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Ohio General Assembly Clarifies Tax Exempt Facility Definitions

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As part of House Bill 66 (H.B. 66), the Ohio General Assembly amended key definitions in Revised Code (R.C.) 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 makes clear that it applies retroactively to all exempt facility applications and appeals pending on the effective date.

The Department of Taxation administers the Ohio's exempt facility program. The program provides tax exemptions for property and related services that comprise an "exempt facility." That term is defined in R.C. 5709.20(E) to include air, water and noise pollution control facilities, as well as solid waste energy conversion and thermal efficiency improvement facilities. The program provides an important sales/use tax exemption for property and services that is not otherwise available. Similarly, a personal property tax exemption is available for certified exempt facility of public utilities. In some instances, a real property tax exemption is also available.

H.B. 66 amended R.C. 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, R.C. 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 of Taxation has inconsistently applied R.C. 5709.20(M) as a reason for denying exemption certificates for property that otherwise met the definition of an exempt facility.

In light of the clarifying amendment, 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.