

103 KAR 8:170. Pollution control facilities exemption.

RELATES TO: KRS 13B, 132.020, 132.200, 224.01-300, 224.1-310

STATUTORY AUTHORITY: KRS 131.130, 224.1-310

NECESSITY, FUNCTION, AND CONFORMITY: KRS 131.130(1) authorizes the Department of Revenue to promulgate administrative regulations necessary for the administration and enforcement of all tax laws in Kentucky. This administrative regulation establishes the administrative process for obtaining and using the pollution control tax exemption certification pursuant to KRS 224.1-310.

Section 1. Definitions. (1) "Date of the making of the application" means the postmark date, electronic submission date, or date hand-stamped by the department for the "Application for Pollution Control Tax Exemption Certificate", Form 61A216.

(2) "Pollution control facility" is defined by KRS 224.1-300(1).

Section 2. Application Process for Certification. (1) An applicant shall:

(a) File an "Application for Pollution Control Tax Exemption Certificate", Form 61A216;

(b) Submit a copy of the plans or blueprints and a materials and equipment listing with the application;

(c) Provide a detailed explanation of what types of pollution control (water, waste, noise, air, or substance removal) a project addresses and how the primary function of the property installed is to control pollution as required under KRS 224.1-300;

(d) Provide costs of the materials and equipment that the exemption is requested; and

(e) Provide any other information required or requested by the department based on the nature of the project to ensure compliance with KRS 132.020, 132.200, and 224.1-300.

(2) Each "Application for Pollution Control Certificate" shall be specific to a project and location and shall not be a blanket certification for all operations of the applicant.

Section 3. Certificate Issuance, Denial, and Revocation Procedures. (1) Issuance, denial, or revocation of pollution control tax exemption.

(a) Before the department issues or denies, in whole or in part, the "Application for Pollution Control Tax Exemption Certificate," the department shall issue a written notice with an explanation of the issuance or denial to the applicant and the Secretary of the Energy and Environment Cabinet.

(b) If the department revokes a pollution control exemption tax certificate, the department shall issue a written notice with an explanation of the revocation to the holder of the certificate and the Secretary of the Energy and Environment Cabinet.

(c) If aggrieved by the issuance, denial, or revocation of pollution control tax exemption, the Energy and Environment Cabinet, the applicant for the pollution control exemption certificate, or the holder of the pollution exemption certificate may request a hearing before the department pursuant to Section 4.

(2) Certificate issuance.

(a) The department shall issue a qualifying applicant a "Pollution Control Tax Exemption Certificate", Form 61A217, upon final approval. The effective date of the certificate shall be the date of making the application to the department pursuant to KRS 224.1-310(1).

(b) "Pollution Control Tax Exemption Certificate", Form 61A217, shall replace "Pollution Control Tax Exemption Certificate", Form 51A226.

1. "Pollution Control Tax Exemption Certificate", Form 51A226 issued prior to January 1, 2019, shall be a valid pollution control tax exemption certificate for purposes of KRS 224.1-

300, 132.020, and 132.200 unless either of the following applies:

- a. The certificate is revoked by the department; or
- b. The pollution control facility is no longer primarily used for pollution control.

2. Beginning January 1, 2019, a valid pollution control tax exemption certificate for purposes of KRS 224.1-300, 132.020, and 132.200 shall be issued on the "Pollution Control Tax Exemption Certificate", Form 61A217.

Section 4. Administrative Hearing Procedures. (1) If aggrieved by the notice of acceptance; denial, in whole or in part; or revocation of a pollution control exemption tax certification, the Energy and Environment Cabinet, the applicant for the pollution control exemption certificate, or the holder of the pollution exemption certificate may file a written request for a hearing pursuant to KRS 224.1-310 with the commissioner of the department of Revenue within thirty (30) days from the date the notice was mailed.

(2) If a timely written request for a hearing is received by the Commissioner of the Department of Revenue, the commissioner shall assign a time and place for the hearing and shall appoint a hearing officer to conduct the hearing, receive evidence, and hear arguments pursuant to the requirements of KRS Chapter 13B.

(3) The hearing officer shall file a written recommended order pursuant to KRS 13B.110 with the Commissioner of the Department of Revenue no later than sixty (60) days after receiving a copy of the official record of the proceeding. The recommended order shall contain a recommendation for the issuance, revocation, or denial, in whole or in part, of the pollution control tax exemption certificate.

(4) The Commissioner of the Department of Revenue shall issue a final order pursuant to KRS 13B.120 within ninety (90) days after the submission of the hearing officer's recommended order, issuing, denying in whole or in part, or revoking the pollution control tax exemption certificate.

(5) Any party to the hearing aggrieved by the issuance of the department's final order may appeal the issuance, revocation, or denial, in whole or in part, of the pollution control tax exemption certificate within thirty (30) days from the date of the mailing of the department's final order to the Kentucky Claims Commission pursuant to KRS 49.220.

Section 5. Forms. (1) The "Application for Pollution Control Tax Exemption Certificate", Form 61A216, listed herein may be inspected, copied, or obtained, subject to applicable copyright law, at:

- (a) The Kentucky Department of Revenue, 501 High Street, Frankfort, Kentucky 40620;
- (b) At a Kentucky Taxpayer Service Center during business hours; or
- (c) On the department Web site at <http://revenue.ky.gov>.

(2) The "Pollution Control Tax Exemption Certificate", Form 61A217, shall be issued by the department upon final approval of the application. (46 Ky.R. 1718, 2225; eff. 5-5-2020)