

UNTAPPED BENEFITS OF LOUISIANA'S POLLUTION TAX EXCLUSION

Many companies in Louisiana may be aware of the beneficial tax exclusion authorized in La. R.S. 47:301 and LAC 61:I.4302 for pollution reduction projects. What they may not be aware of, however, is the broader scope of Louisiana's program than most other states. Unlike other states, Louisiana's exclusion applies to both pollution control devices and pollution control systems. Thus, the Louisiana legislature intended to apply the program to more than simply "end of the pipe" control technology. This more expansive scope may make certain projects in Louisiana more attractive for multi-state companies competing for the same project dollars.

La. R.S. 47:301(10)(l) sets forth the statutory basis for the sales and use tax exclusion, and provides:

Solely for purposes of the state sales and use tax, the term "sale at retail" shall not include the **sale of a pollution control device or system**. Pollution control device or system shall mean any **tangible personal property** approved by the Department of Revenue and the Department of Environmental Quality and sold or leased and used or **intended for the purpose of eliminating, preventing, treating, or reducing the volume or toxicity or potential hazards of industrial pollution of air, water, groundwater, noise, solid waste, or hazardous waste in the state of Louisiana**. ... (emphasis added).

The implementing regulations for the tax exclusion are set forth in LAC 61:I.4302 and "describes the conditions under which certain sale and lease transactions involving personal tangible property used for pollution control purposes may be excluded from

the definition of 'sale at retail' for purposes of the 3 percent tax levied by this Chapter and the Louisiana Tourism Promotion District." LAC 61:I.4302.C and D set forth the following conditions that must be satisfied to qualify for the tax relief provided from the definition of "sale at retail":

1. the "pollution control device or system" must be approved by both the Department of Revenue and LDEQ to be excluded from the definition of "sale at retail" for states sales and use tax purposes (LAC 61.I.4302.C.1);
2. the applicant must demonstrate: (A) a net decrease in the volume or toxicity or potential hazards of pollution as a result of the installation of the device or system, or (B) that installation is necessary to comply with federal or state environmental laws or regulations (LAC 61.I.4302.C.2);
3. the equipment must be intended for use in an "industrial application" (LAC 61.I.4302.C.3);
4. the exclusion does not apply to modifications to processes carried out primarily for reasons other than the reduction of "pollution" (LAC 61.I.4302.D.1); and
5. the exclusion does not apply to installation or replacement of existing process units carried out primarily for reasons other than the reduction of pollution (LAC 61.I.4302.D.2).

"Pollution control device or system" is defined in LAC 33:61.I.4302.B to mean "any one or more pieces of tangible personal property which is intended and installed for the purpose of eliminating, preventing, treating, or reducing the volume or toxicity or po-

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tential hazards of industrial pollution of air, water, groundwater, noise, solid waste, or hazardous waste in the state of Louisiana and which has been approved by the Department of Environmental Quality and the Department of Revenue and Taxation for the tax relief granted by this act." Pollution is also broadly defined in LAC 61:I.4302.B to mean "the environment of the state by any means that would tend to degrade the chemical, physical, biological, or radiological integrity of such environment. ..."

If the above five criteria are satisfied, regulated facilities may be able to exclude the cost of the equipment and possibly the materials of construction necessary for the project from Louisiana sales tax. Again, the Louisiana program should be broadly interpreted and could be used for a number of different projects. Many MACT standards, for instance, allow flexibility in how reductions in emissions are

achieved. In addition, although pollution reduction must be a significant or primary reason for a project, it does not have to be the exclusive reason for the project. Thus, as long as a net decrease in the volume of pollution will result from the project and the reduction is a critical element, it may be eligible for the exclusion. Finally, the exclusions may be applied for either before the project or afterwards through a rebate.



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LDEQ LAUNCHES THE MAML

The LDEQ recently initiated use of its Mobile Air Monitoring Laboratory- "MAML" for short- near a chlor-alkali plant in St. Gabriel, Louisiana. The MAML's recent use near the St. Gabriel plant was the first step in the agency's investigation into mercury releases into the atmosphere around Louisiana and is a part of the LDEQ's mercury initiative that began in 2004.

The MAML is a recreational vehicle that has been specially equipped to be a self-contained mobile air monitoring lab that can provide real-time air sampling and analysis. The MAML can measure and detect the same materials and compounds that a stationary air monitor detects, but it can be set up more quickly than a traditional, stationary air monitoring facility. Furthermore, the results of the MAML's monitoring can be produced in less than an hour, which far outpaces the time it takes to obtain results from stationary air monitors. The types of monitoring equipment housed in the MAML include a gas chromatograph used to sample for multiple organic compounds, a mercury analyzer capable of detecting very low levels of mercury in the air, a device capable of conducting criteria air pollutant monitoring which can measure ozone, particulate matter, carbon monoxide, nitrogen oxides, and sulfur dioxide, and a device capable of monitoring hydrogen sulfide and volatile organic compounds (VOC's).

Because the MAML can be set up more quickly than a stationary air monitoring facility, it is expected that it will be deployed throughout various parts of

the state where stationary monitoring stations do not exist and/or in areas where ambient monitoring stations have detected exceedances to provide instantaneous, onsite data for specific monitoring projects. The LDEQ notes that the MAML will also be used for air monitoring support following emergencies or natural disasters. The MAML will also be used to investigate past or present air pollution complaints or concerns, including those requested by the LDEQ Secretary.

One issue that the LDEQ faces in the operation of the MAML is finding a location where the vehicle can be parked for an extended period of time that is located such that the wind patterns flow in a direction that allows for the adequate collection of data. Furthermore, the LDEQ has also had to work out technical difficulties arising from the sensitive monitoring equipment being jostled during the MAML's travels across Louisiana.



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