

WAC 458-20-242A Pollution control exemption and/or credits for single purpose facilities added to existing production plants to meet pollution control requirements and which are separately identifiable equipment principally for pollution control. Rule 242 deals with pollution control facilities and is published in two parts:

- Part A. Single purpose facilities added to existing production plants as separately identifiable equipment principally for pollution control and which are not designed for production of products other than recovered products which but for the facility would be released as pollutants.
- Part B. Dual purpose facilities which consist of new plant equipment which achieves pollution control in the process of production of the plant's products rather than through the add on of a pollution device to existing plant equipment at some point in processing or upon completion of processing.

Definition of Terms

For purposes of this rule:

(1) "Facility" shall mean an "air pollution control facility" or a "water pollution control facility" as herein defined:

(a) "Air pollution control facility" includes any treatment works, control devices and disposal systems, machinery, equipment, structures, property or any part or accessories thereof, installed or acquired for the primary purpose of reducing, controlling or disposing of industrial waste which if released to the outdoor atmosphere could cause air pollution. "Air pollution control facility" shall not mean any motor vehicle air pollution control devices used to control the emission of air contaminants from any motor vehicle.

(b) "Water pollution control facility" includes any treatment works, control device or disposal system, machinery, equipment, structures, property or any accessories thereof installed or acquired for the primary purpose of reducing, controlling or disposing of sewage and industrial waste, which if released to a water course could cause water pollution; provided, that the word "facility" shall not be construed to include any control device, machinery, equipment, structure, disposal system or other property installed or constructed for a municipal corporation or for the primary purpose of connecting any commercial establishment with the waste collecting facilities of public or privately owned utilities.

(c) For purposes of this exemption or credit, the terms "commercial establishment" and "other commercial establishment" do not include contractors or their suppliers who install pollution control equipment in facilities of and for another person.

(2) For the purpose of tax credit or exemption, "cost" shall be limited to capital expenditures directly related to the acquisition and installation of the control facility as described in the application. For the purposes of this definition, capital expenditures may include engineering, architecture, legal fees, overhead and other costs which may be directly attributed to the control facility.

(3) "Net commercial value of recovered products" shall mean the value of recovered products less the costs incurred in processing, including overhead costs, and costs attributable to their sale, or other

disposition for value. The term shall not include a deduction for the cost or the depreciation of the facility.

(4) "Certificate" shall mean a pollution control tax exemption and credit certificate for which application has been timely made.

(5) "Appropriate control agency" shall mean the state department of ecology; or the operating local or regional air pollution control agency within whose jurisdiction a facility is or will be located.

(6) For the purposes of this rule "depreciation" shall be determined by the straight line method. That is, the cost of the facility, less the salvage or residual value, divided by months of useful life yields the amount by which the facility is depreciated monthly. In computing depreciation for purposes of obtaining a certificate, depreciation shall be computed through the last full month prior to the month in which the application for certificate is filed.

(7) "Department" shall mean the Washington state department of revenue.

Filing Application and Issuance of Certificates

An application for a certificate will be made available by the department to cover the following conditions:

(1) Existing facilities, to provide the basis for a tax credit and for sales tax paid.

(2) Proposed facilities

(a) To provide the basis for a tax exemption on the purchase of material and equipment;

(b) To provide the basis for a tax credit.

The application must show the cost of the facility, specifically stating costs of materials and equipment incorporated into it. When the certificate is for the purposes referred to in "2" above, estimated costs must be shown. The certificate issued on an application based on estimated costs will not permit the holder to claim the credit referred to in "2b" above until an application showing actual costs has been filed and a supplement to the certificate issued.

Applications showing actual costs must also show the total depreciation which is applicable to the facility to the date of the application, the net commercial value of all materials recovered or captured by the facility during the entire period of operation prior to the date of application, and the amount of federal tax credit taken on federal tax returns filed prior to the date of application.

If, subsequent to the issuance of a certificate for a facility, a determination is made to modify or replace such facility, the certificate holder may file an application for a new or a supplemental certificate covering the modification or replacement following the same procedures provided for making application for original certificate. After the issuance by the department of any new certificate or supplement, all subsequent tax exemption and credits for the modified replacement facility shall be based thereon.

The application will be submitted to the department which will forward it to the appropriate control agency within ten days of its receipt from the applicant. The determination that a facility is designed and operated or is intended to be operated primarily for the control, capture and removal of pollutants from the air, or for the control and reduction of water pollution, and that the facility is suitable and reasonably adequate, and meets the intent and purposes of chapter 70.94 RCW (air pollution) or chapter 90.48 RCW (water pollution) will be made by the appropriate control agency. The control agency will notify the department of its findings within thirty days

of the date the application was received for approval. The department will make the final determination of cost.

In making a determination, the appropriate control agency will afford to the applicant an opportunity for a hearing. If the local or regional air pollution control agency fails to act or if the applicant feels aggrieved by the action of the local board, the applicant may appeal to the department of ecology pursuant to rules and regulations established by that department.

Upon notification of the action taken by the control agency the department will issue a certificate or notice of denial within thirty days of the receipt of the application from the control agency. The department will send a certificate or supplement, when issued, by certified mail. Notice of refusal to issue a certificate will likewise be sent by certified mail.

Time limitations. Application must be made no later than December 31, 1969, except that with respect solely to a facility required to be installed in an industrial, manufacturing, waste disposal, utility, or other commercial establishment which is in operation or under construction as of July 30, 1967, such application will be deemed timely if made within one year after the effective date of specific requirements for such facility promulgated by the appropriate control agency; whether or not the determination is made before or after the limitation date of December 31, 1969. The "effective date of specific requirements" refers to the compliance order's date for completion of engineering.

Revocation of certificate. The department may revoke an issued certificate upon subsequent discovery that it was improperly issued for reason of illegality, fraud, mistake, or the ineligibility of the applicant.

Utilization of Exemption and Credit

Sales tax exemption. The original acquisition of a facility, or the modification (meaning a substantial improvement resulting from added capacity in the removal of pollutants from the air or water) of an existing facility by the holder of a certificate shall be exempt from sales tax imposed by chapter 82.08 RCW and use tax subsequent to the effective date of the certificate. For applications filed subsequent to January 1, 1975 certificate holders shall receive credit for sales and use tax paid on acquisition of the facility prior to receiving certification. This exemption does not extend to servicing, maintenance, repairs or replacement parts after a facility is complete and placed in service.

Subsequent to July 30, 1967, a certificate holder may elect to pay sales or use tax on the acquisition and installation of a control facility and, subsequently, take a credit against future liability under business and occupation, use, or public utility tax to the extent of the foregoing exemption, except that a person so electing may not take any further manufacturing tax credit as provided in RCW 82.04.435 on the same facility.

Business and Occupation, Use, or Public Utility Tax Credit. With respect to a facility which has been placed in operation and for which a certificate has been issued, a tax credit not exceeding 2 percent of the cost of a new facility or of the depreciated cost of an existing facility may be taken for each year the certificate is in force. Such credit may be claimed against business and occupation, use, or public utility tax liability; however, it shall not exceed 50 percent of the tax liability for any reporting period for which it is claimed nor

shall the cumulative amount of credit allowed for any facility exceed 50 percent of the cost of the facility.

Credits to be reduced. Credits claimed will be reduced by the net commercial value of materials captured or recovered by the pollution control facility. The value of such material shall first reduce the credit available in the current reporting period and then be applied against the cumulative credit balance which has been established but which may not be currently available to the certificate holder. Applicants and certificate holders shall provide the department with information required to establish the net commercial value of recovered or captured material and will be required to make books and records available to the department to verify the correctness of information furnished. The cumulative credit will also be reduced by the amount of federal investment tax credit or other federal tax credits allowed to the certificate holder which are applicable to the facility. The federal tax credits shall be taken as an offset against a pollution control tax credit claimed in the first reporting period following the date of filing the tax return on which the federal tax credit was taken, and thereafter as an offset against a credit hereunder as it becomes available to the certificate holder. The applicant shall advise the department of adjustments to the federal tax credits, either increase or decrease, resulting from either an audit by the internal revenue service, or otherwise. Adjustments to the credit allowable under this rule will be made by the department accordingly.

The department will issue instructions and forms to the certificate holder covering the accounting for the credit for which the certificate holder is eligible. Where a certificate holder is also eligible for manufacturing tax credit, the department may issue special instructions covering the separate accounting for the tax credits.

Credit will be allowable only in any period in which a certificate is in force.

[Statutory Authority: RCW 82.32.300. WSR 83-08-026 (Order ET 83-1), § 458-20-242A, filed 3/30/83; Order ET 77-1, § 458-20-242A, filed 12/8/77 (formerly codified WAC 458-20-242); Order ET 70-3, § 458-20-242 (Rule 242), filed 5/29/70, effective 7/1/70.]