

ASSEMBLY BILL

No. 1972

Introduced by Assembly Member Huber

February 23, 2012

An act to 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 1972, as introduced, Huber. Sales and use taxes: exemption: manufacturing equipment: 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.

On and after January 1, 2013, and before January 1, 2019, 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 tangible personal property; in research and development; to maintain, repair, measure, or test specified tangible personal 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 existing law authorizes districts, as specified, to impose transactions and use taxes in accordance 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.

Section 2230 of the Revenue and Taxation Code provides that the state will reimburse counties and cities for revenue losses caused by the enactment of sales and use tax exemptions.

This bill would provide that, notwithstanding Section 2230 of the Revenue and Taxation Code, no appropriation is made and the state shall not reimburse local agencies for sales and use tax revenues lost by them pursuant to this bill.

This bill would take effect immediately as a tax levy.

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

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) On and after January 1, 2013, there are exempted
4 from the taxes imposed by this part the gross receipts from the sale
5 of, and the storage, use, or other consumption in this state of, all
6 of the following:
7 (A) Tangible personal property purchased for use by a qualified
8 person to be used primarily in any stage of the manufacturing,
9 processing, refining, fabricating, or recycling of tangible personal
10 property, beginning at the point any raw materials are received by
11 the qualified person and introduced into the process and ending at
12 the point at which the manufacturing, processing, refining,
13 fabricating, or recycling has altered property to its completed form,
14 including packaging, if required.
15 (B) Tangible personal property purchased for use by a qualified
16 person to be used primarily in research and development.
17 (C) Tangible personal property purchased for use by a qualified
18 person to be used primarily to maintain, repair, measure, or test
19 any tangible personal property described in subparagraph (A) or
20 (B).
21 (D) Tangible personal property purchased by a contractor for
22 use in the performance of a construction contract for a qualified
23 person that will use the tangible personal property as an integral
24 part of the manufacturing, processing, refining, fabricating, or

1 recycling process, or as a research or storage facility for use in
2 connection with the manufacturing process.

3 (2) The exemption established by this section shall not apply
4 to the gross receipts from the sale of, or the storage, use, or other
5 consumption of, any of the following:

6 (A) Tangible personal property that is used primarily in
7 administration, general management, or marketing.

8 (B) Consumables with a useful life of less than one year.

9 (C) Furniture or inventory or equipment used in the extraction
10 process, or equipment used to store finished products that have
11 completed the manufacturing process.

12 (b) For purposes of this section:

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

16 (2) “Manufacturing” means the activity of converting or
17 conditioning tangible personal property by changing the form,
18 composition, quality, or character of the tangible personal property
19 for ultimate sale at retail or use in the manufacturing of a product
20 to be ultimately sold at retail. Manufacturing includes any
21 improvements to tangible personal property that result in a greater
22 service life or greater functionality than that of the original tangible
23 personal property. Manufacturing includes the generation of
24 electricity.

25 (3) “Primarily” means 50 percent or more of the time. For
26 purposes of subdivision (a), “primarily” means tangible personal
27 property used 50 percent or more of the time in an activity
28 described in subdivision (a).

29 (4) “Process” means the period beginning at the point at which
30 any raw materials are received by the qualified person and
31 introduced into the manufacturing, processing, refining, fabricating,
32 or recycling activity of the qualified person and ending at the point
33 at which the manufacturing, processing, refining, fabricating, or
34 recycling activity of the qualified person has altered tangible
35 personal property to its completed form, including packaging, if
36 required. Raw materials shall be considered to have been
37 introduced into the process when the raw materials are stored on
38 the same premises where the qualified person’s manufacturing,
39 processing, refining, fabricating, or recycling activity is conducted.
40 Raw materials that are stored on premises other than where the

1 qualified person’s manufacturing, processing, refining, fabricating,
2 or recycling activity is conducted, shall not be considered to have
3 been introduced into the manufacturing, processing, refining,
4 fabricating, or recycling process.

5 (5) “Processing” means the physical application of the materials
6 and labor necessary to modify or change the characteristics of
7 tangible personal property.

8 (6) “Qualified person” means either of the following:

9 (A) A person who is primarily engaged in those lines of business
10 classified in Industry Groups 3111 to 3399, inclusive, Industry
11 Group 5112, NAICS Industry 221119, or NAICS Industry 541711
12 of the North American Industry Classification System (NAICS)
13 published by the United States Office of Management and Budget
14 (OMB), 2007 edition.

15 (B) An affiliate of a person described in subparagraph (A)
16 provided that the affiliate is a member of the qualified person’s
17 unitary group for which a combined report is required to be filed
18 under Article 1 (commencing with Section 25101) of Chapter 17
19 of Part 11.

20 (7) “Refining” means the process of converting a natural
21 resource to an intermediate or finished product.

22 (8) “Research and development” means those activities that are
23 described in Section 174 of the Internal Revenue Code or in any
24 regulations thereunder.

25 (9) “Tangible personal property” includes, but is not limited to,
26 all of the following:

27 (A) Machinery and equipment, including component parts and
28 contrivances such as belts, shafts, moving parts, and operating
29 structures.

30 (B) All equipment or devices used or required to operate,
31 control, regulate, or maintain the machinery, including, without
32 limitation, computers, data processing equipment, and computer
33 software, together with all repair and replacement parts with a
34 useful life of one or more years therefor, whether purchased
35 separately or in conjunction with a complete machine and
36 regardless of whether the machine or component parts are
37 assembled by the qualified person or another person.

38 (C) Tangible personal property used in pollution control that
39 meets or exceeds standards established by this state or any local
40 or regional governmental agency within this state.

1 (D) Special purpose buildings and foundations used as an
2 integral part of the manufacturing, processing, refining, or
3 fabricating process, or that constitute a research or storage facility
4 used during the manufacturing process. Buildings used solely for
5 warehousing purposes after completion of the manufacturing
6 process are not included.

7 (E) Tangible personal property used in recycling.

8 (c) An exemption shall not be allowed under this section unless
9 the purchaser furnishes the retailer with an exemption certificate,
10 completed in accordance with any instructions or regulations as
11 the board may prescribe, and the retailer retains the exemption
12 certificate in its records. The exemption certificate shall contain
13 the sales price of the tangible personal property, the sale of, or the
14 storage, use, or other consumption of which is exempt pursuant to
15 subdivision (a) and shall be furnished to the board upon request.

16 (d) Notwithstanding subdivision (a), the exemption provided
17 by this section shall not apply to any sale or use of tangible
18 personal property which, within one year from the date of purchase,
19 is either removed from California or converted from an exempt
20 use under subdivision (a) to some other use not qualifying for the
21 exemption or used in a manner not qualifying for exemption.

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

37 (f) The exemption established by this section shall apply to a
38 lease of tangible personal property classified as a “continuing sale”
39 or “continuing purchase” in accordance with Section 6006.1 or
40 6010.1, and to the rentals payable pursuant to such a lease, provided

1 the lessee is a qualified person and the tangible personal property
2 is used in an activity described in subdivision (a).

3 (g) At the time necessary information technologies and
4 electronic data warehousing capabilities of the board are
5 sufficiently established, the board shall determine an efficient
6 means by which qualified persons may electronically apply for,
7 and receive, an exemption certificate that contains information
8 that would assist them in complying with this part with respect to
9 the exemption established by this section.

10 (h) This section shall remain in effect only until January 1, 2019,
11 and as of that date is repealed.

12 SEC. 2. Notwithstanding Section 2230 of the Revenue and
13 Taxation Code, no appropriation is made by this act and the state
14 shall not reimburse any local agency for any sales and use tax
15 revenues lost by it under this act.

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