

CR 10-008

**ORDER OF THE
DEPARTMENT OF COMMERCE**

CREATING RULES

The Wisconsin Department of Commerce adopts an order to repeal Comm 132.20 (6);

to renumber Comm 132.20 (1) to (5);

to amend Comm 132.10; 132.30 (1), (2) and Note and (4); 132.40 (title), (1), (2) and Note;
132.50 and 132.60 (1);

to repeal and recreate Comm 132.60 (2);

and to create Comm 132.20 (1) relating to dairy manufacturing facility investment credits for
dairy cooperatives, and affecting small businesses.

Analysis of Rules

1. Statutes Interpreted.

Sections 71.07 (3p), 71.28 (3p) and 71.47 (3p), as amended by 2009 Wisconsin Act 2.

2. Statutory Authority.

Sections 227.11 (2) (a) and 560.207 (4).

3. Explanation of Agency Authority.

Section 560.207 (4) of the Statutes requires the Department to promulgate rules for administering a program to certify taxpayers and allocate tax credits for the dairy manufacturing investments addressed in sections 71.07 (3p), 71.28 (3p) and 71.47 (3p) 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 by dairy cooperatives in dairy manufacturing facilities.

5. Summary of Rule.

The rules in this order primarily expand chapter Comm 132 to enable members of dairy cooperatives to claim tax credits for the cooperatives' investments in dairy manufacturing facilities, as authorized by 2009 Wisconsin Act 2. The rule changes also delete a reference to including a Department of Revenue tax schedule when applying for the certification and allocation; and change the annual deadline for applying, from March 31st to February 15th.

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.

Michigan

Michigan provides tax abatement to agricultural processing facilities that qualify for the Agricultural Processing Renaissance Zones (APRZ) program. There are no administrative rules for the program, but guidelines are available through the Michigan Economic Development Corporation's Web site at <http://www.themedc.org>.

Minnesota

Minnesota offers various tax credit programs, but none that are similar to the dairy manufacturing facility investment credit in Wisconsin.

Iowa

In Iowa, the High Quality Job Creation Program offers tax credits, exemptions and refunds to qualifying businesses to offset the cost incurred to locate, expand, or modernize an Iowa facility. Qualifying businesses must meet several eligibility requirements, including producing value-added goods or being in one of 11 targeted industries. Administrative rules for this program are available in the Iowa Administrative Code, 261-Chapter 68. Further information is available through the Iowa Department of Economic Development Web site at www.iowalifechanging.com.

Illinois

Illinois offers various tax credit programs, but none that are similar to the dairy manufacturing 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 dairy cooperatives that choose to pursue tax credits for investing in dairy manufacturing 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 dairy cooperatives that choose to pursue tax credits for dairy manufacturing modernization or expansion activities.

11. Agency Contact Person.

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File reference: Comm 132-Dairy09/rules, analysis Ad

SECTION 1. Comm 132.10 is amended to read:

Comm 132.10 Authority and purpose. Pursuant to s. 560.207 (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 dairy manufacturing facility investment credit under s. 71.07 (3p), 71.28 (3p), or 71.47 (3p), Stats.:

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

(2) A determination of the maximum amount of tax credit that ~~a taxpayer~~ may ~~claim~~ be claimed under this chapter for ~~investing an investment in a~~ dairy manufacturing ~~facilities~~ facility.

SECTION 2. Comm 132.20 (6) is repealed.

SECTION 3. Comm 132.20 (1) to (5) are renumbered Comm 132.20 (2) to (6).

SECTION 4. Comm 132.20 (1) is created to read:

Comm 132.20 (1) “Dairy cooperative” has the meaning given in s. 71.07 (3p) (a) 1m., Stats.

Note: Section 71.07 (3p) (a) 1m., Stats., reads as follows: “ ‘Dairy cooperative’ means a business organized under ch. 185 or 193 for the purpose of obtaining or processing milk.”

SECTION 5. Comm 132.30 (1), (2) and Note and (4) are amended to read:

Comm 132.30 (1) (a) ~~A person who intends to claim a dairy manufacturing facility investment credit~~ taxpayer or one of the following entities may apply for a certification and an allocation of the ~~for a dairy manufacturing facility investment credit.~~

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

(b) A “person taxpayer” or the “entities” in ~~this section~~ par. (a) may include either the operator of a dairy manufacturing 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; ~~and shall include a department of revenue tax schedule DM, listing the applicant’s eligible expenses for the project.~~

Note: The application form that is currently valid can be obtained from the Department at P.O. Box 7970, Madison, WI, 53707. ~~Schedule DM can be obtained from the Department of Revenue at P.O. Box 8949, Madison, WI, 53708-8949; and may be available by accessing that Department’s Web site at www.revenue.wi.gov.~~

(4) Each application shall be completed and either postmarked or delivered to the department no sooner than upon completion of the ~~claimant’s~~ taxable year in which the costs listed ~~on tax schedule DM in the application~~ were incurred and no later than ~~March 31st~~ February 15th of the subsequent taxable year, unless this deadline is extended by the department.

SECTION 6. Comm 132.40 (title), (1), (2) and Note are amended to read:

Comm 132.40 (title) ~~Certification of~~ **Certifications for applicants, and allocation of tax credits.** **(1)** After receipt of the applications submitted under s.

Comm 132.30, the department shall ~~certify~~ issue certifications for the applicants that have met the criteria in s. Comm 132.30 (2) to (4).

(2) In conjunction with ~~certifying~~ 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, Stats., 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, dairy cooperatives and other multiple-owner entities are limited to \$200,000 for each of their dairy manufacturing facilities.

Note: See chapter Comm 149 for additional requirements relating to (1) contracts between the Department and recipients of economic-development ~~grants, loans or tax credits;~~ (2) ~~submittal of statements for such grants and loans;~~ and ~~(3) (2)~~ penalties for submitting false or misleading information, or for failing to comply with the terms of a contract.

SECTION 7. Comm 132.50 is amended to read:

Comm 132.50 Notifications. Following completion of the certifications and allocations in s. Comm 132.40, the department shall notify each applicant of the outcome of their application – and shall notify the department of revenue of every ~~taxpayer-certified~~ certification issued under this chapter, and the amount of the tax credit allocated to the ~~taxpayer~~ applicant.

SECTION 8. Comm 132.60 (1) is amended to read:

Comm 132.60 (1) A ~~certified applicant~~ taxpayer may file for a tax credit under this chapter using forms acceptable to the department of revenue.

SECTION 9. Comm 132.60 (2) is repealed and recreated to read:

Comm 132.60 (2) A dairy manufacturing facility investment credit claim from a member of a certified dairy cooperative shall include a determination from the cooperative, specifying the amount of the credit the member may claim, based on the amount of milk the member delivered to the cooperative.

(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.

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