

SECTION 1. Chapter Comm 138 is created to read:

Chapter Comm 138

WOODY BIOMASS HARVESTING AND PROCESSING CREDIT

Comm 138.10 Authority and purpose. Pursuant to s. 560.209 (4), Stats., this chapter sets forth the requirements for obtaining both 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 woody biomass harvesting and processing credit under s. 71.07 (3rm), 71.28 (3rm) or 71.47 (3rm), 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 equipment which is utilized primarily to harvest or process woody biomass for use as a fuel or as a component of fuel.

Note: The statute sections listed in this section address income and franchise tax credits for harvesting or processing woody biomass.

Comm 138.20 Definitions. In this chapter:

(1) “Department” means the department of commerce.

(2) “Eligible capital investment” includes all expenses incurred in purchasing equipment that is utilized primarily to harvest or process woody biomass for use as a fuel or as a component of fuel, except it does not include any expenses claimed as a federal deduction under 26 USC 162.

(3) “Used primarily” has the meaning given in s. 71.07 (3rm) (a) 2., Stats.

Note: Section 71.07 (3rm) (a) 2. of the Statutes reads as follows: “‘Used primarily’ means used to the exclusion of all other uses except for use not exceeding 25 percent of total use.”

(4) “Woody biomass” has the meaning given in s. 71.07 (3rm) (a) 3., Stats.

Note: Section 71.07 (3rm) (a) 3. of the Statutes reads as follows: “‘Woody biomass’ means trees and woody plants, including limbs, tops, needles, leaves, and other woody parts, grown in a forest or woodland or on agricultural land.”

Comm 138.30 Applying for certification and allocation. (1) A taxpayer or one of the following entities may apply for a certification and an allocation for a woody biomass tax credit:

- (a) A partnership.
- (b) A limited liability company.
- (c) A tax-option corporation.

(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 at P.O. Box 7970, Madison, WI, 53707, or at www.commerce.wi.us.

(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, 2016.

(4) Each application shall be completed and either postmarked 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 15th of the subsequent taxable year, unless this deadline is extended by the department.

Comm 138.40 Certifications for applicants, and allocation of tax credits. (1) After receipt of an application submitted under s. Comm 138.30, the department shall issue a certification for an applicant that has met the criteria in s. Comm 138.30.

(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 \$100,000; except that partnerships, limited liability companies, tax-option corporations and other multiple-owner entities are limited to an aggregate of \$100,000 for an entity.

(3) (a) Due to the \$900,000 maximum total established in s. 560.209 (2), Stats., for allocations in each fiscal year, the department may allocate the tax credits in a manner that the department believes is most likely to promote economic development.

Note: Section 560.209 (2) of the Statutes requires the Department to annually “allocate \$450,000 in tax credits to businesses that, individually, have no more than \$5,000,000 in gross receipts from doing business in this state for the taxable year in which the credit is claimed.”

(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 amount of new, eligible capital investment in the project.

(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).

Note: See chapter Comm 149 for additional requirements relating to (1) contracts between the Department and recipients of economic-development tax credits and (2) penalties for submitting false or misleading information, or for failing to comply with the terms of a contract.

Comm 138.50 Notifications. Following completion of the certifications and allocations in s. Comm 138.40, the department shall notify each applicant of the outcome of their application – 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.

Comm 138.60 Claims. A taxpayer may file for a tax credit under this chapter using forms acceptable to the department of revenue.

(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.

File reference: Comm 138/rules ph