

103 KAR 15:110. Ethanol tax credit.

RELATES TO: KRS 141.010, 141.020, 141.030, 141.040, 141.0401, 141.422, 141.4242, 141.4246, 141.4248

STATUTORY AUTHORITY: KRS 131.130, 141.4246

NECESSITY, FUNCTION, AND CONFORMITY: KRS 141.4242 provides a nonrefundable tax credit to producers of ethanol. KRS 131.130(1) authorizes the department to promulgate administrative regulations necessary to administer and enforce Kentucky's tax laws. KRS 141.4246(2) 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. This administrative regulation establishes guidelines and filing requirements for an ethanol producer filing a tax credit claim for gallons of ethanol produced in this state.

Section 1. Definitions. (1) "Applicant" means an ethanol producer that files a tax credit claim as provided by KRS 141.4242.

(2) "Application" or "Schedule ETH" means the Schedule ETH, Application, and Credit Certificate of Income Tax/LLET Credit Ethanol (Revenue Form 41A720ETH) that is used to make an ethanol tax credit claim with the department for gallons of ethanol produced in this state as provided by KRS 141.4242(3).

(3) "ASTM" means the American Society for Testing and Materials.

(4) "Corporation" is defined by KRS 141.010(4).

(5) "Department" is defined by KRS 141.010(5).

(6) "Ethanol" is defined by KRS 141.422(9).

(7) "Ethanol producer" is defined by KRS 141.422(11).

(8) "Identification number" means:

(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.

(9) "Individual" is defined by KRS 141.010(13).

(10) "Limited liability pass-through entity" is defined by KRS 141.010(15).

(11) "Pass-through entity" is defined by KRS 141.010(21).

(12) "Tax credit" means the ethanol tax credit authorized by KRS 141.4242 and 141.4246.

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) An ethanol producer shall provide proof that the ethanol gallons reported on the application meet ASTM standard specification D4806 for ethanol.

(2) Proof submitted by an ethanol producer shall be in the form of documentation of laboratory results that certify that the ethanol reported on the Schedule ETH meets the ASTM standard specification.

(3) An independent ASTM certified laboratory shall be used to generate the laboratory results that are required by this section.

(4) Failure to submit documented laboratory results that certify that the ethanol meets the ASTM standard specification with the Schedule ETH shall result in the department disallowing

the credit.

(5)(a) An ethanol producer shall have the ethanol tested as provided by subsection (2) of this section on July 1 and December 31 of each calendar year to determine if the ethanol meets the ASTM standard specification.

(b) A copy of the laboratory results for July 1 and December 31 of each calendar year shall be attached to the application, Schedule ETH, 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 for gallons of ethanol back to the previous testing date of July 1 or December 31.

(d) If proof is timely submitted and the proof certifies that the ethanol does not meet the ASTM standard specification, then all credit claimed for gallons of ethanol 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 the 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 or agricultural cooperative association organized under KRS Chapter 272 claiming the ethanol 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. (36 Ky.R. 1553; 2042-M; eff. 4-2-2010; 45 Ky.R. 77, 1180; eff. 12-7-2018.)