

SOUTH DAKOTA WHEAT COMMISSION REFUND POLICY, PROCEDURES AND GUIDELINES

Refunds. The provisions of SDCL 38-10-34 allow for a grower opposed to the collection to apply for a refund of the promotional fee. SDCL 38-10-34 reads as follows: **"Application for refund erroneously collected. Time for refund--Waiver by failure to file claim." "Any person, firm or corporation subject to the fee provided in this chapter that objects to the collection of the fee may, within sixty days following the collection, apply to the wheat commission for a refund of the fee. Upon return of the refund application, accompanied by a true, legible record of the invoices delivered by the purchaser to the grower, the commission shall, within thirty days, refund the net amount of the fee collected to the grower. If no request is made within sixty days after the collection of the fee, the grower shall be conclusively presumed to have agreed to the deduction."**

Chapter 12:13:04 of South Dakota Administrative Rules, contains the Wheat Commission rules for properly filing for the refund allowed under SDCL 38-10-34 and exclusively states that a **"grower" requests a refund application.** The grower is the one subject to the collection of the fee and is the only one who may apply for the refund application.

The "grower" could be an individual, corporation, partnership, trust or other entity. In some cases, the person requesting and signing an application may be an "affiliated person." An act of an "affiliated person" is considered to be the action of the "grower" requesting the refund.

Accepted definitions of affiliated persons are:

- 1.) Individuals: The spouse of the person and or parent or guardian of a dependent or minor child;
- 2.) Corporation: A person who is a stockholder, shareholder or owner of more than a 20 percent interest in that corporation, or an individual established by corporate resolution or by-laws to conduct the business affairs of such corporation;
- 3.) Partnerships, etc.: A person who has an ownership interest or financial interest in any partnership, joint venture, or other enterprise; and
- 4.) Trust: A person who is a beneficiary, has power of attorney, or has a financial interest in such trust.

Evidence may be requested to assure that the person applying is an "affiliated person."

Refund Procedure. The refund procedure requires two steps on the part of the grower/seller: 1.) the application request; and, 2.) the return of the completed application and evidence of collection. The grower is allowed 60 days from the date of collection of the wheat promotional fee to conduct this process.

Application Request. The request must be orally "in person" at the Commission office (and not by telephone) or on a written request which includes the grower's signature. The required written request

for an application must "match" the request of the actual application. This is necessary to assure it is the grower/seller initiating the request and not another party. The office sends the grower/seller an application on numbered forms provided by and approved by the Commission. A grower may have only one outstanding refund application. The Commission may not issue a second refund to a grower who has an application outstanding unless the grower submits evidence that the first application has been lost or destroyed. (ARSD 12:13:04:02)

Application Requirements. The grower/seller completes and mails or delivers the application back to the Commission Office with evidence sustaining the sale and collection. Evidence is usually in the form of the elevator settlement sheets, assembly sheets, check stub, CCC loan papers. The documents used must include: 1.) the grower/seller's name, address and social security number or tax ID number; 2.) first purchaser's names and addresses; 3.) amount of bushels sold; 4.) date of sale; 5.) amount of the promotional fee; and 6.) date it was collected. A person requesting a refund will also be required to complete and submit Internal Revenue Service form W-9 in accordance to IRS tax code or submit a written letter stating objection to completing the form. The grower/seller has 60 days to complete this process from the time of collection of the promotional fee.

The application must be signed by the grower or an affiliated person of a business or legal entity who is going to receive the refund check. The name on the application must match the name on the documents supporting the evidence of the sale/collection. In a legal partnership, according to state law, either partner can sign for and on behalf of the full partnership. In accordance to the administrative rules, the application will returned if these requirements are not met along with a written statement of what must be done to complete the application within the 60 day application period.

Refund Proceeds. The refund check cannot be made out to anyone other than the name indicated on the documents supporting evidence of the sale and collection. In the matter of corporations, partnerships, or other legal entity the refund check will be made out for endorsement to the party as indicated on the documents supporting evidence of the sale and collection. Leinholders will be included in the endorsement if the sales/collection evidence indicates such.

The total amount of the promotional fee refund returned to each producer/seller will be recorded throughout the calendar year by the Commission and reported to the Internal Revenue Service as required. The Commission is required to file IRS Form 1099 on refunds accumulating to \$600 or more during the tax year.