

AMENDED IN ASSEMBLY APRIL 10, 2013

CALIFORNIA LEGISLATURE—2013–14 REGULAR SESSION

**ASSEMBLY BILL**

**No. 486**

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**Introduced by Assembly Member Mullin**

*(Principal coauthor: Assembly Member V. Manuel Pérez)*

*(Principal coauthor: Senator Correa)*

**(Coauthors: Assembly Members Alejo, Donnelly, Harkey,  
Maienschein, Patterson, and Perea, and Wilk)**

*(Coauthors: Senators Correa, Fuller, and Gaines, Hill, and Nielsen)*

February 19, 2013

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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 amended, 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)~~

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

8 ~~(c)~~

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

16 ~~(d)~~

17 (c) While California’s economy is recovering from the great  
18 recession, it is important to find ways to accelerate economic  
19 growth.

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

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

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

13 (2) Qualified tangible personal property purchased for use by  
14 a contractor purchasing that property for use in the performance  
15 of a construction contract for the qualified person, who will use  
16 the property as an integral part of the manufacturing, processing,  
17 refining, fabricating, or recycling process, or as a storage facility  
18 for use in connection with those processes.

19 (3) Qualified tangible personal property purchased for use by  
20 a qualified person to be used primarily in research and  
21 development.

22 (b) For purposes of this section:

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

26 (2) “Manufacturing” means the activity of converting or  
27 conditioning tangible personal property by changing the form,  
28 composition, quality, or character of the property for ultimate sale  
29 at retail or use in the manufacturing of a product to be ultimately  
30 sold at retail. Manufacturing includes any improvements to tangible  
31 personal property that result in a greater service life or greater  
32 functionality than that of the original property.

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

34 (4) “Process” means the period beginning at the point at which  
35 any raw materials are received by the qualified person and  
36 introduced into the manufacturing, processing, refining, fabricating,  
37 or recycling activity of the qualified person and ending at the point  
38 at which the manufacturing, processing, refining, fabricating, or  
39 recycling activity of the qualified person has altered tangible  
40 personal property to its completed form, including packaging, if

1 required. Raw materials shall be considered to have been  
2 introduced into the process when the raw materials are stored on  
3 the same premises where the qualified person's manufacturing,  
4 processing, refining, fabricating, or recycling activity is conducted.  
5 Raw materials that are stored on premises other than where the  
6 qualified person's manufacturing, processing, refining, fabricating,  
7 or recycling activity is conducted shall not be considered to have  
8 been introduced into the manufacturing, processing, refining,  
9 fabricating, or recycling process.

10 (5) "Processing" means the physical application of the materials  
11 and labor necessary to modify or change the characteristics of  
12 tangible personal property.

13 (6) "Qualified person" means either of the following:

14 (A) A person who is primarily engaged in those lines of business  
15 described in Codes 3111 to 3399, inclusive, ~~or~~ 5112, 541711, or  
16 541712 of the North American Industry Classification System  
17 (NAICS) published by the United States Office of Management  
18 and Budget, 2012 edition.

19 (B) An affiliate of a person who is a qualified person pursuant  
20 to subparagraph (A) if the affiliate is included as a member of the  
21 qualified person's unitary group for which a combined report is  
22 required to be filed under Article 1 (commencing with Section  
23 25101) of Chapter 17 of Part 11.

24 (7) (A) "Qualified tangible personal property" includes, but is  
25 not limited to, all of the following:

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

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

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

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

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

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

12 (ii) Furniture, inventory, and equipment used in the extraction  
13 process, or equipment used to store finished products that have  
14 completed the manufacturing process.

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

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

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

21 (10) “Useful life” for tangible personal property that is treated  
22 as having a useful life of one or more years for state income or  
23 franchise tax purposes shall be deemed to have a useful life of one  
24 or more years for purposes of this section. “Useful life” for tangible  
25 personal property that is treated as having a useful life of less than  
26 one year for state income or franchise tax purposes shall be deemed  
27 to have a useful life of less than one year for purposes of this  
28 section.

29 (c) An exemption shall not be allowed under this section unless  
30 the 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 retains the exemption  
33 certificate in its records *and* furnishes the board with a copy of the  
34 exemption upon request. The exemption certificate shall contain  
35 the sales price of the machinery or equipment that is exempt  
36 pursuant to subdivision (a).

37 (d) (1) Notwithstanding any provision of the Bradley-Burns  
38 Uniform Local Sales and Use Tax Law (Part 1.5 (commencing  
39 with Section 7200)) or the Transactions and Use Tax Law (Part  
40 1.6 (commencing with Section 7251)), the exemption established

1 by this section shall not apply with respect to any tax levied by a  
2 county, city, or district pursuant to, or in accordance with, either  
3 of those laws.

4 (2) Notwithstanding subdivision (a), the exemption established  
5 by this section shall not apply with respect to any tax levied  
6 pursuant to Section 6051.2, or 6201.2, or pursuant to ~~Sections~~  
7 *Section 35* and subdivision (f) of *Section 36* of Article XIII of the  
8 California Constitution.

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

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

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

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