

TAX EXEMPTION PROGRAM

Ohio Revised Code (ORC) Sections 5709.20 through 5709.27

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§ 5709.20 Definitions.

(A) "Air contaminant" means particulate matter, dust, fumes, gas, mist, smoke, vapor, or odorous substances, or any combination thereof.

(B) "Air pollution control facility" means any property designed, constructed, or installed for the primary purpose of eliminating or reducing the emission of, or ground level concentration of, air contaminants generated at an industrial or commercial plant or site that renders air harmful or inimical to the public health or to property within this state, or such property installed on or after November 1, 1993, at a petroleum refinery for the primary purpose of eliminating or reducing substances within fuel that otherwise would create the emission of air contaminants upon the combustion of fuel.

(C) "Energy conversion" means the conversion of fuel or power usage and consumption from natural gas to an alternate fuel or power source other than propane, butane, naphtha, or fuel oil; or the conversion of fuel or power usage and consumption from fuel oil to an alternate fuel or power source other than natural gas, propane, butane, or naphtha.

(D) "Energy conversion facility" means any additional property or equipment designed, constructed, or installed after December 31, 1974, for use at an industrial or commercial plant or site for the primary purpose of energy conversion.

(E) "Exempt facility" means any of the facilities defined in division (B), (D), (F), (I), (K), or (L) of this section for which an exempt facility certificate is issued pursuant to section 5709.21 or for which a certificate remains valid under [section 5709.201](#) [5709.20.1] of the Revised Code.

(F) "Noise pollution control facility" means any property designed, constructed, or installed for use at an industrial or commercial plant or site for the primary purpose of eliminating or reducing, at that plant or site, the emission of sound which is harmful or inimical to persons or property, or materially reduces the quality of the environment, as shall be determined by the director of environmental protection within such standards for noise pollution control facilities and standards for environmental noise necessary to protect public health and welfare as may be promulgated by the United States environmental protection agency. In the absence of such United States environmental protection agency standards, the determination shall be made in accordance with generally accepted current standards of good engineering practice in environmental noise control.

(G) "Solid waste" means such unwanted residual solid or semi-solid material as results from industrial operations, including those of public utility companies, and commercial, distribution, research, agricultural, and community operations, including garbage, combustible or noncombustible, street dirt, and debris.

(H) "Solid waste energy conversion" means the conversion of solid waste into energy and the utilization of such energy for some useful purpose.

(I) "Solid waste energy conversion facility" means any property or equipment designed, constructed, or installed after December 31, 1974, for use at an industrial or a commercial plant or site for the primary purpose of solid waste energy conversion.

(J) "Thermal efficiency improvement" means the recovery and use of waste heat or waste steam produced incidental to electric power generation, industrial process heat generation, lighting, refrigeration, or space heating.

(K) "Thermal efficiency improvement facility" means any property or equipment designed, constructed, or installed after December 31, 1974, for use at an industrial or a commercial plant or site for the primary purpose of thermal efficiency improvement.

(L) "Industrial water pollution control facility" means any property designed, constructed, or installed for the primary purpose of collecting or conducting industrial waste to a point of disposal or treatment; reducing, controlling, or eliminating water pollution caused by industrial waste; or reducing, controlling, or eliminating the discharge into a disposal system of industrial waste or what would be industrial waste if discharged into the waters of this state. This division applies only to property related to an industrial water pollution control facility placed into operation or initially capable of operation after December 31, 1965, and installed pursuant to the approval of the environmental protection agency or any other governmental agency having authority to approve the installation of industrial water pollution control facilities. The definitions in section 6111.01 of the Revised Code, as applicable, apply to the terms used in this division.

(M) Property designed, constructed, installed, used, or placed in operation primarily for the safety, health, protection, or benefit, or any combination thereof, of personnel of a business, or primarily for a business's own benefit, is not an "exempt facility."

HISTORY: 130 v 1304 (Eff 10-14-63); 133 v S 169 (Eff 10-2-69); 135 v H 621 (Eff 11-22-73); 136 v S 498. Eff 1-17-77; 150 v H 95, § 1, eff. 6-26-03.

§ 5709.201. Continuing validity of certificates; transfer of pending applications.

(A) Except as provided in divisions (C)(4)(a) and (c) of section 5709.22 and division (F) of section 5709.25 of the Revised Code, a certificate issued under section 5709.21, 5709.31, 5709.46, or 6111.31 of the Revised Code that was valid and in effect on the effective date of this section shall continue in effect subject to the law as it existed before that effective date. Division (C)(4)(b) of section 5709.22 of the Revised Code does not apply to any certificate issued by the tax commissioner before July 1, 2003.

(B) Any applications pending on the effective date of this section for which a certificate had not been issued on or before that effective date under section 6111.31 of the Revised Code shall be transferred to the tax commissioner for further administering. Sections 5709.20 to 5709.27 of the Revised Code apply to such pending applications, excluding the requirement of section 5709.212 [5709.21.2] of the Revised Code that applicants must pay the fee.

(C) For applications pending on the effective date of this section, division (D) of section 5709.25 of the Revised Code allowing the commissioner to assess any additional tax notwithstanding any other time

limitations imposed by law on the denied portion of the applicant's claim applies only to tax periods that would otherwise be open to assessment on that effective date.

HISTORY: 150 v H 95, § 1, eff. 6-26-03.

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§ 5709.21 Certification procedure.

(A) As used in this section:

(1) "Exclusive property" means real and personal property that is installed, used, and necessary for the operation of an exempt facility, and that is not auxiliary property unless the auxiliary property exempt cost equals or exceeds eighty-five per cent of the total cost of the property.

(2) "Auxiliary property" means personal property installed, used, and necessary for the operation of an exempt facility that is also used in other operations of the business other than an exempt facility purpose described in section 5709.20 of the Revised Code. "Auxiliary property" does not include property with an auxiliary property exempt cost that is less than or equal to fifteen per cent of the total cost of such property.

(3) "Auxiliary property exempt cost" means the cost of auxiliary property calculated as follows:

(a) If the auxiliary property is used for an exempt facility purpose for discrete periods of time, the exempt cost shall be determined by the ratio of time the auxiliary property is in use in such exempt capacity to the total time it is in use. Division (A)(3)(a) of this section does not apply if the property is concurrently used for an exempt facility purpose and a nonexempt facility purpose.

(b) The applicant has the burden of proving the exempt cost of all auxiliary property not described in division (A)(3)(a) of this section.

(c) Any cost related to an expansion of the commercial or industrial site that is not related to the operation of the exempt facility shall not be included as an auxiliary exempt cost under division (A)(3) of this section.

(B) Application for an exempt facility certificate shall be filed with the tax commissioner in such manner and in such form as prescribed by the tax commissioner . The application shall contain plans and specifications of the property, including all materials incorporated or to be incorporated therein and their associated costs, and a descriptive list of all equipment acquired or to be acquired by the applicant for the exempt facility and its associated cost. If the commissioner finds that the property was designed primarily as an exempt facility and is suitable and reasonably adequate for such purpose and is intended for such purpose, the commissioner shall enter a finding and issue a certificate to that effect. The effective date of the certificate shall be the date the application was made for such certificate or the date of the construction of the facility, whichever is earlier .

Nothing in this section shall be construed to extend the time period to file, to keep the time period to file open, or supersede the requirement of filing a tax refund or other tax reduction request in the manner and within the time prescribed by law.

(C) (1) Except as provided in division (C)(2) of this section, the certificate shall permit tax exemption pursuant to section 5709.25 of the Revised Code only for that portion of such exempt facility that is exclusive property used for a purpose enumerated in section 5709.20 of the Revised Code.

(2) Auxiliary property shall be permitted a partial tax exemption under section 5709.25 of the Revised Code, but only to the extent allowed pursuant to division (A)(3) of this section.

(D) The tax commissioner may allow an applicant to file one application that applies to more than one exempt facility that are the same or substantially similar, so long as such facilities are located within the same county.

HISTORY: 130 v 1304 (Eff 10-14-63); 133 v S 169 (Eff 10-2-69); 135 v H 1 (Eff 3-22-73); 135 v H 621. Eff 11-22-73; 150 v H 95, § 1, eff. 6-26-03.

§ 5709.211. Opinion of EPA director or development director to be obtained prior to issuance of certificate.

(A) Before issuing an exempt facility certificate pursuant to section 5709.21 of the Revised Code, the tax commissioner shall provide a copy of a properly completed application to, and obtain the opinion of, the director of environmental protection in the case of an exempt facility described in division (B), (F), or (L) of section 5709.20 of the Revised Code, or provide a copy of the application to, and obtain the opinion of, the director of development in the case of an application for an exempt facility described in division (D), (I), or (K) of section 5709.20 of the Revised Code. The opinion shall provide the commissioner with a recommendation of whether the property is primarily designed, constructed, installed, and used as an exempt facility. The applicant shall provide additional information upon request by the tax commissioner, the director of environmental protection, or the director of development, and allow them to inspect the property listed in the application for the purposes of sections 5709.20 to 5709.27 of the Revised Code. The tax commissioner shall provide to the applicant a copy of the opinion issued by either the director of environmental protection or the director of the department of development.

(B) The opinions of the director of the environmental protection agency and the director of development under division (A) of this section or division (C)(4) of section 5709.22 of the Revised Code are not final actions or orders subject to appeal.

HISTORY: 150 v H 95, § 1, eff. 6-26-03.

§ 5709.212. Application fee.

(A) With every application for an exempt facility certificate filed pursuant to section 5709.21 of the Revised Code, the applicant shall pay a fee equal to one-half of one per cent of the total exempt facility project cost, not to exceed two thousand dollars. One-half of the fee received with applications for exempt facility certificates shall be credited to the exempt facility administrative fund, which is hereby created in the state treasury, for appropriation to the department of taxation for use in administering sections 5709.20 to 5709.27 of the Revised Code. If the director of environmental protection is required to provide the opinion for an application, one-half of the fee shall be credited to the clean air fund created in section 3704.035 [3704.03.5] of the Revised Code for use in administering section 5709.211 [5709.21.1] of the Revised Code, unless the application is for an industrial water pollution control facility. If the application is for an industrial water pollution control facility, one-half of the fee shall be credited to the surface water protection fund created in section 6111.038 [6111.03.8] of the Revised Code for use in administering section 5709.211 [5709.21.1] of the Revised Code. If the director of development is required to provide the opinion for an application, one-half of the fee for each exempt facility application shall be credited to the exempt facility inspection fund, which is hereby created in the state treasury, for appropriation to the department of development for use in administering section 5709.211 [5709.21.1] of the Revised Code.

An applicant is not entitled to any tax exemption under section 5709.25 of the Revised Code until the fee required by this section is paid. The fee required by this section is not refundable, and is due with the application for an exempt facility certificate even if an exempt facility certificate ultimately is not issued or

is withdrawn. Any application submitted without payment of the fee shall be deemed incomplete until the fee is paid.

(B) The application fee imposed under division (A) of this section for a jointly owned facility shall be equal to one-half of one per cent of the total exempt facility project cost, not to exceed two thousand dollars for each facility that is the subject of the application.

HISTORY: 150 v H 95, § 1, eff. 6-26-03.

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§ 5709.22 Powers and duties of tax commissioner.

(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.

HISTORY: 130 v 1305 (Eff 10-14-63); 135 v H 621. Eff 11-22-73; 150 v H 95, § 1, eff. 6-26-03.

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§ 5709.23 Documents concerning application to be provided to county auditor; notice to taxing authorities.

(A) As soon as is practicable after receiving an application for an exempt facility certificate, the tax commissioner shall provide a copy of the application and any accompanying documentation to the county auditor of the county in which the facility is located. The copy shall be accompanied by a statement showing an estimate of what the assessed value of the facility would be, based on the appropriate assessment percentage, if the facility were to be taxable, and an estimate of the taxes that would be chargeable against the facility computed on the basis of the rate of taxation in the taxing district in the year in which the application is received. Within sixty days after receiving such a statement, the county auditor shall issue a notice to the taxing authority of each taxing unit in which the facility is or is to be located. The notice shall state that an application for an exempt facility certificate has been filed for the facility; the estimated assessed value of the facility shown on the statement; the annual amount of taxes that would be charged and payable on that value at the current rate of taxation in effect in the taxing unit; and that, if approved, the application entitles the facility to exemption from taxation and the taxing unit may be required to refund any taxes on the facility accruing after the certificate becomes effective. The tax commissioner shall issue an amended statement if, after the original statement is issued, the estimate of such assessed value increases or decreases by more than ten per cent of the estimated value shown on the most recently issued statement or amended statement, and the county auditor shall issue an amended notice reflecting such change.

(B) Upon request by the county auditor of the county in which the exempt facility described in the application is located, the tax commissioner shall provide the county auditor with any documents submitted with the opinion of the director of environmental protection or director of development, including a copy of opinion.

(C) Any documents, statements, and notices provided for under this section are solely for the purpose of notifying taxing authorities of the existence of an exempt facility application and the potential for a refund

of taxes paid on an exempt facility before a tax exemption certificate is issued. Such documents, statements, and notices do not constitute an assessment that is subject to a petition for reassessment nor are such documents, statements, and notices appealable under section 5717.02 of the Revised Code by any person.

(D) The documents, statements, and notices provided by the tax commissioner under this section are subject to all applicable confidentiality provisions of law.

HISTORY: 150 v H 95, § 1, eff. 6-26-03.

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§ 5709.24 Rules for administration.

The tax commissioner may adopt rules to administer [sections 5709.20 to 5709.27](#) of the Revised Code.

HISTORY: 150 v H 95, § 1, eff. 6-26-03.

HISTORY : 130 v 1306 (Eff 10-14-63); 135 v H 621. Eff 11-22-73.

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§ 5709.25 Exemption of pollution control facilities.

(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 [5709.21.2] 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.

HISTORY: 130 v 1306 (Eff 10-14-63); 134 v H 475 (Eff 12-20-71); 135 v H 621 (Eff 11-22-73); 142 v H 708. Eff 4-19-88; 150 v H 95, § 1, eff. 6-26-03.

§ 5709.26 Liability in case of fraud.

When an exempt facility certificate is revoked or modified for the reason stated in division (C)(1) of section 5709.22 of the Revised Code, all taxes that would have been payable had no certificate been issued shall be assessed with penalties and interest prescribed by law applicable thereto dating to when the exemption was first allowed. Notwithstanding any other time limitations imposed by law, if the certificate is revoked or modified under division (C)(2), (3), or (4) of section 5709.22 of the Revised Code, all taxes that would have been payable had no certificate existed as of the first day of January of the calendar year in which the certificate was revoked or modified are subject to assessment .

HISTORY: 130 v 1306 (Eff 10-14-63); 135 v H 621 (Eff 11-22-73); 139 v H 379. Eff 9-21-82; 150 v H 95, § 1, eff. 6-26-03.

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§ 5709.27 Exemption certificate transfer.

In the event of the sale, lease, or other transfer of an exempt facility, not involving a different location or use, the holder of the exempt facility certificate shall transfer the certificate by written instrument to the person who, except for the transfer of the certificate, would be obligated to pay taxes on the facility. The transferee shall become the holder of the certificate and shall have all the rights to exemption from taxes granted to the former holder or holders, effective as of the date of transfer of the facility or the date of transfer of the certificate, whichever is earlier. The transferee shall promptly give written notice of the effective date of the transfer, together with a copy of the instrument of transfer, to the tax commissioner and the county auditor of the county in which the facility is located. Upon request, the commissioner may provide the transferee with any information the commissioner possesses related to the issuance of the exempt facility certificate.

HISTORY: 133 v S 169 (Eff 10-2-69); 135 v H 621. Eff 11-22-73; 150 v H 95, § 1, eff. 6-26-03..

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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

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