

## Chapter ATCP 163

### DAIRY MANUFACTURING FACILITY INVESTMENT CREDIT

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**Note:** Chapter Comm 132 was renumbered chapter ATCP 163 under s. 13.92 (4) (b) 1., Stats., Register October 2011 No. 670.

**ATCP 163.10 Authority and purpose.** Pursuant to s. 93.535 (4), Stats., this chapter sets forth the requirements for obtaining all of the following:

(1) A certification that a taxpayer, including a taxpayer who is any of the following, is eligible for the dairy manufacturing facility investment credit under s. 71.07 (3p), 71.28 (3p), or 71.47 (3p), Stats.:

- (a) A partner of a partnership.
- (b) A member of a limited liability company.
- (c) A shareholder of a tax-option corporation.
- (d) A member of a dairy cooperative.

(2) A determination of the maximum amount of tax credit that may be claimed under this chapter for an investment in a dairy manufacturing facility.

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

**History:** EmR0802: emerg. cr. eff. 2-4-08; CR 08-031: cr. Register October 2008 No. 634, eff. 11-1-08; CR 10-008: am. Register August 2010 No. 656, eff. 9-1-10; correction in (intro.) made under s. 13.92 (4) (b) 7., Stats., Register October 2011 No. 670.

**ATCP 163.20 Definitions.** In this chapter:

(1) "Dairy cooperative" has the meaning given in s. 71.07 (3p) (a) 1m., Stats.

**Note:** Section 71.07 (3p) (a) 1m., Stats., reads as follows: " 'Dairy cooperative' means a business organized under ch. 185 or 193 for the purpose of obtaining or processing milk."

(2) "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."

(3) "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.

(4) "Department" means the department of agriculture, trade and consumer protection.

(5) "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.

(6) "Milk" means the lacteal secretion of cows, sheep or goats.

**History:** EmR0802: emerg. cr. eff. 2-4-08; CR 08-031: cr. Register October 2008 No. 634, eff. 11-1-08; CR 10-008: r. (6), renum. (1) to (5) to be (2) to (6), cr. (1) Register August 2010 No. 656, eff. 9-1-10; correction in (4) made under s. 13.92 (4) (b) 6., Stats., Register October 2011 No. 670.

**ATCP 163.30 Applying for certification and allocation.** (1) (a) A taxpayer or one of the following entities may apply for a certification and an allocation for a dairy manufacturing facility investment credit:

1. A partnership.
2. A limited liability company.

3. A tax-option corporation.

4. A dairy cooperative.

(b) A "taxpayer" or the "entities" in par. (a) 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 a certification and an allocation of the credit shall be made on a valid, department-prescribed form, listing the applicant's eligible expenses for the project.

**Note:** The application form that is currently valid can be obtained from the Department of Agriculture, Trade and Consumer Protection at P.O. Box 8911, Madison, WI 53708-8911.

(3) (a) Each application shall include all of the following information:

1. A description of the business operations of the applicant, in relation to the project.

2. A description of what the project is.

3. A description of how the project will promote economic development.

4. Any other information that the department deems is necessary to evaluate applications and allocate available tax credits.

5. Any subsequent clarification requested by the department.

(b) No application may include costs incurred in taxable years beginning on or after January 1, 2015.

(4) Each application shall be completed and either post-marked or delivered to the department no sooner than upon completion of the taxable year in which the costs listed in the application were incurred and no later than February 15 of the subsequent taxable year, unless this deadline is extended by the department.

**History:** EmR0802: emerg. cr. eff. 2-4-08; CR 08-031: cr. Register October 2008 No. 634, eff. 11-1-08; CR 10-008: am. (1), (2) and (4) Register August 2010 No. 656, eff. 9-1-10.

**ATCP 163.40 Certifications for applicants, and allocation of tax credits.** (1) After receipt of the applications submitted under s. ATCP 163.30, the department shall issue certifications for the applicants that have met the criteria in s. ATCP 163.30 (2) to (4).

(2) In conjunction with issuing a certification for an applicant, the department shall determine the maximum amount of tax credit that the applicant may either claim or distribute to its partners, members or shareholders.

**Note:** Under chapter 71, Stats., the aggregate amount of credits that a taxpayer may claim under this chapter is \$200,000; except that partnerships, limited liability companies, tax-option corporations, dairy cooperatives and other multiple-owner entities are limited to \$200,000 for each of their dairy manufacturing facilities.

(3) (a) Due to the \$600,000 and \$700,000 maximum totals established in s. 93.535 (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).

**History:** EmR0802: emerg. cr. eff. 2-4-08; CR 08-031: cr. Register October 2008 No. 634, eff. 11-1-08; CR 10-008: am. (title), (1) and (2) Register August 2010 No. 656, eff. 9-1-10; **correction in (1), (3) (a) made under s. 13.92 (4) (b) 7., Stats., Register October 2011 No. 670.**

**ATCP 163.50 Notifications.** Following completion of the certifications and allocations in s. ATCP 163.40, the department shall notify each applicant of the outcome of their applica-

tion — and shall notify the department of revenue of every certification issued under this chapter, and the amount of the tax credit allocated to the applicant.

**History:** EmR0802: emerg. cr. eff. 2-4-08; CR 08-031: cr. Register October 2008 No. 634, eff. 11-1-08; CR 10-008: am. Register August 2010 No. 656, eff. 9-1-10; **correction made under s. 13.92 (4) (b) 7., Stats., Register October 2011 No. 670.**

**ATCP 163.60 Claims. (1)** A taxpayer may file for a tax credit under this chapter using forms acceptable to the department of revenue.

**(2)** A dairy manufacturing facility investment credit claim from a member of a certified dairy cooperative shall include a determination from the cooperative, specifying the amount of the credit the member may claim, based on the amount of milk the member delivered to the cooperative.

**History:** EmR0802: emerg. cr. eff. 2-4-08; CR 08-031: cr. Register October 2008 No. 634, eff. 11-1-08; CR 10-008: am. (1), r. and recr. (2) Register August 2010 No. 656, eff. 9-1-10.