

Tax Exemptions for Air Pollution Control

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Tax Exemptions for Air Pollution Control

Introduction

As per Article II, Chapter I, Part 59 (Air Pollution Control Facility; Tax Exemption) of Public Act 451 of 1994, hereinafter referred to as “Part 59,” tax exemptions for air pollution control are available through an application separate from the Permit to Install application. Specific procedures must be followed to be granted tax relief and tax exemption certificates are terminated when equipment is removed.

Procedures for the Evaluation of Air Pollution Control Tax Exemption Certificate Applications

Part 59 provides for the exemption of air pollution control facilities from sales, use, and property taxes (equipment installed prior to the effective date of Part 59 is eligible for tax exemption). The responsibility for the evaluation of all pollution control tax exemption certificate applications lies with district staff of the Air Quality Division (AQD) of the Michigan Department of Environmental Quality (MDEQ). The Field Operations Supervisor is responsible for supervising and coordinating the technical evaluation of all such applications by the district staff. Questions regarding the processing of these applications that are not answered in this manual should be directed to the attention of the appropriate supervisor or the person assigned to review the application.

The general procedures and policies regarding applications for tax exemptions for air pollution control facilities are as follows:

Application Submittal

Applications for tax exemption for air pollution control facilities must be submitted to the Michigan State Tax Commission (STC) on “Application for Air Pollution Control Tax Exemption Certificate” forms. They must be submitted by June 15th to ensure final determinations are made by the end of the tax year. These forms can be obtained from:

Michigan State Tax Commission
Department of Treasury
430 W. Allegan Street
Lansing, MI 48922
Telephone: 517-373-3272

or from the Michigan State Tax Commission’s website at **www.michigan.gov/treasury**. Click on “Individual” in the left menu, select “Property Owners,” “Forms & Instructions,” then “Property Tax - Abatement/Exemption,” from the middle right menu. Finally, select “#3828, Application for Air Pollution Control Tax Exemption Certificate.” A copy of this form is found at the end of this section.

Application Evaluation/Re-evaluation

1. In the evaluation of an application, the decision of what equipment meets the requirements of Part 59 will be based on the descriptions in the Act and described in the *Guidelines for the Evaluation of Air Pollution Control Tax Exemption Certificate Applications* section of this document.
2. Only the equipment for which the applicant is requesting a tax exemption will be evaluated.
3. Re-evaluation will be made upon written request by the applicant. Re-evaluation requests will be given the same time consideration as new applications.
4. A re-evaluation is not necessary following receipt of the final cost figures.

Incomplete Application

Applicants that have submitted an incomplete application will be given a reasonable amount of time to submit the requested information necessary. An administrative completeness check will be conducted by the STC. Failure to complete the required information will result in a return of the application. A technical completeness check will be conducted by the MDEQ. If the application is technically incomplete and the requested additional information is not submitted within 30 days of notification of the deficiency, the MDEQ will consider the application withdrawn and it will be returned to the State Tax Commission. The STC will then place the application on an inactive status and notify the company that no certificate will be issued.

Coordination with Other Regulations

Equipment for which tax exemption is sought must be operating in compliance with all applicable air pollution control regulations and may either be:

- Covered by an approved Permit to Install,
- Operating within a Permit to Install Exemption, or
- Part of a final control system which is specified as part of a legally enforceable order.

Under Part 59, a tax exemption certificate may be modified or revoked if the certificate was obtained by fraud or misrepresentation; the holder of the certificate has failed substantially to proceed with 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 the amended certificate; 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; there is substantial noncompliance with *Article II, Chapter 1, Part 55 (Air Pollution Control) of P.A. 451 of 1994* (formerly *Michigan Act 348 of the Public Acts of 1965, as amended*) or any rule promulgated thereunder.

Also, material submitted with a tax exemption application cannot be treated as confidential. Neither Part 59, Public Act 442 of 1976, as amended, nor the Freedom of Information Act can provide for confidentiality of content in tax exemption application submissions.

Processing Applications

The responsibilities of the State Tax Commission (STC) are to:

1. Assign a number to tax exemption applications received.
2. Perform an administrative completeness check on the application within 30 days and return incomplete applications for resubmittal.
3. Forward complete applications to the MDEQ for technical evaluation within the 30-day period.
4. Receive findings from the MDEQ and handle all processing of applications except for technical evaluation conducted by the MDEQ.
5. Issue and revoke tax exemption certificates.
6. Hold hearings on appeals by aggrieved parties.
7. Adopt rules and regulations as deemed necessary for the administration of Part 59 as long as such rules do not abridge the authority of the MDEQ to determine whether or not air pollution control exists within the meaning of Part 59.

The MDEQ staff will:

1. Review the application within 30 days of receipt to determine if the application contains sufficient information to complete the evaluation. If the application is technically incomplete, additional information will be requested by letter or electronic mail (e-mail).
2. Conduct a comprehensive review of the application to determine if the equipment covered by the application meets the definition of an air pollution control facility as contained in Part 59.
3. Determine if the equipment meets the requirements of Section 5903 of Part 59.
4. Prepare a rough draft of the tax exemption evaluation and forward to the AQD District Supervisor.
5. The District Supervisor will make a final determination and forward it to the STC. A copy of the documentation will also be sent to the Field Operations Supervisor.

The MDEQ analysis will be completed within 90 days of receipt of the application from the STC, with the exception of delays due to additional information requests.

Guidelines for the Evaluation of Air Pollution Control Tax Exemption Certificate Applications

Before the STC can issue a tax exemption certificate, the MDEQ must find that the air pollution control facility:

- is designed and operated primarily for the control, capture, and/or removal of pollutants from the air.
- is suitable and reasonably adequate.
- meets the intent and purpose of *Article II, Chapter 1, Part 55 (Air Pollution Control) of P.A. 451 of 1994, as amended* and rules promulgated thereunder.

Prior to making this determination, the MDEQ must evaluate the equipment covered by the application to determine which equipment meets the definition of an air pollution control facility as contained in Part 59. Part 59 defines air pollution control facility to mean equipment installed or acquired for the primary purpose of controlling or disposing of air pollution which, if released, would render the air harmful or inimical to the public health or to property within the state. This includes process changes made to production equipment so as to satisfy the requirements of the air pollution act, as well as changes to the fuel burner of a fuel burning system which has been installed, modified, or converted to effect air pollution control. Excepted from this definition is any equipment acquired or installed for the benefit of personnel or of a business.

Generally, equipment which meets the definition of an air pollution control facility as contained in Part 59 falls under one of the following categories:

1. Equipment which actually removes air contaminants from a gas stream being exhausted to the atmosphere (e.g., baghouses, scrubbers, electrostatic precipitators, etc.).
2. Equipment which prevents potential air contaminants from being emitted to the atmosphere (e.g., sprinkler systems, dust control enclosures, etc.).
3. Equipment which alters the sources, thus eliminating the generation of the air contaminant (e.g., process change or burner conversion).
4. Equipment which is ancillary to the operation of the air pollution control facility (e.g., dust hoppers, waste conveyors, monitors, stacks, fans, and motors).

In evaluating specific installations covered by tax exemption certificate applications, the MDEQ uses the following general guidelines to determine whether a piece of equipment meets the definition of an air pollution control facility as contained in Part 59. In applying these guidelines, it is important to remember that:

1. Exceptions to these guidelines will occur.
2. "Air pollution control facility" means equipment installed or acquired for the primary purpose of controlling or disposing of air pollution.

3. "Air pollution control facility" does not mean equipment which is for the benefit of personnel or business.
4. For complex situations in which the equipment serves a number of functions, only one of which is air pollution control, the MDEQ may apply the incremental cost approach. In such situations, the incremental cost eligible for tax exemption is considered to be the difference between the actual cost and the estimated cost of the equipment which could perform all of the functions other than air pollution control.

Control Equipment

Equipment which controls, captures, and removes pollutants from the air stream or which alters the form or characteristics of a pollutants in an air stream, thus making the emission acceptable, meets the definition of an air pollution control facility as contained in Part 59. Control equipment includes, but is not limited to, the following:

- Adsorption units
- Baghouses
- Catalytic afterburners
- Condensers
- Cyclones
- Electrostatic precipitators (ESP)
- Flame afterburners
- Flares
- Flue gas desulfurization units
- Mist eliminators
- Multicyclones
- Packed scrubbers
- Settling chambers
- Thermal oxidizers
- Vapor recovery units
- Water wash and dry filter collectors on paint spray booths (see separate discussion)
- Wet scrubbers

Control equipment which is used as described below does not meet the definition of an air pollution control facility as contained in Part 59. (Note that control equipment that is part of a system recirculating air inside the plant is not excepted from the definition of air pollution control facility.)

This equipment is:

1. Control equipment which is used primarily for product recovery or for the benefit of business or personnel.
2. Control equipment which cleans process gases as a necessary process step for the benefit of business (e.g., ESP for blast furnace exhaust gases where the gases must be cleaned before being utilized for heat recovery).

Paint Spray Booths

The water wash or dry filter section of a paint spray booth serves an air pollution control function and thus meets the definition of an air pollution control facility as contained in Part 59. However, the remainder of a paint spray booth is necessary to the process or for ventilation to protect worker health and therefore is considered a benefit to business or personnel. Additionally, paint reheat units, curing ovens, air filters for incoming air, paint lines, and other equipment associated with the spray system are considered process equipment which is also a benefit to business, and does not meet the requirements of Part 59.

For water wash paint spray booths, the MDEQ generally estimates the cost of the water wash section to be 50 percent of the cost of the total paint spray booth. If the applicant provides an actual cost breakdown for the water wash section, that figure will be used instead of the MDEQ estimate.

For dry filter control, the MDEQ requires a cost breakdown for (a) the filters and filter supports, and (b) the fan and motor. If the applicant is unable to provide a cost breakdown, none of the paint spray booth will be considered to meet the definition of an air pollution control facility as contained in Part 59.

Ancillary Equipment

Ancillary equipment, which is integral or necessary to the operation of exempt control equipment, meets the definition of an air pollution control facility as found in Part 59.

Ancillary equipment includes:

1. Foundations and structural equipment to the extent that they apply to exempt equipment.
2. Equipment enclosures or buildings to the extent that they provide weather protection for the exempt equipment.
3. Electrical equipment to the extent that it applies to exempt equipment
4. Instrumental and other equipment for adequate or more reliable operation of exempt equipment (i.e., spare equipment to ensure continuous operation of exempt equipment, voltage regulators, slide gate valves on discharge hoppers, exhaust gas temperatures and humidity monitors, collector regulating monitors, control panels, etc.).
5. Instrumentation and other equipment for safer or quieter operation of exempt equipment (i.e., noise attenuation equipment, fire protection equipment, etc.).
6. Equipment used for service or maintenance of exempt equipment (i.e., collector maintenance equipment, catwalks, stairs, hoists, service doors, etc.).
7. Equipment used to treat an exempt collector inlet gas stream (i.e., flue gas conditioning equipment, quench sections, gas humidifying equipment, straightening vanes, etc.).

8. Equipment used to prepare and supply the scrubber liquor to an exempt wet collector and equipment used to properly treat the effluent discharge from an exempt wet collector (i.e., water service equipment, re-circulation, pH control equipment, pumps, piping, valves, holding tanks, sludge treatment equipment, disposal ponds, etc.).
9. Equipment used to properly transfer, store, handle, and prepare for disposal of contaminants collected by exempt equipment (i.e., discharge hoppers, augers, conveyors and enclosures, belts and enclosures, bucket elevators, storage hoppers, water sprays, and dust control enclosures).
10. Modifications to process equipment or buildings that were necessitated by the addition of exempt equipment.
11. Fans, motors, ductwork, stacks, in-stack monitors, and some ambient air monitors (see separate discussion).

Fans and Motors

The nature of most process operations requires some in-plant ventilation control to protect the health and comfort of the workers. The in-plant ventilation control system includes the fans and motors needed to move the pollutant-laden air through the hoods and ductwork and out of the plant. Thus, the fans and motors are considered partially a benefit to personnel.

Additionally, the nature of some processes requires a forced or induced draft in order to function properly. Thus, in these situations, the fans and motors are considered partially a benefit to business.

The addition of an exempt collector adds resistance to the exhaust control system which must be overcome with a larger capacity fan and motor. Thus, portions of fans and motors meet the definition of an air pollution control facility. The MDEQ must evaluate the system and estimate the relative importance that in-plant ventilation control, air pollution control, and process requirements have in dictating the fan and motor capacities. In conducting this evaluation, the following guidelines are observed:

1. If the static pressure requirements of the process and/or in-plant ventilation control system far outweigh the static pressure requirement of the exempt air pollution control equipment, 0% of the fans and motors are considered an air pollution control facility.
2. If the static pressure requirements of the exempt air pollution control equipment far outweigh the static pressure requirements of the process and/or in-plant ventilation control system, 100% of the fans and motors are considered an air pollution control facility.
3. If the relationship between the static pressure requirements of the process and /or in-plant ventilation control system and the static pressure requirements of the exempt air pollution control equipment falls in between (1) and (2), 50% of the fans and motors are considered an air pollution control facility.
4. If the applicant provides an actual cost breakdown for the portion of the fans and motors that is exempt, this figure will be used instead of the MDEQ estimate.

Ductwork and Hoods

The in-plant control system also includes the hoods and ductwork needed to confine, capture, and transport pollutant-laden air out of the plant. Thus this equipment is considered a benefit to personnel.

With the installation of an exempt collector, additional ductwork is usually needed to transport the pollutant-laden air to the collector. This additional ductwork meets the definition of an air pollution control facility as contained in Part 59.

Generally, the MDEQ must review the plans of the ductwork submitted by the applicant and estimate the cost of the additional ductwork necessary to exhaust the contaminant gas stream out of the plant via the shortest and cheapest route. The estimate of the cost of the ductwork necessary for air pollution control will be to the nearest increment of 25%. If the applicant provides an actual cost breakdown for the exempt ductwork, that figure will be used instead of the MDEQ estimate.

In some situations, in-plant ventilation control equipment that has been installed to protect the health and comfort of the workers may not be an issue (e.g., process equipment located out of doors). The hood and ductwork installation may not be necessary for in-plant ventilation control and may have been acquired solely to confine, capture and transport pollutant-laden air to an exempt collector. In this circumstance, all of the hood and ductwork meets the definition of an air pollution control facility as contained in Part 59.

Examples of this situation include:

- Push and charge control systems for coke batteries
- Asphalt plant control systems
- Lagoon control systems
- Bulk storage silo control systems

Stacks

Stacks, flues, or chimneys, and related appurtenances which are for an exempt collector system or which provide for dispersion of an air pollutant so as to prevent a nuisance, or to provide for attainment and maintenance of ambient air quality or significant deterioration standards meet the definition of an air pollution control facility as contained in Part 59.

Stacks, flues or chimneys and related appurtenances that are used for general exhaust from a plant or process and that do not exhaust air contaminants in significant concentrations are considered a benefit to personnel or business.

Monitors, In-Stack (Including stack testing equipment)

In-stack emission monitoring equipment used to monitor plume opacity or contaminant concentration meets the definition of an air pollution control facility as contained in Part 59.

Examples of this equipment include:

- opacity monitors
- nitrogen oxide analyzers
- sulfur dioxide analyzers
- carbon monoxide analyzers
- hydrogen sulfide monitors
- stack testing equipment
- television monitoring equipment

Emission monitoring equipment which indicates the loss of product or protects process equipment is of benefit to business and does not meet the definition of an air pollution control facility as contained in Part 59.

Ambient Monitoring Equipment

Ambient air monitoring equipment that is required for compliance with a permit condition or with the federal Prevention of Significant Deterioration regulations meets the definition of an air pollution control facility as contained in Part 59.

Miscellaneous Costs

Various costs incurred during the installation of air pollution control equipment are considered part of the cost of the equipment itself. To the extent that these costs apply to exempt equipment, they qualify for tax exemption. The applicant should include these costs as part of the installed costs for the various component parts of the system.

Examples of various costs that may qualify for tax exemption include:

- administrative fees
- contingency costs
- engineering costs
- feasibility costs
- freight charges
- installation costs
- insurance fees
- interest charges
- start-up costs
- legal fees
- taxes (does not include exempt taxes)

Prevention of Air Pollution

Equipment that controls air pollution by preventing an air contaminant from being released into the air stream may meet the definition of an air pollution control facility as contained in Part 59. Examples of equipment that controls air pollution by prevention include:

1. Fuel desulfurization equipment which reduces the sulfur content of fuel to be burned in the applicant's process of fuel burning equipment. However, fuel desulfurization equipment used to desulfurize fuel which is sold on the open market is considered to be process equipment which is of benefit to the business.
2. Aerators used to aerate disposal lagoons for odor control. However, aerators necessary for the proper operation of aerobic lagoons reduce the lagoon size requirements and thus are a benefit to business.
3. Dust suppression equipment and practices such as sprinkler systems, storage pile enclosures, conveyor transfer points, dump hopper enclosures, etc.
4. Emergency chemical containment pits which prevent excessive vaporization and enable application of a scrubbing system.
5. Street sweepers and related equipment used to prevent the reentrainment of air contaminants.

Process Change

A process change involving production equipment made to satisfy the requirements of *Act 451, Part 55, Air Pollution Control*, meets the definition of an air pollution control facility as contained in Part 59. For process changes, the maximum cost allowed for tax exemption will be the lesser of 25% of the cost of the new process unit plus 100% of the cost of its related air pollution control equipment or the cost of conventional equipment applied on the basis of the new equipment process production rate on the pre-existing process.

Conventional control equipment is considered to be the least expensive air pollution control facility required to comply with the provisions of Act 451, Part 55, Air Pollution Control as determined by the MDEQ. An estimate of the cost of conventional control equipment will be made by the MDEQ based on the actual cost estimate data submitted by the company.

If there has been a change in the production rate concurrent with the process change and the MDEQ is unable to otherwise estimate to its satisfaction the cost of conventional control equipment at the new production rate on the preexisting process, the MDEQ may use such rules of thumb as it deems appropriate to estimate this cost. The most commonly used rule of thumb is the "six-tenths rule". By this rule, the production rate correction is:

Cost = (cost if control equipment at existing production rate) X $R^{0.6}$ WHERE

$$R = \frac{\text{new process production rate}}{\text{old process production rate}}$$

The MDEQ does not deem it appropriate to use the "six-tenths rule" when R equals or exceeds 10.

Examples of process change which qualify for some tax exemptions include:

- Replacement of cupolas with electric furnaces.
- Replacement of larry car charging systems with pipeline charging systems on coke oven batteries.
- Replacement of coal fired boilers with compressors for supplying air to forging hammers.

Burner Conversions

The fuel burner portion of a fuel burning system installed, modified, or converted to effect air pollution control meets the definition of an air pollution control facility as contained in Part 59. The MDEQ considers a fuel burning system installation, modification, or conversion to have effected air pollution control only if the new fuel burning system replaces an existing fuel burning system which burns less polluting fuel than was previously burned (e.g., coal to oil, oil to gas, etc.) or by design reduces air contaminant levels. The installation of a new fuel burning system where previously none existed is of benefit to the applicant and does not effect air pollution control.

In evaluating tax exemption applications, the MDEQ considers a fuel burner a device for the introduction of a flame by delivering fuel and its combustion air at desired velocities and turbulence to establish and maintain proper ignition and combustion of the fuel. Based on this definition, the following equipment is recognized as burner components which may qualify for a tax exemption:

1. Auxiliaries to condition the temperature and viscosity of the fuel to promote better atomization and combustion.
2. Flame safety devices.
3. Steam, mechanical, or other atomization equipment and associated piping.
4. Fans or pumps and associated piping and ductwork, which move or pressurize a mixture of air and fuel that passes through the burner or combustion air.

The following equipment, associated with fuel burning systems, is considered process equipment and thus of benefit to business:

- Fuel storage tanks.
- Natural gas piping and gas main lines.
- Fuel oil piping and associated fuel pumps necessary to transport the fuel from the storage equipment.

Landfills

Collection systems for landfill gases can potentially meet all of the requirements of Part 59. In a situation where a company has elected to install landfill, gas-fired power generating equipment to combust landfill gas, in lieu of a flare, an exemption will be granted for the portion of the power generating equipment cost equal to what it would have cost to install a flare.

Nuclear Power Plants

Several systems at a nuclear power plant limit the uncontrolled release of radioactive materials to the environment which, if released, might result in undue risk to the health and safety of the public. Therefore, it is the opinion of the MDEQ that such systems meet the definition of an air pollution facility as contained in Public Act 451.

However, many of these systems also protect: the general public and plant employees from direct radiation; the plant employees from radioactive materials; and the plant investment. Because of the apparent multiple functions performed by some of these systems, the MDEQ is unable to find that the single purpose of controlling air pollution is their primary purpose. In these cases, the MDEQ applies the incremental cost approach.

Examples of equipment at nuclear power plants that qualify for partial exemption are: the containment structures, the containment spray systems, the emergency core cooling systems, the gaseous waste disposal systems, the emergency power generating systems and the radiation monitoring equipment.

Incinerators

The definition of an air pollution control facility was amended to include an incinerator equipped with a pollution abatement device provided the incinerator is not operated for the benefit of the business. Thus, a properly designed and operated incinerator used solely to incinerate waste generated by the company's own operations qualifies for tax exemption. If the incinerator is used to incinerate another company's waste for a fee, the incinerator is considered process equipment, and only the afterburning (control) portion of the incinerator will qualify for tax exemption. The afterburning portion generally includes the secondary chamber, the afterburner, and air pollution collectors.

Compactors and Balers

The Michigan Court of Appeals has ruled that a solid waste compactor and baler installed at a new merchandising store met all of the requirements of Part 59. This merchandising store did not have a unique type of waste; thus the waste could have been incinerated in a properly designed incinerator in compliance with the Michigan air pollution control regulations. For each tax exemption application covering compactors and balers, the MDEQ will make individual determinations as to whether the equipment is similar in operation and function to the equipment in the Court of Appeals case.

Non-exempt Equipment

Generally, the following equipment does not meet the definition of an air pollution control facility as contained in Part 59:

1. 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 a benefit to business.

2. Equipment used for bypassing air pollution control equipment. This equipment does not perform an air pollution control function.
3. Cooling towers. This equipment normally serves a process function and thus is a benefit to business.
4. 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.
5. Fences. Fences are generally installed for safety and aesthetic reasons and thus are a benefit to personnel and/or business.
6. Process equipment. This equipment does not perform an air pollution control function and is of benefit to business.
7. Equipment used to prepare and return collected contaminants to the process. This equipment serves a process function and is of benefit to business.
8. Equipment used to manufacture air pollution control equipment. This equipment is process equipment and is of benefit to business.

Certificate Issuance and Appeal of Tax Exemption Decisions

After the MDEQ sends their tax exemption findings to the STC, the STC will send certified notice to all interested parties of the determination. From the date of the notice, the assessor and applicant will have 21 days to request a hearing with the STC. If no hearing is requested within 21 days, or after an STC hearing, a certificate will be issued or denied. Any aggrieved party may then appeal the decision to the Circuit Court, pursuant to the Administrative Procedures Act, 1969 PA 306, as amended (APA), as provided by Sections 5907 of Part 59.

Other Tax Exemptions

Other state and federal regulations other than Part 59 may provide tax exemptions for air pollution control. The Capital Acquisition Deduction (CAD) is available through Michigan's Single Business Tax (SBT). The CAD exemption is a line item credit on a business' SBT tax liability. It is available for acquired depreciable real or personal property during the taxable year, or disposed of depreciable real personal property that was acquired on or after January 1, 1976. The CAD credit allows businesses to potentially benefit fiscally from acquiring pollution control equipment.

With reference to federal regulations, Section 179 of the Internal Revenue Service Code allows for direct write-off of equipment purchased. It does not allow real property, however, if an owner chooses to claim his/her acquired pollution control equipment, then s/he may receive a \$17,500 deduction on the federal tax liability. Section 179 federal credit is limited to equipment viewed as expense and can be carried forward from year to year.

Though limited in scope in its applicability to air pollution control, a federal geothermal energy credit may provide a tax incentive. This credit applies to property constructed, reconstructed, or erected by the taxpayer to harness solar energy for generating electricity, to heat or cool a structure, or provide process heat.