

Publications

Ohio Department of Taxation Begins to Issue Findings That Implement Recent Exempt Facility Legislation

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As part of HB 66, the Ohio General Assembly amended key definitions in RC 5709.20 that govern the State of Ohio's exempt facility or pollution control tax exemption program. The legislation became effective on April 3, 2023. The new law applied retroactively to all exempt facility applications and appeals pending on the effective date.

The Ohio Department of Taxation administers Ohio's exempt facility program. The program provides tax exemptions for property and related services that comprise an "exempt facility" as defined by RC 5709.20(E). HB 66 amended RC 5709.20 in three clarifying ways. First, the definition of "exempt facility" was amended to include owned or leased property. The issue of leased property had surfaced in recent years with the department denying certification for leased property. Second, the definition of an "industrial water pollution control facility" was amended to include "hauling" property and property used for "storing, filtering, processing, or disposing of industrial waste." This clarifying language was the result of disagreements over property used for brine disposal in the oil and gas industry. Third, RC 5709.20(M) was amended to clarify that property that otherwise meets the definition of an "exempt facility" will not be disqualified from receiving exemption because of a business benefit that the taxpayer/applicant may also realize. Over the years, the department has inconsistently applied RC 5709.20(M) as a reason for denying exemption certificates for property that otherwise met the definition of an exempt facility.

In the months after the effective date of HB 66, the department worked with other state agencies, specifically the Ohio Department of Natural Resources, to implement the RC 5709.20 amendments. At the end of 2023, the department started to issue decisions reflecting the clarifying amendments. To date, it has been our experience, that the department decisions are consistent with the intent of the legislation and that the disagreements over property used for brine disposal in the oil and gas industry have been resolved. In light of the foregoing, taxpayers should review their property and transactions that either previously were

denied exemption or that were not considered certifiable under the department's previous application of the law. Although, new exempt facility applications may be required to preserve refund claims or claims of exemption for existing tax audits, these types of tax exemption certificates have retroactive effect and can relate back in time to protect a business from tax assessment or serve as a trigger for tax refunds.