

## Clarify California Department of Tax and Fee Administration Reporting Requirement

Section 1: Section 6377.1 of the Revenue and Taxation Code is amended to read:

### **6377.1.**

(a) Except as provided in subdivision (e), on or after July 1, 2014, and before July 1, 2030, there are exempted from the taxes imposed by this part the gross receipts from the sale of, and the storage, use, or other consumption in this state of, any of the following:

(1) Qualified tangible personal property purchased for use by a qualified person to be used primarily 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.

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

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

(4) Qualified tangible personal property purchased for use by 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, the generation or production, or storage and distribution, of electric power, or as a research or storage facility for use in connection with those processes.

(5) Qualified tangible personal property purchased for use by a qualified person to be used primarily in the generation or production, or storage and distribution, of electric power.

(b) For purposes of this section:

(1) "Department" means the California Department of Tax and Fee Administration.

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

(3) "Generation or production" means the activity of making, producing, creating, or converting electric power from sources other than a conventional power source, as defined in Section 2805 of the Public Utilities Code.

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

(5) "Primarily" means 50 percent or more of the time.

(6) "Process" means the period beginning at the point at which any raw materials are received by the qualified person and introduced into the manufacturing, processing, refining, fabricating, or recycling activity of the qualified person and ending at the point at which the manufacturing, processing, refining, fabricating, or recycling activity of the qualified person has altered tangible personal property to its completed form, including packaging, if required. Raw materials shall be considered to have been introduced into the process when the raw materials are stored on the same premises where the qualified person's manufacturing, processing, refining, fabricating, or recycling activity is conducted. Raw materials that are stored on premises other than where the qualified person's manufacturing, processing, refining, fabricating, or recycling activity is conducted shall not be considered to have been introduced into the manufacturing, processing, refining, fabricating, or recycling process.

(7) "Processing" means the physical application of the materials and labor necessary to modify or change the characteristics of tangible personal property.

(8) (A) "Qualified person" means:

(i) Prior to January 1, 2018, 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.

(ii) On and after January 1, 2018, and before July 1, 2030, a person that is primarily engaged in those lines of business described in Codes 3111 to 3399, inclusive, 221111 to 221118, inclusive, 221122, 541711, or 541712 of the North American Industry Classification System (NAICS) published by the United States Office of Management and Budget (OMB), 2012 edition.

(B) Notwithstanding subparagraph (A), "qualified person" shall not include either of the following:

(i) Prior to January 1, 2018, an apportioning trade or business that is required to apportion its business income pursuant to subdivision (b) of Section 25128 or a trade or business conducted wholly within this state that would be required to apportion its business income pursuant to subdivision (b) of Section 25128 if it were subject to apportionment pursuant to Section 25101.

(ii) On and after January 1, 2018, and before July 1, 2030, an apportioning trade or business, other than a trade or business described in paragraph (1) of subdivision (c) of Section 25128, that is required to apportion its business income pursuant to subdivision (b) of Section 25128, or a trade or business, other than a trade or business described in paragraph (1) of subdivision (c) of Section 25128, conducted wholly within this state that would be required to apportion its business income pursuant to subdivision (b) of Section 25128 if it were subject to apportionment pursuant to Section 25101.

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

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

(ii) 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 therefor, 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.

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

(iv) (I) Prior to January 1, 2018, 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.

(II) On and after January 1, 2018, and before July 1, 2030, 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, or the generation or production or storage and distribution of electric power. Buildings used solely for warehousing purposes after completion of those processes are not included.

(B) "Qualified tangible personal property" shall not include any of the following:

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

(ii) 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.

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

(10) "Refining" means the process of converting a natural resource to an intermediate or finished product.

(11) "Research and development" means those activities that are described in Section 174 of the Internal Revenue Code or in any regulations thereunder.

(12) "Storage and distribution" means storing or distributing through the electric grid, but not transmission of, electric power to consumers regardless of source.

(13) (A) "Useful life" for tangible personal property that is treated as having a useful life of one or more years for state income or franchise tax purposes shall be deemed to have a useful life of one or more years for purposes of this section. "Useful life" for tangible personal property that is treated as having a useful life of less than one year for state income or franchise tax purposes shall be deemed to have a useful life of less than one year for purposes of this section. For the purposes of this paragraph, tangible personal property that is deducted under Sections 17201 and 17255 or Section 24356 shall be deemed to have a useful life of one or more years.

(B) The department shall cancel any outstanding and unpaid deficiency determination and any related penalties and interest and shall not issue any deficiency determination or notice of determination, with respect to unpaid sales and use tax on qualified property with a useful life, as defined in subparagraph (A), that was purchased or leased on or after July 1, 2014, and before January 1, 2018. Any amounts paid by a qualified person pursuant to such determination shall be refunded by the department to the qualified person. Any cancellation or refund described in this subparagraph is contingent upon a qualified person making a request to the department, in a manner prescribed by the department, by June 30, 2018.

(c) An exemption shall not be allowed under this section unless the purchaser furnishes the retailer with an exemption certificate, completed in accordance with any instructions or regulations as the department may prescribe, and the retailer retains the exemption certificate in its records and furnishes it to the department upon request.

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

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

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

(A) Any tangible personal property purchased during any calendar year that exceeds two hundred million dollars (\$200,000,000) of purchases of qualified tangible personal property for which an exemption is claimed by a qualified person under this section. For purposes of this subparagraph, in the case of a qualified person that is required to be included in a combined report under Section 25101 or authorized to be included in a combined report under Section 25101.15, the aggregate of all purchases of qualified personal property for which an exemption is claimed pursuant to this section by all persons that are required or authorized to be included in a combined report shall not exceed two hundred million dollars (\$200,000,000) in any calendar year.

(B) 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 under subdivision (a) to some other use not qualifying for exemption, or used in a manner not qualifying for exemption.

(2) 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 two-hundred-million-dollar (\$200,000,000) limitation described in subparagraph (A) of paragraph (1), 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 shall be liable for payment of sales tax, with applicable interest, as if the purchaser were a retailer making a retail sale of the tangible personal property at the time the tangible personal property is

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

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

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

(2) (A) No later than each May 1 next following a calendar year for which this section provides an exemption, the department shall provide to the Joint Legislative Budget Committee and to the Department of Finance a report of the total dollar amount of exemptions taken under this section for the immediately preceding calendar year. The report shall compare the total dollar amount of exemptions taken under this section for that calendar year with the Department of Finance’s department’s estimate in paragraph (1) for that same calendar year. ~~If that total dollar amount taken is less than the estimate for that calendar year, the report shall identify options for increasing exemptions taken so as to meet estimated amounts.~~

(B) (i) No later than each May 1 next following calendar years 2018 to 2030, inclusive, the department shall provide to the Joint Legislative Budget Committee and to the Department of Finance a report of the revenue value of the total dollar amount of exemptions taken pursuant to subdivision (a) for sales to, or purchases by, qualified persons described in clause (ii) for the immediately preceding calendar year.

(ii) The report required under this subparagraph shall only include the revenue value of the total dollar amount of exemptions allowed to the following:

(I) A qualified person that is primarily engaged in those lines of business described in Codes 221111 to 221118, inclusive, and 221122 of the North American Industry Classification System (NAICS) published by the United States Office of Management and Budget (OMB), 2012 edition.

(II) A qualified person that is both of the following:

(ia) A person that is primarily engaged in those lines of business described in Codes 3111 to 3399, inclusive, 541711, and 541712 of the North American Industry Classification System (NAICS) published by the United States Office of Management and Budget (OMB), 2012 edition.

(ib) A person that is an apportioning trade or business as described in paragraph (1) of subdivision (c) of Section 25128, that is required to apportion its business income pursuant to subdivision (b) of Section 25128, or a trade or business as described in paragraph (1) of subdivision (c) of Section 25128, conducted wholly within this state that would be required to apportion its business income pursuant to subdivision (b) of Section 25128 if it were subject to apportionment pursuant to Section 25101.

(C) No later than each May 1 next following calendar years 2022 through 2030, inclusive, the department shall provide to the Joint Legislative Budget Committee and to the Department of Finance a report of the revenue value of the total dollar amount of exemptions taken under this section for the immediately preceding calendar year, and for calendar year 2022, the period shall cover July 1 to December 31, 2022.

(3) (A) An amount that equals the revenue value of the total dollar amount of exemptions, as reported by the department pursuant to subparagraph (B) of paragraph (2), with the concurrence of the Department of Finance, shall be transferred from the Greenhouse Gas Reduction Fund to the General Fund, no later than each June 30 next following the calendar year described in subparagraph (B) of paragraph (2). Any amount attributable to any cancellations the department made of any outstanding and unpaid deficiency determinations and any refunds under subparagraph (B) of paragraph (13) of subdivision (b) shall be excluded from the transfer of the amount described in subparagraph (B). The transfers to the General Fund shall be accrued to the fiscal year in which the revenue loss occurred.

(B) (i) For calendar years 2022 through 2030, inclusive, an amount not to exceed the difference between the revenue value of the total dollar amount of exemptions as reported by the department pursuant to subparagraph (C) of paragraph (2), and the revenue value of the total dollar amount of exemptions as reported by the department pursuant to subparagraph (B) of paragraph (2), may be transferred from the

Greenhouse Gas Reduction Fund to the General Fund, no later than each July 31 following that calendar year described in subparagraph (C) of paragraph (2). The transfers to the General Fund shall be accrued proportionally to the fiscal year in which the revenue loss occurred.

(ii) The amount transferred under this subparagraph for each fiscal year shall be as determined by the Director of Finance, unless a different amount is otherwise specified in the Budget Act for that fiscal year.

(4) For purposes of this subdivision, the "revenue value" of an amount of exemptions shall mean the estimated revenue loss to the General Fund from the allowance of those exemptions.

(h) This section is repealed on January 1, 2031.