

ASSEMBLY BILL

No. 1090

Introduced by Assembly Member O'Donnell

February 27, 2015

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

LEGISLATIVE COUNSEL'S DIGEST

AB 1090, as introduced, O'Donnell. Sales and use taxes: exemption: reshoring jobs.

Existing sales and use tax laws impose 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. Existing law provides various exemptions from the taxes imposed by those laws, including an exemption until July 1, 2022, or as provided, of the gross receipts from the sale of, and the storage, use, or other consumption of, qualified tangible personal property purchased by a qualified person for use primarily in manufacturing, processing, refining, fabricating, or recycling of property, as specified; qualified tangible personal property purchased for use by a contractor for specified purposes, as provided; and qualified tangible personal property purchased for use by a qualified person to be used primarily in research and development, as provided.

This bill would exempt from those taxes, on and after January 1, 2016, 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 to be used primarily in any stage of reshoring jobs by qualified businesses engaged in manufacturing, research and

development, and construction, as specified; qualified tangible personal property purchased for reshoring by a qualified person to be used primarily in research and development; qualified tangible personal property purchased for use by a qualified person to be used primarily for the reshoring of jobs by qualified businesses engaged in manufacturing, research and development, and construction; and qualified tangible personal property purchased for use by a contractor purchasing that tangible personal property for use in the performance of a construction contract for the qualified person, who will use that tangible personal property as an integral part of reshoring jobs by qualified businesses engaged in manufacturing, research and development, and construction for use in connection with those processes, as provided. 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 conformity 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.

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, 2016, 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 reshoring
- 9 jobs by qualified businesses engaged in manufacturing, research
- 10 and development, and construction beginning at the point any raw
- 11 materials are received by the qualified person and introduced into

1 the process and ending at the point at which the manufacturing,
2 processing, refining, fabricating, or recycling has altered tangible
3 personal property to its completed form, including packaging, if
4 required.

5 (2) Qualified tangible personal property purchased for reshoring
6 by a qualified person to be used primarily in research and
7 development.

8 (3) Qualified tangible personal property purchased for use by
9 a qualified person to be used primarily for the reshoring of jobs
10 by qualified businesses engaged in manufacturing, research and
11 development, and construction described in paragraph (1) or (2).

12 (4) Qualified tangible personal property purchased for use by
13 a contractor purchasing that tangible personal property for use in
14 the performance of a construction contract for the qualified person,
15 who will use that tangible personal property as an integral part of
16 reshoring jobs by qualified businesses engaged in manufacturing,
17 research and development, and construction for use in connection
18 with those processes.

19 (b) For purposes of this section:

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

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

12 (7) “Qualified business” means ____.

13 (8) “Qualified person” means a person that is primarily engaged
 14 in those lines of business described in Codes 3111 to 3399,
 15 inclusive, or 5112 of the North American Industry Classification
 16 System (NAICS) published by the United States Office of
 17 Management and Budget (OMB), 2012 edition.

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

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

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

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

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

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

1 (i) Consumables with a useful life of less than one year.

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

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

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

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

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

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

24 (d) 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 (e) (1) Notwithstanding subdivision (a), the exemption provided
31 by this section shall not apply to any sale or storage, use, or other
32 consumption of tangible personal property that, within one year
33 from the date of purchase, is removed from California, converted
34 from an exempt use under subdivision (a) to some other use not
35 qualifying for exemption, or used in a manner not qualifying for
36 exemption.

37 (2) If a purchaser certifies in writing to the seller that the tangible
38 personal property purchased without payment of the tax will be
39 used in a manner entitling the seller to regard the gross receipts
40 from the sale as exempt from the sales tax, and within one year

1 from the date of purchase, the purchaser removes that tangible
2 personal property outside California, converts that tangible personal
3 property for use in a manner not qualifying for the exemption, or
4 uses that tangible personal property in a manner not qualifying for
5 the exemption, the purchaser shall be liable for payment of sales
6 tax, with applicable interest, as if the purchaser were a retailer
7 making a retail sale of the tangible personal property at the time
8 the tangible personal property is so removed, converted, or used,
9 and the cost of the tangible personal property to the purchaser shall
10 be deemed the gross receipts from that retail sale.

11 SEC. 2. This act provides for a tax levy within the meaning of
12 Article IV of the Constitution and shall go into immediate effect.