

AMENDED IN SENATE MAY 14, 2013

AMENDED IN SENATE APRIL 18, 2013

SENATE BILL

No. 412

Introduced by Senator Knight

February 20, 2013

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 amended, 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 tangible personal 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. *This bill would require the Legislative Analyst's Office, by January 1, 2018, to report on the effect of the exemption on employment in the aerospace and related industries, 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 tangible personal property, beginning at the point any raw materials
11 are received by the qualified person and introduced into the process
12 and ending at the point at which the manufacturing, processing,
13 refining, fabricating, or recycling has altered tangible personal
14 property to its completed form, 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.

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

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

11 (b) For purposes of this section:

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

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

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

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

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

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

5 (A) A person who is primarily engaged in those lines of business
6 described in Code 3364 of the North American Industry
7 Classification System (NAICS) published by the United States
8 Office of Management and Budget (OMB), 2012 edition.

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

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

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

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

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

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

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

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

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

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

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

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

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

12 (10) “Useful life” has the same meaning as provided for in Part
13 10 (commencing with Section 17001), or Part 11 (commencing
14 with Section 23001), as applicable.

15 (c) An exemption shall not be allowed under this section unless
16 the purchaser furnishes the retailer with an exemption certificate,
17 completed in accordance with any instructions or regulations as
18 the board may prescribe, and the retailer retains the exemption
19 certificate in its records and furnishes it to the board upon request.
20 The exemption certificate shall contain the sales price of the
21 qualified tangible personal property that the sale of, or the storage,
22 use, or other consumption of, is exempt pursuant to subdivision
23 (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 Section 35 and subdivision (f) of Section 36 of Article XIII of
34 the California Constitution, or to any tax levied pursuant to Section
35 6051 or 6201 that is deposited in the State Treasury to the credit
36 of the Local Revenue Fund 2011 pursuant to Sections 6051.15 and
37 6201.15.

38 (e) (1) Notwithstanding subdivision (a), the exemption provided
39 by this section shall not apply to any sale or storage, use, or other
40 consumption of tangible personal property that, within one year

1 from the date of purchase, is removed from California, converted
2 from an exempt use under subdivision (a) to some other use not
3 qualifying for exemption, or used in a manner not qualifying for
4 exemption.

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

18 (f) *By January 1, 2018, the Legislative Analyst's Office shall*
19 *report on the effect of the exemption established in this section on*
20 *employment in aerospace and related industries, using data,*
21 *including, but not limited to, the data produced by the Employment*
22 *Development Department Labor Market Information Division.*

23 SEC. 2. This act shall remain in effect only until January 1,
24 2019, and as of that date is repealed.

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