comm132_EmR0802.pdf **Commerce – Creates Ch. Comm 132 - EmR0802**

ORDER OF THE

DEPARTMENT OF COMMERCE

EMERGENCY RULE RELATING TO DAIRY MANUFACTURING FACILITY INVESTMENT CREDITS

Finding of Emergency and Rule Analysis

The Department of Commerce finds that an emergency exists and that adoption of the rule included in this order is necessary for the immediate preservation of public welfare.

The facts constituting the emergency are as follows. Under sections 71.07 (3p) (b), 71.28 (3p) (b), and 71.47 (3p) (b) of the Statutes, as created in 2007 Wisconsin Act 20, a taxpayer may claim a dairy manufacturing facility investment credit for dairy manufacturing modernization or expansion during taxable years beginning after December 31, 2006. Sections 71.07 (3p) (a) 3., 71.28 (3p) (a) 3., and 71.47 (3p) (a) 3. of the Statutes define dairy manufacturing modernization or expansion as "constructing, improving, or acquiring buildings or facilities, or acquiring equipment, for dairy manufacturing . . . if acquired and placed in service in this state during taxable years that begin after December 31, 2006, and before January 1, 2015." Section 71.07 (3p) (c) 2m. a. of the Statutes states that the maximum amount of credits that may be claimed in fiscal year 2007-08 is $600,000.

Section 560.207 of the Statutes, as likewise created in 2007 Wisconsin Act 20, requires the Department to (1) implement a program for certifying taxpayers as eligible for the dairy manufacturing facility investment credit, (2) determine the amount of credits to allocate to those taxpayers, and (3) in consultation with the Department of Revenue, promulgate rules to administer the program. No other provisions are established in the Statutes regarding the specific process for taxpayers to use in applying for the credits, and for the Department of Commerce to use in certifying eligible taxpayers and in allocating the credits.

Because of enactment of 2007 Wisconsin Act 20, a number of entities that may be eligible for the tax credits have contacted the Department with inquiries concerning the process for applying for the credits, for expenditures that have been incurred during taxable years that began after December 31, 2006.

Entities that may be eligible for the tax credits for the 2007-08 fiscal year face near-term time constraints for filing their tax returns with the Department of Revenue. Although the Department of Commerce has begun promulgating the permanent rule that is required by 2007 Act 20, the time periods in chapter 227 of the Statutes for promulgating permanent rules preclude the permanent rule from becoming effective in time to readily accommodate claiming the tax credits for the 2007-08 fiscal year. This emergency rule will enable the Department of Commerce to establish an application, certification, and tax credit allocation process for the entities that need to soon file their tax returns for taxable years beginning after December 31, 2006.

Pursuant to section 227.24 of the Statutes, this rule is adopted as an emergency rule to take effect upon publication in the official state newspaper and filing with the Legislative Reference Bureau.

SECTION 1. Chapter Comm 132 is created to read:

Chapter Comm 132

DAIRY MANUFACTURING FACILITY INVESTMENT CREDIT

Comm 132.10 Authority and purpose. Pursuant to s. 560.207 (4), Stats., this chapter sets forth the requirements for obtaining the following from the department:

(1) A certification that a taxpayer is eligible for the dairy manufacturing facility investment credit under ss. 71.07 (3p), 71.28 (3p), and 71.47 (3p), Stats.

(2) A determination of the maximum amount of tax credit that a taxpayer may claim under this chapter for investing in dairy manufacturing facilities.

Note: The statute sections listed in this section address income and franchise tax credits for investments in dairy manufacturing facilities.

Comm 132.20 Definitions. In this chapter:

(1) "Dairy manufacturing" has the meaning given in s. 71.07 (3p) (a) 2., Stats.
Note: Section 71.07 (3p) (a) 2., Stats., reads as follows: " 'Dairy manufacturing' means processing milk into dairy products or processing dairy products for sale commercially."
(2) "Dairy product" means a value-added, saleable product resulting from processing milk or another dairy product – and includes beverage milk products; soft milk products such as yogurt, ice cream and cottage cheese; cheese; butter; non-fat dried milk; whole milk powder; dried whey; whey protein concentrate or isolates; casein; and dairy waste that can be used to produce energy, fuel or industrial products.
(3) "Department" means the department of commerce.
(4) "Eligible capital investment" includes all expenses incurred in the acquisition, construction or improvement of buildings or facilities; and the purchase price of depreciable personal property or equipment.
(5) "Milk" means the lacteal secretion of cows, sheep or goats.
(6) "Person" includes natural persons, fiduciaries, and corporations, unless the context requires otherwise.

Comm 132.30 Applying for certification and allocation. (1) A person who intends to claim a dairy manufacturing facility investment credit may apply for certification and allocation of the credit.
Note: A "person" in this section may include either the operator of a dairy manufacturing operation, or an owner of a building or facility in which the operation occurs.
(2) Application to the department for certification and allocation of the credit shall be made on a valid, department-prescribed form; and shall include a department of revenue tax schedule DM, listing the eligible expenses of the project.
Note: The application form that is currently valid can be obtained from the Department at P.O. Box 7970, Madison, WI, 53707. Schedule DM can be obtained from the Department of Revenue at P.O. Box 8949, Madison, WI, 53708-8949; and may be available by accessing that Department's Web site at www.revenue.wi.gov.
(3) Each application shall include all of the following information:
(a) A description of the business operations of the applicant, in relation to the project.
(b) A description of what the project is.
(c) A description of how the project will promote economic development.
(d) Any other information that the department deems is necessary to evaluate applications and allocate available tax credits.
(e) Any subsequent clarification requested by the department.
(4) Each application shall be completed and either postmarked or delivered to the department, no sooner than upon completion of the claimant's taxable year in which the eligible capital investment occurred, and no later than March 31st of the subsequent taxable year, unless this deadline is extended by the department.

Comm 132.40 Certification of applicants, and allocation of tax credits. (1) After receipt of the applications submitted under s. Comm 132.30, the department shall certify the applicants that have met the criteria in s. Comm 132.30 (2) to (4).
(2) In conjunction with certifying an applicant, the department shall determine the maximum amount of tax credit that the applicant may claim.
(3) (a) Due to the $600,000 and $700,000 maximum totals established in s. 560.207 (2), Stats., for allocations in fiscal years 2007-08 and thereafter, respectively, the department may allocate the tax credits in a manner that the department believes is most likely to promote economic development.
(b) In determining the allocation of tax credits under par. (a), the department shall consider the following:
1. The jobs created by the project.
2. The salaries, wages and other employee benefits of the jobs created by the project.
3. The impact of the project on the dairy industry in Wisconsin.
4. The extent to which the area served by the project is economically distressed.
5. The amount of new, eligible capital investment in the project.
6. The impact of the project on business in Wisconsin.
7. Any previous assistance from the department.
(c) The department may prorate some or all of the allocations in order to broaden the potential for promoting economic development and addressing the criteria in par. (b).

Comm 132.50 Notifications. Following completion of the certifications and allocations in s. Comm 132.40, the department shall notify each applicant of the outcome of their application – and shall notify the department of revenue of every taxpayer certified under this chapter, and the amount of the tax credit allocated to the taxpayer.

Comm 132.60 Claims. (1) A certified applicant may file for a tax credit under this chapter using forms acceptable to the department of revenue.

(2) Dairy manufacturing facility investment credit claims shall include at least all of the following:

(a) A copy of the certification issued by the department under s. Comm 132.50.

(b) The state employer tax identification number.

(c) The North American Industry Classification System code (NAICS) for the certified applicant.

Dated at Madison this 29th day of January, A.D. 2008, by the Department of Commerce

Jack L. Fischer, Secretary **(END)**