

**Introduced by Senator Knight**February 20, 2013

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An act to add and repeal Section 6377.2 of the Revenue and Taxation Code, relating to taxation, to take effect immediately, tax levy.

## LEGISLATIVE COUNSEL'S DIGEST

SB 412, as introduced, Knight. Sales and use taxes: exemption: aerospace products manufacturing: research and development.

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 provides various exemptions from those taxes.

This bill would exempt from those taxes, on and after January 1, 2014, and before January 1, 2019, 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 in the aerospace products and parts manufacturing industry 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 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.

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, 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.

The bill would remain in effect until January 1, 2019.

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. Section 6377.2 is added to the Revenue and
- 2 Taxation Code, to read:
- 3 6377.2. (a) On and after January 1, 2014, and before January
- 4 1, 2019, there are exempted from the taxes imposed by this part
- 5 the gross receipts from the sale of, and the storage, use, or other
- 6 consumption in this state of, any of the following:
- 7 (1) Qualified tangible personal property purchased for use by
- 8 a qualified person to be used primarily in any stage of the
- 9 manufacturing, processing, refining, fabricating, or recycling of
- 10 property, beginning at the point any raw materials are received by
- 11 the qualified person and introduced into the process and ending at
- 12 the point at which the manufacturing, processing, refining,
- 13 fabricating, or recycling has altered property to its completed form,
- 14 including packaging, if required.
- 15 (2) Qualified tangible personal property purchased for use by
- 16 a qualified person to be used primarily in qualified 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

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 research or  
4 storage facility for use in connection with those processes.

5 (b) For purposes of this section:

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

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

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

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

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

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

37 (A) A person who is engaged in those lines of business described  
38 in Code 3364 of the North American Industry Classification System  
39 (NAICS) published by the United States Office of Management  
40 and Budget (OMB), 2012 edition.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

29 (2) Notwithstanding subdivision (a), the exemption established  
30 by this section shall not apply with respect to any tax levied  
31 pursuant to Section 6051.2, 6051.5, 6201.2, or 6201.5, pursuant  
32 to Sections 35 and subdivision (f) of 36 of Article XIII of the  
33 California Constitution, or to any tax levied pursuant to Sections  
34 6051 and 6201 that is deposited in the State Treasury to the credit  
35 of the Local Revenue Fund 2011 pursuant to Sections 6051.15 and  
36 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 outside  
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 SEC. 2. This act shall remain in effect only until January 1,  
17 2019, and as of that date is repealed.

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