

Frequently Asked Questions
Air Pollution Control Tax Exemption
(PA 451 of 1994, Part 59, as amended)

The following frequently asked questions are being provided as a service to assessors and taxpayers to better inform them about the administration of Public Act 451 of 1994, Part 59, as amended.

Note: The information contained in these frequently asked questions constitutes an analysis of one or more statutes and not legal advice. Since the analysis is limited to general statutory requirements, individual facts may result in different conclusions being reached. Therefore, individuals may wish to consult legal counsel.

1. What is an Air Pollution Control Tax Exemption?

The Air Pollution Control Exemption, PA 451 of 1994, Part 59, as amended, affords a 100% property and sales tax exemption to facilities that are designed and operated primarily for the purpose of controlling or disposing of air pollution that, if released, would render the air harmful or inimical to the public health or property within this State. After review by the Property Services Division and the Department of Environmental Quality, a recommendation is made to the State Tax Commission (STC) regarding the qualification of the application. The STC is responsible for final approval and issuance of certificates. Exemptions are not effective until approved by the STC.

2. How do you apply for an Air Pollution Control Tax Exemption Certificate?

Applications, including the required accompanying documents, are filed with the State Tax Commission. Air Pollution Control Tax Exemption Certificate applications can be found on the Michigan Department of Treasury website at the following address: www.michigan.gov/propertytaxexemptions.

The accompanying documents required by the Act to be included with an application for an Air Pollution Control Tax Exemption Certificate are as follows:

- a. Plans and specification of the facility, including all the materials incorporated or to be incorporated in the facility;
- b. A descriptive list of all equipment acquired or to be acquired by the applicant for the purpose of pollution control; and
- c. The proposed operating procedure for the control facility.

3. What does the term “facility mean and what types of facilities qualify for an Air Pollution Control Tax Exemption Certificate?

Facility means machinery, equipment, structures, or any part or accessories of machinery, equipment, or structures installed or acquired for the primary purpose of controlling or disposing of air pollution that if released would render the air harmful or inimical to the public health or to property within this State. Facility includes an incinerator equipped with a pollution abatement device in effective operation. Facility does not include an air

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conditioner, dust collector, fan, or other similar facility for the benefit of personnel or of a business. Facility also means the following, if the installation was completed on or after July 23, 1995:

- a. Conversion or modification of a fuel burning system to effect air pollution control. Only the fuel burner portion of the system is eligible for tax exemption.
- b. Installation of a new fuel burning system to effect air pollution control. Only the fuel burner portion of the system is eligible for tax exemption.
- c. A process change involving production equipment made to satisfy the requirements of Part 59, 1994 PA 451, as amended, and rules promulgated under that part. The maximum cost allowed shall be 25% of the cost of the new process unit but shall not exceed the cost of the conventional control equipment applied on the basis of the new process production rate on the preexisting process.

4. **Who determines whether a facility qualifies for an Air Pollution Control Tax Exemption Certificate or not?**

Issuance of an Air Pollution Control Tax Exemption Certificate by the State Tax Commission is based primarily upon a finding and determination by the Department of Environmental Quality that the facility meets the qualification requirements of Part 59, 1994 PA 451, as amended.

5. **What specific equipment would not qualify for an Air Pollution Control Tax Exemption Certificate?**

Generally, the following equipment does not meet the definition of an air pollution control facility:

- a. Equipment used to handle, convey, transport, transfer or store raw materials or finished products. This equipment is necessary to the operation of the process and thus is a benefit to business;
- b. Equipment used for bypassing air pollution control equipment. This equipment does not perform an air pollution control function;
- c. Cooling towers. This equipment normally serves a process function and thus is a benefit to business;
- d. Heat recovery equipment. This equipment normally results in a fuel savings to the applicant and thus is a benefit to business;
- e. Make-up air units. This equipment is normally installed to improve employee comfort and working conditions inside the plant and thus is a benefit to personnel;

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- f. Fences. Fences are generally installed for safety and aesthetic reasons and thus are a benefit to business;
- g. Process equipment. This equipment does not perform an air pollution control function and is a benefit to business;
- h. Equipment used to prepare and return collected contaminants to the process. This equipment serves a process function and is a benefit to business; and
- i. Equipment used to manufacture air pollution control equipment. This equipment is process equipment and is a benefit to business.

6. **Who can file an application for an Air Pollution Control Tax Exemption Certificate and with whom is it filed?**

Applications are filed by the company requesting the exemption on their qualified property with the State Tax Commission.

7. **What is the deadline for filing an application for an Air Pollution Control Tax Exemption Certificate? What happens if the application is filed *after* the June 15th deadline?**

Completed applications received by the Department of Treasury on or before June 15th will be processed and transmitted to the Department of Environmental Quality (DEQ) no later than July 15th. In turn, DEQ will transmit its determination for all completed applications to the State Tax Commission (STC) on or before November 1st. Applications received by the Department after June 15th and transmitted to the DEQ after July 15th will be acted on as expeditiously as possible. DEQ determinations received after November 1st will be processed by the STC in the subsequent calendar year.

8. **What happens when an incomplete application for an Air Pollution Control Tax Exemption Certificate is received?**

If the application is incomplete, it will not be forwarded to the Department of Environmental Quality (DEQ) for review. The applicant will be contacted by the Department of Treasury staff to provide the missing or incomplete information. If the information is not received in the allotted time, the application will be considered withdrawn.

If during their application review, the DEQ determines that an application is incomplete or missing required information, they will notify the applicant and State Tax Commission in writing. The applicant will need to provide any additional requested information to DEQ, the Commission, the local assessor, and the clerk within 30 days of the date of the DEQ request. If the applicant fails to respond to the request for additional information within 30 days, the application will be considered withdrawn.

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9. How long does an Air Pollution Control Tax Exemption Certificate last?

An Air Pollution Control Tax Exemption Certificate approved by the State Tax Commission remains in effect until the pollution equipment is no longer in place or no longer used for pollution control.

10. What determines the starting date of the Air Pollution Control Tax Exemption Certificate?

If the Department of Environmental Quality (DEQ) finds that the facility is designed and operated primarily for the control, capture, and removal of pollutants from the air, and is suitable, reasonably adequate, and meets the intent and purposes of Part 59, 1994 PA 451, as amended, the DEQ shall notify the State Tax Commission, which shall issue a certificate. The effective date of the certificate is the date on which the certificate is issued.

11. Does the facility have to be completed prior to application for an Air Pollution Control Tax Exemption Certificate?

The facility should be at least substantially complete at the time the application is submitted, thereby allowing the Department of Environmental Quality to make their determination.

12. Why are the dollar amounts on my Air Pollution Control Tax Exemption Certificate different from what I applied for?

Department of Environmental Quality (DEQ) determines the function of the equipment/structure for which the application has been submitted. Some equipment functions might serve several purposes, including but not limited to a process that is beneficial to the business. If the DEQ has determined that a piece of the equipment does serve as both pollution control and other process, the amount of tax incentive may be limited to only a percentage (*i.e.*, 25% or 50%).

13. What constitutes “recovery”? How does it affect the exemption amount?

Recovery means the gross annual commercial or productive value derived from any materials captured or recovered by the air pollution control facility. The captured materials are then sold for a profit. The value to be exempt from property taxation as provided by Part 59, 1994 of 451, as amended, for eligible air pollution control facilities shall be the cost of the facility entitled to exemption reduced by the gross annual commercial or productive value derived from any materials captured or recovered by the air pollution control facility.

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14. Can a decision of the State Tax Commission (STC) regarding an Air Pollution Control Tax Exemption Certificate be appealed?

A party aggrieved by the issuance, refusal to issue, revocation, or modification of an Air Pollution Control Tax Exemption Certificate may appeal the decision of the STC as provided in the Administrative Procedures Act of 1969, 1996 PA 306; MCL 24.201 to MCL 24.328.

15. Do I qualify for a sales tax or use tax refund? If so, how do I apply for the refund?

The State Tax Commission grants exemption of the sales and use tax through issuance of a certificate for qualified water or air pollution control facilities. This exemption may include portions of real property as well as equipment and other items of tangible personal property. The Department of Treasury will not allow an exemption until it has received a signed exemption certificate from the State Tax Commission. However, after a certificate is granted, refunds will be authorized. Requests for refund review as well as other information may be obtained from the Technical Section of the Department's Sales, Use and Withholding Taxes Division at (517) 636-4730.

16. Does an Air Pollution Control Tax Exemption Certificate totally exempt me from real or personal property taxes?

For the period subsequent to the effective date of the certificate and continuing for as long as the certificate is in force, a facility covered by the certificate is exempt from real and personal property taxes imposed under the General Property Tax Act, 1893 PA 206, being MCL 211.1 to MCL 211.157.

17. Can an Air Pollution Control Tax Exemption Certificate be transferred to a new owner?

Yes. An application must be completed for the transfer to be processed. Check the box on the application marked transfer and under source identification list the company for which the transfer has been requested.

18. Can an Air Pollution Control Tax Exemption Certificate be revoked?

Yes. Upon notice by certified mail to the applicant and offering an opportunity for a hearing, the State Tax Commission, on its own initiative or upon complaint of the Department of Environmental Quality, The Department of Treasury, or the assessor of the taxing unit in which any property to which the certificate relates is located, shall modify or revoke the certificate if any of the following appear:

- a. The certificate was obtained by fraud or misrepresentation;
- b. The holder of the certificate has substantially failed to proceed with the construction, reconstruction, installation, or acquisition of a facility or to operate

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the facility for the purpose and degree of control specified in the certification or an amended certificate;

- c. The facility covered by the certificate is no longer used for the primary purpose of pollution control and is being used for a different purpose; or
- d. Substantial noncompliance with Part 59 or any rule promulgated under that part.

Upon the notice of the State Tax Commission modifying or revoking a certificate by certified mail to the certificate holder, the Department of Treasury, and the local assessor, the certificates shall cease to be in force or shall remain in force only as modified. If a certificate is revoked because it was obtained by fraud or misrepresentation, all taxes that would have been payable had the certificate not been issued are immediately due and payable with the maximum interest and penalties prescribed by applicable law. A statute of limitations shall not operate in the event of fraud or misrepresentation.

19. Who can initiate the revocation of an Air Pollution Control Tax Exemption Certificate?

The certificate holder, the assessor of the taxing unit, the State Tax Commission, the Department of Treasury or the Department of Environmental Quality can initiate the revocation of an Air Pollution Control Tax Exemption Certificate.

20. When does the revocation of an Air Pollution Control Tax Exemption Certificate take effect?

The revocation of an Air Pollution Control Tax Exemption Certificate is effective December 30th of the year in which the State Tax Commission revoked the certificate.

21. If I have an Air Pollution Control Tax Exemption Certificate in place and I purchase new equipment to replace old, outdated equipment, is this new equipment covered under the existing Certificate?

If equipment which is currently qualified under an Air Pollution Control Tax Exemption Certificate has become outdated and the company wishes to replace it, an amendment needs to be made to the existing certificate or a new application needs to be submitted to the State Tax Commission.

22. If I have existing Air Pollution Control Equipment on the tax roll, but have never applied for an exemption, will it qualify?

Yes, as long as the subject equipment or facility has not previously been certified as pollution control for the purpose of granting tax exemption.

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23. **How do you annually report equipment that has been granted an Air Pollution Exemption?**

Air and water pollution control facilities and/or wind or water energy conversion devices may qualify for exemption from taxation if an exemption certificate has been issued by the State Tax Commission on or before December 31st of the prior tax year. If you claim such an exemption, check “Yes” on page 1, line 2 of the Treasury Form 632 (Personal Property Statement) and attach an itemized listing of the certificate numbers, dates of issuance and amounts.