

301 CMR 16.00: Cranberry Bog Renovation Tax Credit

Section

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16.01: Purpose

301 CMR 16.00 defines the rules and procedures necessary for the administration and implementation of the Cranberry Bog Renovation Tax Credit program, by which a Taxpayer Primarily Engaged in Cranberry Production shall be allowed a credit against the taxes imposed on them by the Commonwealth of Massachusetts, equal to 25 per cent of the total Qualified Renovation Expenditures incurred in connection with the Qualified Renovation of a Cranberry Bog during a taxable year. 301 CMR 16.00 sets forth different methods for eligible applicants to claim the tax credit in 2020-2022 and in 2023 and beyond.

1. For tax years 2020-2022, applicants will apply to the Secretary, including demonstration of all Qualified Renovation Expenditures for the calendar year. The Secretary will calculate the amount of the tax credit for which each Applicant is eligible for each tax year.
2. For tax years 2023 and beyond, applications to and determinations by the Secretary will be required prior to conducting a Qualified Renovation. The Secretary will review applications for a project period running from October to December of the following calendar year. Tax credits will be authorized by lottery after a 3-part process:
 - a. The Secretary will review each application for completeness and provide a notification of eligibility to each Applicant;
 - b. The Secretary will provide a determination of tax credit availability to each Applicant for whom tax credit funding is available. Determinations of tax credit availability will be made in the order determined by lottery. Applicants who receive a determination will then conduct the Qualified Renovation and submit their actual Qualified Renovation Expenditures to the Secretary when the renovation is complete; and

- c. The Secretary will review the submitted Qualified Renovation Expenditures and will authorize a tax credit for each applicant in the appropriate amount by notifying the Commissioner of Revenue and the Applicant.

All provisions of 301 CMR 16.00 shall take effect upon promulgation.

16.02: Definitions.

The following words shall have the following meanings in 301 CMR 16.00 unless the context clearly indicates otherwise.

Annual Program Cap means the amount of tax credits authorized for a taxable year by the General Court.

Applicant means a Taxpayer who submits an Application to the Secretary for a Cranberry Bog Renovation Tax Credit pursuant to 301 CMR 16.00.

Application means an application by an Applicant to the Secretary for a Cranberry Bog Renovation Tax Credit.

Calendar Tax Credit Year or CTCY means the designated calendar year for which the Secretary may authorize a Cranberry Bog Renovation Tax Credit pursuant to 301 CMR 16.00.

Commissioner means the Commissioner of Revenue or the Commissioner's duly authorized representative.

Cranberry Bog means an area actively cultivated for the harvesting or production of cranberries.

Cranberry Bog Renovation Tax Credit means a tax credit authorized by the Secretary pursuant to 301 CMR 16.00 and either M.G.L. c. 62, § 6(w) or M.G.L. c. 63, § 38II.

Cranberry Bog Renovation Tax Credit Certificate Number means a unique identification number issued to a Taxpayer by the Secretary, certifying the total approved Qualified Renovation Expenditures incurred by a Taxpayer and the associated authorized tax credit for a designated CTCY.

Project means the entirety of the work proposed by a taxpayer in an Application.

Project Period means the calendar dates for beginning and completing any Project Plan and incurring Qualified Renovation Expenditures.

Project Plan means a document describing proposed Qualified Renovations for which the Applicant will seek a Cranberry Bog Renovation Tax Credit in a particular CTCY.

Qualified Renovation means the renovation, repair, replacement, regrading or restoration

of a Cranberry Bog for the cultivation, harvesting or production of cranberries or any other activity or action associated with the renovation of an abandoned Cranberry Bog; provided, however, that Qualified Renovation shall not include the construction of facilities or structures for the processing of cranberries.

Qualified Renovation Expenditure means an expenditure or cost directly incurred in connection with a Qualified Renovation of a Cranberry Bog; provided, however, that Qualified Renovation Expenditure shall not include costs incurred in acquiring or purchasing property for the construction of facilities or structures for the cultivation, harvesting or production of cranberries. An expenditure or cost is directly incurred in connection with a Qualified Renovation if it is:

1. incurred by the Applicant and not subsequently reimbursed to the Applicant;
2. incurred in connection with the Qualified Renovation of a Cranberry Bog located in the Commonwealth of Massachusetts;
3. incurred in compliance with applicable laws, regulations, permits, licenses, or other legal requirements or authorizations;
4. incurred specifically for a Qualified Renovation and is not a general business expense such as a vehicle purchase;
5. incurred as a result of an arms-length commercial transaction memorialized by a written receipt or invoice, and not by the provision of labor or other in-kind goods or services performed or provided by the Applicant or any Related Entity; and
6. for expenditures incurred starting in CTCY 2023, incurred after the Secretary's notification of eligibility for an Application.

Related Entity means an entity that has, directly or indirectly, substantial ownership, direction or control in common with an Applicant.

Secretary means the Secretary of Energy and Environmental Affairs or the Secretary's duly authorized representative.

Taxpayer means any individual or entity subject to taxation under M.G.L. c. 62 or M.G.L. c. 63 and eligible for a credit under M.G.L. c. 62, § 6(w) or M.G.L. c. 63, § 38II, as applicable.

Taxpayer Primarily Engaged in Cranberry Production means a Taxpayer engaged in agriculture, as defined by M.G.L. c. 128, § 1A, that generates sales from cranberry production equal to 50 per cent or more of its total revenue.

16.03: Eligibility

An Applicant shall be eligible to receive a Cranberry Bog Renovation Tax Credit only if such Applicant demonstrates in its application that it:

1. is a Taxpayer Primarily Engaged in Cranberry Production; and

2. owns the property upon which the Qualified Renovations will be implemented or has a leasehold interest in such property, as indicated by a lease agreement or other legal authorization to engage in commercial cranberry production and Qualified Renovations on such property for not less than three years beyond the calendar year for which a tax credit is sought.

16.04: Form of Application

Each Applicant seeking a Cranberry Bog Renovation Tax Credit shall submit no more than one Application to the Secretary in a form required by the Secretary. An Application shall include, at a minimum:

1. A Project Plan containing:
 - a. A description of all proposed Qualified Renovation activities from initiation up to and including the end of the project, including planting of vines and other permanent stabilization work;
 - b. Certification that all proposed Qualified Renovation activities are in accordance with U.S.D.A. Natural Resources Conservation Services Standards and best management practices, available from the Massachusetts Cranberry Experiment Station;
 - c. A visual depiction, plan or map showing where the Applicant proposes to conduct the activities described in the Project Plan;
 - d. A timeline for initiation and completion of each component of the proposed Qualified Renovation;
 - e. A defined Project Period and date by which the project will be completed; and
 - f. An itemized budget identifying and showing the total cost for each stage and component of the work in sufficient detail to allow the Secretary to determine whether each budget item is a Qualified Renovation Expenditure;
2. Proof of a Farm Conservation Plan approved by the Natural Resources Conservation Service, or an equivalent plan, completed or updated within the last five (5) years;
3. For projects on property owned or operated by more than one person, or on leased property, an agreement or affidavit, signed by each co-owner, co-operator, landlord, and lessee, indicating that each such person other than the Applicant:
 - a. Is aware of the Application and the proposed Qualified Renovation;
 - b. Consents to the Applicant conducting the proposed Qualified Renovation on the property; and
 - c. Will not claim a tax credit for Qualified Renovation Expenditures arising from the proposed Qualified Renovation in any other Application;

4. Certification by the Applicant that the Applicant has received all required permits, licenses, and any other federal, state, or local approvals necessary for the project, or that the proposed project will not occur until such permits, licenses, and approvals are received;
5. Indication of whether the proposed Qualified Renovation will occur on property subject to a restriction as defined in M.G.L. c. 184, § 31, and if so, certification by the Applicant that the Applicant has obtained all required approvals for the Qualified Renovation required pursuant to that restriction, or that the proposed Qualified Renovation will not occur unless and until the Applicant obtains all such approvals; and
6. Such other information as the Secretary may require.

16.05: Authorization Process for Calendar Tax Credit Years 2023 and Later

This section describes the process for application for and authorization of tax credits for Qualified Renovation Expenditures for CTCY 2023 and all following calendar tax credit years.

1. Application Period. The Secretary will announce the date each year when the Secretary will begin to accept applications for Cranberry Bog Renovation Tax Credits for the following CTCY and the deadline by which applications must be received to be eligible for the lottery selection process set forth in 301 CMR 16.05(3). The Secretary will accept Applications received after the deadline but these Applications are ineligible for the lottery selection process described in 301 CMR 16.05(3).
2. Project Period. Applications shall include estimated Qualified Renovation expenditures proposed to be made during a Project Period that begins no earlier than October 1 of the year prior to the CTCY applied for and ends no later than December 31 of the CTCY being applied for. The Secretary shall authorize a tax credit only for Qualified Renovation Expenditures incurred during such Project Period, and any such expenditures incurred during such Project Period shall be treated as made during the CTCY for which the Application was made.
3. Lottery Selection. The Secretary will conduct a lottery selection process to establish the priority order for authorization of Cranberry Bog Renovation Tax Credits for the following CTCY.

- a. The Secretary shall announce the lottery date and procedure each year, which shall randomly select Applications to establish the order in which the Secretary will certify Cranberry Bog Renovation Tax Credits.
 - b. The order of the lottery selection list shall be determined independently for each CTCY based on the applications received for that CTCY, and the order of the list shall not carry over to future years.
 - c. The lottery procedure shall require the Secretary to designate each Application as either a Level 1 or a Level 2 Application for purposes of the lottery selection. For CTCY 2023, all applications shall be designated as Level 1 Applications. For each subsequent CTCY, Level 1 Applications shall be those Applications submitted by Applicants for whom the Secretary did not authorize a Cranberry Bog Renovation Tax Credit of more than \$35,000 for the year immediately prior to the CTCY applied for, and Level 2 Applications shall be all other Applications.
 - d. The Secretary shall first conduct a lottery for all Level 1 Applications and add such Applications to the lottery selection list in the order selected. Upon completion of the lottery for all Level 1 Applications, the Secretary shall then conduct a lottery of all Level 2 applications and add such Applications to the lottery selection list in the order selected.
 - e. The Secretary shall add Applications received after the deadline for lottery eligibility to the end of the lottery selection list in the order received.
4. Notification of Eligibility. The Secretary shall determine whether an Application includes all information required by 301 CMR 16.04 and shall notify the Applicant in writing of any required information that must be submitted for the Application to be complete. An Applicant may provide supplementary material to complete an application within 15 business days of transmission of such notification, or within such additional time as the Secretary may provide. Failure by an Applicant to submit information required to complete an Application within the time limit provided, or failure to provide all information required to complete an application, shall constitute withdrawal of that Application.

The Secretary shall review a complete Application to determine whether: (i) the Applicant is an eligible applicant pursuant to 301 CMR 16.03; and (ii) each proposed expenditure is a Qualified Renovation Expenditure. The Secretary shall provide a notification of eligibility to the Applicant, in writing, which shall include:

- a. whether the Applicant is eligible, and if not eligible, the reason therefor;
- b. the proposed expenditures that are Qualified Renovation Expenditures and, if any proposed expenditures are not Qualified Renovation Expenditures, the reason therefor;

- c. the total amount of the Applicant's proposed Qualified Renovation Expenditures;
 - d. the Applicant's place on the lottery selection list; and
 - e. the Applicant's opportunity to provide supplemental information for reconsideration.
- 5. Reconsideration. If the Secretary determines that an Applicant is ineligible or that any proposed expenditures are not Qualified Renovation Expenditures, an Applicant may provide supplemental information to the Secretary, within 15 days of transmission of the Secretary's notification of eligibility, or within such additional time as the Secretary may provide. Said supplemental information shall be in writing and shall include documentation and reasoning to demonstrate why the Applicant is eligible or why the proposed expenditures are Qualified Renovation Expenditures. The Secretary shall reconsider the Application and issue a final notification of eligibility.
- 6. Determination of tax credit availability.
 - a. The Secretary shall remove from the lottery selection list any Application that is withdrawn or for which a final decision has been reached determining that the Applicant is not an eligible applicant or has proposed no Qualified Renovation Expenditures.
 - b. The Secretary shall determine, in the order of the lottery selection list and based on final determinations of Qualified Renovation Expenditures pursuant to 301 CMR 16.05(4) and (5), whether funding is available as a tax credit for each applicant.
 - c. The Secretary shall provide a determination of tax credit availability to an Applicant, in writing, when funding will be available as a tax credit for the Applicant's Qualified Renovation Expenditures for a given CTCY. This determination shall indicate the amount of the tax credit that the Secretary will authorize for the Applicant and procedures for authorization.
 - d. The Secretary shall notify an Applicant, in writing, when he or she finds that funding may not be available as a tax credit for an Application.
- 7. Authorization.
 - a. An Applicant that has received a determination of tax credit availability may submit its Qualified Renovation Expenditures to the Secretary for authorization of the associated tax credit on or before the date specified by the Secretary. An Applicant shall submit sufficient documentation of all expenditures to enable the Secretary to determine that each expenditure is a Qualified Renovation Expenditure and within the scope of the determination of tax credit availability and the Application reviewed by

the Secretary for that CTCY. Such documentation shall include but is not necessarily limited to: invoices; proof that materials and services were provided during the Project Period; proof of payments; and demonstration of how expenditures relate to the Application.

- b. The Secretary shall review such submissions and calculate the tax credit for each Applicant, which shall not exceed \$100,000 or the amount specified in the determination of tax credit eligibility except as provided in 301 CMR 16.05(7)(c).
- c. If the sum of all tax credits calculated for a CTCY pursuant to 301 CMR 16.05(7)(2) is less than the Annual Program Cap, the Secretary may authorize tax credits for Qualified Renovation Expenditures actually incurred that exceed the Qualified Renovation Expenditures estimated in an Application or may authorize tax credits for Applicants who did not receive a Determination of Tax Credit Availability; provided, however, that the Secretary shall not authorize a tax credit greater than \$100,000 for any Applicant in a CTCY. The Secretary shall allocate tax credits to Applicants under 301 CMR 16.07(c) based on lottery position and such other factors as the Secretary may determine.
- d. The Secretary shall authorize tax credits in the amounts calculated by notifying the Applicant and the Commissioner of the amount of the tax credit that it authorizes for each Applicant. The Secretary shall include in such notification: (i) a unique Cranberry Bog Renovation Tax Credit Certificate Number for use in tax filing; (ii) the CTCY to which that certificate number applies; and (iii) such other information as may be required for the Applicant to claim the tax credit.

16.06 Authorization Process for Calendar Tax Credit Years 2020 - 2022

Cranberry Bog Renovation Tax Credits for CTCY 2020, 2021 and 2022 shall be authorized as set forth in this section.

1. Deadline for application.

- a. Taxpayers seeking to claim a tax credit for Qualified Renovation Expenditures for CTCY 2020 or 2021 shall submit an application to the Secretary, in the form prescribed by the Secretary, within 60 days of the effective date of these regulations.
- b. Taxpayers seeking to claim a tax credit for Qualified Renovation Expenditures for CTCY 2022 shall submit an Application to the Secretary, in the form prescribed by the Secretary, by January 31, 2023. A specific expenditure shall not qualify for a tax credit for CTCY 2022 if an Applicant: (i) has included such expenditure in an Application for a Cranberry Bog Renovation Tax Credit for CTCY 2023 as provided in 301

CMR 16.05(1); and (ii) received a final determination of tax credit availability for such Application.

- c. An Applicant must submit a separate Application for each calendar tax credit year.
2. Eligible dates. An applicant may receive a Cranberry Bog Renovation Tax Credit for CTCY 2020, 2021 and 2022 only for those Qualified Renovation Expenditures incurred by the Applicant during each respective calendar year.
3. Form of Application. A complete Application shall include all information required by 301 CMR 16.04, unless otherwise provided by the Secretary. In addition, such application shall include sufficient documentation to enable the Secretary to determine that each expenditure is a Qualified Renovation Expenditure and that it was incurred during the relevant CTCY for fulfillment of the Project Plan.
4. Notification of Eligibility. The Secretary shall determine whether such Application includes all required information and shall notify the Applicant in writing, by email, of any required information that must be submitted for the Application to be complete. An Applicant may provide supplementary material to complete an application within 15 business days of transmission of such notification. Failure by an Applicant to submit information required to complete an Application within the time limit provided herein, or failure to provide all information required to complete an application, shall constitute withdrawal of that Application.

The Secretary shall review a complete Application to determine whether: (i) the Applicant is an eligible applicant pursuant to 301 CMR 16.03; and (ii) each submitted expenditure is a Qualified Renovation Expenditure. The Secretary shall complete this review and provide a notification of eligibility to the Applicant, in writing, which shall include:

- a. whether the Applicant is eligible, and if not eligible, the reason therefor;
 - b. the submitted expenditures that are Qualified Renovation Expenditures and, if any submitted expenditures are not Qualified Renovation Expenditures, the reason therefor;
 - c. the total amount of the Applicant's Qualified Renovation Expenditures; and
 - d. the Applicant's opportunity to provide supplemental information for reconsideration.
5. Reconsideration. If the Secretary determines that an Applicant is ineligible or that any submitted expenditure is not a Qualified Renovation Expenditure, an

Applicant may provide supplemental information to the Secretary within 15 days of transmission of the Secretary's notification of eligibility. Such supplemental information shall be provided in writing and shall include documentation and reasoning to demonstrate why the Applicant is eligible or expenditures are Qualified Renovation Expenditures. The Secretary shall reconsider the Application and issue a final notification of eligibility.

6. Authorization.

- a. Based on its final notification of eligibility for each Applicant, for each CTCY the Secretary shall determine the maximum tax credit for which each Applicant is eligible by multiplying each Applicant's Qualified Renovation Expenditures by 25%. The Secretary shall then calculate the sum of all tax credits for which Applicants are eligible for each CTCY.
- b. If the sum of all tax credits for which Applicants are eligible for a given CTCY is equal to or less than the Annual Program Cap, the Secretary shall authorize the full amount of the tax credit for which each Applicant is eligible.
- c. If the sum of all tax credits for which Applicants are eligible for a given CTCY is greater than the Annual Program Cap, the Secretary will authorize a tax credit for a weighted share of the tax credit for which each Applicant is eligible.
- d. The Secretary shall authorize tax credits in the amounts calculated by notifying the Applicant and the Commissioner of the amount of the tax credit that the Secretary authorizes for each Applicant. The Secretary shall include in such notification: (i) a unique Cranberry Bog Renovation Tax Credit Certificate Number for use in tax filing; (ii) the CTCY to which that certificate number applies; and (iii) such other information as may be necessary for the Applicant to claim the tax credit.

16.07: Certification

The Secretary reserves the sole discretion to determine whether an Applicant is eligible or if an expenditure is a Qualified Renovation Expenditure.

16.08: Severability

The provisions of 301 CMR 16.00 are severable. If any provision or application thereof is held to be invalid by a court of competent jurisdiction, such invalidity will be severed and

will not affect the remainder of 310 CMR 16.00 or any application that can be given effect without the invalid provision or application.

REGULATORY AUTHORITY

301 CMR 16.00: M.G.L. c. 62, § 6(w); M.G.L. c.63, § 38II