

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 renewable 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.)