

**SALES AND USE TAX EXEMPTION FOR
POLLUTION CONTROL FACILITIES**

1999 GENERAL SESSION

STATE OF UTAH

Sponsor: John L. Valentine

AN ACT RELATING TO THE ENVIRONMENTAL QUALITY CODE; EXTENDING THE TIME PERIOD FOR WHICH A TAXPAYER MAY CLAIM A SALES AND USE TAX EXEMPTION FOR CERTAIN SALES OR USES RELATING TO A POLLUTION CONTROL FACILITY; EXTENDING THE TIME PERIOD FOR ERECTING, CONSTRUCTING, OR INSTALLING A POLLUTION CONTROL FACILITY FOR PURPOSES OF THE SALES AND USE TAX EXEMPTION; PROVIDING LIMITS ON THE TIME PERIOD FOR CLAIMING A REFUND FOR SALES AND USE TAXES PAID ON CERTAIN PURCHASES RELATING TO A POLLUTION CONTROL FACILITY; PROVIDING FOR INTEREST TO ACCRUE ON CERTAIN SALES AND USE TAXES PAID ON CERTAIN PURCHASES RELATING TO A POLLUTION CONTROL FACILITY; AND MAKING TECHNICAL CHANGES.

This act affects sections of Utah Code Annotated 1953 as follows:

AMENDS:

19-2-124, as last amended by Chapter 135, Laws of Utah 1994

19-2-125, as last amended by Chapter 135, Laws of Utah 1994

Be it enacted by the Legislature of the state of Utah:

Section 1. Section **19-2-124** is amended to read:

19-2-124. Application for certification of pollution control facility.

(1) (a) A person who qualifies under Subsection (2) may apply to the board for certification of a pollution control facility or facilities erected, constructed, or installed, or to be erected, constructed, or installed in the state [~~after December 31, 1972, or on or before January 31, 1985, and~~] on or after [June 30] July 1, 1986, [and] but on or before [July 1, 1999] June 30, 2004.

(b) An application may be filed at any time after a firm construction contract has been entered or construction has commenced.

(2) (a) (i) A person who applies under Subsection (1) shall be the owner of a trade or business that uses property in the state requiring a pollution control facility to prevent or minimize pollution or a person who, as a lessee or pursuant to an agreement, conducts the trade or business that operates or uses the property.

(ii) For purposes of this Subsection (2), "owner" includes a contract purchaser.

(b) The facility shall be owned, operated, or leased during a part of the tax year in which the exemption is claimed.

(c) ~~[An]~~ A person who obtains certification for a pollution control facility may claim an exemption [may be claimed] from sales and use taxes as provided in Section 19-2-123 and 59-12-104 only [in those tax years that begin] during the time period beginning on or after [January 1, 1973, and on or before January 31, 1985, and after June 30] July 1, 1986, and ending on or before [July 1, 1999] June 30, 2004.

~~[(d) As used in this Subsection, "owner" includes a contract purchaser.]~~

(d) A person who pays a tax under Title 59, Chapter 12, Sales and Use Tax Act, on a purchase of tangible personal property or services used in the construction of or incorporated into a pollution control facility that:

(i) is not certified under Section 19-2-125, may obtain a refund of the tax if:

(A) the board subsequently certifies the pollution control facility;

(B) the tangible personal property or services meet the requirements for exemption provided in Subsections 19-2-123(2) and 59-12-104(11), except for the certification requirement; and

(C) the person files a claim for the refund with the State Tax Commission within § THE LESSER OF: (I) § three

years after the day on which the pollution control facility is certified under Section 19-2-125; or

§ (II) SIX YEARS AFTER THE DAY ON WHICH THE PERSON PAYS THE TAX UNDER TITLE 59, CHAPTER

12, SALES AND USE TAX ACT; OR §

(ii) is certified under Section 19-2-125, may obtain a refund of the tax if:

(A) the tangible personal property or services meet the requirements for exemption provided in Subsections 19-2-123(2) and 59-12-104(11); and

(B) the person files a claim for the refund with the State Tax Commission within three years after the day on which the person § [purchases the tangible personal property or services]

PAYS THE TAX UNDER TITLE 59, CHAPTER 12, SALES AND USE TAX ACT § .

(e) (i) If a person files a claim for a refund of taxes under Subsection (2)(d)(i) paid on a

purchase of tangible personal property or services used in the construction of or incorporated into a pollution control facility that was not certified under Section 19-2-125 at the time of the purchase:

(A) within 180 days after the day on which the board certifies the pollution control facility, interest shall ~~§ [be added]~~ ACCRUE § to the amount of the refund granted by the State Tax Commission:

(I) at the rate prescribed in Section 59-1-402; and

(II) beginning on the day on which the person ~~§ [purchases the tangible personal property or]~~ § ~~§ [services]~~ PAYS THE TAX UNDER TITLE 59, CHAPTER 12, SALES AND USE TAX ACT, § for which the person is claiming a refund; or

(B) more than 180 days after the day on which the board certifies the pollution control facility, interest shall be added to the amount of the refund granted by the State Tax Commission:

(I) at the rate prescribed in Section 59-1-402; and

(II) beginning 30 days after the day on which the person files the claim for a refund under Subsection (2)(d).

(ii) If a person files a claim for a refund of taxes under Subsection (2)(d)(ii) paid on a purchase of tangible personal property or services used in the construction of or incorporated into a pollution control facility that was certified under Section 19-2-125 at the time of the purchase, interest shall accrue to the amount of the refund granted by the State Tax Commission:

(A) at the rate prescribed in Section 59-1-402; and

(B) beginning 30 days after the day on which the person files a claim for a refund under Subsection (2)(d).

(3) (a) Each application shall be in writing on a form prescribed by the board, contain a description of the facilities and materials incorporated in them, the machinery and equipment, the existing or proposed operational procedure, and a statement of the purpose of pollution prevention, control, or reduction served or to be served by the facility.

(b) The board may require any further information it finds necessary before issuance of a certificate.

Section 2. Section **19-2-125** is amended to read:

19-2-125. Action on application for certification.

(1) (a) If the board, after consulting with the State Tax Commission, finds that a pollution control facility or a part of a pollution control facility, for which application is made under Section 19-2-124 was or is to be erected, constructed, acquired, or installed ~~[after December 31, 1972, on~~

90 ~~or before January 31, 1985, and] on or after [June 30]~~ July 1, 1986, ~~[and] but on or before [July~~
91 ~~1, 1999]~~ June 30, 2004, and is designed and is being operated or will operate primarily to prevent,
92 control, or reduce air or water pollution, and that the applicant qualifies under Section 19-2-124,
93 the board shall certify the facility.

94 (b) If one or more facilities constitute an operational unit, the board may certify those
95 facilities under one certificate.

96 (2) (a) The board and the State Tax Commission shall act on an application under Section
97 19-2-124 before the 120th day after filing.

98 (b) Failure of the board and the State Tax Commission to timely act constitutes automatic
99 acceptance of the application and the board shall furnish a certificate to the applicant on demand.

Legislative Review Note
as of 11-19-98 11:55 AM

A limited legal review of this legislation raises no obvious constitutional or statutory concerns.

Office of Legislative Research and General Counsel

Committee Note

The Revenue and Taxation Interim Committee recommended this bill.