

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

2003 GENERAL SESSION

STATE OF UTAH

Sponsor: David Ure

This act modifies the Air Conservation Act by extending the time period for claiming a sales and use tax exemption on materials, equipment, and services used for the construction or installation of a pollution control facility. The act extends the time period for creating, constructing, or installing a pollution control facility for purposes of the sales and use tax exemption.

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

AMENDS:

19-2-124, as last amended by Chapter 275, Laws of Utah 2001

19-2-125, as last amended by Chapter 314, Laws of Utah 1999

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 -- Refunds -- Interest.

(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 on or after July 1, 1986, but on or before June 30, ~~2004~~ 2009.

(b) ~~[An]~~ The person may file the 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



28 minimize pollution or a person who, as a lessee or pursuant to an agreement, conducts the trade
29 or business that operates or uses the property.

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

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

33 (c) A person who obtains certification for a pollution control facility may claim an
34 exemption from sales and use taxes as provided in Sections 19-2-123 and 59-12-104 only
35 during the time period beginning on or after July 1, 1986, and ending on or before June 30,
36 [~~2004~~] 2009.

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

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

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

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

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

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

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

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

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

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

57 (e) (i) If a person files a claim for a refund of taxes under Subsection (2)(d)(i) paid on a
58 purchase of tangible personal property or services used in the construction of or incorporated

59 into a pollution control facility that was not certified under Section 19-2-125 at the time of the
60 purchase:

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

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

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

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

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

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

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

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

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

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

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

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

87 **19-2-125. Action on application for certification.**

88 (1) (a) If the board, after consulting with the State Tax Commission, finds that a
89 pollution control facility or a part of a pollution control facility, for which application is made

90 under Section 19-2-124 was or is to be erected, constructed, acquired, or installed on or after
91 July 1, 1986, but on or before June 30, [~~2004~~] 2009, and is designed and is being operated or
92 will operate primarily to prevent, control, or reduce air or water pollution, and that the
93 applicant qualifies under Section 19-2-124, 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
97 Section 19-2-124 before the 120th day after filing.

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

Legislative Review Note
as of 1-21-03 1:54 PM

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

Office of Legislative Research and General Counsel

Fiscal Note**Bill Number HB0221****Extending the Sales and Use Tax Exemption for Pollution Control
Facilities***29-Jan-03**4:50 PM*

State Impact

No fiscal impact. Passage of this bill extends the exemption of an existing credit. However, it could preclude the collection of future sales and use taxes from applicable entities.

Individual and Business Impact

No fiscal impact.

Office of the Legislative Fiscal Analyst