

## Chapter ATCP 165

### FOOD PROCESSING PLANT AND FOOD WAREHOUSE INVESTMENT CREDIT

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**Note:** Chapter Comm 135 was renumbered chapter ATCP 165 under s. 13.92 (4) (b) 1., Stats., Register October 2011 No. 670.

**ATCP 165.10 Authority and purpose.** Pursuant to s. 93.54 (4), Stats., this chapter sets forth the requirements for obtaining all of the following from the department:

(1) A certification that a taxpayer, including a taxpayer who is any of the following, is eligible for the food processing plant and food warehouse investment credit under s. 71.07 (3rn), 71.28 (3rn), or 71.47 (3rn), Stats.:

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

(2) A determination of the maximum amount of tax credit that may be claimed under this chapter for an investment in a food processing plant or food warehouse.

**Note:** The statute sections listed in this section address income and franchise tax credits for investments in food processing plants and food warehouses.

**History:** EmR1019; cr. eff. 6-8-10; CR 10-117; cr. Register May 2011 No. 665, eff. 6-1-11; correction in (intro.) made under s. 13.92 (4) (b) 7., Stats., Register October 2011 No. 670.

**ATCP 165.20 Definitions.** In this chapter:

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

(2) "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; except it does not include any expenses claimed as a federal deduction under 26 USC 162.

(3) "Food" has the meaning given in s. 97.01 (6), Stats.

(4) "Food processing" has the meaning given in s. 97.29 (1) (g), Stats.

(5) "Food processing plant" has the meaning given in s. 97.29 (1) (h), Stats.

(6) "Food warehouse" has the meaning given in s. 97.27 (1) (b), Stats.

**History:** EmR1019; cr. eff. 6-8-10; CR 10-117; cr. Register May 2011 No. 665, eff. 6-1-11; correction in (1) made under s. 13.92 (4) (b) 6., Stats., Register October 2011 No. 670; correction in (4), (5), (6) made under s. 13.92 (4) (b) 7., Stats., Register January 2017 No. 733.

**ATCP 165.30 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 food processing plant or food warehouse investment credit:

1. A partnership.
2. A limited liability company.
3. A tax-option corporation.

(b) A "taxpayer" or the "entities" in par. (a) may include either the operator of a food processing plant or food warehouse, or an owner of a building or facility in which a food processing plant or food warehouse is located.

(2) Application to the department for a certification and an allocation of the credit shall be made on a valid, department-prescribed form.

**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 the project; including the eligible capital investment, the number of jobs that will be created, and the wages and benefits for those jobs.

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

4. Any other information that the department deems 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, 2017.

(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:** EmR1019; cr. eff. 6-8-10; CR 10-117; cr. Register May 2011 No. 665, eff. 6-1-11.

**ATCP 165.40 Certifications for applicants, and allocation of tax credits.** (1) After receipt of an application submitted under s. ATCP 165.30, the department shall issue a certification for an applicant that has met the criteria in s. ATCP 165.30.

(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 of the Statutes, 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 and other multiple-owner entities are limited to an aggregate of \$200,000 for an entity.

(3) (a) Due to the \$1,000,000; \$1,200,000 and \$700,000 maximum totals established in s. 71.07 (3rn) (c) 3., Stats., for allocations in fiscal years 2009-10, 2010-11 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 all of 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 food processing and food warehouse industries 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 to address the criteria in par. (b).

**History:** EmR1019: cr. eff. 6-8-10; CR 10-117: cr. Register May 2011 No. 665, eff. 6-1-11; correction in (1) made under s. 13.92 (4) (b) 7., Stats., Register October 2011 No. 670.

**ATCP 165.50 Notifications.** Following completion of the certifications and allocations in s. ATCP 165.40, 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:** EmR1019: cr. eff. 6-8-10; CR 10-117: cr. Register May 2011 No. 665, eff. 6-1-11; correction made under s. 13.92 (4) (b) 7., Stats., Register October 2011 No. 670.

**ATCP 165.60 Claims.** A taxpayer may file for a tax credit under this chapter using forms acceptable to the department of revenue.

**History:** EmR1019: cr. eff. 6-8-10; CR 10-117: cr. Register May 2011 No. 665, eff. 6-1-11.