

**ORDER OF THE
DEPARTMENT OF COMMERCE

CREATING RULES**

The Wisconsin Department of Commerce creates chapter Comm 132 relating to certifying applicants and allocating dairy manufacturing facility investment tax credits, and affecting small businesses.

Analysis of Rules

1. Statutes Interpreted.

Sections 71.07 (3p), 71.28 (3p), 71.47 (3p), and 560.207 – as created in 2007 Wisconsin Act 20.

2. Statutory Authority.

Sections 227.11 (2) (a) and 560.207 (4).

3. Explanation of Agency Authority.

Section 560.207 (4) of the Statutes requires the Department to promulgate rules for implementing and administering a program to certify applicants and allocate tax credits for the dairy manufacturing investments addressed in sections 71.07 (3p), 71.28 (3p), and 71.47 (3p) of the Statutes. Section 227.11 (2) (a) of the Statutes authorizes the Department to promulgate rules interpreting the provisions of any Statute administered by the Department.

4. Related Statute or Rule.

The Department has rules for several other programs associated with tax credits, but none of those programs relate specifically to investments in dairy manufacturing facilities. For example, section 560.798 of the Statutes and chapter Comm 118 both refer to the Department's Agricultural Development Zone Program, which provides tax credits to agricultural businesses for job creation, capital investment, and environmental remediation. Those businesses must be located in specific geographic agricultural development zones in the State in order to qualify.

5. Summary of Rule.

The rules in this order specify (1) the eligibility requirements for applicants; (2) the documentation that must be submitted by applicants to become certified as eligible for the dairy manufacturing facility investment credit, and to receive acceptance of incurred expenses for dairy manufacturing modernization or expansion; (3) the Department's response to the submitted documentation; and (4) use of the Department's response when filing a claim with the Department of Revenue for the corresponding tax credit.

6. Summary of, and Comparison With, Existing or Proposed Federal Regulations.

Neither the Department nor the Department of Revenue is aware of any existing or proposed federal regulations that address these tax credits.

7. Comparison With Rules in Adjacent States.

Michigan

Michigan provides tax abatement to agricultural processing facilities that qualify for the Agricultural Processing Renaissance Zones (APRZ) program. There are no administrative rules for the program, but guidelines are available through the Michigan Economic Development Corporation's Web site at <http://www.themedc.org>.

Minnesota

Minnesota offers various tax credit programs, but none that are similar to the dairy manufacturing facility investment credit in Wisconsin.

Iowa

In Iowa, the High Quality Job Creation Program offers tax credits, exemptions and refunds to qualifying businesses to offset the cost incurred to locate, expand, or modernize an Iowa facility. Qualifying businesses must meet several eligibility requirements, including producing value-added goods or being in one of 11 targeted industries. Administrative rules for this program are available in the Iowa Administrative Code, 261-Chapter 68. Further information is available through the Iowa Department of Economic Development Web site at www.iowalifechanging.com.

Illinois

Illinois offers various tax credit programs, but none that are similar to the dairy manufacturing facility investment credit in Wisconsin.

8. Summary of Factual Data and Analytical Methodologies.

The data and methodology for developing these rules were derived from and consisted of (1) incorporating the criteria in 2007 Wisconsin Act 20; (2) incorporating applicable best practices the Department has developed in administering similar programs for economic development, business development, and tax-credit verification; (3) soliciting and utilizing input from the Department of Revenue and the Department of Agriculture, Trade and Consumer Protection, and from representatives of the stakeholders who are expected to participate in this program; and (4) reviewing Internet-based sources of related federal, state, and private-sector information.

9. Analysis and Supporting Documents Used to Determine Effect on Small Business or in Preparation of an Economic Impact Report.

The primary document that was used to determine the effect of the rules on small business was 2007 Wisconsin Act 20. This Act requires the Department to implement a program to certify taxpayers as eligible for the dairy manufacturing facility investment credit under sections 71.07 (3p), 71.28 (3p), and 71.47 (3p) of the Statutes, and requires the

Department to promulgate rules for administering the program. The rules apply their private-sector requirements only to dairy manufacturing facilities for which a corresponding tax credit is desired.

10. Effect on Small Business.

The rules are not expected to impose significant costs or other impacts on small businesses because the rules address submittal of documentation only by applicants who choose to pursue tax credits for dairy manufacturing modernization or expansion activities.

11. Agency Contact Person.

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File reference: Comm 132/rules, analysis A

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 s. 71.07 (3p), 71.28 (3p), or 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) A person who intends to claim a dairy manufacturing facility investment credit may apply for certification and allocation of the credit.

(b) 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 applicant's eligible expenses for 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) (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 postmarked or delivered to the department, no sooner than upon completion of the claimant's taxable year in which the costs listed on tax schedule DM were incurred, 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.

(END)

EFFECTIVE DATE

Pursuant to s. 227.22 (2) (intro.), Stats., these rules shall become effective on the first day of the month commencing after publication in the Wisconsin administrative register.

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