Pollution Control and Other Overlooked Exemptions
Presenters

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Objectives

- Understand the different types of potentially qualifying pollution control equipment and devices;
- Develop a good understanding of the nuances of multistate exemptions related to purchases of pollution control equipment, facilities and supplies;
- Gain a familiarity of other miscellaneous exemptions and credits that may be missed opportunities; and
- Understanding of documentation requirements to support exemptions for pollution control and other exemptions/credits discussed.
Agenda

- Overview
- Types of Pollution Control
- Multistate Exemptions
- Recent Cases, Rulings and Updates
- Other Exemptions/Considerations
- Solar Energy Exemptions
- Key Takeaways
- Q&A
- Appendix
Overview

- In 1970, President Richard Nixon’s creation of the federal Environmental Protection Agency (EPA) and the Clean Air Act Amendments of 1970.

- The federal role in regulating pollution has grown immensely which has resulted in a cascade of regulations on state and local governments side as well.
Overview

- EPA encourages states to develop and run their own hazardous waste programs as an alternative to direct EPA management.
- State adoption of the federal universal waste rules is optional.
- States can create different standards, but they have to be equivalent to the federal regulations (i.e., they must provide equivalent protection).
Overview

- Pollution control means the control of emissions and effluents into air, water or soil.
- Without pollution control, the waste products will degrade the environment.
- In the hierarchy of controls, pollution prevention and waste minimization are more desirable than pollution control.
Overview

Waste Management Hierarchy

Source: https://en.wikipedia.org/wiki/Waste_minimisation
Overview

- Pollution prevention reduces the amount of pollution generated by a process, whether by industry, agriculture, or consumers.
- In contrast pollution control strategies, which seek to manage a pollutant after it is emitted and reduce its impact upon the environment.
- Pollution prevention seeks to increase the efficiency of a process, the reducing the amount of pollution generated at its source.
Pollution Control Device Types

- Air pollution control
  - Thermal oxidizer
- Dust collection systems
  - Baghouses
  - Cyclones
  - Electrostatic precipitators
Pollution Control Device Types

- Sewage treatment
  - Sedimentation (Primary treatment)
  - Activated sludge biotreaters (Secondary treatment; also used for industrial wastewater)
  - Aerated lagoons
  - Constructed wetlands (also used for urban runoff)
Pollution Control Device Types

- Industrial wastewater treatment
  - API oil-water separators
  - Biofilters
  - Dissolved air flotation (DAF)
  - Powdered activated carbon treatment
  - Ultrafiltration
Pollution Control Device Types

- Scrubbers
  - Baffle spray scrubber
  - Cyclonic spray scrubber
  - Ejector venturi scrubber
  - Mechanically aided scrubber
  - Spray tower
  - Wet scrubber
- Vapor recovery systems
- Phytoremediation
The California partial sales and use tax exemption for manufacturing equipment applies to tangible personal property used in pollution control if the equipment meets or exceeds state or local government pollution control standards.

The partial sales and use tax exemption is only available to manufacturers

- CA Revenue & Taxation Code §6377.1
Exemptions - California

- Example: You are in the printing industry.
  - Your business's primary activity falls within one of the NAICS codes qualifying for the manufacturing exemption.
  - You purchase a carbon absorber or catalytic reactor used to control pollution that meets or exceeds state or local government standards.
  - Your purchase should usually qualify for the partial exemption.
Sales, storage, use or other consumption of TPP acquired for incorporation into or used and consumed in the operation of [pollution control] facilities, the primary purpose of which is the reduction, control or elimination of air pollution, certified as approved for such purpose by the Commissioner of Energy and Environmental Protection.

- Gen. Stat. §12-412(22)
- Policy Statement PS99(2)
Exemptions - Connecticut

- Qualifying items included in the list of air pollution control equipment contained in this Statement and intended to be incorporated into or used and consumed in the operation of facilities, the primary purpose of which is the reduction, control or elimination of air pollution.

- Purchaser must present the retailer with a properly completed CERT-117, Certificate for Purchases of TPP Incorporated Into or Consumed in Air Pollution Control Facilities.
### Exemptions - Connecticut

**Qualified Pollution Control Devices**

1. Activated Carbon Adsorption or Carbon Adsorbers
2. Ammonia
3. Bags
4. Breakaway Couplings*
5. Catalysts
6. Catalytic Afterburner with or without Heat Exchanger
7. Centrifugal Collector
8. Coaxial Hose*
9. Combustion Modification to Meet NOx RACT
10. Control Equipment to Meet CTGS, RACT or Other Regulatory Requirements
11. Cyclone, Multiple Cyclone
12. Desulfurization
13. Direct Flame Afterburner
14. Dry Limestone Injection
15. Electrostatic Precipitator
16. Fabric Filter
17. Flares
18. Flue Gas Recirculation
19. Gas Scrubber
20. Gravity Collector
21. Limestone
22. Mist Eliminator
23. Nitrogen Blanket
24. Reagents – e.g., lime, carbon,
25. Reagent Scrubbing Processes
26. Refrigerated Condenser
27. Retrofit Kit*
28. Selective Catalytic or Non-Catalytic Reduction
29. Spray Booth Filters
30. Staged Combustion
31. Steam or Water Injection, Water Sprays
32. Thermal Afterburner with or without HX
33. Tray-Type Gas Adsorption Column
34. Ultrasonic Water Sprays
35. Urea
36. Vapor Lock Balance Recovery System*
37. Vapor Recovery Nozzle*
38. Vapor Recovery System (including condensers)*
39. Vapor Return Piping*
40. Water Wash
41. Wet Electrostatic Precipitators
42. Wet Scrubber or Adsorber, e.g., Venturi, etc.
43. Whip Hose*

Approval for items not included on PS99 may be requested from the CT DEP
Exemptions - Illinois

- General exemption for pollution control facilities was repealed June 30, 2003
- The purchase, use, and transfer of “low sulfur dioxide emission coal fueled devices” is exempt.
- The exemption covers any device sold, used, or intended for burning, combusting, or converting locally available coal to eliminate or significantly reduce additional sulfur dioxide abatement otherwise required by state or federal air emission standards.
Exemptions - Illinois

- The exemption applies to machinery, equipment, structures, and related apparatus of a coal gasification facility, including coal feeding equipment, designed to convert locally available coal into a low sulfur gaseous fuel and to manage all waste and byproduct streams.
  - ILCS Chapter 35 §120/1A-1
  - ILCS Chapter 35 §115/2B
  - ILCS Chapter 35 §105/2A-1
  - ILCS Chapter 35 §110/2B
Exemptions - Illinois

- TPP for use or consumption in the operation of pollution control facilities in an IL Enterprise Zone (EZ) is exempt.
- The item must be used exclusively in the EZ
- The pollution control facility must be in the EZ
  - ILCS Chapter 35 §120/1e
  - Ill. Admin. Code 86 §130.1948
  - Exempt items, see Ill. Admin. Code 86 §130.1948(d)
  - Nonexempt items, see Ill. Admin. Code 86 §130.1948(e)
Exemptions - Louisiana

- A “pollution control device or system” is TPP, approved by the LA DOR and the LA DEQ, sold or leased and used or intended for the purpose of eliminating, preventing, treating, or reducing the volume, toxicity, or potential hazards of industrial pollution of air, water, groundwater, noise, solid waste, or hazardous waste.
  - LA RS47:301(10)(I)
Exemptions - Louisiana

- Louisiana has historically exempted sales of pollution control devices or systems.
- Due to the budget crisis in Louisiana, many exemptions were temporarily suspended in 2016, including the pollution control exemption.
- The tax rates for pollution control devices or systems follow the schedule below:
  - 04/01/16 – 06/30/16: 5%
  - 07/01/16 – 06/30/18: 3%
  - 07/01/18 – 03/31/19: 0%
An exemption from Michigan sales and use taxes applies to TPP bought and installed as a component part of an air or water pollution control facility in Michigan for which a tax exemption certificate has been issued and is in effect.

A tax refund is available for tax paid on TPP that later qualifies for the exemption, when the State Tax Commission (STC) issues an exemption certificate.
Exemptions - Michigan

- Air pollution control facility:
  - An exemption from Michigan sales and use taxes applies to TPP bought and installed as a component part of an air pollution control facility in Michigan for which a tax exemption certificate has been issued and is in effect.
  - STC must certify the facility before a contractor may qualify for the exemption; however, after a certificate is granted, refunds may be authorized.
Exemptions - Michigan

- Air pollution control facility (Cont’d)
  - The exemption is not available before receipt of a signed exemption certificate from the STC.
  - This exemption may include portions of real property as well as TPP provided that the TPP must be installed as a component part of the qualified air pollution control facility
    - Mich. Comp. Laws Ann. §205.54a(1)(l)
    - Mich. Comp. Laws Ann. §205.94(1)(s)
Exemptions - South Carolina

- Exempts pollution control machines that qualify for the machine exemption when installed and operated for compliance with an order of an agency of the United States or of this State to prevent or abate air, water, or noise pollution caused or threatened by the operation of other exempt machines used in the mining, quarrying, compounding, processing, and manufacturing of TPP for sale.

- Includes parts, attachments, and replacements used, or manufactured for use, on or in the operation of the machines.

  - Sec.12-36-2120(17)
Exemptions - Tennessee

- Provides a sales and use tax exemption for any system, method, improvement, structure, or device that is required and primarily used to bring the purchaser into compliance with federal, state or local pollution control laws.

- The exemption also includes repair parts, and repair and installation services.
  - Tenn. Code Ann. § 67-6-346
Exemptions - Tennessee

- The exemption is available only to taxpayers to reduce pollution created by the taxpayer’s own business activities. The exemption is not available to taxpayers that process, treat, or control pollution created by others.

- The purchaser must apply for a Pollution Control Sales and Use Tax Exemption Certificate from the TN Department of Revenue to make tax exempt purchases of qualified pollution control items.
Texas exempts tangible personal property used or consumed in the actual manufacturing, processing, or fabrication of tangible personal property for ultimate sale if the use or consumption of the property is necessary and essential to a pollution control process.

- Tex. Tax Code Ann. §151.318(a)(5)
- Tex. Admin. Code §3.300(d)(6)
Exemptions - Texas

- To qualify for the exemption, the pollution control equipment must be used during the actual processing and not, for example, during preparation for manufacturing or during storage or distribution of the product after it is manufactured.

- The pollution control exemption is not extended to service providers. It only applies to manufacturers.
Alabama

- AL DOR ruled that the purchase by the taxpayer, an AL manufacturer, of a higher combustion efficiency waste heat recovery (WHR) boiler did not qualify for the pollution control exemption.
- The WHR will produce excess energy that will be sold to Alabama Power.
- As profit motivated production equipment, they do not qualify for the pollution control exemption.
- Alabama Revenue Ruling No. 2016-001, 02/06/2017 (released 05/26/2017)
Arkansas

- Taxpayer was denied an exemption because there was also no evidence to show whether pollution control equipment was required by state or federal law as required for exemption under Ark. Regs. § GR-66(A).

- Arkansas Administrative Hearing Decision, Dkt. No. 17-225; 17-226, 06/20/2017
Arkansas (Cont’d)

- Concrete used to construct channels, tunnels, flumes, basins or tanks that control or contain water or sludge during the treatment process are eligible for the pollution control exemption because these structures are used during the treatment process to control pollution or contamination, as is concrete used to support the screening equipment and to contain wastewater during the treatment process;
Cases, Rulings & Updates

- Arkansas (Cont’d)
  - However, concrete used to construct sidewalks, steps, driveways, or footings would not qualify for exemption because they are not used during the treatment process to control pollution.
  - Revenue Legal Opinion No. Revenue Legal Opinion No. 20170209 (Wastewater Treatment Sales Tax Exemption Determination), 05/17/2017
Minnesota

- The following Solid Waste Management (SWM) Tax law changes took effect July 1, 2017.
- To be exempt, the charge for handling recyclable material must be separately itemized on bill.
- The DOR has updated its information releases on the SWM Tax to reflect the 2017 legislative change.
  - Recyclable Materials and Construction Debris, Minn. Dept. Rev., 07/11/2017
  - Solid Waste Management Tax Fact Sheet 1, Minn. Dept. of Rev., 07/01/2017
Mississippi

- The MS DOR adopted amendments to Miss. Administrative Code § 35.IV.7.03 (Manufacturers and Custom Processors), effective May 27, 2017, expanding the exemption for purchases of pollution control equipment by manufacturers and custom processors.

- Exemption has been expanded to all uses. Previously the exemption was restricted to only industrial uses.
South Carolina

- The administrative law court (ALC) granted the taxpayer summary judgment and found that the canister systems utilized by the taxpayer to contain spent nuclear fuel rods following the manufacture of electricity are exempt from use tax under S.C. Code Ann. § 12-36-2120(17) as pollution control machines.
South Carolina (Cont’d)

- The ALC found the language of the statute to be plain and unambiguous. The taxpayer's canisters met the three required elements:
  1. that there was a machine that
  2. prevented or abated pollution caused by machines used in the manufacturing process and
  3. was necessary to comply with the order of an agency.

- Taxpayer's motion for summary judgment was granted.

Cases, Rulings & Updates

* Tennessee DOR Letter Ruling #13-06
  - The TN DOR found that none of the materials or equipment purchased by taxpayer to operate a solid waste disposal landfill qualify for the pollution control sales & use tax exemption.
  - The exemption is designed for a manufacturer installing devices to reduce pollutants created during a fabrication or processing operation whereby it creates tangible personal property.
  - Only industrial machinery used primarily for water pollution control could qualify for a landfill.
Other Exemptions/Considerations

- Industrial Manufacturing
  - Pollution control usually falls under the exemptions extended to manufacturers.
- Chemicals & Catalysts*
- Safety Apparel & Equipment*
- Packaging Equipment & Supplies*
- Recycling Equipment*

* See Appendix for more information
Other Exemptions/Considerations

Documentation Requirements

- Technical Support
  - Tax Technical
  - Engineering/Operations

- Exemption Certificates

- Pre-Certification Requirements
Solar Energy Exemption - California

- California RTC § 6010.8 provides an exclusion from sales and use tax for the purchase of tangible personal property by a "participating party" for eligible projects involving the following:
  - Alternative energy sources
  - Advanced transportation technologies
  - Advanced manufacturing

- Must apply for exemption through the California Alternative Energy and Advanced Transportation Financing Authority (CAEATFA).
Solar Energy Exemption - New Jersey

- NJ provides a sales and use tax exemption on solar energy devices used to convert solar energy into some other useable energy source.
- Must use NJ Form ST-4 (Exempt Use Certificate) to purchase the solar energy devices without paying tax.
Solar Energy Exemption - Virginia

- Virginia H1305 (c. 346), effective 01/01/2017,
  - Limits the retail sales and use tax exemption for machinery, tools, and equipment used to generate energy derived from sunlight or wind related to solar photovoltaic (electric energy) systems.
Solar Energy Credit - Louisiana

- Louisiana provides a credit against income tax for the purchase and installation of a solar electric system.
- Due to LA’s budget shortfalls, many taxpayers were denied credits they should have qualified for.
- Act 413, passed in June 2017 provides additional funding for taxpayers who purchased and installed a qualified solar energy system on or before December 31, 2015. Taxpayers must have already submitted a properly filed claim before September 1, 2017.
Solar Energy Exemption - Texas

- Texas exempts from property tax the amount of appraised value associated with the installation or construction of solar or wind-powered energy devices used primarily for on-site energy production and use.
- Texas also provides an exemption from franchise tax for companies that are engaged solely in the business of manufacturing, selling, or installing solar energy devices.
Final Thoughts…

Key Takeaways

- Research pollution control and other related exemptions to properly determine if your purchases will qualify for an exemption.
- Review ongoing purchases in states where pollution control devices are exempt to ensure tax is not overpaid.
- Understand the requirements to properly document exemptions and retain such evidence to support tax exempt purchases under audit.
Questions?
Appendix
### Pollution Control
### Multistate Exemptions & Credits

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Source: CCH
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Other Exemptions/Considerations

- **Chemicals & Catalysts**
  - AZ, AR, CT, DC, FL, GA, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, NE, NJ, NM, NY, NYC, ND, OH, OK, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY
  - May require it become an ingredient or component part of finished good
  - May require it to create a change to processed good
  - Consumed or destroyed in MFG process
  - May require that it only be necessary to the process
Other Exemptions/Considerations

● Safety Apparel & Equipment
  - Apparel
    ● CT, GA, MD, MO, NJ, NY, OK, PA, RI, TX, VA, WV, WI
    ● when required by a state or federal agency and when used directly in a production area
    ● allow the worker to participate in the production process without injury or to prevent the contamination of the manufactured product is exempt
  - Equipment
    ● CO, FL, GA, ID, IN, MD, MO, NJ, OK, RI, WV, WI
    ● Often excluded because not used directly in manufacturing
    ● May require attachment to exempt machinery
Other Exemptions/Considerations

- **Packaging**
  - Most states provide some form of exemption for packaging
  - Typically require that resale exemption applies
  - Some require the packaging accompany the product sold or transferred subsequent to the sale
  - Typically exceptions/exclusions from the exemptions
  - Returnable containers may be exempt & not exempt depending on the state
Other Exemptions/Considerations

- Recycling Equipment
  - AZ, CA, CT, FL, GA, IL, IN, IA, KS, KY, LA, ME, MI, MS, MO, NJ, NM, NC, ND, PA, RI, SC, TN, TX, UT, VT, VA, WI
  - Exemption may be offset for recovered valuables
  - Some exemptions are very limited