

Ohio Administrative Code 5703-1-06 Certification of industrial air pollution control facilities under sections 5709.20 to 5709.27 of the Revised Code.

Pursuant to division (B) of section 5709.21 of the Revised Code, the tax commissioner hereby prescribes the manner and form of applying for the certification of exempt facilities under sections 5709.20 to 5709.27 of the Revised Code.

(A) Application for certification of an exempt facility as defined in division (E) of section 5709.20 of the Revised Code shall be made by the person owning the facility at the time of application. The application shall contain plans and specifications of the property, including all materials incorporated or to be incorporated into the property and the associated costs of the materials, and a descriptive list of all equipment acquired or to be acquired by the applicant for the exempt facility and the associated costs of the equipment. The application shall include details of how the applicant determined the cost of any auxiliary property under section 5709.21 of the Revised Code.

The application shall be accompanied by the nonrefundable fee required by section 5709.212 of the Revised Code. Section 5709.212 of the Revised Code provides that until such fee is paid, the application is not complete, and the applicant is not entitled to any tax exemption under section 5709.25 of the Revised Code.

An exemption will be allowed only for those exempt facility costs covered by the fee paid. If the exempt facility costs exceed those covered by the fee paid, a certificate will not be issued for the excess amount until the additional fee is paid.

An application is filed when a properly completed application is received by the commissioner. An application not accompanied by the fee, documents, and information required is not properly completed until the fee, documents, and information are received. The commissioner will provide the applicant at least thirty days after a request is sent to complete the application. Thereafter, the commissioner may deny issuing a certificate because the application is not properly completed. A final determination reflecting such denial may be issued without obtaining the opinion of the director of environmental protection or the director of development. The final determination is subject to appeal under section 5717.02 of the Revised Code. Once the denial becomes final, the applicant must file a new application if the applicant still wants a certificate to be issued.

An applicant generally must file a separate application for each location where the owner has facilities for which certification is sought and for every county where a facility is located. However, under authority of division (D) of section 5709.21 of the Revised Code, the commissioner may allow an applicant to file one application that applies to multiple facilities in the same county if the facilities are the same or substantially similar. In addition, a single application, listing each owner and its percentage of ownership, shall be filed for a jointly owned facility; if at any time before or after issuance of an exempt facility certificate the percentages of ownership change, the joint owners subsequent to the change shall forthwith notify the commissioner in writing of the change.

(B) As soon as is practicable after receipt of a properly completed application, the tax commissioner will provide a copy of the application and any accompanying documentation to the county auditor of the county in which the facility is located. The commissioner will include a statement showing an estimate of what the taxable value of, and taxes on, the facility would be if the facility were taxable so that the auditor may proceed in accordance with division (A) of section 5709.23 of the Revised Code. For purposes of the estimate of taxable value, the commissioner will use the cost shown on the application times the appropriate listing percentage.

(C) The tax commissioner will provide a copy of a properly completed application to either the director of environmental protection or the director of development, as appropriate, to obtain the director's opinion

concerning the facility. After obtaining the director's opinion and considering any additional information requested, the commissioner will ascertain if a certificate should be issued in whole or in part or denied.

The commissioner will give written notice of the proposed finding to the applicant and the appropriate county auditor. If the applicant or the county auditor desires a reconsideration of the proposed finding, either person may file a written request for reconsideration with the commissioner within sixty days after the notice was sent.

Either person may include a request that the commissioner conduct a hearing on the application.

If a hearing has been requested, the commissioner will schedule a hearing and give notice thereof to the applicant, the county auditor, and the appropriate director.

After the hearing, the commissioner will issue a final determination on the application and serve copies of the final determination on the applicant and the appropriate county auditor. The final determination is subject to appeal under section 5717.02 of the Revised Code.

After conclusion of the above proceedings, including exhaustion of any appeal, the commissioner will issue, if applicable, an exempt facility certificate, which will include an exempt facility certificate number. The number shall be used on all tax returns, all sales tax exemption certificates, and all other forms and correspondence pertaining to the facility.

(D) For purposes of audit and examination by employees of the tax commissioner, the taxpayer shall identify separately the exempted portion of a facility on the taxpayer's books and records.

(E) Upon the tax commissioner's own motion or upon receiving a complaint, the commissioner may, at the commissioner's discretion, after giving notice and the opportunity for a hearing to a certificate holder, revoke or modify such certificate in accordance with division (C) of section 5709.22 of the Revised Code.

(F) The requirement under division (E) of section 5709.25 of the Revised Code to file a new application for the addition, enlargement, expansion, or replacement of property at a previously certified exempt facility shall be separately ascertained for each such facility. If the exempt facility is a jointly owned facility, that requirement shall be based on the aggregate costs of all the joint owners of the facility.

The new application shall be accompanied by the nonrefundable fee required for applications filed under division (E) of section 5709.25 of the Revised Code.

Section 5709.212 of the Revised Code provides that until the fee is paid, the application is not complete, and the applicant is not entitled to any tax exemption under section 5709.25 of the Revised Code. A certificate will not be issued for the addition, enlargement, expansion, or replacement until the fee is paid.

(G) In the event of the transfer of an exempt facility certificate as provided by section 5709.27 of the Revised Code, the transferee shall promptly give written notice of the transfer to the commissioner and to the county auditor of the county in which the facility is located. Such written notice shall specify the effective date of the transfer and shall have attached thereto a copy of the instrument of transfer and a copy of the certificate transferred.

(H) As used in section 5709.21 of the Revised Code, "the date of the construction of the facility" means the date on which actual installation or construction of the facility, as set forth by the plans and specifications, is begun, which will result in the completed and operational facility.

HISTORY: (former TX-3-01); Eff (Amended) 6-4-73; 9-20-76

Rule promulgated under: RC 5703.14

Rule authorized by: RC 5709.24

Rule amplifies: 5709.20, 5709.21, 5709.22, 5709.23, 5709.24, 5709.25, 5709.26, 5709.27