

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

2008 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Wayne L. Niederhauser**

House Sponsor: John Dougall

---

---

**LONG TITLE**

**General Description:**

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

**Highlighted Provisions:**

This bill:

▶ makes the sales and use tax exemption for a pollution control facility permanent;

and

▶ makes technical changes.

**Monies Appropriated in this Bill:**

None

**Other Special Clauses:**

None

**Utah Code Sections Affected:**

**AMENDS:**

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

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

---

---

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

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



28           **19-2-124. Application for certification of pollution control facility -- Refunds --**  
29 **Interest.**

30           (1) (a) A person who qualifies under Subsection (2) may apply to the board for  
31 certification of a pollution control facility [~~or facilities~~] erected, constructed, or installed, or to  
32 be erected, constructed, or installed in the state [~~on or after July 1, 1986, but on or before June~~  
33 ~~30, 2009~~].

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

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

36           (ii) construction has commenced.

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

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

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

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

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

45           (c) A person who obtains certification for a pollution control facility may claim an  
46 exemption from sales and use taxes as provided in Sections 19-2-123 and 59-12-104 [~~only~~  
47 ~~during the time period beginning on or after July 1, 1986, and ending on or before June 30,~~  
48 ~~2009~~].

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

92 (3) (a) Each application shall:

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

94 (ii) contain:

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

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

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

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

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

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

104 **19-2-125. Action on application for certification.**

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

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

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

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

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

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

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

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

---

---

**Legislative Review Note**  
as of 1-15-08 1:34 PM

**Office of Legislative Research and General Counsel**

---

---

**Fiscal Note****S.B. 135 - Extending the Sales and Use Tax Exemption for Pollution Control  
Facilities**

2008 General Session

State of Utah

---

---

**State Impact**

This bill extends the sales and use tax exemption for a pollution control facility indefinitely, whereas it is currently scheduled to expire at the end of FY 2009. In FY 2007 forgone revenue was \$218,000; based on current trends, the forgone revenue would be approximately \$245,000 in FY 2010.

---

**Individual, Business and/or Local Impact**

Enactment of this bill likely will not result in direct, measurable costs and/or benefits for individuals, or local governments. Businesses that construct pollution control equipment and facilities will benefit from the sales and use tax exemption.

---