An act to add Section 6377.4 to, and to add and repeal Sections 17053.91 and 23649.1 of, the Revenue and Taxation Code, relating to taxation, to take effect immediately, tax levy.

LEGISLATIVE COUNSEL’S DIGEST


(1) Existing laws impose state sales and use 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, at the cumulative state rate of 6.5%, and provides various exemptions from those taxes.

This bill would exempt from those state taxes, on and after January 1, 2017, and before January 1, 2022, the gross receipts from the sale of, and the storage, use, or other consumption of, qualified tangible personal property purchased for use by a qualified person for use primarily in any stage of manufacturing, processing, refining, fabricating, or recycling of tangible personal property, as specified, or
for use primarily in research and development, as specified, or to
maintain, repair, measure, or test that tangible personal property. The
bill would also exempt from those taxes the gross receipts from the sale
of, and the storage, use, or other consumption of, tangible personal
property purchased for use by a contractor, as specified, for a qualified
person. The bill would require the purchaser to furnish the retailer with
an exemption certificate, as specified. This bill would also require the
Legislative Analyst’s Office to conduct a study, by January 1, 2019,
using information provided by the State Board of Equalization, to
measure the effects of the exemption, 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.

This bill would specify that this exemption does not apply to local
sales and use taxes and transactions and use taxes.

(2) The Personal Income Tax Law and the Corporation Tax Law
authorizes various credits against the taxes imposed by those laws.

This bill would allow a credit in an amount equal to a specified portion
of the amount of sales tax reimbursement paid to a retailer or use tax
paid on a purchase of tangible personal property with respect to taxes
paid on transactions occurring on and after January 1, 2014, and before
January 1, 2017, that are imposed under sales and use tax laws for the
sale of, or the storage, use, or other consumption in this state of,
qualified tangible personal property purchased for use by a qualified
person for use primarily in any stage of manufacturing, processing,
refining, fabricating, or recycling of property, as specified, or for use
primarily in research and development, as specified, or to maintain,
repair, measure, or test that property. The credit would be applied in
equal amounts over 3 successive taxable years beginning with the first
taxable year beginning on or after January 1, 2017.

(3)

(2) This bill would take effect immediately as a tax levy.

State-mandated local program: no.
The people of the State of California do enact as follows:

SECTION 1. Section 6377.4 is added to the Revenue and Taxation Code, to read:

6377.4. (a) On and after January 1, 2017, and before January 1, 2022, there are exempted from the taxes imposed by this part the gross receipts from the sale of, and the storage, use, or other consumption in this state of, any of the following:

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

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

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

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

(b) For purposes of this section:

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

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

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

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

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

(6) “Qualified person” means either of the following: a person that is primarily engaged in those lines of business described in Codes 3111 to 3399, inclusive, or 5112 of the North American Industry Classification System (NAICS) published by the United States Office of Management and Budget (OMB), 2012 edition.

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

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

(7) (A) “Qualified tangible personal property” includes, but is not limited to, all of the following:
(i) Machinery and equipment, including component parts and contrivances such as belts, shafts, moving parts, and operating structures.

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

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

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

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

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

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

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

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

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

(10) “Useful life” has the same meaning as provided for in Part 10 (commencing with Section 17001), or Part 11 (commencing with Section 23001), as applicable.

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

The exemption certificate shall contain the sales price cost of the
qualified tangible personal property that the sale of, or the storage,
use, or other consumption of, is exempt pursuant to subdivision
(a).

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

(e) (1) Notwithstanding subdivision (a), the exemption provided
by this section shall not apply to any sale or storage, use, or other
consumption of tangible personal property that, within one year
from the date of purchase, is removed from California, converted
from an exempt use under subdivision (a) to some other use not
qualifying for exemption, or used in a manner not qualifying for
exemption.

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

(f) The Legislative Analyst’s Office shall, by January 1, 2019,
with information provided by the State Board of Equalization,
conduct a study measuring the following:

(1) The exemption’s effect on the employment levels for
manufacturing, research and development, and associated
industries.
(2) Where new and expanded manufacturing and research and development facilities resulting from the exemption are located.

(3) The exemption’s effect on capital investment in manufacturing equipment and all other tangible personal property, the sale or use of which is qualified for exemption under this act.

(g) The Legislative Analyst’s Office shall submit the study required by subdivision (f) to the Senate and Assembly Committees on Budget, the Assembly Committee on Revenue and Taxation, and the Senate Committee on Governance and Finance.

SEC. 2. Section 17053.91 is added to the Revenue and Taxation Code, to read:

17053.91. (a) There shall be allowed to a qualified person as a credit against the “net tax” as defined in Section 17039, an amount equal to that portion of sales tax reimbursement paid to a retailer or use tax paid on a purchase of tangible personal property that is placed in service in this state, equal to 6.5 percent of the gross receipts or sales price on transactions described in paragraphs (1) to (4), inclusive, occurring on and after January 1, 2014, and before January 1, 2017, that are subject to tax under Part 1 (commencing with Section 6001) of Division 2.

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

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

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

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

(b) The amount of any credit allowed under subdivision (a) shall be applied in equal amounts over three successive taxable years beginning with the first taxable year beginning on or after January 1, 2017.

(c) For purposes of this section:

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

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

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

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

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

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

(A) A person who is engaged in those lines of business described in Codes 3111 to 3399, inclusive, or 5112 of the North American

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

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

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

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

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

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

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

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

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

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

(iii) Tangible personal property used primarily in administration, general management, or marketing.
(iv) Tangible personal property that, within one year from the
date of purchase, is either removed from California, converted
from a use described in subdivision (a) to some other use not
described in subdivision (a), or used in a manner not described in
subdivision (a).

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

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

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

(d) In the case where the credit otherwise allowed under this
section exceeds the “net tax” for the taxable year, that portion of
the credit that exceeds the “net tax” may be carried over to reduce
the net tax in the following taxable year, and the succeeding four
taxable years if necessary, until the credit is exhausted.

(e) This section shall remain in effect only until December 1,
2020, and as of that date is repealed.

SEC. 3. Section 23649.1 is added to the Revenue and Taxation
Code, to read:

23649.1. (a) There shall be allowed to a qualified person as a
credit against the “tax” as defined in Section 23036, an amount
equal to that portion of sales tax reimbursement paid to a retailer
or use tax paid on a purchase of tangible personal property that is
placed in service in this state, equal to 6.5 percent of the gross
receipts or sales price on transactions described in paragraphs (1)
to (4), inclusive, occurring on and after January 1, 2014, and before
January 1, 2017, that are subject to tax under Part 1 (commencing
with Section 6001) of Division 2.

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

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

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

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

(b) The amount of any credit allowed under subdivision (a) shall be applied in equal amounts over three successive taxable years beginning with the first taxable year beginning on or after January 1, 2017.

(c) For purposes of this section:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(B) “Qualified tangible personal property” shall not include any
    of the following:
    (i) Consumables with a useful life of less than one year, except
        as provided in clause (v) of subparagraph (A);
    (ii) Furniture, inventory, and equipment used in the extraction
        process, or equipment used to store finished products that have
        completed the manufacturing, processing, refining, fabricating, or
        recycling process.
    (iii) Tangible personal property used primarily in administration,
        general management, or marketing;
    (iv) Tangible personal property that, within one year from the
        date of purchase, is either removed from California, converted
        from a use described in subdivision (a) to some other use not
        described in subdivision (a), or used in a manner not described in
        subdivision (a);

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

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

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

(d) In the case where the credit otherwise allowed under this
    section exceeds the “net tax” for the taxable year, that portion of
    the credit that exceeds the “net tax” may be carried over to reduce
    the net tax in the following taxable year, and the succeeding four
    taxable years if necessary, until the credit is exhausted.

(e) This section shall remain in effect only until December 1,
    2020, and as of that date is repealed.
SEC. 2. This act provides for a tax levy within the meaning of Article IV of the Constitution and shall go into immediate effect.