes of this section:

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

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

12 (3) “Primarily” means 50 percent or more of the time. For
13 purposes of subdivision (a), “primarily” means qualified tangible
14 personal property is used 50 percent or more of the time in an
15 activity described in subdivision (a).

16 (4) “Process” means the period beginning at the point at which
17 raw materials are received by the qualified person and introduced
18 into the manufacturing, processing, refining, fabricating, or
19 recycling activity of the qualified person and ending at the point
20 at which the manufacturing, processing, refining, fabricating, or
21 recycling activity of the qualified person has altered qualified
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 (5) “Processing” means the physical application of the materials
33 and labor necessary to modify or change the characteristics of
34 property.

35 (6) “Qualified person” means any of the following:

36 (A) A person who is engaged in ~~those~~ *the* lines of business
37 described in Industry Groups 3111 to 3399, inclusive, or 5112 of
38 the North American Industry Classification System (NAICS)
39 published by the United States Office of Management and Budget
40 (OMB), 2012 edition.

1 (B) An affiliate of a person qualified pursuant to subparagraph
2 (A) shall also be considered a qualified person as long as the
3 affiliate is included as a member of that person’s unitary group for
4 which a combined report is required to be filed under Article 1
5 (commencing with Section 25101) of Chapter 17.

6 (7) (A) “Qualified tangible personal property” includes, but is
7 not limited to, all of the following:

8 (i) Machinery and equipment, including component parts and
9 contrivances such as belts, shafts, moving parts, and operating
10 structures.

11 (ii) Equipment or devices used or required to operate, control,
12 regulate, or maintain the machinery and equipment, including, but
13 not limited to, computers, data-processing equipment, and computer
14 software, together with all repair and replacement parts with a
15 useful life of one or more years therefor, whether purchased
16 separately or in conjunction with a complete machine and
17 regardless of whether the machine or component parts are
18 assembled by the qualified person or another party.

19 (iii) Property used in pollution control that meets standards
20 established by this state or any local or regional governmental
21 agency within this state.

22 (iv) Special purpose buildings and foundations used as an
23 integral part of the manufacturing, processing, refining, or
24 fabricating process, or that constitute a research or storage facility
25 used during the manufacturing process. Buildings used solely for
26 warehousing purposes after completion of the manufacturing
27 process are not included.

28 (v) Fuels used or consumed in the manufacturing process.

29 (B) Notwithstanding subparagraph (A), “qualified tangible
30 personal property” shall not include any of the following:

31 (i) Consumables with a normal useful life of less than one year,
32 except as provided in clause (v) of subparagraph (A).

33 (ii) Furniture and inventory.

34 (iii) Equipment used in the extraction process or used to store
35 finished products that have completed the manufacturing process.

36 (iv) Tangible personal property used primarily in administration,
37 general management, or marketing.

38 (8) “Refining” means the process of converting a natural
39 resource to an intermediate or finished product.

1 (c) An exemption shall not be allowed under this section unless
2 the purchaser furnishes the retailer with an exemption certificate,
3 completed in accordance with any instructions or regulations as
4 the board may prescribe, and the retailer subsequently furnishes
5 the board with a copy of the exemption certificate. The exemption
6 certificate shall contain the sales price of the qualified tangible
7 personal property that the sale of, or the storage, use, or other
8 consumption of, is exempt pursuant to subdivision (a).

9 (d) (1) Notwithstanding any provision of the Bradley-Burns
10 Uniform Local Sales and Use Tax Law (Part 1.5 (commencing
11 with Section 7200)) or the Transactions and Use Tax Law (Part
12 1.6 (commencing with Section 7251)), the exemption established
13 by this section shall not apply with respect to any tax levied by a
14 county, city, or district pursuant to, or in accordance with, either
15 of those laws.

16 (2) Notwithstanding subdivision (a), the exemption established
17 by this section shall not apply with respect to any tax levied
18 pursuant to Section 6051.2, 6051.5, 6051.8, 6201.2, 6201.5, or
19 6201.8, or pursuant to Section 35 of Article XIII of the California
20 Constitution, or to any tax levied pursuant to Sections 6051 and
21 6201 that is deposited in the State Treasury to the credit of the
22 Local Revenue Fund 2011 pursuant to Sections 6051.15 and
23 6201.15.

24 (e) Notwithstanding subdivision (a), the exemption provided
25 by this section shall not apply to any sale or use of property which,
26 within one year from the date of purchase, is removed from
27 California, converted from an exempt use under subdivision (a)
28 to some other use not qualifying for the exemption, or used in a
29 manner not qualifying for the exemption.

30 (f) If a purchaser certifies in writing to the seller that the property
31 purchased without payment of the tax will be used in a manner
32 entitling the seller to regard the gross receipts from the sale as
33 exempt from the sales tax, and within one year from the date of
34 purchase, the purchaser removes that property from California,
35 converts that property for use in a manner not qualifying for the
36 exemption, or uses that property in a manner not qualifying for
37 the exemption, the purchaser shall be liable for payment of sales
38 tax, with applicable interest, as if the purchaser were a retailer
39 making a retail sale of the property at the time the property is so
40 removed, converted, or used, and the sales price of the property

1 to the purchaser shall be deemed the gross receipts from that retail
2 sale.

3 (g) This section applies to leases of qualified tangible personal
4 property classified as “continuing sales” and “continuing
5 purchases” in accordance with Sections 6006.1 and 6010.1. The
6 exemption established by this section shall apply to the rentals
7 payable pursuant to such a lease, provided the lessee is a qualified
8 person and the property is used in an activity described in
9 subdivision (a).

10 SEC. 3. This act provides for a tax levy within the meaning of
11 Article IV of the Constitution and shall go into immediate effect.