

ASSEMBLY BILL

No. 2091

Introduced by Assembly Member Mansoor

February 20, 2014

An act to amend Section 6377.1 of the Revenue and Taxation Code, relating to taxation.

LEGISLATIVE COUNSEL'S DIGEST

AB 2091, as introduced, Mansoor. Sales and use taxes: exemption: manufacturing and research.

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. Those laws exempt from those taxes, for a specified period, the gross receipts from the sale of, and the storage, use, or other consumption of, specified tangible personal property used primarily in manufacturing or other processes, and in research and development.

This bill would make a technical, nonsubstantive change to that provision.

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

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

- 1 SECTION 1. Section 6377.1 of the Revenue and Taxation
- 2 Code is amended to read:

1 6377.1. (a) Except as provided in subdivision (e), on or after
2 July 1, 2014, and before July 1, 2022, there are exempted from the
3 taxes imposed by this part the gross receipts from the sale of, and
4 the storage, use, or other consumption in this state of, any of the
5 following:

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

15 (2) Qualified tangible personal property purchased for use by
16 a qualified person to be used primarily in research and
17 development.

18 (3) Qualified tangible personal property purchased for use by
19 a qualified person to be used primarily to maintain, repair, measure,
20 or test any qualified tangible personal property described in
21 paragraph (1) or (2).

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

28 (b) For purposes of this section:

29 (1) “Fabricating” means to make, build, create, produce, or
30 assemble components or tangible personal property to work in a
31 new or different manner.

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

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

1 (4) “Process” means the period beginning at the point at which
2 any raw materials are received by the qualified person and
3 introduced into the manufacturing, processing, refining, fabricating,
4 or recycling activity of the qualified person and ending at the point
5 at which the manufacturing, processing, refining, fabricating, or
6 recycling activity of the qualified person has altered tangible
7 personal property to its completed form, including packaging, if
8 required. Raw materials shall be considered to have been
9 introduced into the process when the raw materials are stored on
10 the same premises where the qualified person’s manufacturing,
11 processing, refining, fabricating, or recycling activity is conducted.
12 Raw materials that are stored on premises other than where the
13 qualified person’s manufacturing, processing, refining, fabricating,
14 or recycling activity is conducted shall not be considered to have
15 been introduced into the manufacturing, processing, refining,
16 fabricating, or recycling process.

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

20 (6) (A) “Qualified person” means a person that is primarily
21 engaged in those lines of business described in Codes 3111 to
22 3399, inclusive, 541711, or 541712 of the North American Industry
23 Classification System (NAICS) published by the United States
24 Office of Management and Budget (OMB), 2012 edition.

25 (B) Notwithstanding subparagraph (A), “qualified person” shall
26 not include either of the following:

27 (i) An apportioning trade or business that is required to apportion
28 its business income pursuant to subdivision (b) of Section 25128.

29 (ii) A trade or business conducted wholly within this state that
30 would be required to apportion its business income pursuant to
31 subdivision (b) of Section 25128 if it were subject to apportionment
32 pursuant to Section 25101.

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

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

38 (ii) Equipment or devices used or required to operate, control,
39 regulate, or maintain the machinery, including, but not limited to,
40 computers, data-processing equipment, and computer software,

1 together with all repair and replacement parts with a useful life of
2 one or more years therefor, whether purchased separately or in
3 conjunction with a complete machine and regardless of whether
4 the machine or component parts are assembled by the qualified
5 person or another party.

6 (iii) Tangible personal property used in pollution control that
7 meets standards established by this state or any local or regional
8 governmental agency within this state.

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

14 (B) “Qualified tangible personal property” shall not include any
15 of the following:

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

17 (ii) Furniture, inventory, and equipment used in the extraction
18 process, or equipment used to store finished products that have
19 completed the manufacturing, processing, refining, fabricating, or
20 recycling process.

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

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

25 (9) “Research and development” means those activities that are
26 described in Section 174 of the Internal Revenue Code or in any
27 regulations thereunder.

28 (10) “Useful life” for tangible personal property that is treated
29 as having a useful life of one or more years for state income or
30 franchise tax purposes shall be deemed to have a useful life of one
31 or more years for purposes of this section. “Useful life” for tangible
32 personal property that is treated as having a useful life of less than
33 one year for state income or franchise tax purposes shall be deemed
34 to have a useful life of less than one year for purposes of this
35 section.

36 (c) An exemption shall not be allowed under this section unless
37 the purchaser furnishes the retailer with an exemption certificate,
38 completed in accordance with any instructions or regulations as
39 the board may prescribe, and the retailer retains the exemption
40 certificate in its records and furnishes it to the board upon request.

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

7 (2) Notwithstanding subdivision (a), the exemption established
8 by this section shall not apply with respect to any tax levied
9 pursuant to Section 6051.2, 6051.5, 6201.2, or 6201.5, pursuant
10 to Section 35 of Article XIII of the California Constitution, or any
11 tax levied pursuant to Section 6051 or 6201 that is deposited in
12 the State Treasury to the credit of the Local Revenue Fund 2011
13 pursuant to Section 6051.15 or 6201.15.

14 (e) (1) The exemption provided by this section shall not apply
15 to either of the following:

16 (A) Any tangible personal property purchased during any
17 calendar year that exceeds two hundred million dollars
18 (\$200,000,000) of purchases of qualified tangible personal property
19 for which an exemption is claimed by a qualified person under
20 this section. For purposes of this subparagraph, in the case of a
21 qualified person that is required to be included in a combined report
22 under Section 25101 or authorized to be included in a combined
23 report under Section 25101.15, the aggregate of all purchases of
24 qualified personal property for which an exemption is claimed
25 pursuant to this section by all persons that are required or
26 authorized to be included in a combined report shall not exceed
27 two hundred million dollars (\$200,000,000) in any calendar year.

28 (B) The sale or storage, use, or other consumption of property
29 that, within one year from the date of purchase, is removed from
30 California, converted from an exempt use under subdivision (a)
31 to some other use not qualifying for exemption, or used in a manner
32 not qualifying for exemption.

33 (2) If a purchaser certifies in writing to the seller that the tangible
34 personal property purchased without payment of the tax will be
35 used in a manner entitling the seller to regard the gross receipts
36 from the sale as exempt from the sales tax, and the purchase
37 exceeds the two-hundred-million-dollar (\$200,000,000) limitation
38 described in subparagraph (A) of paragraph (1), or within one year
39 from the date of purchase, the purchaser removes that property
40 from California, converts that property for use in a manner not

1 qualifying for the exemption, or uses that property in a manner
2 not qualifying for the exemption, the purchaser shall be liable for
3 payment of sales tax, with applicable interest, as if the purchaser
4 were a retailer making a retail sale of the tangible personal property
5 at the time the tangible personal property is so purchased, removed,
6 converted, or used, and the cost of the tangible personal property
7 to the purchaser shall be deemed the gross receipts from that retail
8 sale.

9 (f) This section shall apply to leases of qualified tangible
10 personal property classified as “continuing sales” and “continuing
11 purchases” in accordance with Sections 6006.1 and 6010.1. The
12 exemption established by this section shall apply to the rentals
13 payable pursuant to the lease, provided the lessee is a qualified
14 person and the tangible personal property is used in an activity
15 described in subdivision (a).

16 (g) (1) Upon the effective date of this section, the Department
17 of Finance shall estimate the total dollar amount of exemptions
18 that will be taken for each calendar year, or any portion thereof,
19 for which this section provides an exemption.

20 (2) No later than each March 1 next following a calendar year
21 for which this section provides an exemption, the board shall
22 provide to the Joint Legislative Budget Committee a report of the
23 total dollar amount of exemptions taken under this section for the
24 immediately preceding calendar year. The report shall compare
25 the total dollar amount of exemptions taken under this section for
26 that calendar year with the department’s estimate for that same
27 calendar year. If that total dollar amount taken is less than the
28 estimate for that calendar year, the report shall identify options for
29 increasing exemptions taken so as to meet estimated amounts.

30 (h) This section is repealed on January 1, 2023.