



Ohio Revised Code

Section 5709.25 Exemption of pollution control facilities.

Effective: June 26, 2003

Legislation: House Bill 95 - 125th General Assembly

(A) Whenever an exempt facility certificate is issued, the transfer of tangible personal property to the holder of the certificate, whether such transfer takes place before or after the issuance of the certificate, shall not be considered a "sale" of such tangible personal property for the purpose of the sales tax, or a "use" for the purpose of the use tax, if the tangible personal property is to be or was a material or part to be incorporated into an exempt facility.

(B) For the period subsequent to the effective date of an exempt facility certificate and continuing for so long as the certificate is in force, no exempt facility or certified portion thereof shall be considered to be either of the following:

(1) An improvement on the land on which the exempt facility is located for the purpose of real property taxation;

(2) As "used in business" for the purpose of personal property taxation.

(C)(1) The tax commissioner, upon receiving a properly completed application for an exempt facility certificate, may allow the applicant to claim the exemption provided by this section before the commissioner issues the certificate. The applicant is entitled to the exemption unless the commissioner notifies the applicant otherwise by serving notice upon the applicant in the manner prescribed by section 5703.37 of the Revised Code.

(2) A taxpayer whose tangible personal property is subject to taxation under Chapter 5727. of the Revised Code shall notify the commissioner in writing of any property the applicant does not want the commissioner to exclude from assessment. The notice shall be provided before the date the commissioner issues the preliminary assessment under section 5727.23 of the Revised Code.

(D)(1) Notwithstanding any other time limitations imposed by law, the commissioner may assess any additional tax or may assess any additional taxable property, including any applicable interest, on the



denied portion of the applicant's claim for an exempt facility that the applicant claimed prior to the exempt facility certificate being issued or the application being denied. No assessment shall be made pursuant to this division after one hundred eighty days from the date the commissioner mails the exempt facility certificate or notice of the denial of the exempt facility certificate pursuant to section 5709.22 of the Revised Code. Nothing in this section shall prohibit an assessment that otherwise may be timely made by law.

(2) Assessments issued pursuant to division (D)(1) of this section shall be issued as amended preliminary assessment certificates under section 5711.31 of the Revised Code for personal property tax, as amended preliminary assessment certificates under section 5727.23 of the Revised Code for public utility tax, and as assessments under section 5733.11 of the Revised Code for corporation franchise tax, section 5739.13 of the Revised Code for sales tax, and section 5741.11 of the Revised Code for use tax, and are subject to the same appeal requirements as defined in those sections.

(3) Nothing in division (D) of this section allows the tax commissioner, after the expiration of the time limitation, to issue an assessment referenced in division (D)(2) of this section that increases any tax beyond the amount claimed by the applicant as an exempt facility.

(4) If an assessment is issued for only the denied portion of the application for an exempt facility, the only issue the applicant is permitted to raise on appeal of the assessment referenced in division (D)(2) of this section is that of the taxable property or transaction constituting the denied portion of the applicant's claim for an exempt facility.

(E) Except as otherwise provided in this division, no exemption for additional property shall be claimed under this section after an exempt facility certificate has been issued for that facility unless the applicant files a new application under section 5709.21 of the Revised Code. The tax commissioner shall waive the requirement to file a new application under section 5709.21 of the Revised Code if the cost of the additional property, net of retirements for similar property, does not exceed five hundred thousand dollars during any calendar year. The fee imposed under section 5709.212 of the Revised Code for applications filed as a result of this division shall be five hundred dollars.

(F) If, as the result of a revaluation due to sale or bankruptcy or any other reason, the book value of



property that is the subject of an exempt facility certificate is changed from the book value at the time of the original issuance of the certificate, the amount of exemption available to the owner is limited to the percentage resulting from the ratio of the historical cost of the property that is the subject of the exempt facility certificate to the historic cost of all tangible personal property and real property of the owner located at the same location as the property subject to the exempt facility certificate. If the result of using this ratio is greater than the original cost, then acceptable reasons for allowing such greater cost must be established with supporting documentation in order to qualify for the exemption above the original cost.

(G) After two years from the date the tax commissioner receives an application, the applicant may request in writing that the tax commissioner take final action on the pending application. Within ten days after receiving such a request, the tax commissioner shall issue a proposed finding, under section 5709.22 of the Revised Code, if the application is allowed in whole or in part. Otherwise, the tax commissioner shall issue a final determination denying the issuance of the certificate, which is a final determination appealable under section 5717.02 of the Revised Code.