

ASSEMBLY BILL

No. 486

Introduced by Assembly Member Mullin
(Coauthors: Assembly Members Donnelly, Patterson, and Perea)
(Coauthors: Senators Correa, Fuller, and Hill)

February 19, 2013

An act to add Section 6377.4 to Revenue and Taxation Code, relating to taxation, to take effect immediately, tax levy.

LEGISLATIVE COUNSEL'S DIGEST

AB 486, as introduced, Mullin. Sales and use taxes: exemption: manufacturing research and development.

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, 2014, 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 manufacturing, processing, refining, fabricating, or recycling of property, as specified, qualified tangible personal property purchased for use by a contractor for specified purposes, as provided, and tangible personal property purchased for use by a qualified person to be used primarily in research and development, 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 taxes from which revenues are deposited into the Local Public Safety Fund, the Education Protection Account, and the Local Revenue 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. The Legislature finds and declares all of the
2 following:

3 (a) California is one of only three states that tax the sale of
4 equipment used in manufacturing.

5 (b) While manufacturing is increasing in other parts of the
6 United States, it continues to decline in California.

7 (c) The Legislative Analyst’s Office has indicated that
8 exempting the sales and use tax “would reduce ‘tax
9 pyramiding’—an economically distortionary feature of our tax
10 code whereby manufacturers pay sales tax on their equipment and
11 their customers then pay additional sales tax on the final product
12 itself. Moreover, such a policy change would bring California more
13 in line with sales tax policies of other states.”

14 (d) While California’s economy is recovering from the great
15 recession, it is important to find ways to accelerate economic
16 growth.

17 SEC. 2. Section 6377.4 is added to the Revenue and Taxation
18 Code, to read:

19 6377.4. (a) Beginning January 1, 2014, there are exempted
20 from the taxes imposed by this part, the gross receipts from the
21 sale of, and the storage, use, or other consumption in this state of,
22 all of the following:

23 (1) Qualified tangible personal property purchased for use by
24 a qualified person to be used primarily in any stage of the
25 manufacturing, processing, refining, fabricating, or recycling of

1 property, beginning at the point any raw materials are received by
2 the qualified person and introduced into the process and ending at
3 the point at which the manufacturing, processing, refining,
4 fabricating, or recycling has altered property to its completed form,
5 including packaging, if required.

6 (2) Qualified tangible personal property purchased for use by
7 a contractor purchasing that property for use in the performance
8 of a construction contract for the qualified person, who will use
9 the property as an integral part of the manufacturing, processing,
10 refining, fabricating, or recycling process, or as a storage facility
11 for use in connection with those processes.

12 (3) Qualified tangible personal property purchased for use by
13 a qualified person to be used primarily in research and
14 development.

15 (b) For purposes of this section:

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

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

26 (3) “Primarily” means 50 percent or more of the time.

27 (4) “Process” means the period beginning at the point at which
28 any raw materials are received by the qualified person and
29 introduced into the manufacturing, processing, refining, fabricating,
30 or recycling activity of the qualified person and ending at the point
31 at which the manufacturing, processing, refining, fabricating, or
32 recycling activity of the qualified person has altered tangible
33 personal property to its completed form, including packaging, if
34 required. Raw materials shall be considered to have been
35 introduced into the process when the raw materials are stored on
36 the same premises where the qualified person’s manufacturing,
37 processing, refining, fabricating, or recycling activity is conducted.
38 Raw materials that are stored on premises other than where the
39 qualified person’s manufacturing, processing, refining, fabricating,
40 or recycling activity is conducted shall not be considered to have

1 been introduced into the manufacturing, processing, refining,
2 fabricating, or recycling process.

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

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

7 (A) A person who is primarily engaged in those lines of business
8 described in Codes 3111 to 3399, inclusive, or 5112 of the North
9 American Industry Classification System (NAICS) published by
10 the United States Office of Management and Budget, 2012 edition.

11 (B) An affiliate of a person who is a qualified person pursuant
12 to subparagraph (A) if the affiliate is included as a member of the
13 qualified person’s unitary group for which a combined report is
14 required to be filed under Article 1 (commencing with Section
15 25101) of Chapter 17 of Part 11.

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

18 (i) Machinery and equipment, including component parts and
19 contrivances such as belts, shafts, moving parts, and operating
20 structures.

21 (ii) Equipment or devices used or required to operate, control,
22 regulate, or maintain the machinery and equipment, including,
23 without limitation, computers, data processing equipment, and
24 computer software, together with all repair and replacement parts
25 with a useful life of one or more years, whether purchased
26 separately or in conjunction with a complete machine and
27 regardless of whether the machine or component parts are
28 assembled by the qualified person or another party. Any repair
29 and replacement parts that the qualified person treats as having a
30 useful life of one or more years for state income or franchise tax
31 purposes shall be presumed to have a useful life of one or more
32 years for purposes of this section.

33 (iii) Qualified tangible personal property used in pollution
34 control that exceeds standards established by this state or any local
35 or regional governmental agency within this state.

36 (iv) Special purpose buildings and foundations used as an
37 integral part of the manufacturing, processing, refining, fabricating,
38 or recycling process, or that constitute a research or storage facility
39 used during those processes. Buildings used solely for warehousing
40 purposes after completion of those processes are not included.

1 (B) “Qualified tangible personal property” does not include any
2 of the following:

3 (i) Consumables with a useful life of less than one year.

4 (ii) Furniture, inventory, and equipment used in the extraction
5 process, or equipment used to store finished products that have
6 completed the manufacturing process.

7 (iii) Tangible personal property used primarily in administration,
8 general management, or marketing.

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

11 (9) “Research and development” means those activities defined
12 in Section 174 of the Internal Revenue Code.

13 (10) “Useful life” for tangible personal property that is treated
14 as having a useful life of one or more years for state income or
15 franchise tax purposes shall be deemed to have a useful life of one
16 or more years for purposes of this section. “Useful life” for tangible
17 personal property that is treated as having a useful life of less than
18 one year for state income or franchise tax purposes shall be deemed
19 to have a useful life of less than one year for purposes of this
20 section.

21 (c) An exemption shall not be allowed under this section unless
22 the purchaser furnishes the retailer with an exemption certificate,
23 completed in accordance with any instructions or regulations as
24 the board may prescribe, and the retailer retains the exemption
25 certificate in its records furnishes the board with a copy of the
26 exemption upon request. The exemption certificate shall contain
27 the sales price of the machinery or equipment that is exempt
28 pursuant to subdivision (a).

29 (d) (1) Notwithstanding any provision of the Bradley-Burns
30 Uniform Local Sales and Use Tax Law (Part 1.5 (commencing
31 with Section 7200)) or the Transactions and Use Tax Law (Part
32 1.6 (commencing with Section 7251)), the exemption established
33 by this section shall not apply with respect to any tax levied by a
34 county, city, or district pursuant to, or in accordance with, either
35 of those laws.

36 (2) Notwithstanding subdivision (a), the exemption established
37 by this section shall not apply with respect to any tax levied
38 pursuant to Section 6051.2, or 6201.2, or pursuant to Sections 35
39 and subdivision (f) of 36 of Article XIII of the California
40 Constitution.

1 (e) (1) Notwithstanding subdivision (a), the exemption provided
2 by this section shall not apply to any sale or use of property which,
3 within three years from the date of purchase, is either removed
4 from California, converted from an exempt use under subdivision
5 (a) to some other use not qualifying for the exemption, or used in
6 a manner not qualifying for the exemption. The taxpayer that has
7 received the exemption under this section for purchasing qualifying
8 personal property shall notify the board if the property is either
9 removed from California, converted from an exempt use under
10 subdivision (a) within three years from the date of purchase, or
11 used in a manner not qualifying for the exemption.

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

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