

**DEPARTMENT OF COMMERCE
SUMMARY OF PUBLIC HEARING COMMENTS AND AGENCY RESPONSE**

Clearinghouse Rule Number: 07-101		Hearing Location: Madison	
Rule Number: Chapter Comm 130		Hearing Date: November 28, 2007	
Relating to: Manufacturing Investment Credit Program			
Comments: Oral or Exhibit No.	Presenter, Group Represented, City and State	Comments/Recommendations	Agency Response
Exhibit 1	Edward J. Wilusz Wisconsin Paper Council Neenah, Wisconsin	Believes the proposed rule is reasonable and workable.	Support is noted.
		Recommends including an appeal process, if possible.	An appeal process is not possible because the prevailing legislation – 2003 Wisconsin Act 99 – does not provide for one. Also, there is no precedence for such a process in any of the Department’s other tax credit programs. However, this should not be an issue because the criteria are unambiguous, the Department is not relying exclusively on data from the Department of Revenue for identifying the pool of potential applicants, and each certification will be based on an attestation from the applicant.
		Recommends developing guidance on how certification would occur in situations where there was a change in corporate ownership or structure during the 2003-2006 time period.	The prevailing legislation clearly states that the party claiming the manufacturing investment credit must be the same party that had the unused manufacturers’ sales tax credits. Based on this language, the Department cannot certify a company based on manufacturers’ sales tax credit carryovers of an entity that no longer exists. In addition, the Department of Revenue provides the following analysis: “For most credits, section 71.26 (3) (n) of the Statutes adopts the federal limitations in sections 381, 382, and 383 of the Internal Revenue Code for losses and credits that are acquired in certain kinds of corporate reorganizations. For federal purposes, an acquiring corporation may not be able to claim credit or loss carryforwards of the acquired corporation (but generally is able to defer them over a number of years). In some cases these limitations may apply even if the FEIN stays the same. “However, the manufacturing investment credit is not included in section 71.26 (3) (n) of the Statutes as one of the credits for which Wisconsin applies sections 381, 382, and 383 of the Internal Revenue Code. Therefore, as long as the taxpayer has the same FEIN, there is nothing in the Wisconsin tax code that would prevent continuing to allow the credit after a reorganization takes place. Conversely, if the taxpayer has a different FEIN, it is a new taxpayer and cannot carry forward any credits or losses ‘acquired’ from a taxpayer that no longer exists.”
		Recommends sending a reminder to affected companies and to trade associations, such as the Wisconsin Paper Council, in mid-2008 as the September 2008 claim deadline approaches.	Agree. The Department plans to send the reminder.

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