



## States' Biofuels Statutes

### STATE OF KENTUCKY

*This project was undertaken in partnership with the USDA Office of the Chief Economist, The Office of Energy Policy and New Uses. For information on the full project, visit [States' Biofuels Statutory Citations](#). These statutes are placed in reverse chronological order using the date of the most recent amendment to the statute. Many biofuels laws were enacted as amendments to previously passed laws.*

*Current through the 2013 Legislative Session of the Kentucky General Assembly.*

#### **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); and
  - (c) For calendar years beginning on or after January 1, 2009, ten million dollars (\$10,000,000);
- (2) “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;
- (3) “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;
- (4) “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;

(5) “Biodiesel producer” means an entity that manufactures biodiesel at a location in this Commonwealth;

(6) “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;

(7) “Cellulosic ethanol producer” means an entity that uses cellulosic biomass materials to manufacture cellulosic ethanol at a location in this Commonwealth;

(8) “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);

(9) “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;

(10) “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;

(11) “Ethanol producer” means an entity that uses corn, soybeans, or wheat to manufacture ethanol at a location in this Commonwealth;

(12) “Renewable diesel” means a renewable, biodegradable, 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

(13) “Renewable diesel producer” means an entity that manufactures renewable diesel at a location in this Commonwealth.

**Credits:** HISTORY: 2007 2nd ex s, c 1, § 20, eff. 8-30-07; 2005 c 168, § 136, eff. 3-18-05

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**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. The credit rate shall be one dollar (\$1) per biodiesel gallon produced by a biodiesel producer, one dollar (\$1) per gallon of biodiesel used in the blending process by a biodiesel blender, and 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. 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.

(b) 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 shall not be carried forward to a return for any other period.

(4) 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. The department shall determine the amount of the approved credit based on the amount of biodiesel produced, biodiesel blended, or renewable diesel produced in this state during the preceding calendar year and issue a credit certificate to the biodiesel producer, biodiesel blender, or renewable diesel 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, or renewable diesel 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.

**Credits:** HISTORY: 2007 2nd ex s, c 1, § 21, eff. 8-30-07; 2006 1st ex s, c 2, § 33, eff. 6-28-06; 2005 c 168, § 137, eff. 3-18-05

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#### **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.

**Credits: HISTORY:** 2012 c 160, § 134, eff. 7-12-12; 2007 2nd ex s, c 1, § 22, eff. 8-30-07; 2006 1st ex s, c 2, § 34, eff. 6-28-06; 2005 c 168, § 138, eff. 3-18-05

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#### **141.4242 Nonrefundable credit for producers of ethanol**

(1) (a) For taxable years beginning after December 31, 2007, an ethanol producer shall be eligible for a nonrefundable tax credit against the taxes imposed by KRS 141.020 or 141.040 and 141.0401 in an amount certified by the department under subsection (3) of this section. The credit rate shall be one dollar (\$1) per ethanol gallon produced, unless the total amount of approved credit for all ethanol producers exceeds the annual ethanol tax credit cap. If the total amount of approved credit for all ethanol producers exceeds the annual ethanol tax credit cap, the department shall determine the amount of credit each ethanol producer receives by multiplying the annual ethanol tax credit cap by a fraction, the numerator of which is the amount of approved credit for the ethanol producer and the denominator of which is the total approved credit for all ethanol producers.

(b) 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) The credit provided under subsection (1) of this section shall not be carried forward to a return for any other period.

(3) Each ethanol producer eligible for the credit provided under subsection (1) of this section shall file an ethanol tax credit claim for ethanol gallons produced in this state on forms prescribed by the department by January 15 following the close of the preceding calendar year. The department shall determine the amount of the approved credit based on the amount of ethanol produced in this state during the preceding calendar year and shall issue a credit certificate to the ethanol producer by April

15 following the close of the preceding calendar year.

(4) In the case of an ethanol 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 provided under subsection (1) of this section shall be claimed on the return filed for the first fiscal year ending after the close of the preceding calendar year.

**Credits:** HISTORY: 2007 2nd ex s, c 1, § 24, eff. 8-30-07

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#### **141.4244 Nonrefundable credit for producers of cellulosic ethanol**

(1) (a) For taxable years beginning after December 31, 2007, a cellulosic ethanol producer shall be eligible for a nonrefundable tax credit against the taxes imposed by KRS 141.020 or 141.040 and 141.0401 in an amount certified by the department under subsection (3) of this section. The credit rate shall be one dollar (\$1) per cellulosic ethanol gallon produced, unless the total amount of approved credit for all cellulosic ethanol producers exceeds the annual cellulosic ethanol tax credit cap. If the total amount of approved credit for all cellulosic ethanol producers exceeds the annual cellulosic ethanol tax credit cap, the department shall determine the amount of credit each cellulosic ethanol producer receives by multiplying the annual cellulosic ethanol tax credit cap by a fraction, the numerator of which is the amount of approved credit for the cellulosic ethanol producer and the denominator of which is the total approved credit for all cellulosic ethanol producers.

(b) 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) The credit provided under subsection (1) of this section shall not be carried forward to a return for any other period.

(3) Each cellulosic ethanol producer eligible for the credit provided under subsection (1) of this section shall file a cellulosic ethanol tax credit claim for cellulosic ethanol gallons produced in this state on forms prescribed by the department by January 15 following the close of the preceding calendar year. The department shall determine the amount of the approved credit based on the amount of cellulosic ethanol produced in this state during the preceding calendar year and shall issue a credit certificate to the cellulosic ethanol producer by April 15 following the close of the preceding calendar year.

(4) In the case of a cellulosic ethanol 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 provided under subsection (1) of this section shall be claimed on the return filed for the first fiscal year ending after the close of the preceding calendar year.

**Credits:** HISTORY: 2007 2nd ex s, c 1, § 23, eff. 8-30-07

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#### **141.4246 Ethanol or cellulosic ethanol credit distribution for pass-through entities**

- (1) An ethanol producer or a cellulosic ethanol producer that is a pass-through entity not subject to tax under KRS 141.040 shall apply the amount of approved credit against the tax imposed by KRS 141.0401 at the entity level, and shall also distribute the amount of the approved credit 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.
- (2) Each ethanol producer or cellulosic ethanol 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 result in the forfeiture of available credits to all partners, members, shareholders, or beneficiaries in the pass-through entity.
- (3) 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.
- (4) Failure to provide information to the department in a manner prescribed by administrative regulation may result in the forfeiture of available credits to all partners, members, shareholders, or beneficiaries in the pass-through entity or agricultural cooperative association.

**Credits:** HISTORY: 2012 c 160, § 135, eff. 7-12-12; 2007 2nd ex s, c 1, § 25, eff. 8-30-07

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#### **141.4248 Transfer of unused ethanol or cellulosic ethanol tax credit caps established by KRS 141.4242 and 141.4244**

- (1) (a) If, in any calendar year, all approved applications for credit filed pursuant to KRS 141.4242 and 141.4244 do not completely use the annual cellulosic ethanol tax credit cap established by KRS 141.4244 or annual ethanol tax credit cap established by KRS 141.4242, as the case may be; and
  - (b) The other ethanol-based tax credit program has total approved applications for credit that exceed the annual cap established for that program;then the unused cap may be transferred to the other ethanol-based tax credit program.
- (2) The amount of credit cap transferred from one (1) program to the other shall not exceed the amount necessary for all approved applicants to receive the one dollar (\$1) per gallon credit provided for in KRS 141.4242 or 141.4244, as the case may be.
- (3) Any unused cap remaining for any calendar year after both programs have been fully funded shall not be available to be used in any other year.

**Credits:** HISTORY: 2007 2nd ex s, c 1, § 26, eff. 8-30-07

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**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.

**Credits:** HISTORY: 2005 c 168, § 139, eff. 3-18-05