

Introduced by Senator WylandFebruary 12, 2013

An act to add Section 6377.1 to the Revenue and Taxation Code, relating to taxation, to take effect immediately, tax levy.

LEGISLATIVE COUNSEL'S DIGEST

SB 235, as introduced, Wyland. Sales and use taxes: exemption: manufacturing: research.

Existing sales and use tax laws impose 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, and 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 qualified tangible personal property purchased for use by a qualified person to be used primarily in research and development, as provided. The bill would require the purchaser to furnish the retailer with an exemption certificate, as specified. The bill would further limit the exemption for leases that are continuing sales or purchases to a six-year period.

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, the Local Revenue Fund, the Fiscal Recovery Fund, or the Local Revenue Fund 2011.

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. (a) 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 and property purchased for
 6 research.

7 (b) California businesses are at competitive disadvantages, as
 8 California is only one of three states in the United States that
 9 currently impose a sales tax on manufacturing equipment.

10 SEC. 2. Section 6377.1 is added to the Revenue and Taxation
 11 Code, to read:

12 6377.1. (a) On or after January 1, 2014, there are exempted
 13 from the taxes imposed by this part the gross receipts from the sale
 14 of, and the storage, use, or other consumption in this state of, any
 15 of the following:

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

24 (2) Qualified tangible personal property purchased for use by
 25 a contractor purchasing that property for use in the performance

1 of a construction contract for the qualified person, who will use
2 that property as an integral part of the manufacturing, processing,
3 refining, fabricating, or recycling process, or as a storage facility
4 for use in connection with those processes.

5 (3) Qualified tangible personal property purchased for use by
6 a qualified person to be used primarily in research and
7 development.

8 (b) For purposes of this section:

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

12 (2) “Manufacturing” means the activity of converting or
13 conditioning tangible personal property by changing the form,
14 composition, quality, or character of the property for ultimate sale
15 at retail or use in the manufacturing of a product to be ultimately
16 sold at retail. Manufacturing includes improvements to tangible
17 personal property that result in a greater service life or greater
18 functionality than that of the original property.

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

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

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

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

1 (A) A person who is engaged in those lines of business described
2 in Codes 3111 to 3399, inclusive, of the North American Industry
3 Classification System (NAICS) published by the United States
4 Office of Management and Budget (OMB), 2007 edition.

5 (B) An affiliate of a person who is a qualified person pursuant
6 to subparagraph (A) if the affiliate is included as a member of that
7 person's unitary group for which a combined report is required to
8 be filed under Article 1 (commencing with Section 25101) of
9 Chapter 17 of Part 11.

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

12 (i) Machinery and equipment, including component parts and
13 contrivances such as belts, shafts, moving parts, and operating
14 structures.

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

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

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

31 (v) Fuels used or consumed in the manufacturing, processing,
32 refining, fabricating, or recycling process.

33 (B) "Qualified tangible personal property" shall not include any
34 of the following:

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

37 (ii) Furniture, inventory, and equipment used in the extraction
38 process, or equipment used to store finished products that have
39 completed the manufacturing, processing, refining, fabricating, or
40 recycling process.

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

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

5 (9) “Research and development” means those activities defined
6 in Section 174 of the Internal Revenue Code or in any regulations
7 thereunder.

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

16 (c) An exemption shall not be allowed under this section unless
17 the purchaser furnishes the retailer with an exemption certificate,
18 completed in accordance with any instructions or regulations as
19 the board may prescribe, and the retailer retains the exemption
20 certificate in its records and furnishes it to the board upon request.
21 The exemption certificate shall contain the sales price of the
22 tangible personal property that the sale of, or the storage, use, or
23 other consumption of, is exempt pursuant to subdivision (a).

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

30 (2) Notwithstanding subdivision (a), the exemption established
31 by this section shall not apply with respect to any tax levied
32 pursuant to Section 6051.2, 6051.5, 6201.2, or 6201.5, pursuant
33 to Sections 35 and 36 of Article XIII of the California Constitution,
34 or any tax levied pursuant to Sections 6051 or 6201 that is
35 deposited in the State Treasury to the credit of the Local Revenue
36 Fund 2011 pursuant to Sections 6051.15 or 6201.15.

37 (e) (1) Notwithstanding subdivision (a), the exemption provided
38 by this section shall not apply to any sale or storage, use, or other
39 consumption of property that, within one year from the date of
40 purchase, is removed from California, converted from an exempt

1 use under subdivision (a) to some other use not qualifying for
2 exemption, or used in a manner not qualifying for exemption.

3 (2) If a purchaser certifies in writing to the seller that the
4 property purchased without payment of the tax will be used in a
5 manner entitling the seller to regard the gross receipts from the
6 sale as exempt from the sales tax, and within one year from the
7 date of purchase, the purchaser removes that property from
8 California, converts that property for use in a manner not qualifying
9 for the exemption, or uses that property in a manner not qualifying
10 for the exemption, the purchaser shall be liable for payment of
11 sales tax, with applicable interest, as if the purchaser were a retailer
12 making a retail sale of the property at the time the property is so
13 removed, converted, or used, and the sales price of the property
14 to the purchaser shall be deemed the gross receipts from that retail
15 sale.

16 (f) This section applies to leases of qualified tangible personal
17 property classified as “continuing sales” and “continuing
18 purchases” in accordance with Sections 6006.1 and 6010.1. The
19 exemption established by this section shall apply to the rentals
20 payable pursuant to such a lease, provided the lessee is a qualified
21 person and the property is used in an activity described in
22 subdivision (a). Rentals that meet the foregoing requirements are
23 eligible for the exemption for a period of six years from the date
24 of commencement of the lease. At the close of the six-year period
25 from the date of commencement of the lease, lease receipts are
26 subject to tax without exemption.

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