STATE BOARD OF EQUALIZATION
STAFF LEGISLATIVE BILL ANALYSIS

DRAFT

Date Introduced:	**02/25/09**	Bill No:	**AB 546**
Tax:	**Sales and Use**	Author:	**Knight**
Related Bills:			

BILL SUMMARY

This bill would provide a state sales and use tax exemption (6%) for purchases of tangible personal property purchased for use primarily in any stage of the manufacturing of solar photovoltaic panels, as specified.

ANALYSIS

CURRENT LAW

Under current law, entities engaged in activities such as manufacturing that purchase equipment and other supplies for use in the conduct of their activities are required to pay tax on their purchases to the same extent as any other person either engaged in business in California or not so engaged. Current law does not provide special tax treatment for purchases of equipment used by entities engaged in manufacturing activities, including those engaged in the production of photovoltaic panels.

The statewide sales and use tax rate (8.25%) imposed on taxable sales and purchases of tangible personal property is made up of the following components (additional district taxes are levied among various local jurisdictions and are not reflected in this chart):

Rate	Jurisdiction	R & T Code
4.75% 0.25% 1.00% 6.00%	State (General Fund)	6051, 6201, 6051.3, 6201.3 6051.7, 6201.7
0.25%	State (Fiscal Recovery Fund)	6051.5, 6201.5
0.50%	Local Revenue Fund	6051.2, 6201.2
0.50%	Local Public Safety Fund	§35 Art XIII St. Constitution
1.00%	Local (0.25% County transportation funds 0.75% City and county operations)	7203.1

PROPOSED LAW

This bill would add Revenue and Taxation Code Section 6377 to the Sales and Use Tax Law to provide a partial exemption (6%) from the statewide sales and use tax rate for purchases of machinery, equipment, and component parts and contrivances for use primarily in any stage of the manufacturing of solar photovoltaic panels.

The bill would define “manufacturing” and “tangible personal property.”

As a tax levy, the bill would become effective immediately, but would become operative on the first day of the calendar quarter commencing more than 90 days after the bill’s effective date.

COMMENTS

1. **Sponsor and purpose.** The author is sponsoring this measure. Its purpose is to give businesses the needed incentives and breaks to continue working towards a "greener" California in addition to providing jobs and stimulating the economy.

2. **Partial exemptions complicate administration.** Currently, most sales and use tax exemptions are applied to the total applicable sales and use tax. However, there are currently a few partial exemptions in California law, where only the state tax portion (6.25%) of the state and local sales and use tax rate is exempted, such as sales and purchases of teleproduction equipment and farm equipment. These partial exemptions are difficult for both retailers and the Board. They complicate return preparation and return processing. And, errors on returns attributable to these partial exemptions occur frequently, which result in additional return processing workload for the Board.

   This measure proposes a 6% exemption, which would add a new exemption category (since current law does not have any partial 6% exemptions). This would require a revision to the sales and use tax return and result in a new, separate computation on the return. Some retailers would have to segregate in their records sales subject to this 6% partial exemption, sales with a complete exemption (such as a sale for resale or a sale in interstate commerce), and sales that are fully taxable. This proposed 6% exemption would add a new level of complexity, which would create a corresponding increase in errors in reporting the tax to the Board. This increase in errors would further complicate the Board’s administration of the sales and use tax law and complicate reporting obligations of retailers.

3. **Machinery and equipment should be clearly defined.** In order to avoid any uncertainty in determining the scope of the proposed exemption, it is recommended that the bill incorporate a definition of the machinery and equipment intended to be included. For example, would only those items for which a deduction for depreciation is allowed qualify? Would such items as supplies, hand tools, or data processing equipment qualify? Would component parts of a prototype qualify?

   Also, perhaps the bill should address situations where the qualifying machinery and equipment is purchased for use in the manufacture of solar panels, but is actually used to manufacture other property. Should the purchase of that property continue to qualify for the proposed partial exemption?

4. **Technical issues.** “Primarily,” as used on page 2, line 6, should be defined.

COST ESTIMATE

The Board would incur costs to administer this measure. These costs would be attributable to, among other things, identifying and notifying qualifying entities, auditing claimed amounts, revising sales tax returns, reviewing returns with claimed exemptions, and programming. An estimate of these costs is pending.

REVENUE ESTIMATE

BACKGROUND, METHODOLOGY, AND ASSUMPTIONS

Since 1998, rebates for solar energy systems, most of which were photovoltaic panel systems, have been administered by the California Energy Commission (CEC) under the Emerging Renewables Program. Assembly Bill 1890 (Brulte, Ch. 854, Stats. 1996) and Senate Bill 90 (Sher, Ch. 905, Stats. 1997) created the CEC Renewable Energy Program and authorized the CEC to administer funds collected from the state's three major investor-owned utilities to support renewable energy technologies. This legislation established a new statewide renewables program by providing $540 million collected from Pacific Gas and Electric Company, Southern California Edison, and San Diego Gas and Electric to support existing, new and emerging renewable technologies from 1998 to 2001.

Senate Bill 1038 (Sher, Ch. 515, Stats. 2002) reauthorized the CEC's Emerging Renewables Program through 2006, to support renewable energy by offering cash rebates on eligible renewable energy systems, such as small wind turbines, fuel cells, solar photovoltaics, and other solar power generating equipment.

In 2006, the California Public Utilities Commission (CPUC) collaborated with the CEC to develop the framework of the California Solar Initiative Program. In August 2006, Governor Schwarzenegger signed Senate Bill 1 (Murray, Ch. 132, Stats. 2006), which established the California Solar Initiative program in statute and provided a $3.35 billion rebate program for the installation of solar photovoltaic projects.

On January 1, 2007, the CEC's Emerging Renewables Program formally changed. Incentives for solar were split between the CEC and the CPUC. The CPUC administers incentives for existing residential homes and businesses under the California Solar Initiative Program. The CEC administers incentives for new residential homes under the New Solar Homes Program. The CEC also continues to administer incentives for wind and fuel cell systems.

The California Solar Initiative Program is administered by the CPUC through California's three major investor-owned utilities—Pacific Gas and Electric, Southern California Edison, and San Diego Gas and Electric. All electric customers of these three utilities are eligible to apply for cash rebates for solar for existing homes, as well as existing and new commercial, industrial, government, non-profit, and agricultural facilities—within the service territories of the three investor-owned utilities

We do not have specific data on the amount of manufacturing expenditures in California used primarily in the manufacturing of solar voltaic panels. However, using information from the *Annual Survey of Manufacturers 2006,* from the US Census Bureau for California adjusted for inflation and information on US capital expenditures on power generation, transmission and distribution, we estimate that at least $120 million tangible personal property is purchased for use primarily in the manufacturing of photovoltaic panels.

REVENUE SUMMARY

The annual revenue loss from exempting $120 million in tangible personal property purchased for use primarily in the manufacturing of solar photovoltaic panels from the state sales and use tax at the rate of 6% amounts to $7.2 million ($120 million x 6%).

Analysis prepared by:	Sheila T. Waters	(916) 445-6579	05/01/09
Revenue estimate by:	Bill Benson	(916) 445-0840	
Contact:	Margaret S. Shedd	(916) 322-2376	

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