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Re: Kansas Ethanol and Biodiesel Legislative History

This memorandum contains information on the Kansas statutory history of incentives for production of ethanol and biodiesel, known collectively as biofuels. Federal tax incentives also are available to many biofuel producers and the federal tax incentive information is included in table form. Finally, a list of current biofuel production operations in the State of Kansas is included as well.

Kansas Ethanol Incentive History

1987

- HB 2491 repealed the provisions which granted a lower motor fuel tax rate to gasohol and replaced that form of incentive with a direct subsidy of \$.20 per gallon of agricultural ethyl alcohol to Kansas ethanol producers who sell ethanol to fuel blenders for use as motor fuel. The payments, pursuant to this program, administered by the Secretary of Revenue, are made from the new Kansas Qualified Agricultural Ethyl Alcohol Producer Incentive Fund. The fund is replenished from motor fuel tax receipts at the rate of \$625,000 in each quarter beginning October 1, 1987, and ending July 1, 1990.

1988

- HB 2658 amended KSA 1987 Supp. 79-34,163 to require qualified agricultural ethyl alcohol producers to file such information relating to the original production records and invoices as required by rules and regulations of the Department of Revenue in order to receive the production incentive payment from the state.

1990

- HB 2585 extended the expiration date of the Agricultural Ethyl Alcohol Incentive Program from July, 1990, to July 1, 1993.

1993

- SB 59 extended the expiration date of the Agricultural Ethyl Alcohol Incentive Program from July 1, 1993, to July 1, 1997.

1997

- SB 2 extended the expiration date of the Agricultural Ethyl Alcohol Incentive Program from July 1, 1997, to July 1, 2001.

1999

- Technical correction made to KSA 79-34,161 and KSA 79-34,162.

2001

- HB 2011 modified the section of law dealing with incentives for the production of ethyl alcohol. Specifically, the bill provided for an incentive of \$.05 for each gallon of agricultural ethyl alcohol sold by the producer to an alcohol blender with an annual cap of \$2 million. This incentive is only for current producers. After three years, this incentive would end. Any amount of money left at the end of the year is to be transferred to meet the needs of the new production incentive described below. The bill creates the current production account in the Kansas Qualified Agricultural Ethyl Alcohol Producer Incentive Fund.
- The bill created an incentive for new production or expanded production of ethyl alcohol. This incentive is to be for facilities which have new production of at least 5,000,000 gallons. No incentive would be available for new or expanded production over 15,000,000 gallons. The incentive on expanded or new production would be \$.075 per gallon and would be limited to seven years. The bill creates the new production account in the Kansas Qualified Agricultural Ethyl Alcohol Producer Incentive Fund. When the current producer incentive ends, the total dollar amount of incentive for new or expanded production would be \$3.5 million. Any moneys left at the end of the year will be held in the new production account for the year. The provisions of the agricultural ethyl alcohol incentive are to expire on July 1, 2011.

Kansas Biodiesel Incentive History

2006

- SB 388 established a biodiesel fuel producer production incentive in the amount of \$.30 for each gallon of biodiesel fuel sold by a Kansas qualified biodiesel fuel producer, as defined by the bill. The incentive will be payable to a producer from the Kansas Qualified Biodiesel Fuel Producer Incentive Fund, which will be created by the bill in the state treasury.
- The bill required the Director of Accounts and Reports to transfer \$437,500 on April 1, 2007 from the State Economic Development Initiatives Fund (EDIF) to the Kansas Qualified Biodiesel Fuel Producer Incentive Fund. Also, on July 1, 2007, and every quarter thereafter, the Director of Accounts and Reports is to transfer \$875,000 from the EDIF to the Incentive Fund. The Secretary of Revenue will make the payments to the producers upon a filing by the producer of a form furnished by the Department of Revenue. Moneys remaining in the Fund upon expiration of the act are to be credited by the State Treasurer to the EDIF. In the event funds from the EDIF are insufficient, then funds will be transferred from the State General Fund.

- The bill authorized the Secretary of Revenue to adopt rules and regulations necessary to administer the provisions of the bill. Those rules and regulations will include the development of a procedure for the payment of the production incentive on a pro rata basis. The bill provides for a sunset of the incentive program on July 1, 2016.

Incentives are not only available on the state level. Federal incentives have been in place for biofuel producers since the Energy Tax Act of 1978 was passed. Table 1 shows the current federal tax incentives for biofuel producers.

Table 1: Major Federal Biofuel Tax Incentives					
Title	Code or Law^a	Fuel Type	Incentive	Qualifying Period	Limits^c
Volumetric Ethanol Excise Tax Credit (VEETC)	Public Law 108-357 ^b	Ethanol of 190 proof or greater from biomass (e.g., corn grain, cellulosics)	\$0.51 per pure gal of ethanol used or blended.	January 2005 – December 2010	Available to blenders/ retailers
Volumetric Excise Tax Credit for Biodiesel	EPACT 2005 ^c §1344, Title XIII, Subtitle D	Agri-biodiesel (e.g., from soybeans or other oil seeds)	\$1.00 per pure gal of agri-biodiesel used or blended	Expires December 31, 2008	Available to blenders/ retailers
Volumetric Excise Tax Credit for Biodiesel	EPACT 2005 §1344, Title XIII, Subtitle D	Waste-grease biodiesel	\$0.50 per pure gal of waste-grease biodiesel used or blended	Expires December 31, 2008	Available to blenders/ retailers
Volumetric Excise Tax Credit for Biodiesel	EPACT 2005 §1344, Title XIII, Subtitle D	Renewable diesel – made from biomass by thermal depolymerization process	\$1.00 per gal of diesel fuel used or blended	Expires December 31, 2008	Available to blenders/ retailers
Small Ethanol Producer Credit	EPACT 2005 §1347, Title XIII, Subtitle D	Ethanol from biomass (e.g., corn grain, cellulosics)	\$0.10 per gallon ethanol or biodiesel produced up to 30 million gallons	Expires December 31, 2008	< 60 million gallon production capacity Cap at \$1.5 million per yr per producer Can offset the alternative minimum tax
Small Biodiesel Producer Credit	EPACT 2005 §1345, Title XIII, Subtitle D	Agri-biodiesel	\$0.10 per gallon ethanol or biodiesel produced up to 15 million gallons	Expires December 31, 2008	Same as above
Income Tax Credit for E85 and B20 Infrastructure	EPACT 2005 §1342, Title XIII, Subtitle D	Ethanol or biodiesel	Permits taxpayers to claim a 30% credit for cost of installing clean-fuel vehicle refueling property at business or residence	January 2006 – December 2007	\$30,000 limit on tax credit

Source: Renewable Fuels Association, <http://www.ethanolrfa.org/policy/regulations/federal/standard/>

- a) Most recent Internal Revenue Service code or public law affecting the status of the incentive. In several cases, the most recent action is a modification of prior actions.
- b) Public Law 108-357 was the American Jobs Creation Act of 2004.
- c) EPACT 2005 is the Energy Policy Act of 2005. See brief summary of all biofuel related provisions in the final version of the Energy Policy Act at:
<http://www.ethanolrfa.org/policy/regulations/federal/standard/>

Federal tax incentives for alcohol fuels were first established in 1978 for 10 percent blended gasoline (gasohol) creating an effective Federal subsidy for ethanol of \$0.40/gallon. Various subsequent acts have raised or lowered, modified, and extended the subsidy. Tax incentives for biodiesel were first initiated in 2004 with the American Jobs Creation Act. In addition to the tax subsidies, there is the Renewable Fuels Standard for biofuels and several other types of incentives provided in the Energy Policy Act of 2005.

Despite the incentives, the number of biodiesel plants in Kansas is still low. According to officials with the Kansas Soybean Association, only one biodiesel plant is currently in operation, that being Healy Biodiesel in Sedgwick County. Healy mainly uses reclaimed vegetable oil from restaurants to create their biodiesel. One plant under construction in Kansas is the Bunge Biodiesel plant in the Emporia area, which would use soybean oil as its source for producing biodiesel.

The officials with the Soybean Association also said there are as many as four projects in the planning and fund-raising phase with estimated dates of completion between May and November of 2008. Because those projects are only speculated at this point, the names and locations could not be given.

There are small scale biodiesel producers in Kansas but they are not included in most lists of biodiesel plants because they do not produce fuel for use on public roads. Their biodiesel is used in farming operations and they produce several hundred to several thousands of gallons per year. Large commercial operations will produce in the millions of gallons of biodiesel per year. Current fuel taxation laws in Kansas make it difficult for small producers to sell their biodiesel for road use.

Ethanol plants are much more numerous in Kansas. Table 2 shows the plants that are currently operating and plants currently under construction in the State of Kansas.

Table 2: Kansas Ethanol Plants		
Current Plants	Location	Capacity (gallons/year, in millions)
Abengoa Bioenergy Corp.	Colwich	25
East Kansas Agri-Energy, LLC	Garnett	35
ESE Alcohol Inc.	Leoti	1.5
MGP Ingredients, Inc.	Atchison	9
Prairie Horizon Agri-Energy, LLC	Phillipsburg	40
Reeve Agri-Energy	Garden City	12
U.S. Energy Partners, LLC (White Energy)	Russell	48
Western Plains Energy, LLC	Campus	45
Current Total		215.5
Plants Under Construction		
Arkalon Energy, LLC	Liberal	110
Bonanza Energy, LLC	Garden City	55
E Caruso (Goodland Energy Center)	Goodland	25
Gateway Ethanol	Pratt	55
Kansas Ethanol, LLC	Lyons	55
Potential Total		300
Current and Potential Total		515.5