

New California Sales and Use Tax Exclusion for “Advanced Manufacturing”

January 30, 2013

Overview

California recently adopted legislation¹ expanding the authority of the California Alternative Energy and Advanced Transportation Financing Authority (“CAEATFA”) to grant a sales and use tax exclusion for the acquisition of machinery and equipment used in an “advanced manufacturing” project. The exclusion applies to tangible personal property placed in service in California and used in certain advanced manufacturing processes or systems.² Qualification for the exclusion is discretionary and prospective and will be based on an application that must be submitted to CAEATFA.³ Importantly, the new law limits the total amount of sales tax exclusions that may be awarded in the aggregate for advanced manufacturing, advanced transportation and alternative source projects to \$100 million per calendar year⁴ and appears to eliminate the title conveyance/reconveyance requirement set forth in California Revenue and Taxation Code (“R&TC”) Section 6010.8.⁵

In this Tax Alert we summarize the requirements of this new “advanced manufacturing” exclusion.

Advanced Manufacturing

Advanced manufacturing means:

“Manufacturing processes that improve existing, or create entirely new, materials, products, and processes through the use of science, engineering, or information technologies, high-precision tools and methods, a high-performance work force, and innovative business or organizational models utilizing any of the following technology areas:

- Micro-and nanoelectronics, including semiconductors,
- Advanced materials,
- Integrated computational materials engineering,
- Nanotechnology,
- Additive manufacturing, or
- Industrial biotechnology.”⁶

In addition, “advanced manufacturing” includes two catch-all categories:

- “Systems that result from substantive advancement, whether incremental or breakthrough, beyond the current industry standard, in the production of materials and products...[,] often referred to as ‘smart’ or ‘intelligent’ manufacturing systems”
- “Sustainable manufacturing systems and manufacturing technologies that minimize the use of resources while maintaining or improving cost and performance.”⁷

¹ Stats 2012 ch 677 §5, (Senate Bill (“S.B.”) 1128), effective January 1, 2013, inoperative July 1, 2016, repealed January 1, 2017.

² Section 26003(a)(1)(B)(i) of the Public Resources Code as amended by S.B. 1128.

³ CAEATFA currently administers the “green manufacturing” sales tax exclusion applicable to machinery and equipment used in the design, manufacture, production, or assembly of advanced transportation and alternative source products, components and systems. See, Section 26011.8 of the Public Resources Code, added by Stats 2010 ch 10 (Senate Bill 71).

⁴ S.B. 1128 §§5 and 6.

⁵ Previously, as applied to the “green manufacturing” exclusion (see fn 3 above), only transfers of property by a participating party to and from CAEATFA were excluded in the R&TC’s definition of sale or purchase. S.B. 1128 §35 appears to eliminate this conveyance/reconveyance requirement as applied to both the green manufacturing exclusion and the new advanced manufacturing exclusion.

⁶ Section 26003(a)(1)(A) of the Public Resources Code as amended by S.B. 1128 §5.

⁷ S.B. 1128 §5.

Practical Considerations

California manufacturers should be aware that CAEATFA will now have the statutory authority to grant sales tax exclusions for advanced manufacturing projects. However, the agency has not yet begun drafting the specific criteria and guidelines that its staff will use to evaluate and score projects. CAEATFA recently named a new executive director and we understand that the agency will be announcing a schedule for interested party meetings (for the purpose of soliciting industry input on the key definitions and rules), potentially followed by a formal regulation process. At this point, there remain many open questions about the advanced manufacturing program, including defining the various terms in the statute (e.g., the determination of what will be considered a “substantive advancement” or a “sustainable manufacturing system”) and how the \$100 million annual allotment will be allocated (i.e., first come/first served, capitated, based on merit, or spread some other way). Although the legislation became effective beginning January 1, 2013, it is unlikely that CAEATFA will begin accepting applications for advanced manufacturing projects until its interested party or formal rulemaking process has concluded. In the meantime, manufacturers planning capital projects in California that could potentially qualify under the statute should monitor and consider participating in the upcoming rulemaking and regulation process.

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