



Ohio Revised Code

Section 5709.22 Tax commissioner - powers and duties.

Effective: June 26, 2003

Legislation: House Bill 95 - 125th General Assembly

(A) After receiving an opinion from the director of environmental protection or the director of development, the tax commissioner shall promptly ascertain if an application filed under section 5709.21 of the Revised Code shall be allowed or disallowed in whole or in part. The commissioner shall give written notice of the proposed finding to the applicant and the county auditor of the county in which the facility described in the application is located. Within sixty days after sending written notice of the proposed finding, the applicant or the county auditor may file a request for reconsideration, in writing, to the commissioner and may request that the commissioner conduct a hearing on the application. If no request for reconsideration is filed, the commissioner's proposed findings shall be final and, if applicable, the commissioner shall issue an exempt facility certificate, which shall not be subject to appeal pursuant to section 5717.02 of the Revised Code.

(B) If a reconsideration of the tax commissioner's proposed finding is requested by the applicant or the county auditor, the commissioner shall notify the applicant and the auditor of the time and place of the hearing, which the commissioner may continue from time to time as the commissioner finds necessary. The commissioner also shall notify the environmental protection agency or department of development, as applicable, of the hearing. The environmental protection agency or the department of development shall participate in the hearing if requested in writing by the commissioner, the applicant, or the county auditor. After conducting the hearing, the commissioner shall issue a final determination, with a copy of it served on the applicant and applicable county auditors in the manner prescribed by section 5703.37 of the Revised Code. The final determination is subject to appeal pursuant to section 5717.02 of the Revised Code. Once all appeals are exhausted, the commissioner shall issue, if applicable, the exempt facility certificate based on the outcome of the appeal.

(C) The tax commissioner, on the commissioner's own initiative or on complaint by the county auditor of any county in which property to which the exempt facility certificate relates is located, shall revoke the certificate, or modify it by restricting its operation, if it appears to the commissioner that any of the following has occurred:



- (1) The certificate was obtained by fraud or misrepresentation;
- (2) The holder of the certificate has failed substantially to proceed with the construction, reconstruction, installation, or acquisition of an exempt facility;
- (3) The property to which the certificate relates has ceased to be used as an exempt facility;
- (4) The tax commissioner issued the certificate in error. As used in this section, "error" means any of the following:
 - (a) A clerical or mathematical mistake;
 - (b) When the commissioner agrees with an opinion from the director of environmental protection or the director of development that a certificate should not have been issued;
 - (c) When the tax commissioner determines that the issuance of the certificate may have been improper as the result of a final adjudication by the board of tax appeals, or by a court with jurisdiction on appeal from that board, that is adverse to the original exempt status of the facility, regardless of whether the holder of the certificate was a party to such adjudication.
- (D) If the revocation or modification of a certificate under division (C)(4) of this section is an action found to be frivolous for the purposes of section 5703.54 of the Revised Code the certificate holder may claim damages as provided under division (B) of that section.
- (E) Upon service of notice certificate to the holder of an exempt facility certificate, in the manner provided in section 5703.37 of the Revised Code, of the tax commissioner's revocation or modification of the certificate under division (C) of this section, the certificate shall cease to be in force or shall remain in force only as modified, as the case may require. The notice is subject to appeal under section 5717.02 of the Revised Code. Once all appeals are exhausted, the commissioner shall issue a modified certificate, if applicable, and the holder of the certificate shall be allowed to claim a refund within one hundred eighty days, notwithstanding any other time limitation provided by law of the taxes paid as a result of the certificate being revoked or modified.