

103 KAR 15:140. Biodiesel tax credit.

RELATES TO: KRS 141.010, 141.020, 141.030, 141.040, 141.0401, 141.422, 141.423, 141.424

STATUTORY AUTHORITY: KRS 131.130, 141.424, 141.425

NECESSITY, FUNCTION, AND CONFORMITY: KRS 141.423 establishes a nonrefundable tax credit for biodiesel producers, biodiesel blenders, and renewable diesel producers. KRS 141.425 authorizes the department to promulgate administrative regulations necessary to administer the biodiesel tax credit. KRS 141.424 requires the department to promulgate an administrative regulation to establish the manner in which a pass-through entity shall electronically notify the department of who may claim the approved tax credit.

Section 1. Definitions.

- (1) "Applicant" means a biodiesel producer, biodiesel blender, or re-newable diesel producer that files a tax credit claim as provided by KRS 141.423.
- (2) "Application" or "Schedule BIO" means the Schedule BIO, Application and Credit Certificate of Income Tax/LLET Credit Cellulosic Ethanol (Revenue Form 41A720BIO) that is used to make a tax credit claim with the department for gallons of biodiesel produced in this state, gallons of biodiesel used in blended biodiesel produced in this state, or gallons of renewable diesel produced in this state as provided by KRS 141.423(4).
- (3) "ASTM" means the American Society for Testing and Materials.
- (4) "Biodiesel" is defined by KRS 141.422(4).
- (5) "Biodiesel blender" means an entity that blends biodiesel with petroleum diesel as provided by KRS 141.422(8).
- (6) "Biodiesel producer" is defined by KRS 141.422(5).
- (7) "Blended biodiesel" is defined by KRS 141.422(8).
- (8) "Corporation" is defined by KRS 141.010(4).
- (9) "Department" is defined by KRS 141.010(5).
- (10) "Identification number" means the:
 - (a) Social Security number for individuals;
 - (b) Federal Employer Identification Number for general partnerships, estates, and trusts; and
 - (c) Kentucky corporation income tax and limited liability entity tax account number for corporations and limited liability pass-through entities.
- (11) "Individual" is defined by KRS 141.010(13).
- (12) "Limited liability pass-through entity" is defined by KRS 141.010(15).
- (13) "Pass-through entity" is defined by KRS 141.010(21).
- (14) "Renewable diesel" is defined by KRS 141.422(12).
- (15) "Renewable diesel producer" is defined by KRS 141.422(13).

Section 2. Application for Tax Credit. An applicant shall mail to the department a completed application on or before January 15 for the preceding calendar year.

Section 3. Proof of ASTM standard specification.

- (1) A biodiesel producer or biodiesel blender shall provide proof the biodiesel gallons reported on the application meet ASTM standard specification D6751 for biodiesel fuel (B100) blend stock distillate fuels.
- (2) A renewable diesel producer shall provide proof that the renewable diesel gallons reported on the application meet ASTM standard specification D396 for fuel oils intended for use in various types of fuel-oil-burning equipment, D975 for diesel fuel oils suitable for various types of diesel fuel engines, or D1655 for aviation fuels.

- (3) Proof submitted by a biodiesel producer or a renewable diesel producer shall be in the form of documentation of laboratory results that certify that the biodiesel or renewable diesel reported on the Schedule BIO meets the ASTM standard specification.
- (4) A biodiesel blender shall obtain from the biodiesel producer a copy of laboratory results that certify that the biodiesel reported on the Schedule BIO meets the ASTM standard specification.
- (5) An independent ASTM certified laboratory shall be used to generate the laboratory results that are required by this section.
- (6) Failure to submit documented laboratory results that certify that the biodiesel, renewable diesel, or the biodiesel used in the blended biodiesel meets the ASTM standard specification with the Schedule BIO shall result in the department disallowing the credit.
- (7)
 - (a) A biodiesel producer, biodiesel blender, or renewable diesel producer shall have the biodiesel, blended biodiesel, or renewable diesel tested as provided by subsections (1) or (2) of this section on July 1 and December 31 of each calendar year to determine if the biodiesel, blended biodiesel, or renewable diesel meets the ASTM standard specification, as required to be reported by subsection (4) of this section.
 - (b) A copy of the laboratory results for July 1 and December 31 of each calendar year shall be attached to the Schedule BIO submitted to the department as provided by Section 2 of this administrative regulation.
 - (c) Failure to provide proof of meeting the ASTM standard specification on July 1 and December 31 of each calendar year with the application shall result in the denial of the credit claimed for gallons of biodiesel or renewable diesel back to the previous testing date of July 1 or December 31.
 - (d) If proof is timely submitted and the proof certifies that the biodiesel or renewable diesel does not meet the ASTM standard specification, then all credit claimed for gallons of biodiesel, renewable diesel, or biodiesel used in the blended biodiesel back to the previous testing date of July 1 or December 31 shall be disallowed.

Section 4. Filing Requirements.

- (1) An applicant claiming the tax credit shall attach the credit certificate issued by the department to its tax return on which the tax credit is claimed.
- (2) A partner, member, or shareholder claiming the tax credit shall attach a copy of Schedule K-1, Form 720S, Form number 41A720S(K-1), Form 765, Form number 41A765(K-1), or Form 765GP, Form number 42A765GP(K-1) to the partner's, member's, or shareholder's tax return on which the credit is claimed.

Section 5. Electronic Filings for Pass-through Entities.

- (1) Each pass-through entity claiming the biodiesel tax credit shall file a report with the department by electronic mail at KRC.WEBResponseEconomicDevelopmentCredits@ky.gov.
- (2) The electronic mail shall contain a separate attachment in plain format text or plain ASCII format that includes each partner's, member's, or shareholder's:
 - (a) Name;
 - (b) Address;
 - (c) Telephone number;
 - (d) Identification number; and
 - (e) Distributive share of the tax credit.

(32 Ky.R. 1817; 33 Ky.R. 378; eff. 9-1-2006; 36 Ky.R. 1519; 2044-M; eff. 4-2-2010; 45 Ky.R. 730, 1181; eff. 12-7-2018.)

141.422 Definitions for KRS 141.422 to 141.425.

As used in KRS 141.422 to 141.425:

- (1) "Annual biodiesel and renewable diesel tax credit cap" means:
 - (a) For calendar years beginning prior to January 1, 2008, one million five hundred thousand dollars (\$1,500,000);
 - (b) For the calendar year beginning on January 1, 2008, five million dollars (\$5,000,000);
 - (c) For calendar years beginning on or after January 1, 2009, but before January 1, 2021, ten million dollars (\$10,000,000);
- (2) "Annual biodiesel, renewable diesel, and renewable chemical production tax credit cap" means, for calendar years beginning on or after January 1, 2021, ten million dollars (\$10,000,000);
- (3) "Annual cellulosic ethanol tax credit cap" means five million dollars (\$5,000,000), unless the annual cellulosic ethanol tax credit cap is modified pursuant to KRS 141.4248, in which case the cap established by KRS 141.4248 shall be the annual cellulosic ethanol tax credit cap for that year. Any adjustments to the annual cellulosic ethanol tax credit cap made pursuant to KRS 141.4248 shall be made on an annual basis and shall not carry forward to subsequent years;
- (4) "Annual ethanol tax credit cap" means five million dollars (\$5,000,000), unless the annual credit cap is modified pursuant to KRS 141.4248, in which case the cap established by KRS 141.4248 shall be the annual ethanol tax credit cap for that year. Any adjustments to the annual ethanol tax credit cap made pursuant to KRS 141.4248 shall be made on an annual basis and shall not carry forward to subsequent years;
- (5) "Biodiesel" means a renewable, biodegradable, mono alkyl ester combustible liquid that is derived from agriculture crops, agriculture plant oils, agriculture residues, animal fats, or waste products that meets current American Society for Testing and Materials specification D6751 for biodiesel fuel (B100) blend stock distillate fuels;
- (6) "Biodiesel producer" means an entity that manufactures biodiesel at a location in this Commonwealth;
- (7) "Cellulosic ethanol" means ethyl alcohol for use as motor fuel that meets the current American Society for Testing and Materials specification D4806 for ethanol that is produced from cellulosic biomass materials of any lignocellulosic or hemicellulosic matter that is available on a renewable or recurring basis, including:
 - (a) Plant wastes from industrial processes such as sawdust and paper pulp;
 - (b) Energy crops grown specifically for fuel production such as switchgrass; or
 - (c) Agricultural plant residues such as corn stover, rice hulls, sugarcane, and cereal straws;
- (8) "Cellulosic ethanol producer" means an entity that uses cellulosic biomass materials to manufacture cellulosic ethanol at a location in this Commonwealth;
- (9) "Blended biodiesel" means a blend of biodiesel with petroleum diesel so that the

percentage of biodiesel in the blend is at least two percent (2%) (B2 or greater);

- (10) "Ethanol" means ethyl alcohol produced from corn, soybeans, or wheat for use as a motor fuel that meets the current American Society for Testing and Materials specification D4806 for ethanol;
- (11) "Ethanol-based tax credits" means the cellulosic ethanol tax credit provided for in KRS 141.4244 and the ethanol tax credit provided for in KRS 141.4242;
- (12) "Ethanol producer" means an entity that uses corn, soybeans, or wheat to manufacture ethanol at a location in this Commonwealth;
- (13) "Renewable diesel" means a renewable, biodegradeable, non-ester combustible liquid that:
 - (a) Is derived from biomass resources as defined in KRS 152.715; and
 - (b) Meets the current American Society for Testing and Materials Specification D396 for fuel oils intended for use in various types of fuel-oil-burning equipment; D975 for diesel fuel oils suitable for various types of diesel fuel engines; or D1655 for aviation turbine fuels; and
- (14) "Renewable diesel producer" means an entity that manufactures renewable diesel at a location in this Commonwealth.

Effective: April 15, 2020

History: Amended 2020 Ky. Acts ch. 91, sec. 26, effective April 15, 2020. -- Amended 2007 (2d Extra. Sess.) Ky. Acts ch. 1, sec. 20, effective August 30, 2007. -- Created 2005 Ky. Acts ch. 168, sec. 136, effective March 18, 2005.

Legislative Research Commission Note (3/18/2005). 2005 Ky. Acts ch. 168, sec. 165, provides that this section shall apply to tax years beginning on or after January 1, 2005.

141.423 Nonrefundable credit for biodiesel producer, biodiesel blender, or renewable diesel producer.

- (1) (a) A biodiesel producer, biodiesel blender, or renewable diesel producer shall be entitled to a nonrefundable tax credit against the taxes imposed by KRS 141.020 or 141.040 and KRS 141.0401 in an amount certified by the department under subsection (4) of this section.
- (b) The credit rate shall be:
1. One dollar (\$1) per biodiesel gallon produced by a biodiesel producer;
 2. One dollar (\$1) per gallon of biodiesel used in the blending process by a biodiesel blender; and
 3. One dollar (\$1) per gallon of renewable diesel produced by a renewable diesel producer;
- unless the total amount of approved credit for all biodiesel producers, biodiesel blenders, and renewable diesel producers exceeds the annual biodiesel and renewable diesel tax credit cap for calendar years beginning prior to January 1, 2021, or the annual biodiesel, renewable diesel, and renewable chemical production tax credit cap for calendar years beginning on or after January 1, 2021.
- (c) For calendar years beginning prior to January 1, 2021, if the total amount of approved credit for all biodiesel producers, biodiesel blenders, and renewable diesel producers exceeds the annual biodiesel and renewable diesel tax credit cap, the department shall determine the amount of credit each biodiesel producer, biodiesel blender, and renewable diesel producer receives by multiplying the annual biodiesel and renewable diesel tax credit cap by a fraction, the numerator of which is the amount of approved credit for the biodiesel producer, biodiesel blender, and renewable diesel producer and the denominator of which is the total approved credit for all biodiesel producers, biodiesel blenders, and renewable diesel producers.
- (d) For calendar years beginning on or after January 1, 2021, if the total amount of approved credit for all biodiesel producers, biodiesel blenders, renewable diesel producers, and renewable chemical producers exceeds the annual biodiesel, renewable diesel, and renewable chemical production tax credit cap, the department shall determine the amount of credit each biodiesel producer, biodiesel blender, renewable diesel producer, and renewable chemical producer receives by multiplying the annual biodiesel, renewable diesel, and renewable chemical production tax credit cap by a fraction, the numerator of which is the amount of approved credit for the each producer and the denominator of which is the total approved credit for all producers.
- (e) The credit allowed under paragraph (a) of this subsection shall be applied both to the income tax imposed under KRS 141.020 or 141.040 and to the limited liability entity tax imposed under KRS 141.0401, with the ordering of credits as provided in KRS 141.0205.
- (2) Re-blending of blended biodiesel shall not qualify for the credit provided under this

section.

- (3) The credit allowed in subsection (1) of this section shall not be carried forward to a return for any other period.
- (4)
 - (a) Each biodiesel producer, biodiesel blender, and renewable diesel producer eligible for the credit provided under subsection (1) of this section shall file a tax credit claim for biodiesel gallons produced or blended in this state or for renewable diesel produced in this state on forms prescribed by the department by the fifteenth day of the first month following the close of the preceding calendar year.
 - (b) The department shall determine the amount of the approved credit based on the amount of biodiesel produced, biodiesel blended, renewable diesel produced, or renewable chemical produced in this state during the preceding calendar year and issue a credit certificate to the biodiesel producer, biodiesel blender, renewable diesel producer, or renewable chemical producer by the fifteenth day of the fourth month following the close of the calendar year.
- (5) In the case of a biodiesel producer, biodiesel blender, renewable diesel producer, or renewable chemical producer that has a fiscal year end for purposes of computing the tax imposed by KRS 141.020, 141.040, and 141.0401, the amount of approved credit shall be claimed on the return filed for the first fiscal year ending after the close of the preceding calendar year.

Effective: April 15, 2020

History: Amended 2020 Ky. Acts ch. 91, sec. 27, effective April 15, 2020. -- Amended 2007 (2d Extra. Sess.) Ky. Acts ch. 1, sec. 21, effective August 30, 2007. -- Amended 2006 (1st Extra. Sess.) Ky. Acts ch. 2, sec. 33, effective June 28, 2006. -- Created 2005 Ky. Acts ch. 168, sec. 137, effective March 18, 2005.

Legislative Research Commission Note (6/28/2006). 2006 (1st Extra Sess.) Ky. Acts ch. 2, sec. 73, provides that "unless a provision of this Act specifically applies to an earlier tax year, the provisions of this Act shall apply to taxable years beginning on or after January 1, 2007."

Legislative Research Commission Note (3/18/2005). 2005 Ky. Acts ch. 168, sec. 165, provides that this section shall apply to tax years beginning on or after January 1, 2005.

Legislative Research Commission Note (3/18/2005). 2005 Ky. Acts chs. 11, 85, 95, 97, 98, 99, 123, and 181 instruct the Reviser of Statutes to correct statutory references to agencies and officers whose names have been changed in 2005 legislation confirming the reorganization of the executive branch. Such a correction has been made in this section.

141.424 Biodiesel credit distribution for pass-through entities.

- (1) In the case of a biodiesel producer, biodiesel blender, or renewable diesel producer which is a pass-through entity not subject to tax under KRS 141.040, the amount of approved credit shall be applied against the tax imposed by KRS 141.0401 at the entity level, and shall also be distributed to each partner, member, shareholder, or beneficiary based on the partner's, member's, shareholder's, or beneficiary's distributive share of the income of the pass-through entity. Each biodiesel producer, biodiesel blender, or renewable diesel producer shall notify the department electronically of all partners, members, shareholders, or beneficiaries who may claim any amount of the approved credit. Failure to provide information to the department in a manner prescribed by administrative regulation may constitute the forfeiture of available credits to all partners, members, shareholders, or beneficiaries in the pass-through entity.
- (2) An agricultural cooperative association organized under KRS Chapter 272 or 272A may elect to apportion pro rata any amount of the approved credit among the members of the association and, if a limited cooperative association, among patron members only, on the basis of the quantity or value of business done with or for such members for the taxable year. The agricultural cooperative association shall notify the department electronically of all members who may claim any amount of the approved credit if the election is made.

Effective: July 12, 2012

History: Amended 2012 Ky. Acts ch. 160, sec. 134, effective July 12, 2012. --
Amended 2007 (2d Extra. Sess.) Ky. Acts ch. 1, sec. 22, effective August 30, 2007. -
- Amended 2006 (1st Extra. Sess.) Ky. Acts ch. 2, sec. 34, effective June 28, 2006. --
Created 2005 Ky. Acts ch. 168, sec. 138, effective March 18, 2005.

Legislative Research Commission Note (6/28/2006). 2006 (1st Extra Sess.) Ky. Acts ch. 2, sec. 73, provides that "unless a provision of this Act specifically applies to an earlier tax year, the provisions of this Act shall apply to taxable years beginning on or after January 1, 2007."

Legislative Research Commission Note (3/18/2005). 2005 Ky. Acts ch. 168, sec. 165, provides that this section shall apply to tax years beginning on or after January 1, 2005.

Legislative Research Commission Note (3/18/2005). 2005 Ky. Acts ch. 11, 85, 95, 97, 98, 99, 123, and 181 instruct the Reviser of Statutes to correct statutory references to agencies and officers whose names have been changed in 2005 legislation confirming the reorganization of the executive branch. Such a correction has been made in this section.

141.425 Authorization for administrative regulations to administer biodiesel credit.

The department may promulgate administrative regulations necessary to administer KRS 141.422 to 141.424.

Effective: March 18, 2005

History: Created 2005 Ky. Acts ch. 168, sec. 139, effective March 18, 2005.

Legislative Research Commission Note (3/18/2005). 2005 Ky. Acts ch. 168, sec. 165, provides that this section shall apply to tax years beginning on or after January 1, 2005.

Legislative Research Commission Note (3/18/2005). 2005 Ky. Acts ch. 11, 85, 95, 97, 98, 99, 123, and 181 instruct the Reviser of Statutes to correct statutory references to agencies and officers whose names have been changed in 2005 legislation confirming the reorganization of the executive branch. Such a correction has been made in this section.