

AMENDED IN SENATE MAY 17, 2011

SENATE BILL

No. 686

Introduced by Senator Padilla
(Principal coauthor: Senator Strickland)
(Coauthor: Senator La Malfa)
(Coauthor: Assembly Member Fletcher)

February 18, 2011

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

LEGISLATIVE COUNSEL'S DIGEST

SB 686, as amended, Padilla. Sales and use taxes: exemption: biotechnology manufacturing.

The Sales and Use Tax Law imposes 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 the taxes imposed by that law

This bill would exempt from those taxes, on and after January 1, 2012, *and before January 1, 2020*, the gross receipts from the sale of, and the storage, use, or other consumption of, tangible personal property purchased by a qualified person for use primarily in the biotechnology manufacturing process. *The bill additionally would require the Legislative Analyst's Office to report to the Joint Legislative Budget Committee on the effectiveness of this tax exemption.*

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.

Section 2230 of the Revenue and Taxation Code provides that the state will reimburse counties and cities for revenue losses caused by the enactment of sales and use tax exemptions.

This bill would provide that, notwithstanding Section 2230 of the Revenue and Taxation Code, no appropriation is made and the state shall not reimburse local agencies for sales and use tax revenues lost by them pursuant to this bill.

This bill would take effect immediately as a tax levy.

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

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

1 SECTION 1. Section 6377.1 is added to the Revenue and
2 Taxation Code, to read:
3 6377.1. (a) On and after January 1, 2012, there are exempted
4 from the taxes imposed by this part the gross receipts from the sale
5 of, and the storage, use, or other consumption in this state of, any
6 of tangible personal property purchased for use in biotechnology
7 manufacturing by a qualified person to be used primarily in any
8 stage of manufacturing of property, beginning at the point any raw
9 materials are received by the qualified person and introduced into
10 the process and ending at the point at which the manufacturing,
11 has altered property to its completed form, including packaging,
12 if required.
13 (b) For purposes of this section:
14 (1) "Biotechnology manufacturing" means manufacturing in
15 the lines of business described in Codes 325411, 325412, 325413,
16 325414, 334510, 33911, and 541711, ~~541720, and 541910~~ of the
17 North American Industry Classification System (NAICS) published
18 by the United States Office of Management and Budget (OMB),
19 2007 edition, including medicinal and botanical manufacturing,
20 pharmaceutical preparation manufacturing, in-vitro diagnostic
21 substance manufacturing, biological product manufacturing,
22 ~~research and development in biotechnology, research and~~

1 ~~development in the social sciences and humanities, and marketing~~
2 ~~research and public opinion polling, and marketing research.~~

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

10 (3) “Primarily” means tangible personal property used 50 percent
11 or more of the time in an activity described in subdivision (a).

12 (4) “Process” means the period beginning at the point at which
13 any raw materials are received by the qualified taxpayer and
14 introduced into the manufacturing activity of the qualified person
15 and ending at the point at which the manufacturing activity of the
16 qualified person has altered tangible personal property to its
17 completed form, including packaging, if required. Raw materials
18 shall be considered to have been introduced into the process when
19 the raw materials are stored on the same premises where the
20 qualified person’s manufacturing activity is conducted. Raw
21 materials that are stored on premises other than where the qualified
22 person’s manufacturing activity is conducted, shall not be
23 considered to have been introduced into the manufacturing process.

24 (5) “Qualified person” means a person who is engaged in
25 biotechnology manufacturing.

26 (6) (A) “Tangible personal property,” as used in this section,
27 includes, but is not limited to, all of the following:

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

31 (ii) All equipment or devices used or required to operate, control,
32 regulate, or maintain the machinery, including, without limitation,
33 computers, data processing equipment, and computer software,
34 together with all repair and replacement parts with a useful life of
35 one or more years, whether purchased separately or in conjunction
36 with a complete machine and regardless of whether the machine
37 or component parts are assembled by the taxpayer or another party.

38 (iii) Property used in pollution control that meets standards
39 established by this state or any local or regional governmental
40 agency within this state.

1 (iv) Fuels used or consumed in the manufacturing process.
2 (B) “Tangible personal property” shall not include any of the
3 following:

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

6 (ii) Furniture, inventory, and equipment used in the extraction
7 process, or equipment used to store finished products that have
8 completed the manufacturing process.

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

11 (c) An exemption shall not be allowed under this section unless
12 the purchaser furnishes the retailer with an exemption certificate,
13 completed in accordance with any instructions or regulations as
14 the board may prescribe, and the retailer subsequently furnishes
15 the board with a copy of the exemption certificate. The exemption
16 certificate shall contain the sales price of the machinery or
17 equipment, the sale of, or the storage, use, or other consumption
18 of which is exempt pursuant to subdivision (a).

19 (d) Notwithstanding subdivision (a), the exemption provided
20 by this section shall not apply to any sale or use of property which,
21 within one year from the date of purchase, is removed from
22 California, converted from an exempt use under subdivision (a)
23 to some other use not qualifying for the exemption, or used in a
24 manner not qualifying for the exemption.

25 (e) If a purchaser certifies in writing to the seller that the
26 property purchased without payment of the tax will be used in a
27 manner entitling the seller to regard the gross receipts from the
28 sale as exempt from the sales tax, and within one year from the
29 date of purchase, the purchaser removes that property outside
30 California, converts that property for use in a manner not qualifying
31 for the exemption, or uses that property in a manner not qualifying
32 for the exemption, the purchaser shall be liable for payment of
33 sales tax, with applicable interest, as if the purchaser were a retailer
34 making a retail sale of the property at the time the property is so
35 removed, converted, or used, and the sales price of the property
36 to the purchaser shall be deemed the gross receipts from that retail
37 sale.

38 (f) *This section shall remain in effect only through and including*
39 *December 31, 2019, and is repealed on January 1, 2020.*

1 *SEC. 2. (a) On or before January 1, 2020, the Legislative*
2 *Analyst's Office shall report to the Joint Legislative Budget*
3 *Committee on the effectiveness of the tax exemption established*
4 *in Section 6377.1 of the Revenue and Taxation Code by evaluating*
5 *various factors, including, but not limited to, all of the following:*

6 *(1) The amount of tax revenue lost to the state as a result of the*
7 *tax exemption.*

8 *(2) The number of employers claiming the tax exemption and*
9 *the nature of the claims, such as the size of the employer, the*
10 *location of the employer, and the primary biotechnology emphasis*
11 *of the employer.*

12 *(3) The activities and products for which the tax exemption was*
13 *claimed.*

14 *(4) The number of jobs created in California as a result of the*
15 *tax exemption.*

16 *(5) The number of businesses that have remained in California*
17 *or relocated to California as a result of the tax exemption.*

18 *(6) The amount of state and local revenue and economic activity*
19 *generated by the tax exemption.*

20 *(b) The Legislative Analyst's Office shall evaluate the tax*
21 *exemption, as described in subdivision (a), with a focus on*
22 *outcomes and the fiscal and employment impacts of this exemption*
23 *for the State of California.*

24 ~~SEC. 2.~~

25 *SEC. 3. Notwithstanding Section 2230 of the Revenue and*
26 *Taxation Code, no appropriation is made by this act and the state*
27 *shall not reimburse any county or city for any sales and use tax*
28 *revenues lost by it under this act.*

29 ~~SEC. 3.~~

30 *SEC. 4. This act provides for a tax levy within the meaning of*
31 *Article IV of the Constitution and shall go into immediate effect.*