330 CMR 29.00:   DAIRY FARMER TAX CREDIT PROGRAM

Section

29.01: Scope and Purpose

330 CMR 29.00 implements M.G.L. c. 62, §§ 6(o)(1) through (4) and M.G.L. c. 63 § 38Z, which establishes a tax credit to dairy farmers to offset the cyclical downturns in milk prices paid to dairy farmers.

The purpose of 330 CMR 29.00 is to provide a safety net program that supports Massachusetts dairy farms through its provision of revenue stability to dairy farmers when either milk prices paid to farmers fall or costs of production rise relative to one another. An Eligible Taxpayer who holds a Certificate of Registration shall be eligible to receive a refundable state income tax credit based on the amount of milk produced and sold, such that if the price paid to dairy farmers drops below the Trigger Price, the taxpayer may receive the tax credit. The total annual value of the tax credit to all Eligible Taxpayers shall not exceed $6 million.

29.02: Definitions

As used in 330 CMR 29.00:

Annual Milk Production. The sum of the monthly milk production reported by an Eligible Taxpayer for the calendar year.

Certificate of Registration. The certificate of registration issued by the Commissioner pursuant to M.G.L. c. 94, § 16A.

Commissioner. The Commissioner of the Department of Agricultural Resources.

Dairy Farmer Tax Credit. An amount calculated by multiplying the Dairy Farmer Tax Credit Rate by the number of hundredweights of the Annual Milk Production of an Eligible Taxpayer as reported under 330 CMR 29.03.

Dairy Farmer Tax Credit Rate. A value calculated by dividing the Total Tax Credit by the number of hundredweights of milk in the Total Milk Production.

Eligible Taxpayer. A taxpayer or domestic or foreign corporation that holds a Certificate of Registration.

Farm Price. The farm price of milk as calculated in 330 CMR 29.05(3).

Northeast Federal Milk Marketing Order. 7 CFR 1001.

Northeast Marketing Area. The area established by the Northeast Federal Milk Marketing Order pursuant to 7 CFR 1001 which is the United States Federal Milk Marketing Order for the applicable market as required by M.G.L. c. 62, § 6(o)(1).

Program. The Dairy Farmer Tax Credit Program.

Statistical Uniform Price. The Statistical Uniform Price at 3.5% Butterfat as announced monthly by the Northeast Federal Milk Marketing Order for the Northeast Marketing Area.

29.02:   continued

Total Cumulative Value of Credits. The total cumulative value of authorized credits as provided in M.G.L. c. 62, § 6(o)(3) and M.G.L. c. 63, § 38Z.

Total Milk Production. The sum of all the Annual Milk Production of all Eligible Taxpayers.

Total Tax Credit. A value obtained by multiplying the Trigger Percent by the Total Cumulative Value of Credits, not to exceed $6 million.

Trigger Percent. The number of months for which the Farm Price is less than or equal to the Trigger Price divided by 12.

Trigger Price. The price established by the Commissioner for the purpose of calculating the tax credit pursuant to 330 CMR 29.05(2).

UMass. The University of Massachusetts.

29.03:   Dairy Farmer Eligibility

(1)   Any Eligible Taxpayer wishing to participate in the Program shall complete and submit a disclosure statement on a form provided by Commissioner, to the Commissioner, no later than January 15th of the following tax year. The disclosure statement shall include, at a minimum, the following information:
   (a)   taxpayer identification information;
   (b)   shareholder information, if applicable; and
   (c)   a statement authorizing the Commissioner to obtain milk production information from a third-party that purchased milk from the Eligible Taxpayer, which shall be deemed to authorize the release of production data required for the administration of this Program, or a monthly milk production report, if not submitted by a third-party on behalf of the Eligible Taxpayer.

(2)   The Commissioner may request additional information as needed to administer the Program.

(3)   The Commissioner may verify monthly milk production reports either by auditing an Eligible Taxpayer's records of milk production revenues or by acquiring records from third parties that have collected such data including records released by the Northeast Federal Milk Marketing Order or milk marketing cooperatives.

(4)   Resolving Discrepancy. If the Commissioner identifies a discrepancy in monthly milk production reports, the Eligible Taxpayer shall be notified and shall have five business days from receipt of notification to submit to the Commissioner sufficient information to validate the production record. Upon receipt of such information, the Commissioner shall then have five business days to notify the Eligible Taxpayer of its determination as to whether to amend the Eligible Taxpayer's total production.

29.04:   Certification of Eligibility and Tax Credit

By January 31st of each year, the Commissioner shall provide the Department of Revenue a list of Eligible Taxpayers that may claim the Dairy Farmer Tax Credit under 330 CMR 29.00. The list shall contain the taxpayer's name, tax identification number, Annual Milk Production, and the amount of the Total Tax Credit to which the Eligible Taxpayer is entitled.   The Commissioner shall certify that the Eligible Taxpayers listed have met the eligibility requirements and that, to the best of the Commissioner's knowledge, the milk production reports submitted by an Eligible Taxpayer are accurate. A copy of the certification shall be sent to the Eligible Taxpayer.

29.05:   Tax Credit Calculations

(1)   On or before January 31st of the following applicable tax year, the Commissioner shall determine the following values:

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      (a)   Trigger Price;
      (b)   Farm Price;
      (c)   Trigger Percent;
      (d)   Total Tax Credit;
      (e)   Dairy Farmer Tax Credit Rate; and
      (f)   Dairy Farmer Tax Credit.

(2)   <u>Trigger Price</u>.
      (a)   The Trigger Price shall be calculated for each month during the year and shall equal the sum of the following per hundred weight components of the monthly milk cost of production as determined by UMass, and which shall be updated annually and be made available on the Department's website: total operating costs (which shall include all feed costs, interest and other operating costs), cost of hired labor, and opportunity cost of unpaid labor.

      Trigger = total operating costs + hired labor + opportunity cost of unpaid labor.

      (b)   The Commissioner shall review this formula at least every five years as circumstances permit or sooner if there are changes in the milk market that require a review of the Trigger Price calculation.
      (c)   In the absence of the monthly milk cost of production data as determined by UMass, the Commissioner shall estimate the total operating costs, costs of hired labor, and the opportunity cost of unpaid labor; such estimates shall then be used to calculate the Trigger Price as in 330 CMR 29.05(2)(a).

(3)   <u>Farm Price</u>.
      (a)   The Farm Price shall be equal to the Statistical Uniform Price as announced monthly by the Northeast Federal Milk Marketing Order for the Northeast Marketing Area.
      (b)   In the absence of a timely publication by the Northeast Federal Milk Marketing Order of the Statistical Uniform Price, the Commissioner shall estimate the monthly value of the farm price.

(4)   <u>Trigger Percent</u> shall be the sum of the number of months for which the Farm Price is less than or equal to the Trigger Price divided by 12.

(5)   <u>Total Tax Credit</u> shall be calculated by multiplying the Trigger Percent by the Total Cumulative Value of Credits, not to exceed $6 million.

(6)   <u>Dairy Farmer Tax Credit Rate</u> shall be calculated by dividing the Total Tax Credit by the Total Milk Production.

(7)   <u>Dairy Farmer Tax Credit</u> shall be calculated by multiplying the Dairy Farmer Tax Credit Rate by the number of hundredweights of the Annual Milk Production of an Eligible Taxpayer.

29.06:   Application of the Tax Credit to an Eligible Taxpayer's Tax Return

(1)   The amount of the Dairy Farmer Tax Credit shall be applied to the Eligible Taxpayer's state income tax return as follows:
      (a)   If the tax liability of the Eligible Taxpayer is greater than the Dairy Farmer Tax Credit, the taxpayer's tax liability shall be reduced by the amount of the credit.
      (b)   If the tax liability of the Eligible Taxpayer is zero, the Dairy Farmer Tax Credit shall be refunded to the taxpayer.
      (c)   If the tax liability of the Eligible Taxpayer is less than the Dairy Farmer Tax Credit, the tax liability shall be reduced to zero. The difference between the Dairy Farmer Tax Credit and the tax liability shall be refunded to the taxpayer.

29.07: Determination of Error and Recalculation of Tax Credit

(1) Petition to Determine Error. On or before October 1st of any year, a written petition, signed under the penalties of perjury, may be filed with the Commissioner requesting that the Board of Food and Agriculture determine that an error has been made in calculating the Trigger Price, the reporting or collecting data used in the calculation of the Trigger Price, or in the amount of the Dairy Farmer Tax Credit, for the previous year. The petition shall specifically identify the errors believed to have been made. To be considered, the petition must be signed by 25% of the Eligible Taxpayers.

(2) Transmittal of Petition to Board of Food and Agriculture. The Commissioner shall first verify the form and content of the petition and that it has been signed by the required number of Eligible Taxpayers. Upon verification, the Commissioner shall, within ten business days of receipt of the petition, transmit a copy of the petition along with his verification to the Board of Food and Agriculture.

(3) Determination by the Board of Food and Agriculture. Within 30 days of receipt of the petition, the Board of Food and Agriculture shall determine whether an error has been made. In making such a determination, the Board may, after notice, hold a public hearing regarding the specific error or errors identified in the petition. If the Board decides to hold a public hearing, the hearing must be held not less than seven days or more than 21 days from the date of notice.

(4) Recalculation. Within ten business days of a determination by the Board of Food and Agriculture that an error has been made, the Commissioner shall recalculate, with or without amendment, the Trigger Price or Dairy Farmer Tax Credit by any method which, in his opinion, is sufficient to address the error.

(5) Notification of Department of Revenue and Taxpayers. The Commissioner shall transmit to the Commissioner of the Department of Revenue a list of Eligible Taxpayers that may claim the recalculated Dairy Farmer Tax Credit as soon as practicable. The list shall contain the taxpayer's name, tax identification number, Annual Milk Production, and the amount of the Dairy Farmer Tax Credit to which the Eligible Taxpayer is entitled. The Commissioner shall also transmit to the Eligible Taxpayer a calculation showing any revised tax credit amount to which they are entitled.

REGULATORY AUTHORITY

330 CMR 29.00: M.G.L. c. 62, §§ 6(o)(1) through (4); c. 63, § 38Z and c. 94, § 16A.

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