

CR 10-007

**ORDER OF THE
DEPARTMENT OF COMMERCE**

CREATING RULES

The Wisconsin Department of Commerce adopts an order to create Comm 134 relating to investment credits for meat processing facilities, and affecting small businesses.

Analysis of Rules

1. Statutes Interpreted.

Sections 71.07 (3r), 71.28 (3r), 71.47 (3r), and 560.208, as created in 2009 Wisconsin Act 2.

2. Statutory Authority.

Sections 227.11 (2) (a) and 560.208 (4).

3. Explanation of Agency Authority.

Section 560.208 (4) of the Statutes requires the Department to promulgate rules for administering a program to certify applicants and allocate tax credits for the meat processing investments addressed in sections 71.07 (3r), 71.28 (3r) and 71.47 (3r) 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 meat processing facilities.

5. Summary of Rule.

The rules in this order address (1) the eligibility requirements for applicants; (2) the documentation that must be submitted by an applicant to receive a certification for a meat processing facility 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 these tax credits.

7. Comparison With Rules in Adjacent States.

An Internet-based search of rules promulgated by Minnesota, Michigan, Illinois and Iowa revealed that each state offers various tax credit programs, but none that are similar to the meat processing 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 applicable criteria from 2009 Wisconsin Act 2, (2) incorporating applicable best practices the Department has developed in administering the current tax credit program for dairy manufacturing facility investments, (3) soliciting and utilizing input from the Department of Revenue, and (4) reviewing Internet-based sources of related federal and state 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 businesses was 2009 Wisconsin Act 2. The rules apply their private-sector requirements only to owners or operators of meat processing facilities who choose to pursue tax credits for investing in those facilities.

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 investments in meat processing facilities.

11. Agency Contact Person.

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File reference: Comm 134-Meat/rules, analysis Ad

SECTION 1. Chapter Comm 134 is created to read:

Chapter Comm 134

MEAT PROCESSING FACILITY INVESTMENT CREDIT

Comm 134.10 Authority and purpose. Pursuant to s. 560.208 (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 meat processing facility investment credit under s. 71.07 (3r), 71.28 (3r), or 71.47 (3r), 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 meat processing facility.

Note: The statute sections listed in this section address income and franchise tax credits for investments in meat processing facilities.

Comm 134.20 Definitions. In this chapter:

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

(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.

(3) “Livestock” means domesticated food animals other than fish and wild game animals.

(4) “Meat” means the edible muscle and other edible parts of animals used as food for human consumption including the dressed edible muscle and other edible parts of cattle, swine, sheep, goats, poultry, and other food animals, except fish and wild game animals.

(5) “Meat processing” has the meaning given in s. 71.07 (3r) (a) 2., Stats.

Note: Section 71.07 (3r) (a) 2. of the Statutes reads as follows: “ ‘Meat processing’ means processing livestock into meat products or processing meat products for sale commercially.”

(6) “Meat product” means a value-added, saleable, and edible stand-alone product resulting from processing meat or another meat product by a USDA or state-inspected facility. Meat products do not include sandwiches, spreads, appetizers, soups, salads, dinners, pizzas, pasties, or any other product that uses meat in any manner other than as the predominant ingredient. Meat products also do not include products that are processed through custom or mobile processing or slaughtering.

(7) “Process” means to cut, grind, manufacture, compound, intermix, or prepare meat or meat products for human consumption.

Comm 134.30 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 meat processing facility 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 meat processing operation, or an owner of a building or facility in which the operation occurs.

(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.

(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.
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 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 134.40 Certifications for applicants, and allocation of tax credits.

(1) After receipt of the applications submitted under s. Comm 134.30, the department shall issue certifications for the applicants that have met the criteria in s. Comm 134.30 (2) to (4).

(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 a facility.

(3) (a) Due to the \$300,000 and \$700,000 maximum totals established in s. 560.208 (2), Stats., for allocations in fiscal years 2009-10 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 meat processing 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 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 134.50 Notifications. Following completion of the certifications and allocations in s. Comm 134.40, 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 134.60 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 134/rules Ad