



## Bill Analysis

Author: Grayson

Sponsor:

Bill Number: AB 52

Related Bills: See Legislative History  
Amended: March 16, 2023

### SUBJECT

Credit for Portion of Sales Tax Reimbursement or Use Tax Paid for Qualified Tangible Personal Property

### SUMMARY

This bill would, under the Personal Income Tax Law (PITL) and the Corporation Tax Law (CTL), allow certain taxpayers an income tax credit for the non-exempt portion of sales and use taxes paid during the year on the sale of, or the storage, use, or other consumption in this state of certain qualified tangible personal property (TPP) used primarily for manufacturing, research and development, or production; the TPP used to maintain this TPP, and TPP used in the generation or production, or storage and distribution, of electric power.

### RECOMMENDATION

No position.

### SUMMARY OF AMENDMENTS

The March 16, 2023, amendments removed intent language relating to the Sales and Use Tax Law and replaced it with the provisions discussed in this analysis.

This is the Franchise Tax Board's (FTB) first analysis of the bill.

### REASON FOR THE BILL

The reason for the bill is to incentivize growth in the manufacturing industry in California.

### ANALYSIS

For taxable years beginning on or after January 1, 2024, and before January 1, 2029, this bill would, under the PITL and the CTL, allow a taxpayer an income tax credit in an amount equal to sales tax reimbursement and use taxes paid on certain gross receipts during the taxable year for the following sales and use taxes that are not exempt

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under Revenue and Taxation Code (RTC) section 6377.1, subdivision (d), the sales and use taxes levied by a county, city, or district under either the:

- Bradley-Burns Uniform Local Sales and Use Tax Law.
- Transactions and Use Tax Law.
- Sales and use taxes that are credited to the Local Revenue Fund, the Local Revenue Fund 2011, or the Local Public Safety Fund.

The credit would be applicable only for the sales tax reimbursement and the use taxes paid on gross receipts for qualified TPP used for specified purposes, that among other purposes, includes manufacturing, research and development, production, maintenance of this TPP, and TPP used in the generation or production, or storage and distribution, of electric power.

This bill would, by reference to Section 6377.1, incorporate that section's definitions.

In addition, the bill provides that a deduction for an amount upon which the credit is based would be reduced by the amount of the credit.

Any unused credit could be carried over for up to 9 years, until exhausted.

The FTB would be allowed to adopt necessary or appropriate regulations to implement this bill.

The bill includes, for purposes of complying with Section 41, the Legislature's findings and declarations that:

- The goal, purpose and objective of this credit is to encourage new and continued investment in California in the areas of manufacturing and research and development.
- Detailed performance indicators for Legislature to use in determining whether the credit meets that goal, purpose and objective are as follows:
  - The total dollar amount of tax credits allowed.
  - The number of taxpayers that are allowed a credit.
- This bill would require the Legislative Analyst's Office (LAO) to review the effectiveness of the credit and post the review on its internet website on or before January 1, 2027, including an analysis of the demand for the credit and the economic impact of the credit.

Because this bill does not specify otherwise, this credit would not reduce regular tax below tentative minimum tax.

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This credit would be in effect only until December 1, 2028, and as of that date would be repealed.

#### *Effective/Operative Date*

As a tax levy, this bill would be effective immediately upon enactment and specifically operative for taxable years beginning on or after January 1, 2024, and before January 1, 2029.

#### *Federal/State Law*

##### *Federal Law*

No comparable provision in federal law.

##### *State Law*

Under RTC section 6377.1, a partial sales and use tax exemption is allowed for qualified TPP used for manufacturing, production, and research and development.

Under RTC section 6377.1, a partial exemption is allowed from sales and use tax on the purchase or lease of qualified TPP used primarily in one of the following activities:

- Any stage of the manufacturing, processing, refining, fabricating, or recycling process.
- Research and development.
- To maintain, repair, measure, or test any qualified TPP.
- The generation or production, storage or distribution of electric power.
- For use by a contractor purchasing that property for use in the performance of a construction contract for a qualified person, provided that the qualified person will use the resulting improvement to real property as an integral part of the manufacturing, processing, refining, fabricating, or recycling process, the generation or production, storage or distribution, of electric power, or as a research or storage facility for use in connection with those processes.

The exemption is limited to \$200 million in qualified TPP purchases annually.

However, the partial exemption does not currently apply with respect to the following sales and use taxes levied by a county, city, or district under the:

- Bradley-Burns Uniform Local Sales and Use Tax Law.
- Transactions and Use Tax Law.
- Sales and use taxes that are credited to the Local Revenue Fund, the Local Revenue Fund 2011, or the Local Public Safety Fund.

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### *Implementation Considerations*

The FTB has identified the following implementation considerations and is available to work with the author's office to resolve these and other considerations that may be identified.

This bill requires the LAO to review the effectiveness of the credit allowed by this bill. However, the bill does not provide a data sharing provision to allow the FTB to share information with the LAO. The author may wish to amend the bill.

This bill would allow the FTB to adopt necessary or appropriate regulations to implement this bill. However, the bill does not provide an exemption from the rulemaking procedures required under the Administrative Procedure Act (Government Code section 11340 et seq.)

The FTB does not have the expertise to determine if a taxpayer is a qualified person under RTC section 6377.1, subdivision (d). Typically, credits involving areas for which the department does not have the expertise are certified by another agency or agencies that possess the relevant expertise. It is recommended that this bill be amended to provide that the credit would be certified by the California Department of Tax and Fee Administration (CDTFA) as the CDTFA administers the Sales and Use Tax Law. The certification language should specify the responsibilities of both the certifying agency and the taxpayer. In addition, it is recommended that a data sharing provision be added to allow the CDTFA and the FTB to share credit certification data to verify the taxpayer's eligibility for this credit.

### *Technical Considerations*

For consistency in terminology, in SEC.2., Section 17053.90(a)(2) and SEC.3., Section 23623(a)(2), the phrase "the amount of use tax paid for storage, use, or other consumption" should be replaced with "the amount of use tax paid during the taxable year for storage, use, or other consumption."

In Sections 17053.90(f) and 23623(f), the repeal date should be extended to December 1, 2029, to incorporate the full operative period for accrual method taxpayers as well as cash method taxpayers.

In Section 23623(c), strike out "net tax," and insert "tax".

### *Policy Considerations*

None Noted.

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**LEGISLATIVE HISTORY**

No legislation similar to this bill has been identified.

**PROGRAM BACKGROUND**

None noted.

**FISCAL IMPACT**

The department’s costs to implement this bill have yet to be determined. As the bill moves through the legislative process, costs will be determined.

**ECONOMIC IMPACT**

*Revenue Estimate*

This bill would result in the following revenue loss:

Estimated Revenue Loss of AB 52 as Amended March 16, 2023  
Assumed Enactment after June 30, 2023

*(\$ in Millions)*

<b>Fiscal Year</b>	<b>Revenue</b>
2023-2024	-\$100
2024-2025	-\$280
2025-2026	-\$350

This analysis does not account for changes in employment, personal income, or gross state product that could result from this bill or for the net final payment method of accrual.

**LEGAL IMPACT**

None noted.

**APPOINTMENTS**

None noted.

**SUPPORT/OPPOSITION**

To be determined.

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## **ARGUMENTS**

To be determined.

## **LEGISLATIVE CONTACT**

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