

Clearinghouse Rule 10-117

DEPARTMENT OF COMMERCE

CREATING RULES

The Wisconsin Department of Commerce proposes an order to create chapter Comm 135 relating to investment tax credits for food processing plants and food warehouses, and affecting small businesses.

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Analysis of Rules

**1. Statutes Interpreted.**

Sections 71.07 (3rm), 71.28 (3rm), 71.47 (3rm), and 560.2056 (4) – as created in 2009 Wisconsin Act 295.

**2. Statutory Authority.**

Sections 227.11 (2) (a) and 560.2056 (4).

**3. Explanation of Agency Authority.**

Section 560.2056 (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 food processing plant and food warehouse investments addressed in sections 71.07 (3rm), 71.28 (3rm) and 71.47 (3rm) 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 those programs are not targeted specifically to investments in food processing plants and food warehouses.

**5. Summary of Rule.**

The rules in this order address (1) the eligibility requirements for applicants; (2) the documentation that must be submitted by applicants to become certified as eligible for the food processing plant and food warehouse investment credit, and to receive acceptance of incurred expenses; (3) the Department's response to the submitted documentation; and (4) 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 this tax credit.

## **7. Comparison With Rules in Adjacent States.**

Minnesota, Illinois and Iowa have various tax-credit programs but nothing similar to the food processing plant and food warehouse investment credit addressed in these rules. Michigan has an Agricultural Processing Renaissance Zone program that offers abatement of certain taxes to agricultural processing facilities.

## **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 2009 Wisconsin Act 295; (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 (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 2009 Wisconsin Act 295. This Act requires the Department to implement a program to certify taxpayers as eligible for the food processing plant and food warehouse investment credit under sections 71.07 (3rm), 71.28 (3rm) and 71.47 (3rm) of the Statutes, and requires the Department to promulgate rules for administering the program. This Act applies its private-sector requirements only to food processing plants and food warehouses 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 that choose to pursue tax credits for modernization or expansion of food processing plants and food warehouses.

## **11. Agency Contact Person.**

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## **12. Place Where Comments Are to Be Submitted, and Deadline for Submission.**

Comments on the proposed rules may be submitted by e-mail to [sam.rockweiler@wi.gov](mailto:sam.rockweiler@wi.gov), no later than October 29, 2010. If e-mail submittal is not possible, written comments may be

mailed, by the same date, to Sam Rockweiler, Department of Commerce, Division of Environmental and Regulatory Services, P.O. Box 14427, Madison, WI 53708-0427.

*File reference: Comm 135/rules, analysis-p*