

[Assembly Bill 2334](#) (Mullin and Ting)

Date: 05/27/16

Program: Sales and Use Tax

Sponsor: Authors

Revenue and Taxation Code Section 6010.8 and Public Resources Code Section 26011.8

Effective: Upon enactment

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This analysis is limited to the bill's effect on the BOE-related tax programs

Summary: Expands the California Alternative Energy and Advanced Transportation Financing Authority's (CAEATFAs) sales and use tax exclusion to any contractor for the use in the performance of a construction contract for the participating party that will use that property as an integral part of the approved project. Also, allows the rollover to the next calendar year amounts not granted or granted but unused from the previous calendar year.

Summary of Amendments: The amendments since the previous analysis delete the previously proposed additional exclusion of \$475 million in 2017 and to \$250 million each year thereafter.

Purpose: To incentivize California based jobs and manufacturing, while promoting green technology and reducing pollution and energy consumption.

Fiscal Impact Summary: No impact.

Existing Law: California's Sales and Use Tax Law¹ imposes the sales tax on all retailers for the privilege of selling tangible personal property at retail in this state or the use tax on the storage, use, or other consumption in this state of tangible personal property purchased from a retailer, unless the law provides a specific exemption or exclusion from the sales or use tax.

Existing law² provides a sales and use tax exclusion³ for tangible personal property purchased for certain approved manufacturing projects. In 2010, legislation⁴ authorized the CAEATFA until January 1, 2021, to approve sales and use tax exclusions for tangible personal property utilized for the design, manufacture, production, or assembly of advanced transportation technologies or alternative energy source products, components or systems. In 2012, legislation was enacted⁵ to authorize CAEATFA until July 1, 2016, to approve sales and use tax exclusions related to advanced manufacturing projects. The law⁶ provides a \$100 million cap on sales and use tax loss for these exclusions.

In 2015, legislation⁷ amended the term "project" for purposes of CAEATFA's authority to approve sales and use tax exclusions for tangible personal property if at least 50% of its use is either to process recycled feedstock that is intended to be reused to produce another product or to use recycled feedstock to produce another product or soil amendment. The law specifically excludes from the term "project" tangible personal property that processes or uses recycled feedstock in a manner that constitutes disposal, as defined.

CAEATFA's approval of these exclusions is based on whether the project results in a net fiscal or environmental benefit to the State.

¹ Part 1 of Division 2 of the Revenue and Taxation Code (RTC) (commencing with Section 6001).

² RTC Section 6010.8.

³ An "exclusion" means the transfer of the property is neither a "sale" nor a "purchase" and is therefore excluded from the application of the sales and use tax. An "exemption" involves a retail sale that, absent an exemption in law, would otherwise be subject to the tax.

⁴ SB 71 (Ch. 10, Stats. 2010, effective March 24, 2010).

⁵ SB 1128 (Ch. 677, Stats. 2011, effective January 1, 2013).

⁶ Public Resources Code Section 26011.8.

⁷ AB 199 (Ch. 768, Stats. 2015, effective October 11, 2015).

This staff analysis is provided to address various administrative, cost, revenue and policy issues; it is not to be construed to reflect or suggest the BOE's formal position.

Construction contractors. Under the Sales and Use Tax Law, specific rules apply to the furnishing and installing of tangible personal property pursuant to a construction contract. Contracts for improvements to real property constitute construction contracts, and the person who performs the construction contract is a construction contractor. Generally, a construction contractor is the consumer of materials, such as electrical wiring, concrete, and other items, furnished and installed in the performance of a construction contract. Therefore, tax generally applies to the sale of materials to the construction contractor. In contrast, a construction contractor generally is regarded as the retailer of fixtures, which are accessories to a structure that do not lose their identity when installed. Sales tax applies to the contractor's sale of the fixture.

Proposed Law: This bill allows granted but unused and ungranted amounts of the CAEATFA tax exclusion from the previous calendar year, to be transferred to the subsequent calendar year.

This bill also expands the sales and use tax exclusion for approved manufacturing projects to any construction contractor for use in the performance of a construction contract with the participating party who will use that property as an integral part of the approved project.

As a tax levy, the provisions are effective upon enactment.

Background: All applicants that apply for the sales and use tax exclusion are subject to an application and evaluation process. CAEATFA evaluates all applicants to determine whether the benefits received by the state will outweigh forgone revenue, and can only allocate exemptions to projects that produce net fiscal and environmental benefits for the state.

Commentary:

1. **This bill would expand CAEATFA's current program.** This measure would expand CAEATFA's authority to allow sales and use tax exclusions to include tangible personal property leased or purchased for a construction contract by a contractor on an approved project when the property will be an integral part of the project.
2. **The May 27, 2016 amendments** delete the proposed additional \$475 million exclusion for 2017, and subsequent \$250 million exclusion for 2018 through 2020. The amendments also include technical corrections. The **May 16, 2016 amendments** made non-substantive changes and add another coauthor.
3. **Extending the exclusion to include specified construction contracts simplifies the process.** Existing law limits the exclusion to the sale of tangible personal property to the participating party. Construction contractors do not receive the exclusion for materials they consume or fixtures they sell to another construction contractor. To ensure the exclusion applies, every project must be structured to separately state the furnishing and installation charges, and all property must be sold directly to the participating party prior to installation. This bill's proposed change would simplify that process by extending the sales and use tax exclusion to any retail sale related to the construction contract irrespective of the contract's structure.
4. **Construction contractors would need to provide an exemption certificate to retailers.** Currently, the BOE provides an [exemption certificate](#) for an approved applicant. Construction contractors would need to provide the CAEATFA application number, along with the approved recipient's contact information and to supply the certificate to the vendor to receive the sales and use tax exclusion.
5. **The sales and use tax exclusion would be administered primarily by CAEATFA.** As a result, the BOE's administrative duties would be minimal.
6. **Related legislation.** [Assembly Bill 1683](#) (Eggman) allows the unallocated portion of the current \$100 million cap in one calendar year to be added to the following calendar year's cap. The bill was held in the Assembly Appropriations Committee.

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Costs: The BOE would incur some absorbable costs to notify taxpayers, change the BOE's website and publications, and answer inquiries.

Revenue Impact: It is unknown how much, if any of the not granted or granted but unused \$100 million each year would be rolled over to the next calendar year. Between November 2010 and January 1, 2016, CAEATFA has approved tax exclusions of about \$455 million, but only \$92 million in tax has actually been claimed.⁸

⁸ California State Treasurer. (2016, January 1). Retrieved March 8, 2016, from <http://www.treasurer.ca.gov/caeatfa/ste/applicants/considered.pdf>

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