

MINUTES OF THE HOUSE ENERGY AND UTILITIES COMMITTEE

The meeting was called to order by Chairman Carl Holmes at 9:15 A.M. on January 23, 2008 in Room 783 of the Docking State Office Building.

All members were present except:

Dan Johnson- excused
Tom Sloan- excused
Vaughn Flora-excused
Judy Morrison-excused

Committee staff present:

Mary Galligan, Kansas Legislative Research
Carol Toland, Kansas Legislative Research
Melissa Doeblin, Revisor's Office
Renaë Hansen, Committee Administrative Assistant

Conferees appearing before the committee:

Janet Buchanon, KCC

Others attending:

Twenty eight including the attached list.

The chairman gave an update on our gas price game. The price as of January 22 was \$2.77.

Representative Rob Olson moved to introduced a change to the scrap metal bill, adding stainless steel to the mix of metals that scrap dealers take down drivers licenses and names for the record, seconded by Representative Peggy Mast. Motion carried.

Representative Annie Kuether moved to introduce an electric generation bill, seconded by Representative Tom Hawk..

Janet Buchanon, Kansas Corporation Commission, (Attachment 1), updated the committee on Docket No. 07-GIMT-432-GIT regarding the authority it had to require Interconnected VoIP providers to contribute to the KUSF and scheduling a workshop to address implementation of contributions by such providers.

Questions were asked and comments made by Representatives: Forrest Knox, and Tom Hawk.

It was noted that the KUSF fund is about \$67 million dollars.

The information presented relates to **SB 49** that was tabled by the committee March 15, 2007. The chairman reminded the committee that to remove it from the table he would need 11 names that would vote to remove it from the table.

The committee also received information from the Department of Commerce on follow up information from their presentation last week. Included was, (Attachment 2) a brochure from the department of commerce that they make available to the public, and (Attachment 3) followup information requested from the question and answer period.

The next committee meeting is scheduled for January 24, 2008.

The meeting was adjourned at 9:32 am.



*Kathleen Sebelius, Governor
Thomas E. Wright, Chairman
Michael C. Moffet, Commissioner
Joseph F. Harkins, Commissioner*

Briefing
Before the House Utilities Committee
January 23, 2008

Regarding
Docket No. 07-GIMT-432-GIT
Obligations of VoIP Providers With Respect to the KUSF

SUMMARY:

The Commission issued an order on January 9, 2008, in Docket No. 07-GIMT-432-GIT, finding it had authority to require Interconnected VoIP providers to contribute to the KUSF and scheduling a workshop to address implementation of contributions by such providers. The Commission concluded it could act based on implied federal authority, implied state authority concerning construction of the phrase "every telecommunications carrier or telecommunications public utility" within K.S.A. 66-2008, the principle of competitive neutrality in contributions and distributions from the fund, and the public interest in a sustainable KUSF. However, the Commission noted that passing legislation such as SB 49 would remove any question of state authority.



*Kathleen Sebelius, Governor
Thomas E. Wright, Chairman
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Joseph F. Harkins, Commissioner*

Briefing
Before the House Utilities Committee
January 23, 2008

Regarding
Docket No. 07-GIMT-432-GIT
Obligations of VoIP Providers With Respect to the KUSF

Chairman Holmes and members of the House Energy and Utilities Committee:

Thank you for allowing me to appear before you this morning on behalf of the Kansas Corporation Commission (KCC) to provide you with an update on the Commission's consideration of VoIP providers' obligation to contribute to the KUSF. My name is Janet Buchanan. I am the Commission's Chief of Telecommunications.

During the 2007 Session, SB 49 was introduced in the Senate Utilities Committee to amend K.S.A. 2006 Supp. 66-2008(a) by adding interconnected VoIP service providers to the list of entities that are required to contribute to the KUSF. The Commission was in the process of considering whether to require interconnected VoIP providers to contribute to the KUSF prior to the bill being introduced and delayed its decision in the proceeding pending legislative action. The Senate Utilities Committee passed SB 49 favorably from the committee to the Senate as a whole. The Senate then passed SB 49. The bill then moved to the House Energy and Utilities Committee where it was amended to define interconnected VoIP provider consistent with 47. C.F.R. 9.3 and to indicate that the Commission should require contribution to the KUSF to the extent not prohibited by federal law. After amending SB 49, the House Energy and Utilities Committee voted to table the bill until the 2008 Session. Chairman Holmes, Vice Chairman Olson and Ranking Minority Member Kuether sent a letter to the Commission detailing the House Energy and Utilities Committee actions and urging the Commission to issue its decision in Docket No. 07-GIMT-432-GIT prior to the 2008 Session. The Commission issued an order making interim findings in this docket on January 9, 2008.

Background

In recent years, there has been concern over the sustainability of universal service funding at the state and federal level. The Commission and the FCC have acknowledged that assessable revenues have been declining over the years. There are several factors contributing to the decline in revenues. One of those factors is the migration of customers to VoIP providers' communication services. VoIP providers, until recently, have not been subject to universal service funding requirements at the state or federal level. On June 27, 2006, the FCC issued an order requiring interconnected VoIP providers to contribute to the federal fund on an interim

basis. The FCC stated that an interconnected VoIP service would have the following characteristics:

- (1) the service enables real-time, two-way voice communications;
 - (2) the service requires a broadband connection from the user's location;
 - (3) the service requires IP-compatible CPE; and,
 - (4) the service offering permits users generally to receive calls that originate on the [public switched network] *and* to terminate calls to the [public switched network].¹
- (footnotes omitted, emphasis in original)

The Commission opened Docket No. 07-GIMT-432-GIT on November 11, 2006, to investigate whether interconnected VoIP service providers should be obligated to contribute to the KUSF. Interested parties were asked to file comments, at a minimum, addressing the following:

- a. The Commission's statutory authority to require VoIP providers to contribute to the KUSF.
- b. The ability of VoIP providers to identify local and interstate traffic.
- c. Whether any decision by the Commission to require contributions should differ based on whether a provider adopts the FCC's safe harbor or utilizes another method to calculate traffic.

Comments were filed on December 15, 2006. Reply comments were filed on January 12, 2007. Following receipt of the Energy and Utilities Committee letter, the Commission issued an order on April 30, 2007, requesting further comment on the letter and any new information that had become available since the filing of comments in January. Those comments were filed on June 15, 2007 and reply comments on July 16, 2007. The Commission continued to monitor this issue at the federal level and monitor the action of other states.

Commission Action

On January 9, 2008, the Commission issued an order making interim findings on the questions listed above². The Commission found:

- (i) There is no federal statutory authority expressly permitting or precluding it from requiring Interconnected VoIP providers to contribute to the KUSF. Federal authority

¹ In *the Matters of IP-Enabled Services and E911 Requirements for IP-Enabled Service Providers, First Report and Order and Notice of Proposed Rulemaking*, WC Dockets No. 04-36 and 05-196, FCC 05-116, released June 3, 2005, paragraph 24.

² The order makes interim findings in the sense that the Commission set forth a process to resolve implementation issues through a workshop and will undoubtedly have a further order once those are worked out.

however, may be implied from various sources of federal law, and other States' practices. Such implication poses limited risk against a claim of federal pre-emption.

- (ii) There is no Kansas statutory authority expressly permitting the Commission to require Interconnected VoIP providers to contribute; such defect, however, could be cured by the passing of an amendment containing the language of SB 49, which was tabled until the 2008 legislative session. Without such an amendment, State statutory authority can be implied from a construction of certain State statutes, but such a construction leaves open the potential of future litigation challenging the requirement to contribute on State grounds.
- (iii) The ability of Interconnected VoIP providers to identify local and interstate traffic is a non-issue if the safeharbor mechanism utilized by the FUSF is employed.
- (iv) Following the practice utilized in New Mexico, Interconnected VoIP providers may choose among the same three methods for determining required contributions to the KUSF that the FCC has found appropriate for determining contributions to the FUSF. An industry workshop shall follow to address implementation issues.³

Regarding federal authority and the potential for pre-emption, the Commission noted that both New Mexico and Nebraska have required Interconnected VoIP providers to contribute to their State funds and neither state has faced a challenge based on federal pre-emption.⁴ In support of its position regarding pre-emption, the Commission also pointed to recent federal legislation concerning the Internet Tax Freedom Act (ITFA) Amendments Act of 2007 that was signed into law on October 31, 2007. The Commission's order quotes Section 1107 of the new law which states:

- (a) Universal Service. -- Nothing in this Act shall prevent the imposition or collection of any fees or charges used to preserve and advance the Federal universal service or similar State programs --
 - (1) authorized by section 254 of the Communications act of 1934 (47 U.S.C. 254);
 - or
 - (2) in effect on February 8, 1996.⁵

The Commission stated its belief that is language "reflects Congressional intent that states are not only permitted to continue to implement their own universal service funds, but further, that such funds may require contributions . . . from services such as Interconnected VoIP. . ."⁶

³ *In the Matter of the Investigation to Address Obligations of VoIP Providers with Respect to the KUSF*, Docket No. 07-GIMT-432-GIT, Order Making Interim Findings and Conclusions Relative to Questions Posed for Investigation, January 9, 2008, paragraph 6. <http://kcc.ks.gov/scan/200801/20080109085433.pdf>

⁴ *Id.*, paragraph 22.

⁵ *Id.*, paragraph 11.

Regarding state law, the Commission asserts that a legislative amendment to the statute, such as SB 49, would remove any ambiguity regarding state authority to require interconnected VoIP providers to contribute to the KUSF. However, without such an amendment, the Commission could find implied authority to require such contributions from a construction of K.S.A. 66-2008(a) with consideration of the public interest in a sustainable KUSF and the principle of competitive neutrality.⁷ The Commission is not opposed to passage of SB 49 and believes such amendment to the statute would provide clear authority to require interconnected VoIP providers to contribute to the KUSF.

If parties wish to petition for reconsideration of the Commission's order, such petitions must be filed with the Commission by January 24, 2008. Staff will be working with the Commission's Advisory Counsel to set a date for a workshop to discuss implementation issues.

Conclusion

On January 9, 2008, the Commission sent a copy of its order along with a cover letter and Executive Summary to Chairman Holmes, Vice Chairman Olsen and Ranking Minority Member Kuether. The Executive Summary, written by the Commission's Advisory Counsel, states:

...the Commission believes the 2008 Legislature should act to amend K.S.A. 66-2008(a) in the manner similarly proposed and considered in SB 49.

Again, even without such an amendment, the Commission concluded it could require Interconnected VoIP providers to contribute to the KUSF based on implied federal authority, implied state authority, the principle of competitive neutrality, and the public interest in a sustainable KUSF.

⁶ Id.

⁷ Id., Paragraph 26.

Ethyl Alcohol Production Incentive

- \$0.075 for each gallon sold by the producer.
- Producers who are in production prior to July 1, 2001 and who increase production capacity on or after July 1, 2001 by an amount of 5 million gallons qualify for the incentive for a maximum of 15 million gallons sold per year.
- Producers who commenced production on or after July 1, 2001 and who sold at least 5 million gallons qualify for the incentive for a maximum of 15 million gallons sold per year.
- \$875,000 per quarter is added to the fund for distribution. If production exceeds the fund balance, a proration of the distribution is performed.
- Program sunsets July 1, 2011.
- Reference Kansas Statutes 79-34, 160-164

Lyle Peterson, (785) 296-6080, lpeterson@kansascommerce.com

Biodiesel Fuel Producer Incentive

- \$0.30 for each gallon sold by the producer.
- Kansas qualified biodiesel fuel producers may file for the incentive beginning July 1, 2007.
- A one-time payment of \$400,000 will be added to the fund for distribution through June 30, 2008.
- \$875,000 per quarter beginning July 1, 2008 is added to the fund for distribution. If production exceeds the fund balance, a proration of the distribution is performed.
- Program sunsets July 1, 2016.
- Reference Kansas Statutes 79-34, 155-159

Lyle Peterson, (785) 296-6080, lpeterson@kansascommerce.com

Biomass-to-Energy Plant Tax Credit

- An income tax credit, beginning with the 2006 tax year, for expenditures in new construction or expansion of the capacity in an existing plant.
- The credit is 10 percent of the taxpayer's qualified investment on the first \$250 million invested, and 5 percent of the taxpayer's qualified investment that exceeds \$250 million.
- Credit shall be taken in 10 equal annual installments.
- Before making a qualified investment, a taxpayer shall apply to the Secretary of Commerce to enter into an agreement for a tax credit.
- In addition to the income tax credit, a taxpayer shall be entitled to a deduction from Kansas adjusted gross income of the amortizable costs of a new facility. Such deduction shall be equal to 55 percent of the amortizable costs of the facility for the first taxable year, and 5 percent for the next nine taxable years. The provisions of this section shall apply to all taxable years commencing after December 31, 2006 and is administered by the Secretary of Revenue.
- Reference Kansas Statutes 79-32, 233-237

Lyle Peterson, (785) 296-6080, lpeterson@kansascommerce.com

Agriculture Value Added Loan

- Loans for feasibility studies, business plans or equity drives are typically funded at the 50 percent level.
- Loans for feasibility studies are forgivable if the project does not move forward. Equity drive loans are typically paid back within 120 days of successful conclusion of the equity drive.
- Other loans are interest-free for two years and 1 percent over prime for the balance of the loan.

Corey Mohn, (785) 296-3034, cmohn@kansascommerce.com

Enterprise Zone Incentives

- Investment tax credit of \$1,000 for each qualified business facility investment starting at \$51,000 or more.
- Jobs tax credit of \$1,500-\$2,500 with a minimum of two jobs created.
- Exemption from state and local sales tax on all tangible personal property or services purchased for the construction, enlarging or remodeling of a business. The sale and installation of machinery and equipment purchased for the installation at the business shall also be exempt from sales tax.
- Credits can be carried forward until used.

Darla Price, (785) 296-1868, dprice@kansascommerce.com

High Performance Incentive Program (HPIP)

- HPIP provides an investment tax credit to companies that pay above-average wages and have a strong commitment to skills development for their workers.
- Employer must invest 2 percent of payroll in training or participate in one of Commerce's workforce training programs.
- A capital investment tax credit equal to 10 percent of eligible investment that exceeds \$50,000.
- A project description must be submitted prior to any commitment of investment.
- Credits can be carried forward 10 years.
- A company can elect to take the High Performance Investment Credits or the Enterprise Zone Investment Tax Credits, but not both.

David Bybee, (785) 296-7174, dbybee@kansascommerce.com

CDBG – Economic Development Loans

- The maximum amount of funding is \$35,000 per created job up to \$750,000.
- At least 51 percent of the jobs must meet HUD's low-and-moderate income (LMI) test for the county in which the project is located.
- The local unit of government must apply for infrastructure funding on behalf of a private for-profit biofuel entity. Funds may be used for water, sewer, road or a rail spur.
- This program requires that half the funds be paid back over a 10-year period at a 2 percent rate. This payment stream is accomplished through a special assessment placed on the property.

Terry Marlin, (785) 29 ENERGY AND HOUSE UTILITIES

DATE: 1/23/2008

ATTACHMENT 2-1

Renewable Electric Cogeneration Facility Tax Credit

- “Renewable Electric Cogeneration Facility is a facility owned and operated by the owner of an industrial, commercial or agricultural process to generate electricity for use in such process to displace current or provide for future electricity use.
- Income tax credit equal to 10 percent of taxpayer’s qualified investment for the first \$50 million and an amount equal to 5 percent of the amount that exceeds \$50 million. Program is for taxable years commencing after December 31, 2006 and before January 1, 2012.
- Credit shall be taken in 10 equal annual installments.
- Before making a qualified investment, a taxpayer shall apply to the Secretary of Commerce to enter into an agreement for a tax credit.
- In addition to the income tax credit, a taxpayer shall be entitled to a deduction from Kansas adjusted gross income of the amortizable costs of a new facility. Such deduction shall be equal to 55 percent of the amortizable costs of the facility for the first taxable year, and 5 percent for the next nine taxable years. The provisions of this section shall apply to all taxable years commencing after December 31, 2006 and is administered by the Secretary of Revenue.
- Reference Enrolled House Bill No. 2038
Lyle Peterson, (785) 296-6080, lpeterson@kansascommerce.com
- New Renewable Electric Cogeneration Facility; The Kansas Development Finance Authority is authorized to issue revenue bonds in amounts sufficient to finance the construction costs of such facility.
- Reference Enrolled House Bill No. 2038
Rebecca Floyd, (785) 357-4445 Ext. 303, rfloyd@kdfa.org

Alternative-Fuel Fueling Station Tax Credit

- Expenditures for qualified alternative-fuel fueling stations shall be allowed a credit against the income tax imposed against the owner of such facility.
- For any qualified alternative-fuel fueling station placed in service on or after January 1, 1996 and before January 1, 2005, an amount equal to 50 percent of the total amount expended but not to exceed \$200,000 for each fueling station.
- For any qualified alternative-fuel fueling station placed in service on or after January 1, 2005 and before January 1, 2009, an amount equal to 40 percent of the total amount expended but not to exceed \$160,000 for each fueling station.
- For any qualified alternative-fuel fueling station placed in service on or after January 1, 2009, an amount equal to 40 percent of the total amount expended but not to exceed \$100,000 for each fueling station.
- This fund is administered by the Kansas Department of Revenue.
- Reference Enrolled House Bill No. 2145
Lyle Peterson, (785) 296-6080, lpeterson@kansascommerce.com

Storage and Blending Equipment Tax Credit

- “Storage and Blending Equipment” means any equipment which is used for storing and blending petroleum-based fuel and biodiesel, ethanol or other biofuel and is installed at a fuel terminal, refinery or biofuel production plant. This does not include equipment used only for denaturing ethyl alcohol.
- Income tax credit equal to 10 percent of the taxpayer’s qualified investment for the first \$10 million invested and an amount equal to 5 percent of the amount that exceeds \$10 million. Program is for taxable years commencing after December 31, 2006 and before January 1, 2012.
- Credit shall be taken in 10 equal annual installments.
- Before making a qualified investment, a taxpayer shall apply to the Secretary of Commerce to enter into an agreement for a tax credit.
- In addition to the income tax credit, a taxpayer shall be entitled to a deduction from Kansas adjusted gross income of the amortizable costs of a new facility. Such deduction shall be equal to 55 percent of the amortizable costs of the facility for the first taxable year, and 5 percent for the next nine taxable years. The provisions of this section shall apply to all taxable years commencing after December 31, 2006 and is administered by the Secretary of Revenue.
- Storage and Blending Equipment is exempt from all property taxes levied for the 10 taxable years immediately following installation.
- Reference Enrolled House Bill No. 2038
Lyle Peterson, (785) 296-6080, lpeterson@kansascommerce.com

Kansas Retail Dealers Incentive Fund

- Kansas Retail Dealers Incentive Fund was created for the payment of incentives to Kansas retail dealers who sell and dispense renewable fuels or biodiesel through a motor fuel pump.
- On January 1, 2009, and quarterly thereafter, \$400,000 will be directed from the general fund into the Kansas Retail Dealers Incentive Fund. On or after July 1, 2009 the unobligated balance in the fund shall not exceed \$1.5 million.
- The retail dealer’s renewable fuels threshold percentage must be 10 percent for any quarter in the calendar year 2009, and increase 1 percent per year to a total of 25 percent by the end of calendar year 2024. For any determination period in which the retail dealer attains the threshold percentage, the incentive rate is 6.5 cents per gallon.
- The retail dealer’s biodiesel threshold percentage must be 2 percent for any quarter in the calendar year 2009, and increase 2 percent per year to a total of 25 percent by the end of calendar year 2024. For any determination period in which the retail dealer attains the threshold percentage, the incentive rate is 3 cents per gallon.
- The provisions of the Kansas Retail Dealers Incentive Fund shall expire on January 1, 2026.
- Reference Enrolled House Bill No. 2145
Edie Martin, (785) 296-3307, edie_martin@kdor.state.ks.us

Waste Heat Utilization System

- “Waste Heat Utilization System” means facilities and equipment for the recovery of waste heat generated in the process of generating electricity and the use of such heat to generate additional electricity or to produce fuels from renewable energy resources or technologies.
- “Waste Heat Utilization Property” shall be exempt from all property taxes levied under the laws of the state of Kansas for 10 taxable years immediately following the taxable year in which construction or installation is complete.
- In addition to the property tax credit, a taxpayer shall be entitled to a deduction from Kansas adjusted gross income of the amortizable costs of a new facility. Such deduction shall be equal to 55 percent of the amortizable costs of the facility for the first taxable year, and 5 percent for the next nine taxable years. The provisions of this section shall apply to all taxable years commencing after December 31, 2006 and is administered by the Secretary of Revenue.
- Reference Enrolled House Bill No. 2038
Edie Martin, (785) 296-3307, edie_martin@kdor.state.ks.us
- Waste Heat Utilization System; The Kansas Development Finance Authority is authorized to issue revenue bonds in amounts sufficient to finance the construction, purchase and installation of such a system at an electric generation facility.
- Reference Enrolled House Bill No. 2038
Rebecca Floyd, (785) 357-4445 Ext. 303, rfloyd@kdfa.org

Coal or Coke Gasification Nitrogen Fertilizer Plant

- For the placement into service of a new integrated coal or coke gasification nitrogen fertilizer plant or the expansion of an existing integrated coal or coke gasification nitrogen fertilizer plant.
- Income tax credit equal to 10 percent of the taxpayer’s qualified investment for the first \$250,000 invested and an amount equal to 5 percent of the amount that exceeds \$250,000. Program is for taxable years commencing after December 31, 2005 and before January 1, 2011.
- Credit shall be taken in 10 equal annual installments.
- Before making a qualified investment, a taxpayer shall apply to the Secretary of Commerce to enter into an agreement for a tax credit.
- Reference Enrolled House Bill No. 2038
Lyle Peterson, (785) 296-6080, lpeterson@kansascommerce.com

Coal Gasification Power Plant

- For the placement of a new integrated coal gasification power plant into service or the expansion of an existing integrated coal gasification power plant.
- Income tax credit equal to 10 percent of the taxpayer’s qualified investment for the first \$250,000 invested and an amount equal to 5 percent of the amount that exceeds \$250,000. Program is for taxable years commencing after December 31, 2005 and before January 1, 2011.
- Credit shall be taken in 10 equal annual installments.
- Before making a qualified investment, a taxpayer shall apply to the Kansas Corporation Commission to enter into an agreement for a tax credit.
- Reference Enrolled House Bill No. 2038
Larry Holloway, (785) 271-3222, l.holloway@kcc.ks.gov

Workforce Training Funds

- The Kansas Industrial Training program is designed to help new and expanding companies offset the costs of training workers for new jobs.
- Training funds can be used to reimburse negotiated costs for pre-employment, on-the-job and/or classroom training.
- The average reimbursement level for Kansas Industrial Training is \$300-\$500 per position.
Becky Kester, (785) 296-4238, bkester@kansascommerce.com

July 2007

To: House Energy and Utilities Committee

It was requested that additional information for the committee members be provided as a result of my "Testimony Regarding Internal Review of Existing BioFuel Incentives" on January 16, 2008. I have also provided under separate copy a list of all incentives that we utilize in commerce as we work with the biofuels industry.

Biofuel subsidies on the state and federal level, sunset date and production levels.

Ethyl Alcohol Incentive

State of Kansas: Kansas qualified Ethyl Alcohol producers shall be paid an incentive of \$0.075 for each gallon sold by the producer. Producers who were in production prior to July 1, 2001 and increase production capacity by 5 million gallons qualify. Producers who commenced production after July 1, 2001 and who sold at least 5 million gallons qualify. Each is eligible for the incentive for a maximum of 15 million gallons sold and may be payable for no more than seven years to any one producer. This program will sunset on July 1, 2011.

Federal: Small Ethanol Producer Tax Credit. This credit is \$0.10 per gallon income tax credit on Ethanol produced in a tax year. To qualify as a small producer you must produce less than 60 million gallons per year and receive credit on no more than 15 million gallons per year.

Volumetric Ethanol Excise Tax Credit. Each gallon of alcohol used by the taxpayer in producing any alcohol fuel mixture for sale or use in a trade or business of the taxpayer is allowed a \$0.51 per gallon tax credit. "Alcohol" includes Methanol and Ethanol. An alcohol fuel mixture is defined as a mixture of alcohol and a taxable fuel (gasoline). There is no maximum production numbers associated with this tax credit. This program will sunset on December 31, 2010.

Biodiesel Fuel Incentive

State of Kansas: Kansas qualified Biodiesel fuel producers shall be paid an incentive of \$0.30 for each gallon sold by the producer. There are no minimum or maximum production numbers necessary to qualify for this incentive. This program will sunset on July 1, 2016.

Federal: Small Agri-Biodiesel Producer Tax Credit. This credit is \$0.10 per gallon on Agri-Biodiesel produced in a tax year. Agri-Biodiesel is defined as Biodiesel produced from first-use vegetable oils (soybean, canola, sunflower, etc.) and animal fats. To qualify as a small producer you must produce less than 60 million gallons per year and receive credit on no more than 15 million gallons per year.

ENERGY AND HOUSE UTILITIES

Blenders Biodiesel Tax Credit. This is for the blender of Biodiesel and it does get confusing. The definition on the federal level of a Biodiesel mixture is a mixture of Agri-Biodiesel or Biodiesel and diesel fuel containing at least 0.1 percent by volume of diesel fuel. Biodiesel is defined as Biodiesel produced from used oils and grease. A producer can become a blender by taking 999 gallons of Biodiesel produced at the plant and mixing in 1 gallon of petroleum-based diesel fuel. They have then made a Biodiesel mixture as defined by the federal government. The Federal programs will sunset on December 31, 2008. Extension of these programs is tied up in the current Ag bill.

Flex Fuel Vehicles

I was able to put together some numbers on flex fueled vehicles in Kansas and surrounding states. These numbers come from the Alliance of Automobile Manufacturers.

Kansas	48,519
Nebraska	36,859
Iowa	58,049
Missouri	107,888
Oklahoma	55,549
Colorado	63,725

The Kansas Department of Revenue does not keep raw data on types of vehicles sold in Kansas. The Kansas Department of Revenue provides information to R.L. Polk & Company, who is a provider of information to the automotive industry. R.L. Polk & Company compiles the raw data nationally and then is able to disseminate the information.

Summary of Kansas Alternative Energy Incentives and Tax Credits

Ethyl Alcohol Production Incentive

- \$0.075 for each gallon sold by the producer.
- Producers who are in production prior to July 1, 2001 and who increase production capacity on or after July 1, 2001 by an amount of 5 million gallons qualify for the incentive for a maximum of 15 million gallons sold per year.
- Producers who commenced production on or after July 1, 2001 and who sold at least 5 million gallons qualify for the incentive for a maximum of 15 million gallons sold per year.
- \$875,000 per quarter is added to the fund for distribution. If production exceeds the fund balance, a proration of the distribution is performed.
- Program sunsets July 1, 2011.
- Reference Kansas Statutes 79-34,160-164

Edie Martin, (785) 296-3307, edie_martin@kdor.state.ks.us

Biodiesel Fuel Producer Incentive

- \$0.30 for each gallon sold by the producer.
- Kansas qualified biodiesel fuel producers may file for the incentive beginning July 1, 2007.
- A one-time payment of \$400,000 will be added to the fund for distribution through June 30, 2008.
- \$875,000 per quarter beginning July 1, 2008 is added to the fund for distribution. If production exceeds the fund balance, a proration of the distribution is performed.
- Program sunsets July 1, 2016.
- Reference Kansas Statutes 79-34, 155-159

Edie Martin, (785) 296-3307, edie_martin@kdor.state.ks.us

Biomass-to-Energy Plant Tax Credit

- An income tax credit for expenditures in new construction or expansion of the capacity in an existing plant commencing after December 31, 2005 and before January 1, 2011.
- The credit is 10 percent of the taxpayer's qualified investment on the first \$250 million invested, and 5 percent of the taxpayer's qualified investment that exceeds \$250 million.
- Credit shall be taken in 10 equal annual installments.
- Before making a qualified investment, a taxpayer shall apply to the Secretary of Commerce to enter into an agreement for a tax credit.
- In addition to the income tax credit, a taxpayer shall be entitled to a deduction from Kansas adjusted gross income of the amortizable costs of a new facility. Such deduction shall be equal to 55 percent of the amortizable costs of the facility for the first taxable year, and 5 percent for the next nine taxable years. The provisions of this section shall apply to all taxable years commencing after December 31, 2006 and is administered by the Secretary of Revenue.
- Reference Kansas Statutes 79-32, 233-237

Lyle Peterson, (785) 296-6080, lpeterson@kansascommerce.com

Renewable Electric Cogeneration Facility Tax Credit

- "Renewable Electric Cogeneration Facility" is a facility owned and operated by the owner of an industrial, commercial or agricultural process to generate electricity for use in such process to displace current or provide for future electricity use.
- Income tax credit equal to 10 percent of taxpayer's qualified investment for the first \$50 million and an amount equal to 5 percent of the amount that exceeds \$50 million. Program is for taxable years commencing after December 31, 2006 and before January 1, 2012.
- Credit shall be taken in 10 equal annual installments.
- Before making a qualified investment, a taxpayer shall apply to the Secretary of Commerce to enter into an agreement for a tax credit.
- In addition to the income tax credit, a taxpayer shall be entitled to a deduction from Kansas adjusted gross income of the amortizable costs of a new facility. Such deduction shall be equal to 55 percent of the amortizable costs of the facility for the first taxable year, and 5 percent for the next nine taxable years. The provisions of this section shall apply to all taxable years commencing after December 31, 2006 and is administered by the Secretary of Revenue.
- Reference Enrolled House Bill No. 2038

Lyle Peterson, (785) 296-6080, lpeterson@kansascommerce.com

- New Renewable Electric Cogeneration Facility: The Kansas Development Finance Authority is authorized to issue revenue bonds in amounts sufficient to finance the construction costs of such facility.
- Reference Enrolled House Bill No. 2038
Rebecca Floyd, (785) 357-4445 Ext. 303, rfloyd@kdfa.org

Alternative-Fuel Tax Credit

- Any taxpayer who makes expenditures for a qualified alternative-fueled motor vehicle or alternative-fuel fueling station shall be allowed a credit against the income tax imposed.
- For any qualified alternative-fueled motor vehicle placed in service on or after January 1, 1996, and before January 1, 2005, an amount equal to 50% of the incremental cost or conversion cost for each qualified alternative-fueled motor vehicle but not to exceed \$3,000 for each such motor vehicle with a gross vehicle weight of less than 10,000 lbs.; \$5,000 for a heavy duty motor vehicle with a gross vehicle weight of greater than 10,000 lbs. but less than 26,000 lbs.; and \$50,000 for motor vehicles having a gross vehicle weight of greater than 26,000 lbs.
- For any qualified alternative-fueled motor vehicle placed in service on or after January 1, 2005, an amount equal to 40% of the incremental cost or conversion cost for each qualified alternative-fueled motor vehicle, but not to exceed \$2,400 for each such motor vehicle with a gross vehicle weight of less than 10,000 lbs.; \$4,000 for a heavy duty motor vehicle with a gross vehicle weight of greater than 10,000 lbs. but less than 26,000 lbs.; and \$40,000 for motor vehicles having a gross vehicle weight of greater than 26,000 lbs.
- If no credit has been claimed, a credit in an amount not exceeding the lesser of 5% of the cost of the vehicle or \$750 shall be allowed to a taxpayer who purchases a motor vehicle equipped by the vehicle manufacturer with an alternative fuel system and who is unable or elects not to determine the exact basis attributable to such property. The credit shall be allowed only to the first individual to take title to such motor vehicle, other than for resale. The credit for motor vehicles which are capable of operating on a blend of 85% ethanol and 15% gasoline shall be allowed for taxable years commencing after December 31, 1999, only if the individual claiming the credit furnishes evidence of the purchase, during the period of time beginning with the date of purchase of such vehicle and ending on December 31 of the next succeeding calendar year, of 500 gallons of such ethanol and gasoline blend as may be required or is satisfactory to the Secretary of Revenue.
- For any qualified alternative-fuel fueling station placed in service on or after January 1, 1996 and before January 1, 2005, an amount equal to 50 percent of the total amount expended but not to exceed \$200,000 for each fueling station.
- For any qualified alternative-fuel fueling station placed in service on or after January 1, 2005 and before January 1, 2009, an amount equal to 40 percent of the total amount expended but not to exceed \$160,000 for each fueling station.
- For any qualified alternative-fuel fueling station placed in service on or after January 1, 2009, an amount equal to 40 percent of the total amount expended but not to exceed \$100,000 for each fueling station.
- This fund is administered by the Kansas Department of Revenue.
- Reference Enrolled House Bill No. 2145
Kathleen Smith, (785) 296-3070, Kathleen_Smith@kdor.state.ks.us

Storage and Blending Equipment Tax Credit

- “Storage and Blending Equipment” means any equipment which is used for storing and blending petroleum-based fuel and biodiesel, ethanol or other biofuel and is installed at a fuel terminal, refinery or biofuel production plant. This does not include equipment used only for denaturing ethyl alcohol.
- Income tax credit equal to 10 percent of the taxpayer’s qualified investment for the first \$10 million invested and an amount equal to 5 percent of the amount that exceeds \$10 million. Program is for taxable years commencing after December 31, 2006 and before January 1, 2012.
- Credit shall be taken in 10 equal annual installments.
- Before making a qualified investment, a taxpayer shall apply to the Secretary of Commerce to enter into an agreement for a tax credit.
- In addition to the income tax credit, a taxpayer shall be entitled to a deduction from Kansas adjusted gross income of the amortizable costs of a new facility. Such deduction shall be equal to 55 percent of the amortizable costs of the facility for the first taxable year, and 5 percent for the next nine taxable years. The provisions of this section shall apply to all taxable years commencing after December 31, 2006 and is administered by the Secretary of Revenue.
- Storage and Blending Equipment is exempt from all property taxes levied for the 10 taxable years immediately following installation.
- Reference Enrolled House Bill No. 2038
Lyle Peterson, (785) 296-6080, lpeterson@kansascommerce.com

Kansas Retail Dealers Incentive Fund

- Kansas Retail Dealers Incentive Fund was created for the payment of incentives to Kansas retail dealers who sell and dispense renewable fuels or biodiesel through a motor fuel pump.
- On January 1, 2009, and quarterly thereafter, \$400,000 will be directed from the general fund into the Kansas Retail Dealers Incentive Fund. On or after July 1, 2009 the unobligated balance in the fund shall not exceed \$1.5 million.
- The retail dealer’s renewable fuels threshold percentage must be 10 percent for any quarter in the calendar year 2009, and increase 1 percent per year to a total of 25 percent by the end of calendar year 2024. For any determination period in which the retail dealer attains the threshold percentage, the incentive rate is 6.5 cents per gallon.
- The retail dealer’s biodiesel threshold percentage must be 2 percent for any quarter in the calendar year 2009, and increase 2 percent per year to a total of 25 percent by the end of calendar year 2024. For any determination period in which the retail dealer attains the threshold percentage, the incentive rate is 3 cents per gallon.
- The provisions of the Kansas Retail Dealers Incentive Fund shall expire on January 1, 2026.
- Reference Enrolled House Bill No. 2145
Edie Martin, (785) 296-3307, edie_martin@kdor.state.ks.us

If you have additional questions, please let me know.

Lyle E. Peterson
BioProducts Specialist
785-296-6080