

Introduced by Senator Correa

(Principal coauthors: Assembly Members Alejo, Mullin, and V. Manuel Pérez)

(Coauthors: Senators Hill and Wyland)

February 20, 2013

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

SB 376, as introduced, Correa. Sales and use taxes: personal and corporate income tax: manufacturers' credit and exemption.

(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, 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 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 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 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) 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 6377.4 is added to the Revenue and
- 2 Taxation Code, to read:
- 3 6377.4. (a) On and after January 1, 2017, 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 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

1 manufacturing, processing, refining, fabricating, or recycling of
2 property, beginning at the point any raw materials are received by
3 the qualified person and introduced into the process and ending at
4 the point at which the manufacturing, processing, refining,
5 fabricating, or recycling has altered property to its completed form,
6 including packaging, if required.

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

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

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

20 (b) For purposes of this section:

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

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

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

32 (4) “Process” means the period beginning at the point at which
33 any raw materials are received by the qualified person and
34 introduced into the manufacturing, processing, refining, fabricating,
35 or recycling activity of the qualified person and ending at the point
36 at which the manufacturing, processing, refining, fabricating, or
37 recycling activity of the qualified person has altered tangible
38 personal property to its completed form, including packaging, if
39 required. Raw materials shall be considered to have been
40 introduced into the process when the raw materials are stored on

1 the same premises where the qualified person’s manufacturing,
2 processing, refining, fabricating, or recycling activity is conducted.
3 Raw materials that are stored on premises other than where the
4 qualified person’s manufacturing, processing, refining, fabricating,
5 or recycling activity is conducted, shall not be considered to have
6 been introduced into the manufacturing, processing, refining,
7 fabricating, or recycling process.

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

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

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

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

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

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

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

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

37 (iv) Special purpose buildings and foundations used as an
38 integral part of the manufacturing, processing, refining, fabricating,
39 or recycling process, or that constitute a research or storage facility

1 used during those processes. Buildings used solely for warehousing
2 purposes after completion of those processes are not included.

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

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

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

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

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

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

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

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

28 (c) An exemption shall not be allowed under this section unless
29 the purchaser furnishes the retailer with an exemption certificate,
30 completed in accordance with any instructions or regulations as
31 the board may prescribe, and the retailer retains the exemption
32 certificate in its records and furnishes it to the board upon request.
33 The exemption certificate shall contain the sales price of the
34 qualified tangible personal property that the sale of, or the storage,
35 use, or other consumption of, is exempt pursuant to subdivision
36 (a).

37 (d) Notwithstanding the Bradley-Burns Uniform Local Sales
38 and Use Tax Law (Part 1.5 (commencing with Section 7200)) and
39 the Transactions and Use Tax Law (Part 1.6 (commencing with
40 Section 7251)), the exemption established by this section shall not

1 apply with respect to any tax levied by a county, city, or district
2 pursuant to, or in accordance with, either of those laws.

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

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

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

24 17053.91. (a) There shall be allowed to a qualified person as
25 a credit against the “net tax” as defined in Section 17039, an
26 amount equal to that portion of sales tax reimbursement paid to a
27 retailer or use tax paid on a purchase of tangible personal property
28 that is placed in service in this state, equal to 6.5 percent of the
29 gross receipts or sales price on transactions described in paragraphs
30 (1) to (4), inclusive, occurring on and after January 1, 2014, and
31 before January 1, 2017, that are subject to tax under Part 1
32 (commencing with Section 6001) of Division 2.

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

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

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

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

14 (b) The amount of any credit allowed under subdivision (a) shall
15 be applied in equal amounts over three successive taxable years
16 beginning with the first taxable year beginning on or after January
17 1, 2017.

18 (c) For purposes of this section:

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

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

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

30 (4) “Process” means the period beginning at the point at which
31 any raw materials are received by the qualified person and
32 introduced into the manufacturing, processing, refining, fabricating,
33 or recycling activity of the qualified person and ending at the point
34 at which the manufacturing, processing, refining, fabricating, or
35 recycling activity of the qualified person has altered tangible
36 personal property to its completed form, including packaging, if
37 required. Raw materials shall be considered to have been
38 introduced into the process when the raw materials are stored on
39 the same premises where the qualified person’s manufacturing,
40 processing, refining, fabricating, or recycling activity is conducted.

1 Raw materials that are stored on premises other than where the
2 qualified person’s manufacturing, processing, refining, fabricating,
3 or recycling activity is conducted, shall not be considered to have
4 been introduced into the manufacturing, processing, refining,
5 fabricating, or recycling process.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

13 (iv) Tangible personal property that, within one year from the
14 date of purchase, is either removed from California, converted
15 from a use described in subdivision (a) to some other use not
16 described in subdivision (a), or used in a manner not described in
17 subdivision (a).

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

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

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

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

36 (e) This section shall remain in effect only until December 1,
37 2020, and as of that date is repealed.

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

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

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

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

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

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

31 (b) The amount of any credit allowed under subdivision (a) shall
32 be applied in equal amounts over three successive taxable years
33 beginning with the first taxable year beginning on or after January
34 1, 2017.

35 (c) For purposes of this section:

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

39 (2) “Manufacturing” means the activity of converting or
40 conditioning tangible personal property by changing the form,

1 composition, quality, or character of the property for ultimate sale
2 at retail or use in the manufacturing of a product to be ultimately
3 sold at retail. Manufacturing includes any improvements to tangible
4 personal property that result in a greater service life or greater
5 functionality than that of the original property.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

29 (iv) Tangible personal property that, within one year from the
30 date of purchase, is either removed from California, converted
31 from a use described in subdivision (a) to some other use not
32 described in subdivision (a), or used in a manner not described in
33 subdivision (a).

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

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

39 (10) “Useful life” for tangible personal property that is treated
40 as having a useful life of one or more years for state income or

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

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

12 (e) This section shall remain in effect only until December 1,
13 2020, and as of that date is repealed.

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

O