

Introduced by Senator Alquist

December 13, 2010

An act to add Section 6377 to the Revenue and Taxation Code, relating to taxation, to take effect immediately, tax levy.

LEGISLATIVE COUNSEL'S DIGEST

SB 47, as amended, Alquist. Sales and use taxes: exemption: manufacturing and research activities.

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.

On and after January 1, ~~2011~~ 2012, this bill would exempt from a specified portion of those taxes, the gross receipts from the sale of, and the storage, use, or other consumption of, specified tangible personal property including property purchased for use by a qualified person, as defined, in manufacturing, processing, or fabricating of property, or use in research and development activities, *or specified fabrication or research and development clean rooms and equipment*.

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

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 is added to the Revenue and
2 Taxation Code, to read:

3 6377. (a) On and after January 1, ~~2011~~ 2012, there are
4 exempted from the taxes imposed by this part the gross receipts
5 from the sale of, and the storage, use, or other consumption in this
6 state of, ~~by a qualified person~~ any of the following *by a qualified*
7 *person*:

8 (1) Tangible personal property that will become an ingredient
9 or component part of tangible personal property primarily
10 manufactured, processed, fabricated, or used in research and
11 development activities.

12 (2) Tangible personal property directly and primarily used or
13 consumed in or during the actual manufacturing, processing,
14 fabrication, or research and development of tangible personal
15 property if the use or consumption of the property is necessary or
16 essential to the manufacturing, processing, fabrication operation,
17 or research and ~~development, and directly makes or causes a~~
18 ~~chemical or physical change to either of the following:~~
19 *development.*

20 (3) *Semiconductor, pharmaceutical or biotechnology*
21 *fabrication, or research and development clean rooms and*
22 *equipment.*

23 (b) *For the purposes of this section, all of the following apply:*

- 24 (1) *“Component” means ____.*
25 (2) *“Consumed” means ____.*
26 (3) *“Consumption” means ____.*
27 (4) *“Development” means ____.*
28 (5) *“Directly” means ____.*
29 (6) *“Fabricated” means ____.*
30 (7) *“Fabricating” means ____.*
31 (8) *“Fabrication” means ____.*
32 (9) *“Ingredient” means ____.*
33 (10) *“Manufactured” means ____.*
34 (11) *“Manufacturing” means ____.*
35 (12) *“Process” means ____.*
36 (13) *“Processed” means ____.*
37 (14) *“Processing” means ____.*
38 (15) *“Qualified person” ____.*

1 (16) “Qualified tangible personal property” means ____.

2 (17) “Research” means ____.

3 (18) “Semiconductor, pharmaceutical or biotechnology
4 fabrication, or research and development clean rooms and
5 equipment” means ____:

6 (A) ~~The product being manufactured, processed, fabricated, or
7 used in a research and development activity.~~

8 (B) ~~Any intermediate or preliminary product that will become
9 an ingredient or component part of the product being manufactured,
10 processed, fabricated, or used in a research and development
11 activity.~~

12 ~~(3) Actuators, steam production equipment and its fuel,
13 in-process flow through tanks, cooling towers, generators, heat
14 exchangers, transformers and the switches, breakers, capacitor
15 banks, regulators, relays, reclosers, fuses, interruptors, reactors,
16 arrestors, resistors, insulators, instrument transformers, and
17 telemetry units that are related to the transformers, electronic
18 control room equipment, computerized control units, pumps,
19 compressors, and hydraulic units that are primarily used to power,
20 supply support, or control equipment that qualifies for exemption
21 under paragraph (2) or paragraph (6) of this subdivision, or to
22 generate electricity, chilled water, or steam for ultimate sale.~~

23 ~~(4) Transformers located at an electric generating facility that
24 increase the voltage of electricity generated for ultimate sale, the
25 electrical cable that carries the electricity from the electric
26 generating equipment to the step-up transformers, and the switches,
27 breakers, capacitor banks, regulators, relays, reclosers, fuses,
28 interruptors, reactors, arrestors, resistors, insulators, instrument
29 transformers, and telemetry units that are related to the step-up
30 transformers.~~

31 ~~(5) Transformers that decrease the voltage of electricity
32 generated for ultimate sale and the switches, breakers, capacitor
33 banks, regulators, relays, reclosers, fuses, interruptors, reactors,
34 arrestors, resistors, insulators, instrument transformers, and
35 telemetry units that are related to the step-down transformers.~~

36 ~~(6) Tangible personal property primarily used or consumed in
37 manufacturing, processing, fabrication, or research and
38 development of tangible personal property if the use or
39 consumption of the property is necessary and essential to a
40 pollution control process.~~

1 ~~(7) Lubricants, chemicals, chemical compounds, gases, or liquids~~
2 ~~that are primarily used or consumed during manufacturing,~~
3 ~~processing, fabrication, or research and development of tangible~~
4 ~~personal property if their use or consumption is necessary and~~
5 ~~essential to prevent the decline, failure, lapse, or deterioration of~~
6 ~~equipment exempted by this section.~~

7 ~~(8) Gases used on the premises of a manufacturing plant or~~
8 ~~facility used in performing research and development activities to~~
9 ~~prevent contamination of raw material or product, or to prevent a~~
10 ~~fire, explosion, or other hazardous or environmentally damaging~~
11 ~~situation at any stage in the manufacturing or research and~~
12 ~~development process, or in loading or storage of the product or~~
13 ~~raw material on the premises.~~

14 ~~(9) Tangible personal property primarily used or consumed~~
15 ~~during manufacturing, processing, fabrication, or research and~~
16 ~~development of tangible personal property if the use or~~
17 ~~consumption of the property is necessary and essential to a quality~~
18 ~~control process that tests tangible personal property that is being~~
19 ~~manufactured, processed, fabricated, or used in performing research~~
20 ~~and development activities.~~

21 ~~(10) Tangible personal property primarily used or consumed in~~
22 ~~manufacturing, processing, fabrication, or research and~~
23 ~~development of tangible personal property if the use or~~
24 ~~consumption of the property is necessary and essential to comply~~
25 ~~with federal, state, or local laws, or rules and regulations that~~
26 ~~establish requirements related to public health.~~

27 ~~(11) Tangible personal property specifically installed to do any~~
28 ~~of the following:~~

29 ~~(A) Reduce water use and wastewater flow volumes from the~~
30 ~~manufacturing, processing, fabrication, research and development~~
31 ~~or repair operation.~~

32 ~~(B) Reuse and recycle wastewater streams generated within the~~
33 ~~manufacturing, processing, fabrication, research and development,~~
34 ~~or repair operation.~~

35 ~~(C) Treat wastewater from another industrial or municipal source~~
36 ~~for the purpose of replacing existing freshwater sources in the~~
37 ~~manufacturing, processing, fabrication, research and development,~~
38 ~~or repair operation.~~

39 ~~(12) Chemicals, catalysts, and other materials that are primarily~~
40 ~~used during a manufacturing, processing, fabrication, or research~~

1 and development operation to produce or induce a chemical or
2 physical change, to remove impurities, or to make the product
3 more marketable.

4 (13) Semiconductor, pharmaceutical or biotechnology
5 fabrication, or research and development clean rooms and
6 equipment.

7 (b) For purposes of this section, all of the following apply:

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

11 (2) “Manufacturing” means the activity of converting or
12 conditioning property by changing the form, composition, quality,
13 or character of the property for ultimate sale at retail or use in the
14 manufacturing of a product to be ultimately sold at retail.
15 Manufacturing includes any improvements to tangible personal
16 property that result in a greater service life or greater functionality
17 than that of the original property. Manufacturing also includes the
18 production of a publication for the dissemination of news of a
19 general character and of a general interest that is printed on
20 newsprint and distributed to the general public daily, weekly, or
21 at other short intervals. The manufacturing of computer software
22 begins with the design and writing of the code or program for the
23 software and includes the testing or demonstration of the software.

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

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

1 been introduced into the manufacturing, processing, refining,
2 fabricating, or recycling process.

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

6 (6) “Qualified person” means a manufacturer or an entity
7 performing research and development.

8 (7) “Research and development” means those activities that are
9 described in Section 174 of the Internal Revenue Code or in any
10 regulations thereunder. The research and development of computer
11 software begins with the design and writing of the code or program
12 for the software and includes the testing or demonstration of the
13 software.

14 (8) “Semiconductor, pharmaceutical or biotechnology
15 fabrication, or research and development clean rooms and
16 equipment” means all tangible personal property, without regard
17 to whether the property is affixed to or incorporated into realty,
18 used in connection with the manufacturing, processing, fabrication,
19 or research and development in a clean room environment of a
20 semiconductor, pharmaceutical, or biotechnology product, without
21 regard to whether the property is actually contained in the clean
22 room environment. The term includes integrated systems, fixtures,
23 and piping, all property necessary or adapted to reduce
24 contamination or to control airflow, temperature, humidity,
25 chemical purity, or other environmental conditions or
26 manufacturing or research and development tolerances, and
27 production equipment and machinery. The term does not include
28 the building or a permanent, nonremovable component of the
29 building, that houses the clean room environment. The term
30 includes moveable clean room partitions and clean room lighting.

31 (c) No exemption shall be allowed under this section unless the
32 purchaser furnishes the retailer with an exemption certificate,
33 completed in accordance with any instructions or regulations as
34 the board may prescribe, and the retailer subsequently furnishes
35 the board with a copy of the exemption certificate. The exemption
36 certificate shall contain the sales price of the machinery or
37 equipment that is exempt pursuant to subdivision (a).

38 (d) (1) Notwithstanding any provision of the Bradley-Burns
39 Uniform Local Sales and Use Tax Law (Part 1.5 (commencing
40 with Section 7200)) or the Transactions and Use Tax Law (Part

1 1.6 (commencing with Section 7251)), the exemption established
2 by this section shall not apply with respect to any tax levied by a
3 county, city, or district pursuant to, or in accordance with, either
4 of those laws.

5 (2) *Notwithstanding subdivision (a), the exemption established*
6 *by this section shall not apply with respect to any tax levied*
7 *pursuant to Sections 6051.2 and 6201.2, or pursuant to Section*
8 *35 of Article XIII of the California Constitution.*

9 (e) ~~(1)~~ Notwithstanding subdivision (a), the exemption provided
10 by this section shall not apply to any sale or use of property that,
11 within one year from the date of purchase, is either removed from
12 California, converted from an exempt use under subdivision (a)
13 to some other use not qualifying for the exemption, or used in a
14 manner not qualifying for the exemption.

15 ~~(2) Notwithstanding subdivision (a), the exemption established~~
16 ~~by this section shall not apply with respect to any tax levied~~
17 ~~pursuant to Sections 6051.2 and 6201.2, or pursuant to Section 35~~
18 ~~of Article XIII of the California Constitution.~~

19 (f) If a purchaser certifies in writing to the seller that the property
20 purchased without payment of the tax will be used in a manner
21 entitling the seller to regard the gross receipts from the sale as
22 exempt from the sales tax, and within one year from the date of
23 purchase, the purchaser (1) removes that property from California,
24 (2) converts that property for use in a manner not qualifying for
25 the exemption, or (3) uses that property in a manner not qualifying
26 for the exemption, the purchaser shall be liable for payment of
27 sales tax, with applicable interest, as if the purchaser were a retailer
28 making a retail sale of the property at the time the property is so
29 removed, converted, or used, and the sales price of the property
30 to the purchaser shall be deemed the gross receipts from that retail
31 sale.

32 (g) This section applies to leases of tangible personal property
33 classified as “continuing sales” and “continuing purchases” in
34 accordance with Sections 6006.1 and 6010.1. The exemption
35 established by this section shall apply to the rentals payable
36 pursuant to such a lease, provided the lessee is a qualified person
37 and the property is used in an activity described in subdivision (a).
38 Rentals that meet the foregoing requirements are eligible for the
39 exemption for a period of six years from the date of commencement
40 of the lease. At the close of the six-year period from the date of

- 1 commencement of the lease, lease receipts are subject to tax
- 2 without exemption.
- 3 SEC. 2. This act provides for a tax levy within the meaning of
- 4 Article IV of the Constitution and shall go into immediate effect.

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