

State Tax Day - Current, S.3, California—Sales and Use Tax: Exemption Enacted for Manufacturing and R&D Equipment, (Jul. 12, 2013)

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Gov. Jerry Brown has signed legislation as part of his Economic Development Initiative that, among other provisions regarding hiring credits and investment incentives, enacts a California sales and use tax exemption for purchases of manufacturing and research and development (R&D) equipment by biotechnology and manufacturing companies.

Exemption for Manufacturing and R&D Equipment

Operative July 1, 2014, and before July 1, 2022, a sales and use tax exemption is applicable to the gross receipts from the sale, storage, use, or other consumption in California of any of the following qualified tangible personal property purchased for use by:

- a qualified person to be used primarily (*i.e.*, 50% or more of the time) in any stage of the manufacturing, processing, refining, fabricating, or recycling of tangible personal property, beginning at the point any raw materials are received by the qualified person and introduced into the process and ending at the point at which the manufacturing, processing, refining, fabricating, or recycling has altered tangible personal property to its completed form, including packaging, if required;
- a qualified person to be used primarily in R&D;
- a qualified person to be used primarily to maintain, repair, measure, or test any qualified tangible personal property described above; and
- a contractor purchasing that property for use in the performance of a construction contract for the qualified person that will use that property as an integral part of the manufacturing, processing, refining, fabricating, or recycling process, or as a research or storage facility for use in connection with those processes.

Qualified Person

"Qualified person" is defined as a person that is primarily engaged in those lines of business described in Codes 3111 to 3399, inclusive, 541711, or 541712 of the North American Industry Classification System (NAICS) published by the United States Office of Management and Budget (OMB), 2012 edition. Examples of types of manufacturing companies represented by the applicable NAICS codes include R&D in biotechnology, physical engineering, and life sciences.

Qualified Tangible Personal Property

"Qualified tangible personal property" includes:

- machinery and equipment, including component parts and contrivances such as belts, shafts, moving parts, and operating structures;
- equipment or devices used or required to operate, control, regulate, or maintain the machinery, including but not limited to computers, data-processing equipment, and computer software, together with all repair and replacement parts with a useful life of one or more years, whether purchased separately or in conjunction with a complete machine and regardless of whether the machine or component parts are assembled by the qualified person or another party;

- tangible personal property used in pollution control that meets standards established by the state or any local or regional governmental agency within the state; and
- special purpose buildings and foundations used as an integral part of the manufacturing, processing, refining, fabricating, or recycling process, or that constitute a research or storage facility used during those processes (buildings used solely for warehousing purposes after completion of those processes are not included).

The following are not included within the definition of "qualified tangible personal property" for purposes of the exemption:

- consumables with a useful life of less than one year;
- furniture, inventory, and equipment used in the extraction process, or equipment used to store finished products that have completed the manufacturing, processing, refining, fabricating, or recycling process; and
- tangible personal property used primarily in administration, general management, or marketing.

Limitations

The exemption is not allowed unless the purchaser furnishes the retailer with an exemption certificate and the retailer retains the exemption certificate in its records and furnishes it to the California State Board of Equalization upon request.

The exemption is inapplicable to either of the following:

- any tangible personal property purchased during any calendar year that exceeds \$200 million of purchases of qualified tangible personal property for which this exemption is claimed by a qualified person; or
- the sale or storage, use, or other consumption of property that, within one year from the date of purchase, is removed from California, converted from an exempt use, as provided, to some other use not qualifying for exemption, or used in a manner not qualifying for exemption.

Claw-Back Provision

If a purchaser certifies in writing to the seller that the tangible personal property purchased without payment of the tax will be used in a manner entitling the seller to regard the gross receipts from the sale as exempt from the sales tax, and the purchase exceeds the \$200 million limitation, or within one year from the date of purchase, the purchaser removes that property from California, converts that property for use in a manner not qualifying for the exemption, or uses that property in a manner not qualifying for the exemption, the purchaser will be liable for payment of sales tax with applicable interest, as if the purchaser were a retailer making a retail sale of the property at the time the property is so purchased, removed, converted, or used, and the cost of the property to the purchaser will be deemed the gross receipts from that retail sale.

Local Taxes and Certain State Taxes

The exemption is inapplicable to local sales and use taxes imposed under the Bradley-Burns Uniform Local Sales and Use Tax Law, transactions and use taxes imposed under the Transactions and Use Tax Law, and certain state taxes, as specified, from which revenues are deposited into certain funds including the Local Public Safety Fund, the Local Revenue Fund, and the Local Revenue Fund 2011.

Sunset

The exemption is repealed effective January 1, 2023.

Provisions of this legislation regarding corporate income and personal income taxes are reported separately.
([TAXDAY 2013/07/12, S.6](#))

[S.B. 90](#) and [A.B. 93](#), Laws 2013, both effective July 11, 2013