

103 KAR 30:260. Pollution control facilities exemption.

RELATES TO: KRS 139.200, 139.260, 139.270, 139.310, 139.330, 139.480, 139.540, 139.550, 224.01-300(01), 224.1-310

STATUTORY AUTHORITY: KRS 131.130(1)

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 receiving and using the pollution control exemption certification established by KRS 139.480(12).

Section 1. Definitions. (1) "Date of the making of the application" means the postmark date, date of electronic submission, or date hand-stamped by the department for the Application for Pollution Control Tax Exemption Certificate, Form 51A216, which is incorporated by reference in 103 KAR 3:020.

(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 51A216, which is incorporated by reference in 103 KAR 3:020 with the Department of Revenue;

(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, or air) a project addresses and how the property installed functions primarily to control pollution as required under KRS 224.1-300;

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

(e) Provide any other information needed by the department based on the nature of the project to ensure compliance with KRS 139.480(12) and 224.1-300.

(2) The department shall issue a qualifying applicant a "Pollution Control Tax Exemption Certificate", Form 51A226, which is incorporated by reference in 103 KAR 3:020, upon final approval. The effective date of the certificate shall be the date the application is made to the department as provided under KRS 224.1-300(1).

(3) Each application for pollution control certification shall be project and location specific and shall not constitute a blanket certification for the operations of the applicant.

Section 3. Exemption Procedures. (1) Before the department issues an authorized "Pollution Control Tax Exemption Certificate", an applicant may issue a completed "Certificate of Exemption for Pollution Control Facilities", Form 51A149, which is incorporated by reference in 103 KAR 3:020, separately or jointly with a construction contractor, to a seller for the exempt purchase of materials and equipment used in the construction, erection, or installation of the facility for which an application for pollution control certification has been made.

(2) If an "Application for Pollution Control Tax Exemption Certificate" is subsequently denied, the applicant shall report and pay the tax due directly to the Department of Revenue, according to the provisions of KRS 139.270 and 139.540, on all purchases made exempt from tax but not certified as exempt.

(3) After final approval, a qualifying applicant shall issue a completed "Certificate of Exemption for Pollution Control Facilities", Form 51A149, separately or jointly with a construction contractor to a seller for the exempt purchase of materials and equipment used in the construction, erection or installation of the certified pollution control facility.

Section 4. In addition to the pollution control exemption, the purchase of property may also qualify for exemption under KRS 139.480(10) as machinery for new and expanded industry if the requirements of KRS 139.010 and 139.480(10) are met. Pollution control equipment that does not qualify for exemption as machinery for new and expanded industry under KRS 139.480(10) may still be eligible for exemption as a certified pollution control facility as defined in KRS 224.1-300(1).

Section 5. Nonqualifying property. (1) A sewage treatment plant used for the treatment of residential sewage shall not qualify for exemption as a pollution control facility.

(2) Repair and replacement parts and maintenance items purchased for a completed pollution control facility shall be taxable.

Section 6. (1) This administrative regulation shall replace Revenue Policy 51P377 and Revenue Circular 51C006.

(2) Revenue Policy 51P377 and Revenue Circular 51C006 are hereby rescinded and shall be null, void and unenforceable. (33 Ky.R. 2812; 3156; eff. 5-4-2007; TAm eff. 6-22-2016.)