

AMENDED IN ASSEMBLY APRIL 14, 2015

CALIFORNIA LEGISLATURE—2015–16 REGULAR SESSION

ASSEMBLY BILL

No. 1090

Introduced by Assembly Member O'Donnell

February 27, 2015

An act to ~~add~~ *amend* Section ~~6377.2 to~~ *6377.1* of the Revenue and Taxation Code, relating to taxation, to take effect immediately, tax levy.

LEGISLATIVE COUNSEL'S DIGEST

AB 1090, as amended, 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. *Existing law provides that the exemption does not apply to any tangible personal property purchased during any calendar year that exceeds \$200,000,000 of purchases of qualified tangible personal property.*

~~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 increase that \$200,000,000 threshold to \$500,000,000 for any calendar year on and after January 1, 2016, provided that \$300,000,000 is for purchases of qualified tangible personal property that is used primarily for the purpose of reshoring or insourcing, defined to mean the relocation of a whole process, a piece of a process, a function, or a discrete piece of work from currently outside the boundaries of the United States to inside the boundaries of the state, either within or outside the boundaries of a company. This bill would require the city or county where the tangible personal property will be placed in service to issue a written certification that the relocation meets the definition of reshoring or insourcing, which the purchaser shall be required to furnish to the retailer for purposes of the exemption.

By imposing a new duty on local governments, this bill would impose a state-mandated local program.

This bill would also extend the exemption until July 1, 2024, except as otherwise provided by existing law.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.

This bill would take effect immediately as a tax levy.

Vote: majority. Appropriation: no. Fiscal committee: yes.

State-mandated local program: ~~no~~-yes.

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

1 *SECTION 1. The Legislature finds and declares the following:*

2 *(a) Since 1997, the number of manufacturing facilities in the*
3 *United States has dropped by 17 percent, resulting in the loss of*
4 *six million American jobs.*

5 *(b) These significant losses are the result of an “offshoring”*
6 *movement, in which many American manufacturers closed their*
7 *domestic doors or expanded their facilities in foreign counties,*
8 *which sent millions of manufacturing jobs overseas.*

9 *(c) When these American companies moved or shifted their*
10 *expansions offshore, the economic benefit of spent wages and*
11 *related payroll, income, and consumer sales taxes associated with*
12 *those workers went with them.*

13 *(d) Some American companies are reconsidering their decision*
14 *to outsource work or operate facilities in foreign countries, or*
15 *both, in a trend referred to as “reshoring.” Since 2010, domestic*
16 *manufacturing employment has increased slightly as businesses*
17 *have begun to recognize the risks associated with a global supply*
18 *chain, including such factors as the variable price of oil, quality*
19 *and consistency of some product lines, increased foreign labor*
20 *costs, and overseas shipping costs, which have already driven at*
21 *least hundreds of companies to return to the United States.*

1 (e) *There exists an opportunity for policy makers to accelerate*
2 *this trend and return the United States to an era of manufacturing*
3 *growth. California has a time-sensitive opportunity to provide the*
4 *incentives necessary to draw manufacturing companies not only*
5 *back to the United States, but specifically into California.*

6 (f) *California will have a comparative advantage in competing*
7 *for “reshoring” companies through offsetting some of the initial*
8 *costs of relocating manufacturing to California by providing a*
9 *sales and use tax exemption.*

10 SEC. 2. *Section 6377.1 of the Revenue and Taxation Code is*
11 *amended to read:*

12 6377.1. (a) Except as provided in subdivision (e), on or after
13 July 1, 2014, and before July 1, ~~2022~~ 2024, there are exempted
14 from the taxes imposed by this part the gross receipts from the sale
15 of, and the storage, use, or other consumption in this state of, any
16 of the following:

17 (1) Qualified tangible personal property purchased for use by
18 a qualified person to be used primarily in any stage of the
19 manufacturing, processing, refining, fabricating, or recycling of
20 tangible personal property, beginning at the point any raw materials
21 are received by the qualified person and introduced into the process
22 and ending at the point at which the manufacturing, processing,
23 refining, fabricating, or recycling has altered tangible personal
24 property to its completed form, including packaging, if required.

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

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

32 (4) Qualified tangible personal property purchased for use by
33 a contractor purchasing that property for use in the performance
34 of a construction contract for the qualified person, that will use
35 that property as an integral part of the manufacturing, processing,
36 refining, fabricating, or recycling process, or as a research or
37 storage facility for use in connection with those processes.

38 (b) For purposes of this section:

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

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

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

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

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

31 (6) (A) “Qualified person” means a person that is primarily
32 engaged in those lines of business described in Codes 3111 to
33 3399, inclusive, 541711, or 541712 of the North American Industry
34 Classification System (NAICS) published by the United States
35 Office of Management and Budget (OMB), 2012 edition.

36 (B) Notwithstanding subparagraph (A), “qualified person” shall
37 not include either of the following:

38 (i) An apportioning trade or business that is required to apportion
39 its business income pursuant to subdivision (b) of Section 25128.

- 1 (ii) A trade or business conducted wholly within this state that
2 would be required to apportion its business income pursuant to
3 subdivision (b) of Section 25128 if it were subject to apportionment
4 pursuant to Section 25101.
- 5 (7) (A) “Qualified tangible personal property” includes, but is
6 not limited to, all of the following:
 - 7 (i) Machinery and equipment, including component parts and
8 contrivances such as belts, shafts, moving parts, and operating
9 structures.
 - 10 (ii) Equipment or devices used or required to operate, control,
11 regulate, or maintain the machinery, including, but not limited to,
12 computers, data-processing equipment, and computer software,
13 together with all repair and replacement parts with a useful life of
14 one or more years therefor, whether purchased separately or in
15 conjunction with a complete machine and regardless of whether
16 the machine or component parts are assembled by the qualified
17 person or another party.
 - 18 (iii) Tangible personal property used in pollution control that
19 meets standards established by this state or any local or regional
20 governmental agency within this state.
 - 21 (iv) Special purpose buildings and foundations used as an
22 integral part of the manufacturing, processing, refining, fabricating,
23 or recycling process, or that constitute a research or storage facility
24 used during those processes. Buildings used solely for warehousing
25 purposes after completion of those processes are not included.
- 26 (B) “Qualified tangible personal property” shall not include any
27 of the following:
 - 28 (i) Consumables with a useful life of less than one year.
 - 29 (ii) Furniture, inventory, and equipment used in the extraction
30 process, or equipment used to store finished products that have
31 completed the manufacturing, processing, refining, fabricating, or
32 recycling process.
 - 33 (iii) Tangible personal property used primarily in administration,
34 general management, or marketing.
- 35 (8) “Refining” means the process of converting a natural
36 resource to an intermediate or finished product.
- 37 (9) “Research and development” means those activities that are
38 described in Section 174 of the Internal Revenue Code or in any
39 regulations thereunder.

1 (10) (A) “Reshoring” and “insourcing” means the relocation
2 of a whole process, a piece of a process, a function, or a discrete
3 piece of work, from currently outside the boundaries of the United
4 States, to inside the boundaries of the state of California, either
5 within or outside the boundaries of a company. This includes work
6 performed either as an affiliate or work outsourced to another
7 firm.

8 (B) The city or county where the tangible personal property will
9 be placed in service shall issue a written certification, in any
10 manner determined by the city or county, that the relocation meets
11 the definition of subparagraph (A).

12 ~~(10)~~

13 (11) “Useful life” for tangible personal property that is treated
14 as having a useful life of one or more years for state income or
15 franchise tax purposes shall be deemed to have a useful life of one
16 or more years for purposes of this section. “Useful life” for tangible
17 personal property that is treated as having a useful life of less than
18 one year for state income or franchise tax purposes shall be deemed
19 to have a useful life of less than one year for purposes of this
20 section.

21 (c) An exemption shall not be allowed under this section unless
22 the purchaser furnishes the retailer with an exemption certificate
23 and the county or city certificate issued pursuant to paragraph
24 (10) of subdivision (b), completed in accordance with any
25 instructions or regulations as the board may prescribe, and the
26 retailer retains the exemption certificate in its records and furnishes
27 it to the board upon request.

28 (d) (1) Notwithstanding the Bradley-Burns Uniform Local
29 Sales and Use Tax Law (Part 1.5 (commencing with Section 7200))
30 and the Transactions and Use Tax Law (Part 1.6 (commencing
31 with Section 7251)), the exemption established by this section
32 shall not apply with respect to any tax levied by a county, city, or
33 district pursuant to, or in accordance with, either of those laws.

34 (2) Notwithstanding subdivision (a), the exemption established
35 by this section shall not apply with respect to any tax levied
36 pursuant to Section 6051.2, 6051.5, 6201.2, or 6201.5, pursuant
37 to Section 35 of Article XIII of the California Constitution, or any
38 tax levied pursuant to Section 6051 or 6201 that is deposited in
39 the State Treasury to the credit of the Local Revenue Fund 2011
40 pursuant to Section 6051.15 or 6201.15.

1 (e) (1) The exemption provided by this section shall not apply
 2 to either of the following:

3 (A) (i) Any tangible personal property purchased (I) during
 4 any calendar year that exceeds two hundred million dollars
 5 (\$200,000,000) of purchases of qualified tangible personal property
 6 for which an exemption is claimed by a qualified person under
 7 this section, *and (II) during any calendar year on and after January*
 8 *1, 2016, exceeds three hundred million dollars (\$300,000,000) of*
 9 *purchases of qualified tangible personal property for which an*
 10 *exemption is claimed by a qualified person under this section, not*
 11 *including the amounts of those purchases subject to subclause (I),*
 12 *and that is used primarily for the purpose of reshoring or*
 13 *insourcing.*

14 (ii) For purposes of this subparagraph, in the case of a qualified
 15 person that is required to be included in a combined report under
 16 Section 25101 or authorized to be included in a combined report
 17 under Section 25101.15, the aggregate of all purchases of qualified
 18 personal property for which an exemption is claimed pursuant to
 19 this section by all persons that are required or authorized to be
 20 included in a combined report shall not exceed ~~two hundred million~~
 21 ~~dollars (\$200,000,000)~~ *the amounts get forth in clause (i) in any*
 22 *calendar year.*

23 (B) The sale or storage, use, or other consumption of property
 24 that, within one year from the date of purchase, is removed from
 25 California, converted from an exempt use under subdivision (a)
 26 to some other use not qualifying for exemption, or used in a manner
 27 not qualifying for exemption.

28 (2) If a purchaser certifies in writing to the seller that the tangible
 29 personal property purchased without payment of the tax will be
 30 used in a manner entitling the seller to regard the gross receipts
 31 from the sale as exempt from the sales tax, and the purchase
 32 exceeds the ~~two-hundred-million-dollar (\$200,000,000) limitation~~
 33 *limitations* described in subparagraph (A) of paragraph (1), or
 34 within one year from the date of purchase, the purchaser removes
 35 that property from California, converts that property for use in a
 36 manner not qualifying for the exemption, or uses that property in
 37 a manner not qualifying for the exemption, the purchaser shall be
 38 liable for payment of sales tax, with applicable interest, as if the
 39 purchaser were a retailer making a retail sale of the tangible
 40 personal property at the time the tangible personal property is so

1 purchased, removed, converted, or used, and the cost of the tangible
2 personal property to the purchaser shall be deemed the gross
3 receipts from that retail sale.

4 (f) This section shall apply to leases of qualified tangible
5 personal property classified as “continuing sales” and “continuing
6 purchases” in accordance with Sections 6006.1 and 6010.1. The
7 exemption established by this section shall apply to the rentals
8 payable pursuant to the lease, provided the lessee is a qualified
9 person and the tangible personal property is used in an activity
10 described in subdivision (a).

11 (g) (1) Upon the effective date of this section, the Department
12 of Finance shall estimate the total dollar amount of exemptions
13 that will be taken for each calendar year, or any portion thereof,
14 for which this section provides an exemption.

15 (2) No later than each March 1 next following a calendar year
16 for which this section provides an exemption, the board shall
17 provide to the Joint Legislative Budget Committee a report of the
18 total dollar amount of exemptions taken under this section for the
19 immediately preceding calendar year. The report shall compare
20 the total dollar amount of exemptions taken under this section for
21 that calendar year with the department’s estimate for that same
22 calendar year. If that total dollar amount taken is less than the
23 estimate for that calendar year, the report shall identify options for
24 increasing exemptions taken so as to meet estimated amounts.

25 (h) This section is repealed on January 1, ~~2023~~ 2025.

26 SECTION 1. ~~Section 6377.2 is added to the Revenue and~~
27 ~~Taxation Code, to read:~~

28 ~~6377.2. (a) On and after January 1, 2016, there are exempted~~
29 ~~from the taxes imposed by this part the gross receipts from the sale~~
30 ~~of, and the storage, use, or other consumption in this state of, any~~
31 ~~of the following:~~

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

1 ~~(2) Qualified tangible personal property purchased for reshoring~~
2 ~~by 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 for the reshoring of jobs~~
6 ~~by qualified businesses engaged in manufacturing, research and~~
7 ~~development, and construction described in paragraph (1) or (2).~~

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

15 ~~(b) For purposes of this section:~~

16 ~~(1) “Fabricating” means to make, build, create, produce, or~~
17 ~~assemble components or tangible personal property to work in a~~
18 ~~new or different manner.~~

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

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

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

1 or recycling activity is conducted, shall not be considered to have
2 been introduced into the manufacturing, processing, refining,
3 fabricating, or recycling process.

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

7 (6) “Reshoring” means ____.

8 (7) “Qualified business” means ____.

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

14 (9) (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 (B) “Qualified tangible personal property” shall not include any
36 of the following:

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

38 (ii) Furniture, inventory, and equipment used in the extraction
39 process, or equipment used to store finished products that have

1 completed the manufacturing, processing, refining, fabricating, or
 2 recycling process.

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

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

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

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

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

21 (d) Notwithstanding the Bradley-Burns Uniform Local Sales
 22 and Use Tax Law (Part 1.5 (commencing with Section 7200)) and
 23 the Transactions and Use Tax Law (Part 1.6 (commencing with
 24 Section 7251)), the exemption established by this section shall not
 25 apply with respect to any tax levied by a county, city, or district
 26 pursuant to, or in accordance with, either of those laws.

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

34 (2) If a purchaser certifies in writing to the seller that the tangible
 35 personal property purchased without payment of the tax will be
 36 used in a manner entitling the seller to regard the gross receipts
 37 from the sale as exempt from the sales tax, and within one year
 38 from the date of purchase, the purchaser removes that tangible
 39 personal property outside California, converts that tangible personal
 40 property for use in a manner not qualifying for the exemption, or

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

8 *SEC. 3. If the Commission on State Mandates determines that*
9 *this act contains costs mandated by the state, reimbursement to*
10 *local agencies and school districts for those costs shall be made*
11 *pursuant to Part 7 (commencing with Section 17500) of Division*
12 *4 of Title 2 of the Government Code.*

13 ~~SEC. 2.~~

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