

REG-1-084, Application for Refund - Air or Water Pollution Control Facility

084.01 An air or water pollution control facility shall mean and include any system, treatment works, or appliance used or placed in operation primarily for the purpose of reducing, controlling, or eliminating air or water pollution caused by industrial or agricultural waste. Industrial or agricultural waste shall mean any liquid, gaseous, or solid waste substance resulting from any process of industry, manufacture, including the generation of electricity, trade or business, or from the development, processing, or recovery of any paper or wood which is capable of polluting the air or waters of this state.

084.01A Facilities such as air conditioners, dust collectors, filters, fans, and similar facilities designed, constructed or installed solely for the benefit of the person for whom installed or the personnel of such person, and facilities designed or installed for the reduction or control of automobile exhaust emissions are not air pollution control facilities.

084.02 Before applying for a refund of Nebraska sales and use tax paid, the applicant shall receive a written final findings of the Department of Environmental Quality (DEQ). If DEQ finds that the facility, a portion of a facility, or single location with multiple facilities is designed and operated primarily for control, capture, or removal of industrial or agricultural waste from the air or water and is suitable, reasonably adequate, and meets the intent and purposes of the Environmental Protection Act, DEQ shall notify the owner of the facility in writing of its findings.

084.02A The granting of a permit or approval to operate a facility does not meet the requirements of a written final finding of DEQ for the purposes of the Air and Water Pollution Control Tax Refund Act of the Nebraska Revised Statutes.

084.02B Any finding of DEQ with regard to whether or not a facility or portion of a facility qualifies for the Air and Water Pollution Control Tax Refund Act is not final if it has been appealed or is being reconsidered by DEQ.

084.03 The application for a refund must be filed within three years of the date of payment of the applicable sales and use tax. The necessary forms can be obtained from the Department of Revenue. The application for a refund must be filed separate from any other application, return, or protest and must be accompanied by:

084.03A A copy of the written final findings of DEQ;

084.03B Plans and specifications of such facility including all materials incorporated therein;

084.03C A descriptive list of all equipment acquired by the applicant for the purpose of industrial or agricultural pollution control and showing where in the facility the equipment is used;

084.03D The proposed operating procedure for the facility; and

084.03E The acquisition cost of the facility for which a refund is claimed.

084.04 The owner of any air or water pollution control facility must obtain such information from the contractor and furnish it in support of his or her application for refund where he or she has not purchased the tangible personal property annexed therein.

084.05 No refund shall be allowed under the Air and Water Pollution Control Tax Refund Act on any facility which is not used primarily for pollution control nor for which a refund is otherwise provided under the terms of the Nebraska Revenue Act of 1967, as amended. DEQ shall determine whether or not industrial or agricultural pollution control exists and the Department of Revenue shall determine the amount of sales and use tax to be refunded. The Department of Revenue may not abridge the authority of DEQ to determine whether or not industrial or agricultural

pollution control exists. Any person aggrieved by action taken with respect to the determination of the amount of a refund under the Air and Water Pollution Control Tax Refund Act may appeal from the findings and order of the Tax Commissioner in the manner and form and within the time provided by sections 84-917 to 84-919, of the Nebraska Revised Statutes.

(Sections 77-27,149 through 77-27,155, R.R.S. 2003. October 1, 2003.)