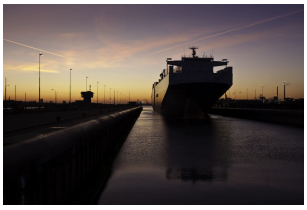

Pollution Control Exemption Now Included on Kentucky Watercraft Tax Forms

May 23, 2023

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This article was originally published by The Waterways Journal in April 2023.

As this time of year marks the start of the Kentucky watercraft tax assessment and tax return season, some watercraft operators may have noticed a change to the Kentucky Department of Revenue's watercraft tax forms. A staple of the general Kentucky property tax world, but now more explicitly incorporated on the Kentucky watercraft tax return and assessment, is the so-called pollution control exemption. The department has now specifically incorporated the exemption on its forms by providing a separate schedule in the return packet for pollution control-certified items as well as a line item on the tax assessment notice for such items, as different tax treatment is applied to items that are certified as pollution control facilities.

In Kentucky, until 2018, the state offered both a sales tax exemption for the purchase of pollution control equipment and an income tax benefit; however, both were eliminated during the sweeping 2018 state tax reform legislation. Today, Kentucky still provides a significant property tax benefit for equipment that is used for the primary purpose of "pollution control." KRS 132.200(8) provides that tangible personal property that is certified as a "pollution control facility" is exempt from all local tax (i.e., county, city, school) and is subject only to Kentucky's state-level tax at a reduced rate.

While the statute uses the phrase "pollution control facilities," the exemption has been applied broadly. A broad range of equipment, component parts and appliances, in a variety of industries—including the inland marine industry—can be certified so long as the equipment is used to prevent, control or reduce air, water, sound or waste pollution.

Kentucky Administrative Regulation 103 KAR 8:170 provides guidance for the process and implications of seeking a pollution

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control exemption. In order to qualify for the exemption to an asset, the taxpayer must file an application with the Kentucky Department of Revenue and submit various documentation related to the equipment, as well as the pollution it aims at eliminating or controlling (e.g., air, water, sound and waste).

If approved, the exemption becomes effective on the date that the application is submitted to the department, not when the department issues the certificate and, importantly, not retroactive to date of purchase if made before the application. Therefore, the taxpayer can effectively benefit from the moment the application is submitted and is not disadvantaged if the department's application review time becomes lengthy, which is all too common, it seems.

Kentucky is not an outlier in this area of tax law. Other states have adopted similar tax exemptions for pollution control equipment. While many vary on the type of pollution control equipment that can qualify for an exemption, as well as the type of tax it is exempted from, several states have statutory language that is similar to those in Kentucky in property tax matters.

As applied to the Kentucky Watercraft Tax, which has a number of questionable intricacies to begin with, the pollution control exemption, if used correctly, can be a tool for the industry to lower tax liability.

For more information about Kentucky tax savings opportunities, contact the authors of this article or visit Frost Brown Todd's Tax Law Defined Blog.

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