

1 **EXTENDING THE SALES AND USE TAX**
2 **EXEMPTION FOR POLLUTION CONTROL**
3 **FACILITIES**

4 2008 GENERAL SESSION

5 STATE OF UTAH

6 **Chief Sponsor: Wayne L. Niederhauser**

7 House Sponsor: John Dougall

8
9 **LONG TITLE**

10 **General Description:**

11 This bill extends the sales and use tax exemption for a pollution control facility.

12 **Highlighted Provisions:**

13 This bill:

- 14 ▶ makes the sales and use tax exemption for a pollution control facility permanent; and
- 15 ▶ makes technical changes.

16 **Monies Appropriated in this Bill:**

17 None

18 **Other Special Clauses:**

19 None

20 **Utah Code Sections Affected:**

21 AMENDS:

22 **19-2-124**, as last amended by Laws of Utah 2003, Chapter 331

23 **19-2-125**, as last amended by Laws of Utah 2003, Chapter 331

24
25 *Be it enacted by the Legislature of the state of Utah:*

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

27 **19-2-124. Application for certification of pollution control facility -- Refunds --**

28 **Interest.**

29 (1) (a) A person who qualifies under Subsection (2) may apply to the board for

30 certification of a pollution control facility [~~or facilities~~] erected, constructed, or installed, or to
31 be erected, constructed, or installed in the state [~~on or after July 1, 1986, but on or before June~~
32 ~~30, 2009~~].

33 (b) The person may file the application [~~at any time~~] after:

34 (i) a firm construction contract has been entered; or

35 (ii) construction has commenced.

36 (2) (a) (i) A person who applies under Subsection (1) shall be:

37 (A) the owner of a trade or business that uses property in the state requiring a pollution
38 control facility to prevent or minimize pollution; or

39 (B) a person who, as a lessee or pursuant to an agreement, conducts the trade or
40 business that operates or uses the property.

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

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

44 (c) A person who obtains certification for a pollution control facility may claim an
45 exemption from sales and use taxes as provided in Sections 19-2-123 and 59-12-104 [~~only~~
46 ~~during the time period beginning on or after July 1, 1986, and ending on or before June 30,~~
47 ~~2009~~].

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

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

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

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

56 (C) the person files a claim for the refund with the State Tax Commission within the
57 lesser of:

58 (I) three years after the day on which the pollution control facility is certified under
59 Section 19-2-125; or

60 (II) six years after the day on which the person pays the tax under Title 59, Chapter 12,
61 Sales and Use Tax Act; or

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

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

65 (B) the person files a claim for the refund with the State Tax Commission within three
66 years after the day on which the person pays the tax under Title 59, Chapter 12, Sales and Use
67 Tax Act.

68 (e) (i) If a person files a claim for a refund of taxes under Subsection (2)(d)(i) paid on a
69 purchase of tangible personal property or services used in the construction of or incorporated
70 into a pollution control facility that was not certified under Section 19-2-125 at the time of the
71 purchase:

72 (A) within 180 days after the day on which the board certifies the pollution control
73 facility, interest shall accrue to the amount of the refund granted by the State Tax Commission:

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

75 (II) beginning on the day on which the person pays the tax under Title 59, Chapter 12,
76 Sales and Use Tax Act, for which the person is claiming a refund; or

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

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

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

83 (ii) If a person files a claim for a refund of taxes under Subsection (2)(d)(ii) paid on a
84 purchase of tangible personal property or services used in the construction of or incorporated
85 into a pollution control facility that was certified under Section 19-2-125 at the time of the

86 purchase, interest shall accrue to the amount of the refund granted by the State Tax

87 Commission:

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

89 (B) beginning 30 days after the day on which the person files a claim for a refund under

90 Subsection (2)(d).

91 (3) (a) Each application shall:

92 (i) be in a format prescribed by the board[;]; and

93 (ii) contain:

94 (A) a description of the [facilities] facility and materials incorporated in [~~them;~~] the
95 facility;

96 (B) the machinery and equipment[;];

97 (C) the existing or proposed operational procedure[;]; and

98 (D) a statement of the purpose of pollution prevention, control, or reduction served or
99 to be served by the facility.

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

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

103 **19-2-125. Action on application for certification.**

104 (1) (a) [~~If the~~] The board shall certify the facility if, after consulting with the State Tax
105 Commission, the board finds that:

106 (i) a pollution control facility or a part of a pollution control facility, for which
107 application is made under Section 19-2-124;

108 (A) was or is to be erected, constructed, acquired, or installed [~~on or after July 1, 1986,~~
109 ~~but on or before June 30, 2009;~~]; and

110 (B) is designed and is being operated or will operate primarily to prevent, control, or
111 reduce air or water pollution[;]; and [~~that~~]

112 (ii) the applicant qualifies under Section 19-2-124[~~, the board shall certify the facility~~].

113 (b) If one or more facilities constitute an operational unit, the board may certify those

114 facilities under one certificate.

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

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