

Frequently Asked Questions
Water Pollution Control Tax Exemption
(PA 451 of 1994, Part 37, 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 37, 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 a Water Pollution Control Tax Exemption?

The Water Pollution Control Exemption, PA 451 of 1994, Part 37, as amended, affords a 100% property and sales tax exemption to facilities that are designed and operated primarily for the control, capture and removal of industrial waste from the water. 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 qualifications 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 a Water Pollution Control Tax Exemption Certificate?

Applications, including the required accompanying documents, are filed with the State Tax Commission. Water 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 a Water Pollution Control Tax Exemption Certificate are as follows:

- a. Plans and specifications of the facility, including all the materials incorporated or to be incorporated in the facility;
- b. A descriptive list of all equipment, including individual costs, 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 types of facilities qualify for a Water Pollution Control Tax Exemption Certificate?

The following are types of facilities that would normally qualify for real and personal property, sales and use tax exemption status under Part 37 of PA 451 of 1994 providing, upon review or inspection by the Department of Environmental Quality (DEQ), they are found to be functioning adequately:

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- a. Industrial wastewater treatment or pretreatment installations and ancillary equipment such as wastewater storage and chemical treatment storage tanks, pumps, piping, electrical, instrumentation and sludge dewatering equipment;
- b. Waste disposal wells and monitoring wells;
- c. Purge wells and treatment systems for industrially contaminated groundwater;
- d. Incinerators or other technologies that effectively destroy hazardous industrial wastes that are potential water contaminants;
- e. Landfill components that serve primarily for the purpose of reducing water pollution such as Leachate Collection Systems;
- f. Containment dikes, impervious flooring or other containment structures to retain spillage or leakage from chemical storage tanks or hazardous waste containers;
- g. Industrial cooling water regeneration systems and wastewater recycle systems. Pumps and piping to the system would qualify, but not return pumps and piping back to the process;
- h. Laboratories and lab equipment used in connection with industrial wastewater pollution control;
- i. Agricultural facilities that have a primary purpose of water pollution control, such as animal waste storage facilities, pesticide and fertilizer storage facilities and certain land use changes such as green belts and filter strips that are installed and maintained to prevent water pollution; and
- j. Well casings and other measures that prevent losses to drinking water aquifers from production wells.

4 Who determines whether a facility qualifies for a Water Pollution Control Tax Exemption Certificate?

Issuance of a Water 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 37, 1994 PA 451, as amended.

5 If I have existing Water Pollution Control equipment on the tax roll, but have never previously applied for the tax exemption, will the equipment 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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6 Who can file an application for a Water Pollution Control Tax Exemption Certificate and with whom is it filed?

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

7 What is the deadline for filing an application for a Water 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 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 Does the facility have to be completed prior to application for a Water 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.

9 What happens when an incomplete application for a Water 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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10. What is the term for a Water Pollution Control Tax Exemption Certificate?

A Water 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.

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

A party aggrieved by the issuance, refusal to issue, revocation, or modification of a Water 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.

12. What determines the starting date of the Water 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 industrial waste from the water, and is suitable, reasonably adequate, and meets the intent and purposes of Part 37, 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.

13. Does a Water 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.

14. Do I qualify for sales 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.

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15. 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 water pollution control facility. The materials captured are then sold for a profit. The value to be exempt from property taxation as provided by Part 37, 1994 PA 451, as amended, for eligible water 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 water pollution control facility.

16. Why are the dollar amounts on my Water Pollution Exemption Application 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 equipment does serve both pollution control and another process, the amount of tax incentive may be limited to only a percentage (*i.e.*, 25% or 50%).

17. Can a Water 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. I have a Water 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 a Water 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.

19. Can a Water 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 for any of the following:

- a. The certificate was obtained by fraud or misrepresentation;

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- b. The holder of the certificate has failed substantially to proceed with the construction, reconstruction, installation, or acquisition of a facility or to operate the facility for the purpose and degree of control specified in the certification or an amended certificate; or
- 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.

Upon the notice of the State Tax Commission modifying or revoking a Water Pollution Control Tax Exemption 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.

20. Who can initiate the revocation of a Water 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 a Water Pollution Control Tax Exemption Certificate.

21. When does the revocation of a Water Pollution Control Tax Exemption Certificate take effect?

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

22. How do you annually report equipment that has been granted a Water Pollution Control Tax Exemption Certificate?

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 30th 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.