

Frequently Asked Questions
Air Pollution Control Tax Exemption
(1994 PA 451, 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 1994 Public Act 451, 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 should consult legal counsel.

1. What is an Air Pollution Control Tax Exemption?

The Air Pollution Control Exemption, 1994 PA 451, 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 Community Services Division in Treasury and the Department of Environment, Great Lakes, and Energy (EGLE) 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 I apply for an Air Pollution Control Tax Exemption Certificate?

Applications, including the required accompanying documents, are filed with the STC. 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 to be included with an application for an Air 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/components acquired or to be acquired by the applicant for the purpose of pollution control;
- c. The proposed operating procedure for the control facility; and
- d. A completed signed and sealed affidavit of an engineer's certification.
- e. A detailed description of any miscellaneous costs included in the application with the justification for how such costs are a necessary part of the installation of pollution control equipment/components.

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3. 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 STC.

4. 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. Applications received by the Department of Treasury after June 15th will be acted on as expeditiously as possible.

5. Who determines if a facility qualifies for an Air Pollution Control Tax Exemption Certificate?

Issuance of an Air Pollution Control Tax Exemption Certificate by the STC is based on a determination by EGLE that the facility meets the qualification requirements of 1994 PA 451, Part 59, as amended and by a determination of the STC that the application is complete and meets statutory requirements.

6. What specific equipment/components would not qualify for an Air Pollution Control Tax Exemption Certificate?

An applicant should consult engineering professionals and legal counsel to review the proposed exemption request. The determination of the qualifications of a piece of equipment/component as a “facility” under the statute is based on the use of that equipment/component at the specific pollution control site.

Generally, the following equipment/components do not meet the definition of an air pollution control facility:

- a. Equipment/components used to handle, convey, transport, transfer or store raw materials or finished products. This equipment/component is necessary to the operation of the process and thus is a benefit to business.
- b. Equipment/components used for bypassing air pollution control equipment/component. This equipment/component does not perform an air pollution control function.
- c. Cooling towers. This equipment/component normally serves a process function and thus is a benefit to business.

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- d. Heat recovery equipment/components. This equipment/component normally results in a fuel savings to the applicant and thus is a benefit to business.
- e. Make-up air units. This equipment/component is normally installed to improve employee comfort and working conditions inside the plant and thus is a benefit to personnel.
- f. Fences. Fences are generally installed for safety and aesthetic reasons and thus are a benefit to business.
- g. Process equipment/components. This equipment/component does not perform an air pollution control function and is a benefit to business.
- h. Equipment/components used to prepare and return collected contaminants to the process. This equipment/component serves a process function and is a benefit to business; and
- i. Equipment/components used to manufacture air pollution control equipment/components. This equipment/component is process equipment/components and are a benefit to business.

7. Can an application for an Air Pollution Control Tax Exemption Certificate be denied?

Yes. An application can be denied if EGLE or the STC determines that the facility was not designed primarily to control, capture or remove air pollutants that if released would render the air harmful or inimical to the public health, does not meet the intent and purpose of part 55 and rules promulgated under that part, or to property within the state or if the application is incomplete.

8. Can a decision of the 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, PA 306 of 1996, as amended.

9. What is the term of an Air Pollution Control Tax Exemption Certificate?

An Air Pollution Control Tax Exemption Certificate approved by the STC remains in effect until the pollution equipment/component is no longer in place or no longer used for the primary purpose of pollution control.

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

The effective date of the certificate is the date the certificate is issued by the STC.

11. 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, as amended.

12. Are special assessment millage rates impacted by the granting of an Air Pollution exemption?

Special assessment millage rates may be impacted. Millage-based special assessments levied under 1951 Public Act 33, as amended, do not apply to property with an Air Pollution exemption. However, the special assessments would still be applicable to the land on which the Air Pollution exemption property is located. Conversely, for millage-based special assessments levied under public acts other than Public Act 33 of 1951, as amended, property with an Air Pollution exemption pays on the full special assessment millage rate, the same as any "ad valorem" property.

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

If equipment/component 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 by application or a new application needs to be submitted.

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

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

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

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If the application is incomplete, it will not be forwarded to EGLE for review. The applicant will be contacted by Treasury staff to provide the missing or incomplete information. If the information is not received in the allotted time, the application may be considered withdrawn.

If, during the application review, EGLE determines that an application is incomplete or missing required information, they will notify the STC in writing. The applicant will need to provide any additional requested information within 30 days of a request from either the STC or EGLE. If the applicant fails to respond to the request for additional information within 30 days, the application may be considered withdrawn.

16. 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.

17. 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 EGLE, 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 the facility for the purpose and degree of control specified in the certificate 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 55 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

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maximum interest and penalties prescribed by applicable law. A statute of limitations shall not operate in the event of fraud or misrepresentation.

18. 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 STC revoked the certificate.

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

Per 1994 PA 451, Part 59, as amended:

“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 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, 1965:

- a. Conversion or modification of a fuel burning system to effect air pollution control. The fuel burner portion only of the system is eligible for tax exemption.*
- b. Installation of a new fuel burning system to effect air pollution control. The fuel burner portion only of the system is eligible for tax exemption.*
- c. A process change involving production equipment made to satisfy the requirements of part 55 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.”*

20. 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 1994 PA 451, Part 59, as amended, for eligible

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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.

21. How do you annually report equipment/components that have 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 STC 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.

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

The STC 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/components 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 STC. 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) 636-6925.

23. Where can I obtain copies of previously issued Air Pollution Control Tax Exemption Certificates?

Copies of certificates acted upon by the State Tax Commission after January 1, 2013 are available on the Department of Treasury website at:
www.michigan.gov/propertytaxexemptions.

Choose the exemption program under which the certificate was issued. Within the “Certificate Activity” link, the certificates are listed according to the date they were acted upon.