



1-1-2011

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Recommended Citation

Rebekah Morrissey, *Chapter 10: Manufacturing Incentives and Green Technology*, 42 MCGEORGE L. REV. (2016).

Available at: <https://scholarlycommons.pacific.edu/mlr/vol42/iss3/26>

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Chapter 10: Manufacturing Incentives and Green Technology

Rebekah Morrissey

Code Sections Affected

Public Resources Code § 26011.8 (new), § 26003 (amended), § 26011.8 (repealed).

SB 71 (Padilla); 2010 STAT. Ch. 10 (*Effective March 24, 2010*).

I. INTRODUCTION

On May 20, 2010, Toyota announced its intention to “invest \$50 million in Tesla” for the production of electric vehicles.¹ Taking advantage of a California law that provided a sales tax exemption to manufacturers of zero-emission vehicles,² Tesla decided to expand its California-based manufacturing facilities.³

The California State Treasurer’s Office estimates that the new Tesla project will create 1,400 new jobs in California.⁴ Attracting green companies to California, such as the Tesla-Toyota partnership, is a “top priority for Governor Schwarzenegger.”⁵ Chapter 10 seeks to expand the tax incentives for green companies to create or increase manufacturing activities in California, which will increase the number of companies operating in California, creating jobs and increasing tax revenue.⁶

II. LEGAL BACKGROUND

Existing California law includes a significant tax exemption for companies that use alternative energy sources or produce alternative transportation technologies that can be used to establish manufacturing facilities within the state.⁷ In 1980, the California Alternative Energy and Advanced Transportation

1. Press Release, Office of the Governor, Gov. Schwarzenegger Joins Tesla & Toyota Officials to Announce Historic Toyota-Tesla Partnership & Tesla’s Acquisition of NUMMI Facility (May 20, 2010) (on file with the *McGeorge Law Review*); see also TESLAMOTORS.COM, About, <http://www.teslamotors.com/about> (last visited Mar. 14, 2011) (on file with the *McGeorge Law Review*) (explaining Tesla is a company that manufactures electric vehicles and electric powertrains).

2. Press Release, Cal. State Treasurer Bill Lockyer, Treasurer Lockyer Announces Agreement with Tesla Motors That Will Expand Electric Car Manufacturing in California (Oct. 28, 2009) (on file with the *McGeorge Law Review*); CAL. PUB. RES. CODE § 26011 (West 2010); CAL. REV. & TAX CODE § 6010.8 (West 2010).

3. Press Release, Cal. State Treasurer Bill Lockyer, *supra* note 2.

4. *Id.*

5. Press Release, Office of the Governor, Governor Schwarzenegger Celebrates Earth Day, Announces SunPower Expansion in Cal. (Apr. 22, 2010) (on file with the *McGeorge Law Review*).

6. *Id.*

7. ASSEMBLY COMMITTEE ON BUDGET, COMMITTEE ANALYSIS OF SB 71, at 2 (Mar. 22, 2010); see CAL. PUB. RES. CODE § 26011 (granting CAEATFA the power to give “financial assistance” to “participating

Financing Authority (CAEATFA) was established to approve financing for projects that “use alternative energy sources,”⁸ and to authorize “bonds, loans, loan guarantees and credit enhancements” to projects that gain their approval.⁹ Under existing law, “any transfer of title of tangible personal property” that qualifies as a CAEATFA project does not constitute a “sale” or “purchase,” and is thus exempt from the sales and use tax.¹⁰ Under existing law, a “project” is limited to any site or equipment that utilizes alternative energy sources or is utilized for “the design, technology transfer, manufacture, production, assembly, distribution, or service of advanced transportation technologies.”¹¹

In other words, companies that manufacture “zero-emission cars” or other alternative energy products enjoy tax exemption for projects approved by CAEATFA.¹² Once the project is approved, the State purchases equipment for the project, then leases or transfers title to the qualifying company, with no sales or use tax.¹³ These tax waivers encourage alternative energy companies to establish manufacturing facilities in California.¹⁴

Given the severe financial crisis in California, one of the Legislature’s primary goals is to stimulate the economy, and it often does so through tax exemptions.¹⁵ In 2010, Governor Schwarzenegger announced four proposals aimed at creating jobs, known as the California Jobs Initiative.¹⁶ The first three proposals will “provid[e] training and hiring incentives” to employers, “streamline regulations” concerning construction permits, and extend “home buyer tax credit[s].”¹⁷ Chapter 10 represents the last of these proposals, providing a sales tax exemption for green technology manufacturing equipment.¹⁸

parties” for “projects”); *id.* § 26003 (c)(1),(g) (defining alternative transportation technologies as “projects” and providing a non-exhaustive list of examples); CAL. REV. & TAX CODE § 6010.8 (noting the tax exemption was determined by CAEATFA to be “financial assistance”).

8. ASSEMBLY COMMITTEE ON BUDGET, COMMITTEE ANALYSIS OF SB 71, at 2 (Mar. 22, 2010).

9. *Id.*

10. CAL. REV. & TAX CODE § 6010.8.

11. CAL. PUB. RES. CODE § 26003(g) (West 2010).

12. Robb Hicken, *Incentives Can Go A Long Way*, IDAHO BUS. REV., July 21, 2008, at 4A, available at <http://idahobusinessreview.com/blog/2008/07/21/incentives-can-go-a-long-way-8212-marketplace/> (on file with the *McGeorge Law Review*).

13. *Id.*

14. *Id.*

15. Cal. Governor Arnold Schwarzenegger, State of the State Address (Jan. 6, 2010), available at <http://gov.ca.gov/index.php?/print-version/speech/14118/> (on file with the *McGeorge Law Review*).

16. OFFICE OF THE GOVERNOR: ARNOLD SCHWARZENEGGER, FACT SHEET: STATE OF THE STATE 2010: THE GOVERNOR’S NUMBER ONE PRIORITY IS CREATING JOBS AND GETTING CALIFORNIA’S ECONOMY BACK ON TRACK (2010), <http://gov.ca.gov/index.php?/fact-sheet/14122/> (on file with the *McGeorge Law Review*).

17. *Id.*

18. *Id.*

III. CHAPTER 10

Chapter 10 expands CAEATFA's ability to approve projects for a "sales and use tax exclusion."¹⁹ It adds a new definition of "project" that includes "any tangible personal property that is utilized for the design, manufacture, production, or assembly of advanced transportation technologies or alternative source products, components or systems."²⁰ Additionally, the definition of "alternative source" now includes "advanced electric distributive generation technology . . . or energy storage technologies and their component materials."²¹

In assessing whether a project should receive the tax exemption, CAEATFA must evaluate "the extent to which the project" creates California jobs, promotes California industry, assists in the reduction of pollution, and other "factors the authority deems appropriate in accordance with this section."²² By January 1, 2019, the Legislative Analyst's Office must provide a "report to the Joint Legislative Budget Committee" that evaluates Chapter 10's overall effectiveness in achieving the tax exemption program's stated goals.²³ CAEATFA must provide the Legislature with twenty days notice prior to approving additional exemptions once the total amount of tax exemptions exceeds 100 million dollars annually.²⁴ Chapter 10 has a sunset date of January 1, 2021.²⁵

IV. ANALYSIS

Chapter 10 subtly expands the definition of project to include "alternative source products"²⁶ and broadens an existing tax exemption designed to "promote the creation of California-based manufacturing, California-based jobs, the reduction of greenhouse gases, or reductions in air and water pollution or energy consumption."²⁷ Supporters believe Chapter 10 will help stimulate the economy.²⁸ Others, however, hope to see the tax exemption created by Chapter 10 expanded to include all manufacturing equipment, not just green technology equipment.²⁹

19. CAL. PUB. RES. CODE § 26011.8(a) (enacted by Chapter 10).

20. *Id.* § 26003(g)(2) (enacted by Chapter 10).

21. *Id.* § 26011.8(b)(2) (enacted by Chapter 10).

22. *Id.* § 26011.8(d) (enacted by Chapter 10).

23. *Id.* § 26011.8(g) (enacted by Chapter 10).

24. *Id.* § 26011.8(h) (enacted by Chapter 10).

25. *Id.* § 26011.8(g) (enacted by Chapter 10).

26. *See id.* § 26011.8(g)(2) (enacted by Chapter 10) (implying that if only one part of a product, component or system is alternative, the manufacturing equipment for the entire product can still qualify as a project).

27. *Id.* § 26011.8(a) (enacted by Chapter 10).

28. *See* Colin Sullivan, *Tax Breaks for 'Green' Equipment Signed Into Law*, GREENWIRE, Mar. 25, 2010, at 10 (noting that Chapter 10 aims "to keep clean-tech companies operating within the state").

29. Press Release, Office of Sen. Robert Dutton, *Dutton Measure to Level Playing Field for Private Sector Jobs Killed by Democrats* (Apr. 28, 2010) (on file with the *McGeorge Law Review*).

A. *Support for Chapter 10*

Supporters of Chapter 10 believe the sales tax exemption will create a powerful incentive for green technology companies to open and retain manufacturing facilities in California and help jumpstart the state's struggling economy.³⁰ Governor Schwarzenegger hails California as a leader in "the world [of] environmental technology as the home to 10,209 clean-tech companies."³¹ Prior to the enactment of Chapter 10, however, California was one of only three states without a tax exemption for the purchase of manufacturing equipment by green technology companies.³² By creating this tax exemption, the Legislature hopes to entice new and current green technology manufacturing companies to establish, retain, and expand facilities in California and continue to bolster California's economy and reputation as a leader in green technologies.³³

Calisolar, a solar panel manufacturer, recently opened a new facility in Sunnyvale and its CEO, Roy Johnson, pointed to Chapter 10 as a key piece of legislation allowing him to do so.³⁴ Mr. Johnson stated that Chapter 10 "help[s] to level [the] playing field [with] other jurisdictions" when companies are considering California as a location for business operations.³⁵ Several proponents of Chapter 10 maintain that taxing green technology manufacturing equipment poses a barrier to companies that would otherwise consider investing in California.³⁶ By removing this barrier, California will become a more competitive and attractive location for green technology companies,³⁷ which will in turn create jobs and increase "revenue by expanding the number of clean technology manufacturing companies with sites in California."³⁸

B. *Does Chapter 10 Go Far Enough?*

While Chapter 10 did not face any significant opposition, some argue it does not go far enough to help California's struggling economy.³⁹ These groups argue

30. Press Release, Office of the Governor, Governor Schwarzenegger Signs Legislation for Green Tech Manufacturing Equipment Sales Tax Exemption to Create Jobs (Mar. 25, 2010) (on file with the *McGeorge Law Review*).

31. *Id.*

32. Sullivan, *supra* note 28.

33. Jerry Hill, *Opinion: Legislature, Governor Have Made a Start at Closing Deficit*, SAN JOSE MERCURY NEWS, Mar. 29, 2010 (on file with the *McGeorge Law Review*).

34. Roy Johnson, CEO, Calisolar, Governor Schwarzenegger Cuts Ribbon on Calisolar's Manufacturing Facility Remarks (Apr. 6, 2010), available at <http://gov.ca.gov/speech/14829/> (on file with the *McGeorge Law Review*).

35. *Id.*

36. Sullivan, *supra* note 28; see also Hill, *supra* note 33 (arguing that recent pieces of bi-partisan legislation, including SB 71, will help reduce the deficit).

37. Press Release, Office of the Governor, *supra* note 30.

38. *Id.*

39. Press Release, Office of Sen. Robert Dutton, *supra* note 29.

Chapter 10 should expand to include all purchases of manufacturing equipment, not just those by green technology companies.⁴⁰ California is still only one of three states that taxes manufacturing equipment at all.⁴¹ Governor Schwarzenegger has indicated he believes “all manufacturing equipment . . . in California” should be exempt from sales tax.⁴² With California’s budget deficit “estimated at more than \$20 million and unemployment surpass[ing] 12 percent,” job creation and state revenue are top priorities for both the Legislature and the Governor.⁴³

Supporters of Chapter 10 believe that such a wide tax exemption further assists California in recruiting companies, both green and non-green, to create and expand manufacturing facilities, which ultimately creates jobs and revenue in the struggling state.⁴⁴ In April of 2010, Senate Bill X6 8, authored by Senator Bob Dutton, failed to pass out of committee.⁴⁵ This bill would have created a sales tax exemption for manufacturing equipment for all companies, regardless of the company’s green status.⁴⁶ Opponents of the bill claimed, however, the connection between the tax exemption and actual jobs created was too tenuous to measure accurately and would have given manufacturing companies an unfair advantage over other types of businesses.⁴⁷ The Senate did not complete the full fiscal analysis of Senate Bill X6 8 before it failed in committee, so it is unclear how expensive or effective the bill would have been.⁴⁸ If Senate Bill X6 8 is any example of how legislation attempting to create such a wide exemption will be treated in the future,⁴⁹ it is likely the debate over expansion of Chapter 10 will continue.

V. CONCLUSION

Chapter 10 creates a sales and use tax exemption for purchases of manufacturing equipment by green companies with CAEATFA approved projects.⁵⁰ Given the current state of the economy, both in California and across

40. *Id.*

41. *Id.*

42. Cal. Governor Arnold Schwarzenegger, Governor Schwarzenegger Cuts Ribbon on Calisolar’s Manufacturing Facility Remarks (Apr. 6, 2010), available at <http://gov.ca.gov/speech/14829/> (on file with the *McGeorge Law Review*).

43. Sullivan, *supra* note 28.

44. See Press Release, Office of Sen. Robert Dutton, *supra* note 29 (claiming that a tax exemption applicable to all purchases of manufacturing equipment, green and non-green, would create 500,000 jobs over ten years).

45. *Id.*

46. *Id.*

47. SENATE COMMITTEE ON REVENUE & TAXATION, COMMITTEE ANALYSIS ON SB X6 8, at 5 (Apr. 26, 2010).

48. *Id.*

49. Press Release, Office of Sen. Robert Dutton, *supra* note 29.

50. CAL. PUB. RES. CODE § 26011.8 (enacted by Chapter 10).

the nation, it is likely the California Legislature's main objectives moving forward will remain centered on the recovery of the economy and job creation.⁵¹ As a leader in the green technology industry, California hopes Chapter 10 will provide an incentive for green companies to come, stay, and expand in California, bringing with them a much needed boost to the economy and the budget.⁵² Governor Schwarzenegger's California Jobs Initiative aims to "create or retain at least 100,000 jobs" through several proposals, including Chapter 10.⁵³ With most states in the country currently exempting sales tax for manufacturing equipment purchased by green companies,⁵⁴ Chapter 10 may help California become a more competitive and attractive location for green companies to establish manufacturing facilities.⁵⁵

51. Cal. Governor Arnold Schwarzenegger, State of the State Address, *supra* note 15.

52. Press Release, Office of the Governor, *supra* note 30.

53. *Id.*

54. Press Release, Office of Sen. Robert Dutton, *supra* note 29.

55. Press Release, Office of the Governor, *supra* note 30.

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