



1 FINANCE AND ADMINISTRATION CABINET

2 Department of Revenue

3 (Amendment)

4 103 KAR 15:110. Ethanol tax credit.

5 RELATES TO: KRS 141.010, 141.020, 141.030, 141.040, 141.0401, 141.422, 141.4242,
6 141.4246, 141.4248

7 STATUTORY AUTHORITY: KRS 131.130, 141.4246

8 NECESSITY, FUNCTION, AND CONFORMITY: KRS 141.4242 provides a nonrefundable
9 tax credit to producers of ethanol. KRS 131.130(1) authorizes the department to promulgate

10 administrative regulations necessary to administer and enforce Kentucky's tax laws. KRS
11 141.4246(2)~~[141.4242(2)]~~ requires the department to promulgate an administrative regulation to
12 establish the manner in which a pass-through entity shall electronically notify the department of
13 who may claim the approved tax credit. This administrative regulation establishes guidelines and
14 filing requirements for an ethanol producer filing a tax credit claim for gallons of ethanol produced
15 in this state.

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

18 (2) "Application" or "Schedule ETH" means the Schedule ETH, Application, and Credit
19 Certificate of Income Tax/LLET Credit Ethanol (Revenue Form 41A720ETH)~~[, in incorporated by~~
20 ~~reference in 103 KAR 3:040,]~~ that is used to make an ethanol tax credit claim with the department
21 for gallons of ethanol produced in this state as provided by KRS 141.4242(3).

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

2 (4) "Corporation" is defined by KRS 141.010(4).~~[141.010(24).]~~

3 (5) "Department" is defined by KRS 141.010(5).~~[141.010(2).]~~

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

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

6 (8) "Identification number" ~~[the]~~ means:

7 (a) Social Security number for individuals;

8 (b) Federal Employer Identification Number for general partnerships, estates, and trusts; and

9 (c) Kentucky corporation income tax and limited liability entity tax account number for
10 corporations and limited liability pass-through entities.

11 (9) "Individual" is defined by KRS 141.010(10).~~[141.010(7).]~~

12 (10) "Limited liability pass-through entity" is defined by KRS 141.010(15).~~[141.010(28).]~~

13 (11) "Pass-through entity" is defined by KRS 141.010(21).~~[141.010(26).]~~

14 (12) "Tax credit" means the cellulosic ethanol tax credit authorized by KRS 141.4242.

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

17 Section 3. Proof of ASTM standard specification. (1) A ethanol producer shall provide proof
18 that the ethanol gallons reported on the application meet ASTM standard specification D4806 for
19 ethanol.

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

23 (3) An independent ASTM certified laboratory shall be used to generate the laboratory results

1 that are required by this section.

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

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

8 (b) A copy of the laboratory results for July 1 and December 31 of each calendar year shall be
9 attached to the application, Schedule ETH, submitted to the department as provided by Section 2
10 of this administrative regulation.

11 (c) Failure to provide proof of meeting the ASTM standard specification on July 1 and
12 December 31 of each calendar year with the application shall result in the denial of the credit for
13 gallons of ethanol back to the previous testing date of July 1 or December 31.

14 (d) If proof is timely submitted and the proof certifies that the ethanol does not meet the ASTM
15 standard specification, then all credit claimed for gallons of ethanol back to the previous testing
16 date of July 1 or December 31 shall be disallowed.

17 Section 4. Filing Requirements. (1) An applicant claiming the tax credit shall attach the credit
18 certificate issued by the department to the tax return on which the tax credit is claimed.

19 (2) A partner, member, or shareholder claiming the tax credit shall attach a copy of Schedule
20 K-1: Form 720S, Form number 41A720S(K-1); Form 765, Form number 41A765(K-1); or Form
21 765GP, Form number 42A765GP(K-1)[, incorporated by reference in 103 KAR 3:040,] to the
22 partner's, member's or shareholder's tax return on which the credit is claimed.

23 Section 5. Electronic Filings for Pass-through Entities. (1) Each pass-through entity or

1 agricultural cooperative association organized under KRS Chapter 272 claiming the ethanol tax
2 credit shall file a report with the department by electronic mail at
3 KRC.WEBResponseEconomicDevelopmentCredits@ky.gov.

4 (2) The electronic mail shall contain a separate attachment in plain format text or plain ASCII
5 format that includes each partner's, member's, or shareholder's:

6 (a) Name;

7 (b) Address;

8 (c) Telephone number;

9 (d) Identification number; and

10 (e) Distributive share of the tax credit.

103 KAR 15:110

APPROVED:

Daniel Bork
DANIEL BORK, COMMISSIONER
Department of Revenue
Finance and Administration Cabinet

August 14, 2018
DATE APPROVED BY AGENCY

PUBLIC HEARING AND PUBLIC COMMENT PERIOD

A public hearing on this administrative regulation shall be held on September 25, 2018 at 10:00 a.m. in Room 8A, State Office Building, Frankfort KY 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through September 30, 2018. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Lisa Swiger, Tax Policy Research Consultant II, Department of Revenue, 501 High Street, Station 1, Frankfort, Kentucky, 40601, (502) 564-9526 (telephone), (502) 564-3875(fax), Lisa.Swiger@ky.gov(email).

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Regulation Number: 103 KAR 15:110

Contact Person: Lisa Swiger
Phone Number: (502)564-9526
Email: Lisa.Swiger@ky.gov

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation removes an outdated reference to the department Income Tax Forms Manual, 103 KAR 3:040, which was repealed in 2017; and updates statutory references to conform to recent changes in HB 487 of the 2018 GA.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to update 103 KAR 15:110 to remove incorrect and/or outdated information which may deem this regulation deficient without removal.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 141.4242 requires the department to promulgate a regulation to establish the manner in which a producer shall notify the department of the credit claimed for gallons of ethanol produced in this state. This regulation provides the most recent up to date information needed to comply with KRS 141.4242.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation provides the reporting guidelines necessary to comply with the requirements of the statute.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:

(a) How the amendment will change this existing administrative regulation: See (1)(a).

(b) The necessity of the amendment to this administrative regulation: See (1)(b).

(c) How the amendment conforms to the content of the authorizing statutes: See (1)(c).

(d) How the amendment will assist in the effective administration of the statutes: See (1)(d).

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Producers of ethanol in Kentucky will benefit from the updated information contained in this regulation.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: None. This amendment only removes outdated information and statutory references.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There is no new or additional cost involved.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): These changes will not impact the entities identified in question (3).

(5) Provide an estimate of how much it will cost to implement this administrative regulation:

(a) Initially: There are no new costs associated with this regulation. Current department staff and resources will be used to implement this administrative regulation.

(b) On a continuing basis: None.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Currently budgeted department funding and staff.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change, if it is an amendment: No increase in fees or funding will be necessary.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: No fees are established or increased by this regulation.

(9) TIERING: Is tiering applied? Tiering was not applied to this regulation as all producers in Kentucky are required to follow the same process to report gallons produced in the state to the department.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

Regulation Number: 103 KAR 15:110

Contact Person: Lisa Swiger
Phone Number: (502)564-9526
Email: Lisa.Swiger@ky.gov

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Finance and Administration Cabinet, Department of Revenue, will be impacted.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 131.130 and 141.4242.

3. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. There will be no effect on expenditures and revenues for state and local government agencies.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? None.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? None.

(c) How much will it cost to administer this program for the first year? None.

(d) How much will it cost to administer this program for subsequent years? None.

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-):

Expenditures (+/-):

Other Explanation: