

## ***Annual Update on California's Manufacturing Tax Incentives***

**by Chris Micheli**

### **I. INTRODUCTION**

The purpose of this article is to provide another annual update on proposals and amendments to the statutes and regulations implementing California's manufacturing equipment tax incentives. In addition, the article provides information on tax agency data and the critical sunset date provision. As readers may recall, since the initial statute was enacted in 1993 (SB 671) and then expanded in 1994 (SB 676), there have been several modifications to the statutes.

In 1995, legislative attempts to amend the statutes were unsuccessful. However, in 1996 (SB 38), the MIC was amended to expand the definitions of "special purpose buildings" and "small business." In addition, several technical changes were made. In 1997, only technical changes were made to the MIC statute.

In 1998 (AB 2798), the MIC was amended to expand the definitions of "qualified taxpayer" and "qualified property" to include software companies. In 1999 (SB 1229), there were only technical amendments to the MIC and no amendments to the partial exemption statute.

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### **II. BACKGROUND ON STATUTES**

In 1993, California enacted a 6% investment tax credit (herein referred to as the "MIC") and a partial (equal to 5%) sales/use tax exemption (herein referred to as the "partial exemption") for the purchase of certain property used by manufacturers (See California Revenue & Taxation Code [CRTC] §§ 17053.49 and 23649 [for the MIC] and 6377 [for the partial exemption]).

For purposes of the MIC and partial exemption, the law provides that a "qualified taxpayer/person" is any taxpayer who falls within Standard Industrial Classification (SIC) Codes 2011 to 3999. This is Division D ("Manufacturing") of the SIC Manual. A qualified taxpayer/person may be an individual, partnership, C or S corporation, limited liability company, trust, or estate.

For purposes of the definition of “qualified property,” there are four major requirements to be met in order for property to be eligible for the MIC: It must be (1) tangible personal property, (2) which is depreciable or amortizable under Internal Revenue Code Section 1245(a), (3) which is “primarily used” in the manufacturing process, (4) which is placed in service in California on or after January 1, 1994.

Also available to certain taxpayers is a partial exemption from the sales or use tax that otherwise would be imposed on an item of machinery or equipment. For purchases made after January 1, 1994, but prior to December 31, 1994, the exemption rate equals six percent. For purchases made after December 31, 1994, the exemption rate equals five percent.

In addition, the partial exemption is only available to a “new trade or business” (formed or organized after December 31, 1993, or that commenced doing business in California after that date). The partial exemption is only available for the first three years of a business’ operation.

Finally, the benefits of the MIC and the partial exemption will be lost if 100,000 jobs in the manufacturing sector are not created by January 1, 2001, or on January 1 of the earliest year thereafter.

### **III. 1999 LEGISLATION AFFECTING THE MIC**

During this first year of the 1999-2000 California Legislative Session, there were several efforts to enhance the MIC and partial exemption statutes. The following bills affecting the MIC statute were considered by the California Legislature this year:

#### **SB 1229 (Senate Revenue & Taxation Committee) (Enacted, Stats. 1999, Ch. 987)**

This measure made only technical amendments to CRTC §§ 17053.49 and 23649 relating to the addition of software-makers to the MIC. SB 1229, which enacted a number of FTB-sponsored legislative proposals, contained these “clean-up” provisions to last year’s AB 2798 (Stats. 1998, Ch. 323).

#### **AB 473 (Hertzberg) (“2-year bill”)**

This measure proposes to extend the sunset date of the MIC statute from January 1, 2001 to January 1, 2004. As a result, it would remove the requirement that manufacturing jobs in 2001, 2002, and 2003 exceed the 1994 employment level by at least 100,000 non-aerospace, manufacturing jobs.

In addition, it would change the sunset provision to provide that, if the number of jobs falls below 100,000 and causes the MIC to expire, then the MIC will remain in place for one additional, transitional year. For example, if on January 1, 2005 the employment level has not exceeded 100,000 jobs over the 1994 level, then the MIC would be repealed on January 1, 2006.

The bill is pending in the Senate Appropriations Committee Suspense File. The following proposed language would amend the MIC statutes as follows [proposed amendments are in italics]:

CRTC §§ 17053.49 and 23649 (l) would be amended to read: (1) This section shall remain in effect until the date specified in paragraph (2), on which date the section shall cease to be operative and is repealed.

(2) (A) This section shall cease to be operative on January 1, ~~2001~~ 2004, or on January 1 of the earliest year thereafter, if the total employment in this state in the preceding year, as determined by the Employment Development Department on the preceding January 1, does not exceed by 100,000 jobs the total employment in this state on January 1, 1994. The department shall report to the Legislature annually with respect to the determination required by the preceding sentence.

(B) For purposes of this paragraph, "total employment" means the total employment in the manufacturing sector, excluding employment in the aerospace sector.

#### **SB 756 (Polanco) ("2-year bill")**

This measure proposes to expand the definitions of "qualified taxpayer" and "qualified property" to include establishments primarily engaged in manufacturing prerecorded videotapes and disks. The bill is pending on the Assembly Floor.

The following proposed language would amend the MIC statutes as follows [proposed amendments are in italics]:

CRTC §§ 17053.49 and 23649 (c)(1) would be amended to read: For purposes of this section, "qualified taxpayer" means any taxpayer engaged in those lines of business described in Codes 2011 to 3999, inclusive, ~~or~~ Codes 7371 to 7373, inclusive, or for video tape or video disk reproduction that is properly classified under Code 7819 of the Standard Industrial Classification (SIC) Manual published by the United States Office of Management and Budget, 1987 edition.

CRTC §§ 17053.49 and 23649 (d)(2)(B) would be added to read: (B) Tangible personal property that is defined in subdivision (a) of Section 1245 of the Internal Revenue Code that is primarily used by a qualified taxpayer for video tape or video disk reproduction in an operating establishment that is properly classified under SIC Code 7819 of the SIC Manual.

CRTC §§ 17053.49 and 23649 (l) would be added to read: (l) The amendments made by the act adding this subdivision shall be operative for taxable years beginning on or after January 1, 1999.

#### **IV. 1999 LEGISLATION AFFECTING THE PARTIAL EXEMPTION**

No bill was enacted this year to amend the partial exemption statute. However, two measures were considered that would have extended the sunset date and expanded the partial exemption to include establishments primarily engaged in manufacturing prerecorded videotapes and disks.

#### **AB 473 (Hertzberg) ("2-year bill")**

This measure proposes to extend the sunset date of the partial exemption statute from January 1, 2001 to January 1, 2004. As a result, it would remove the requirement

that manufacturing jobs in 2001, 2002, and 2003 exceed the 1994 employment level by at least 100,000 non-aerospace, manufacturing jobs.

In addition, it would change the sunset provision to provide that, if the number of jobs falls below 100,000 and causes the partial exemption to expire, then the partial exemption will remain in place for one additional, transitional year. For example, if on January 1, 2005 the employment level has not exceeded 100,000 jobs over the 1994 level, then the partial exemption would be repealed on January 1, 2006.

The bill is pending in the Senate Appropriations Committee Suspense File. The following proposed language would amend the partial exemption statute as follows [proposed amendments are in italics]:

CRTC § 6377 (g) would be amended to read: (1) This section shall remain in effect until the date specified in paragraph (2), on which date the section shall cease to be operative and is repealed.

(2) (A) This section shall cease to be operative on January 1, ~~2004~~ 2004, or on January 1 of the earliest year thereafter, if the total employment in this state in the preceding year, as determined by the Employment Development Department on the preceding January 1, does not exceed by 100,000 jobs the total employment in this state on January 1, 1994. The department shall report to the Legislature annually with respect to the determination required by the preceding sentence.

(B) For purposes of this paragraph, “total employment” means the total employment in the manufacturing sector, excluding employment in the aerospace sector.

### **SB 756 (Polanco) (“2-year bill”)**

This measure proposes to expand the definition of “qualified person” to include establishments primarily engaged in manufacturing prerecorded videotapes and disks. The bill is pending on the Assembly Floor.

CRTC § 6377 would be amended to read: (b)(6)(B) Engaged in those lines of business described in Codes 2011 to 3999, inclusive, of the Standard Industrial Classification (SIC) Manual published by the United States Office of Management and Budget, 1987 edition. For purposes of this subparagraph, SIC Code 3652 is modified to include establishments primarily engaged in manufacturing prerecorded videotapes and disks.

## **V. PROPOSED AND ADOPTED AMENDMENTS TO SBE REGULATION**

On August 23, 1999, the SBE released to interested parties an “Initial Discussion Paper on Regulation 1525.2, Manufacturing Equipment.” In addition, notice was provided that the proposed amendments to Reg. 1525.2 would be discussed at the SBE’s Business Taxes Committee hearing on November 17, 1999.

The staff released proposed amendments in order to “provide interested parties an opportunity to discuss the issue and present any suggested changes or comments.” That initial interested parties meeting was held on September 9, 1999 by the SBE staff. On

November 17, the Committee of the 5-member Board voted to adopt one amendment, as well as to consider two other amendments next year.

### **Adopted Amendment -- Claim for Refund**

Under Regulation 1525.2 Section (f)(3)(B), failure to file a timely return for an otherwise qualified purchase from a retailer not engaged in business in this state, or failure to attach a completed declaration to a timely return, does not constitute a waiver of the use tax exemption for that purchase.

However, the burden of establishing that a qualified person is entitled to claim the partial exemption is upon the person who fails to file a timely return or attach a completed declaration to a timely return.

Under Regulation Section (f)(3)(C), a person who self-reported and paid use tax on a qualified purchase from a retailer not engaged in business in this state, but who failed to claim the partial use tax exemption, may file a claim for refund equal to the amount of the partial exemption.

The claim for refund is limited to those purchases made from a retailer not engaged in business in this state. The complaint from interested parties has been that there is no provision in Regulation 1525.2 for purchases made from an in-state retailer or from an out-of-state retailer obligated to collect the use tax from the purchaser.

In these transactions, the purchaser must provide the retailer with a manufacturer's exemption certificate no later than 60 days after the date of the purchase. Failure to do so constitutes a waiver of the partial exemption for that purchase. No refunds are allowed for an otherwise qualified purchase.

The 5-member SBE Board voted 3-1-1 to amend Regulation 1525.2 to provide that a claim for refund equal to the amount of the partial exemption may be filed by a person who paid either sales or use tax on a qualified purchase and who failed to claim the partial exemption. The purpose of the amendment is to expand the current claim for refund provision to include all persons who establish their eligibility.

As has been noted by other commentators, there is no statutory authority for a number of provisions in this Regulation, including denial of the exemption simply because the taxpayer did not prequalify in a timely fashion. There is nothing in the statute concerning prequalification. This is an administrative hurdle created by the SBE staff.

As one interested party noted, "Section 6377 ... does not preclude the filing of claims for refund. The Board routinely allows taxpayers to support other types of exempt sales after the fact. Similar allowances should be provided to otherwise qualified purchasers seeking the partial exemption for qualified purchases."

It is interesting to note here that, because this recently-adopted amendment is based upon a reinterpretation of existing statute, there is no operative date. Therefore, the amendment is retroactive. As a result of the SBE Board action, Reg. 1525.2 has been amended to read:

(f) Exemption Certificates.

(3) Waiver Refund of Partial Exemption. ~~Except as specifically set forth in section 6902.2 of the Revenue and Taxation Code:~~

~~(A) Failure to claim the partial exemption by furnishing the retailer with a manufacturer's exemption certificate within 60 days after an otherwise qualified purchase constitutes a waiver of the partial exemption for that purchase and, as a consequence, the partial exemption cannot be claimed on that purchase.~~

~~(B) Failure to file a timely return for an otherwise qualified purchase from a retailer not engaged in business in this state, or failure to attach a completed manufacturer's declaration to such a timely filed return, does not constitute a waiver of the use tax partial exemption for that purchase. A person who fails to file a timely return or attach a completed manufacturer's declaration to a timely return for an otherwise qualified purchase has the burden of establishing that he or she was entitled to claim the partial exemption.~~

(A) For the period commencing on January 1, 1994, and ending on December 31, 1994, a qualified person may claim the partial exemption on qualified purchases from an in-state retailer or an out-of-state retailer obligated to collect the use tax by furnishing the retailer with a manufacturer's exemption certificate on or before March 31, 1995. The retailer must refund the tax directly to the purchaser or, at the purchaser's sole option, the purchaser may be credited with such amount. In the event that the retailer has already reported and paid the tax to the Board, the retailer must file a written claim for refund on or before April 30, 1995.

~~(B) A person who self-reported and paid sales or use tax on a qualified purchase from a retailer not engaged in business in this state, and who failed to claim the partial use tax exemption as provided by this regulation may file a claim for refund equal to the amount of the partial exemption that he or she could have claimed pursuant to this regulation. The procedure for such a claim shall be the same as for other claims for refund filed pursuant to Revenue and Taxation Code section 6901. A person filing a claim for refund of the partial use tax exemption has the burden of establishing that he or she was entitled to claim the partial exemption with respect to the amount of refund claimed under this part.~~

According to SBE staff, "these amendments would erase the distinction currently provided in subsection (f)(3)(C) allowing claims for refund only for transactions in which a person self-reported and paid use tax on a qualified purchase from a retailer not engaged in business in this state, and who failed to claim the partial use tax exemption.

"It is staff's view that the legislature did not intend to allow claims for refund of sales tax when the manufacturer's exemption is not timely claimed. The legislature's enactment of a refund provision for the MIC and not for the manufacturer's exemption indicates a legislative intent not to allow such refunds." Despite this stated opposition to the claim for refund amendment, the Board rejected these staff arguments and adopted the industry-backed amendment.

## **Proposed Amendment -- Definition of Consumables**

In addition, on November 17, 1999, the 5-member Board voted to conduct further review of three additional proposed amendments to the partial exemption regulation. The following is a brief description of the proposed amendments to Regulation 1525.2 that will be discussed with interested parties in early 2000:

Under Regulation 1525.2 (c)(9)(B), "tangible personal property" does not include consumables with a normal useful life of less than one year, except fuels used or consumed in the manufacturing process. Tangible personal property acquired by a qualified person at a unit cost of \$250 or less is likewise deemed a consumable with a normal useful life of less than one year under this regulation.

SBE staff strongly supports retailers by insisting on a de minimus figure; otherwise, there is an undue burden placed upon retailers if exemption certificates are issued for small items. However, as opposed to December 1994 when the partial exemption regulation was actually adopted, retailers now support a good faith exception if the \$250 threshold is eliminated. That exception is most appropriate because the retailers should be protected by the SBE as they have created the prequalification process.

Interested parties have suggested that a rebuttable presumption be added to this provision of the regulation to provide an option to refute the provisions classifying certain items as consumables. The following are the suggested "consumables" amendments to Regulation 1525.2 from interested parties:

(c) Definitions.

(9) "Tangible personal property" does not include any of the following:

(B) Consumables with a normal useful life of less than one year, except as provided in subsection (c)(10)(E). For purposes of this regulation, it shall be presumed tangible personal property that the qualified person treats as having a normal useful life of less than one year for state income or franchise tax purposes ~~or tangible personal property which is acquired by the qualified person at a unit cost of \$250 or less is tangible personal property with a normal useful life of less than one year for purposes of this regulation.~~ This presumption may be rebutted by evidence satisfactory to the board.

(10) "Tangible personal property" includes but is not limited to the following:

(B) All equipment or devices used or required to operate, control, regulate, or maintain the machinery, including, without limitation, computers, data processing equipment, and computer software, including both operating programs and application programs, together with all repair and replacement parts with a useful life of one or more years therefor, whether purchased separately or in conjunction with a complete machine and regardless of whether the machine or component parts are assembled by the taxpayer or another party. Any repair or replacement parts that the qualified person treats as having a useful life of less than one year for state income or franchise tax purposes shall be presumed to have a useful life of less than one year for purposes of this regulation. This presumption may be rebutted by evidence satisfactory to the board.

## **Proposed Amendment -- Definition of Establishment**

Industry also proposes to change the definition of “establishment” in subsections (c)(6)(B)(1) and (c)(6)(B)(2) to correspond to the definition of “establishment” used in Regulation 1532, which implements a partial exemption for teleproduction or other postproduction equipment. Industry contends that the definition found in Reg. 1532(c)(2)(C) is the most current definition and is easier to comply with than the definition in Reg. 1525.2.

Staff does not agree with this contention. They note that the current definition of “establishment” in Regulation 1525.2 is taken directly from the SIC Manual, and is the appropriate definition because taxpayers may only qualify for the manufacturer’s exemption based upon the definitions found in the SIC Manual. Regulation 1532 and its underlying statute, CRTC Section 6378, reference the NAICS Manual.

According to the SBE staff, “this proposal would define ‘establishment’ as ‘the smallest operating unit for which records provide information on the revenues and costs of operations incurred in those lines of business activities that are described in Codes 2011 to 3999, inclusive, of the Standard Industrial Classification Manual published by the United States Office of Management and Budget, 1987 edition.’ The services may be provided to other divisions within the same entity or to related parties with or without direct compensation. Establishments may include, but are not limited to, departments, divisions, subdivisions, and product lines.

“This definition would allow new businesses whose single most predominant activity is not manufacturing to have a portion of their business qualify for the partial exemption where just a department, division, subdivision, or other unit engages in a manufacturing activity. Under the current provisions of Regulation 1525.2, a department, division, or subdivision of a non-manufacturing business does not qualify for the partial exemption unless 25 percent or more of that business’ total employees and dollar value of its payroll from a definable operation of that business attributable to a manufacturing activity.

“Under this alternative, significantly more units of businesses not otherwise predominantly engaged in a manufacturing activity would qualify for the partial exemption. We have no way of definitively knowing at this time how many more units of a business would now qualify for the partial exemption. We estimate that this alternative would increase the claimed partial exemptions by 40 percent resulting in an additional reduction in the annual State General Fund of approximately \$3 million. This amount, however, could significantly fluctuate depending on the number of units of new businesses that may qualify pursuant to the proposed broader language of ‘establishment’.”

The following are the suggested “establishment” amendments to Regulation 1525.2 from interested parties:

(c) Definitions.

(6) “Qualified person” means any person that satisfies the requirements of both subsections (c)(6)(A) and (c)(6)(B) below with regard to the trade or business in which the

property will be placed into service in the use qualifying the property for this partial exemption:

(B) A qualified person must be engaged in those manufacturing lines of business described in Codes 2011 to 3999, inclusive, of the Standard Industrial Classification Manual published by the United States Office of Management and Budget, 1987 edition. For purposes of this subsection:

~~1. For purposes of classifying a line or lines of business, the economic unit shall be the “establishment” and the classification of the line or lines of business will be based on the establishment’s single most predominant activity based upon value of production. The term “establishment” means an economic unit, generally at a single physical location, where business is conducted or where services or manufacturing or other industrial operations are performed. The following will generally constitute an “establishment”: a factory, mill, store, hotel, movie theater, mine, farm, ranch, bank, railroad depot, airline terminal, sales office, warehouse, or central administrative office.~~

~~2. For purposes of determining the “establishment” or “establishments” of a trade or business.~~

~~a. Where distinct and separate economic activities are performed at a single physical location, such as construction activities operated out of the same physical location as a lumber yard, each activity should be treated as a separate establishment where: (i) no one industry description in the classification includes such combined activities; (ii) the employment in each such economic activity is significant; and (iii) separate reports are prepared on the number of employees, their wages and salaries, sales or receipts, property and equipment, and other types of financial data, such as financial statements, job costing, and profit center accounting. For purposes of this paragraph, whether or not employment in an economic activity is significant shall be based upon all of the facts and circumstances. Nevertheless, employment in an economic activity will be considered to be “significant” for purposes of this paragraph whenever more than 25 percent of the taxpayer’s total number of employees at a single physical location, or more than 25 percent of the taxpayer’s total dollar value of payroll at a single physical location, is attributable to the economic activity being tested for separate establishment status.~~

~~b. An establishment is not necessarily identical with the enterprise or company which may consist of one or more establishments. Also, an establishment is to be distinguished from subunits of the establishment such as departments.~~

~~c. Where a person conducts business at more than one establishment within the meaning of this subsection, then that person shall be considered to be a “qualified person” for purposes of this regulation only as to those purchases that are intended to be used and are actually used in those lines of business that are described in Codes 2011 to 3999, inclusive, of the Standard Industrial Classification Manual published by the United States Office of Management and Budget, 1987 edition.~~

1. For purposes of classifying a line or lines of business, the economic unit shall be the “establishment” and the classification of the line or lines of business will be based on the establishment’s primary activity based upon gross revenues.

2. "Establishment" is defined as the smallest operating unit for which records provide information on the revenues and cost of operations incurred in those lines of business activities that are described in Codes 2011 to 3999, inclusive, of the Standard Industrial Classification Manual published by the United States Office of Management and Budget, 1987 edition.

a. The services may be provided to other divisions within the same entity or to related parties with or without direct compensation.

b. Establishments may include, but are not limited to, departments, divisions, subdivisions, and product lines.

## **VI. UPDATE ON FTB INFORMATION**

According to data from the Franchise Tax Board provided to the author, the following is the amount of tax credits claimed by qualified taxpayers under the MIC statute:

<b><u>FTB MIC RETURNS</u></b>		
<u>1995 Returns (94/95 purchases)</u>	<u>Total Amount of MIC</u>	<u>Average MIC</u>
PIT 4,502	\$41,203,148	\$9,152
B&C 2,137	\$229,291,700	\$107,296
<u>1996 Returns</u>	<u>Total Amount of MIC</u>	<u>Average MIC</u>
PIT 5,418	\$38,099,000	\$7,030
B&C 4,957	\$493,081,000	\$99,472
<u>1997 Returns</u>	<u>Total Amount of MIC</u>	<u>Average MIC</u>
PIT 5,415	\$39,474,000	\$6,955
B&C 4,899	\$313,168,000	\$63,924

Since the MIC's enactment, the staff have issued only two Chief Counsel rulings on the MIC. These are similar to IRS private letter rulings and are taxpayer specific; they are attached to the taxpayer's return. They are not made public and cannot be used by any taxpayer other than the one who requested it. There have been seven requests for Chief Counsel rulings, but only two have been issued to date.

The first Chief Counsel Ruling analyzes the effect of like-kind exchanges pursuant to IRC § 1031 as qualified costs for the MIC. The second Chief Counsel Ruling concerns the definition of "manufacturing" as it applies to printers.

The FTB staff have also issued one Legal Ruling concerning the MIC. They are made public and are similar to IRS Revenue Rulings. These Rulings, which are intended to provide taxpayer guidance in the area covered by the Ruling, are made public after formal adoption by the three-member FTB Board.

The Ruling concerns design and engineering costs. It addresses whether capitalized labor costs for engineering and design sources may be "qualified costs" for the MIC.

## VII. UPDATE ON SBE INFORMATION

According to data provided by the State Board of Equalization to the author, the following is the amount of tax exemptions claimed by qualified persons under the partial exemption statute:

### SBE PARTIAL EXEMPTION RETURNS

<u>YEAR</u>	<u>TOTAL PURCHASES CLAIMED</u>	<u>TAX AFFECTED (TAX SAVINGS)</u>
<b>1994</b>	\$58,607,020	\$2,930,351
<u>YEAR</u>	<u>TOTAL PURCHASES CLAIMED</u>	<u>TAX AFFECTED (TAX SAVINGS)</u>
<b>1995</b>	\$90,476,929	\$4,523,846
<u>YEAR</u>	<u>TOTAL PURCHASES CLAIMED</u>	<u>TAX AFFECTED (TAX SAVINGS)</u>
<b>1996</b>	\$151,724,061	\$7,586,203
<u>YEAR</u>	<u>TOTAL PURCHASES CLAIMED</u>	<u>TAX AFFECTED (TAX SAVINGS)</u>
<b>1997</b>	\$213,993,006	\$10,699,650
<u>YEAR</u>	<u>TOTAL PURCHASES CLAIMED</u>	<u>TAX AFFECTED (TAX SAVINGS)</u>
<b>1998</b>	\$84,709,594	\$4,235,479

The information provided above is based upon amounts claimed on sales/use tax returns attributable to the partial exemption. These figures represent significant differences in the amounts previously provided to the author by SBE staff for the years 1994 through 1996. These differences are attributable to the way the SBE is now accounting for the amounts claimed.

Previously, the SBE used amounts shown on exemption certificates that taxpayers submitted when prequalifying for the exemption. However, these amounts were considerably understated when staff compared the amounts claimed on sales/use tax returns with the amounts that had been declared on the exemption certificates. As a result, the figures set forth above are the precise figures taken directly from the returns.

Regarding the partial exemption and prequalifications completed by the SBE, staff have provided the following information (the exemption requests are still only processed in Sacramento):

\* Total number of requests for prequalification received by SBE: 2,046

\* Total number of prequalification certificates issued (granted by SBE): 1,512

<u>YEAR</u>	<u>APPROVED PREQUALIFICATIONS</u>
1994	193
1995	248
1996	312
1997	303
1998	283
1999 (thru 9/30)	173
TOTAL:	2,046
Granted:	1,512
Revoked Exemptions:	487

Also of interest is that SBE staff have received approximately 60 requests for legal opinions under Regulations 1525.2 and 1525.3. They have issued a response to each requester.

### **VIII. UPDATE ON THE SUNSET CLAUSE**

Finally, of interest to readers is the current number of new jobs created under the MIC and partial exemption since their effective date of January 1, 1994. As you will recall, at least 100,000 new manufacturing jobs (not including aerospace jobs) must be created by January 1, 2001, or else the MIC and partial exemption statutes will expire (remember that the laws can expire on any January 1 thereafter if a net 100,000 jobs is not maintained).

Below is a chart listing data supplied by the California Employment Development Department to the author (as required to be reported on an annual basis to the California Legislature):

<u>YEAR</u>	<u>ANNUAL AVERAGE OF MANUFACTURING JOBS</u>	<u>NET CHANGE SINCE 1/1/94</u>
1994	1,587,000	N/A
1995	1,625,500	+38,500
1996	1,686,600	+99,600
1997	1,746,000	+159,000
1998	1,789,400	+202,400

As readers can see from this data, just over 200,000 new jobs have been created in the manufacturing sector since January 1, 1994 (the 1999 figures will be available in March 2000). There is less than one year until the first sunset date could take effect if at least 100,000 jobs are not maintained. However, it appears that the MIC and partial exemption statutes will not sunset in the foreseeable future.