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To : Mark Ibele
Staff Director
Commission on the 21st Century Economy

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From : Larry Bergkamp, Technical Advisor
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Subject : **Summary of Capitol Equipment Exemption Programs**

Pursuant to your recent telephone and e-mail requests I am providing you a summary of the capitol equipment sales and use tax exemption programs for the states of New York, Ohio, Pennsylvania, Georgia, Michigan and Minnesota.

New York includes a primary use test and requires prequalification. Ohio, Pennsylvania, Georgia and Michigan utilize exemption certificates similar to a resale certificate and no prequalification. Although, Ohio expanded the exemption to businesses and equipment beyond what is provided in the other states. Minnesota requires purchasers to pay tax on the qualifying equipment and then file a claim for refund for the tax. However the purchaser is limited to only two claims for refund per calendar year.

Administrative Issues for California

If legislation is passed to provide a sales and use tax capitol equipment exemption, the Board of Equalization (BOE) would administer the exemption. However, the administrative issues and costs would depend on the requirements of the legislation. Any new exemption would include regulatory changes, mainframe programming changes, revisions to forms and publications and outreach efforts to notify taxpayers and BOE staff of the change in the application of tax. The complexity of the exemption would determine how much time and effort would be required to implement and administer the program

As we discussed previously a prequalification requirement would result in the need for significant resources to review and process applications. This would be similar to the expired Manufactures Exemption. The use of an exemption certificate without a prequalification requirement would be easier to administer and would be similar to administering other existing tax exemptions. However, if the exemption includes limitations on who qualifies, the type of equipment, or how the equipment is used the administrative costs and requirements would increase. This would be similar to the partial exemption for farm and teleproduction equipment that the BOE currently administers. It should also be noted that the partial exemptions are extended to businesses that may not be required to be registered with the BOE. Administration of a refund program similar to Minnesota's would require addition resources to verify and process the refund claims.

Taxpayer Issues

The impacts on taxpayers would also depend on the requirements of the legislation. A straight forward exemption for defined equipment would not have a significant impact on retailers. However, if the exemption includes limitations such those included in the partial farm and teleproduction exemptions, it makes it more difficult for retailers to determine who and what type of equipment qualifies. The refund program would have the least amount of impact on retailers because the purchaser is responsible for making the claim for refund with the state.

NEW YORK

Type of Exemption

Provides a purchaser exemption from tax for machinery and equipment, including parts, tools, and supplies used or consumed **directly** and **predominantly** in the production of various types of tangible personal property, including tangible personal property used or consumed directly and predominantly in research and development.

Administrative Issues

Generally, purchasers must apply for and receive a *Certificate of Authority* to issue an exemption certificate.

OHIO

Type of Exemption

- Sales of property for use in farming and food service operations.
- Material, machinery, equipment and other items used in packaging property for sale by a manufacturer or retailer.
- Material incorporated as part of tangible personal property produced for sale by manufacturing, assembling, processing, or refining.
- Tangible personal property used or consumed in a manufacturing operation.
- Sales of tangible personal property and services to a provider of electricity used or consumed directly and primarily in generating, transmitting, or distributing electricity for use by others.
- Sales to a professional racing team of any of the following:
 - Motor racing vehicles;
 - Repair services of motor racing vehicles;
- Items of property that are attached to or incorporated in motor racing vehicles, including engines, chassis, and all other components of the vehicles, and all spare, replacement, and rebuilt parts or components of the vehicles; except not including tires, consumable fluids, paint, and accessories consisting of instrumentation sensors and related items added to the vehicle to collect and transmit data by means of telemetry and other forms of communication.

- Things used or consumed primarily in storing, transporting, mailing or otherwise handling purchased sales inventory in a warehouse, distribution center or similar facility when the inventory is primarily distributed outside this state to retail stores of the person who owns or controls the warehouse, distribution center, or similar facility.
- Things used or consumed by a warrantor in fulfilling a warranty on tangible personal property.

Administrative Issues

To claim exemption, a purchaser must provide a properly completed exemption certificate to the supplier.

PENNSYLVANIA

Type of Exemption

- Building Machinery and Equipment for certain materials and items that are commonly used during a construction project with certain exempt entities.
- Machinery and equipment used in farming.

Administrative Issues

To claim exemption, a purchaser must provide a properly completed exemption certificate to the supplier.

GEORGIA

Type of Exemption

- Machinery and equipment used in the manufacturing process.
- Machinery and equipment used in farming.

Administrative Issues

To claim exemption, a purchaser must provide a properly completed exemption certificate to the supplier.

MICHIGAN

Type of Exemption

- Machinery and equipment used for industrial processing.
- Machinery and equipment used for farming.

Administrative Issues

To claim exemption, a purchaser must provide a properly completed exemption certificate to the supplier.

MINNESOTA

Type of Exemption

- Capital equipment used primarily for manufacturing tangible personal property.

Administrative Issues

To claim exemption, a purchaser must pay tax to its vendor and then file a claim for refund from the state. A purchaser may file no more than two such claims for refund in a calendar year.

cc: Ms. Randie Henry
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