

ORDER OF THE DEPARTMENT OF REVENUE CREATING RULES

The Wisconsin Department of Revenue adopts an order to: **create** Tax 2.99; **relating to** the dairy investment credit.

Analysis by the Department of Revenue

Statutes interpreted: ss. 71.07 (3n), 71.28 (3n) and 71.47 (3n), Stats.

Statutory authority: s. 227.11 (2) (a), Stats.

Explanation of agency authority: Each agency may promulgate rules interpreting the provisions of any statute enforced or administered by it, if the agency considers it necessary to effectuate the purpose of the statute.

Related statute or rule: ss. 71.07 (3n), 71.28 (3n) and 71.47 (3n), Stats.

Plain language analysis: This rule order clarifies the following terms as they apply to the dairy investment credit:

- “amount the claimant paid in the taxable year,”
- “dairy farm modernization or expansion,”
- “milk production,” and
- “used exclusively related to dairy animals.”

Summary of, and comparison with, existing or proposed federal regulation: There is no existing or proposed federal regulation that is intended to address the activities to be regulated by the rule.

Comparison with rules in adjacent states: The department is not aware of a similar rule in an adjacent state.

Summary of factual data and analytical methodologies: 2003 Wisconsin Act 135 created the dairy investment credit, available to dairy producers who are modernizing or expanding their operations. Soon after its creation, questions began to arise concerning the credit and its qualifications. As a result of this, it was requested that the department publish guidelines for dairy producers and tax return preparers concerning the credit. The department determined that to effectively provide guidance on the credit, it would be necessary to clarify some of the terms used in the credit’s statutory language. In consultation with legislative personnel, the department developed clarifying language and used it to create this rule order.

Analysis and supporting documents used to determine effect on small business: The department has prepared a fiscal estimate regarding this rule order. It was determined that there is not a significant fiscal effect on small business.

Anticipated costs incurred by private sector: This rule order does not have a significant fiscal effect on the private sector.

Effect on small business: This rule order does not have a significant fiscal effect on small business.

Agency contact person: Please contact Dale Kleven at (608) 266-8253 or dkleven@dor.state.wi.us, if you have any questions regarding this rule order.

SECTION 1. Tax 2.99 is created to read:

Tax 2.99 Dairy investment credit. (1) PURPOSE. This section clarifies certain terms as they apply to the dairy investment credit under ss. 71.07 (3n), 71.28 (3n), and 71.47 (3n), Stats.

(2) DEFINITIONS. In this section and in ss. 71.07 (3n), 71.28 (3n), and 71.47 (3n), Stats.:

(a) "Amount the claimant paid in the taxable year" means the purchase price of facilities or equipment acquired and first placed in service in this state during taxable years that begin after December 31, 2003, and before January 1, 2010.

(b) "Dairy farm modernization or expansion" has the meaning as given in ss. 71.07 (3n), 71.28 (3n), and 71.47 (3n), Stats. "Dairy farm modernization or expansion" refers only to those facilities or equipment in this state used exclusively on the claimant's dairy farm related to the dairy animals located on the claimant's dairy farm. "Dairy farm modernization or expansion" does not include the purchase of:

1. Equipment used for raising crops for sale.
2. Vehicles licensed for highway use, snowmobiles, and all-terrain vehicles.

(c) "First placed in service" has the meaning as given under Treas. Reg. s. 1.167 (a)-11 (e) (1) (i) for purposes of computing depreciation.

Note: Treas. Reg. s. 1.167 (a)-11 (e) (1) (i) provides, in part, that property is first placed in service when first placed in a condition or state of readiness and availability for a specifically assigned function.

(d) "Milk production" means the activity of producing and handling milk on the claimant's dairy farm in this state for human consumption, but does not include activities such as transporting, pasteurizing, or homogenizing milk or making butter, cheese, ice cream or other dairy products.

(e) "Used exclusively related to dairy animals" means used in this state on the claimant's dairy farm to the exclusion of all other uses except for other uses not exceeding 5% of total use.

Note: Section Tax 2.99 interprets ss. 71.07 (3n), 71.28 (3n), and 71.47 (3n), Stats.

Note: Sections 71.07 (3n), 71.28 (3n), and 71.47 (3n), Stats., were created by 2003 Wis. Act 135, effective for taxable years that begin after December 31, 2003, and before January 1, 2010.

The rules contained in this order shall take effect on the first day of the month following publication in the Wisconsin administrative register as provided in s. 227.22(2)(intro.), Stats.

Final Regulatory Flexibility Analysis

This rule order does not have a significant economic impact on a substantial number of small businesses.

DEPARTMENT OF REVENUE

Dated: _____

By: _____

Michael L. Morgan
Secretary of Revenue

E:Rules/299 Final Order