

**422.11N Ethanol promotion tax credit.**

1. As used in this section, unless the context otherwise requires:
  - a. “E-85 gasoline”, “ethanol”, “ethanol blended gasoline”, “gasoline”, “retail dealer”, and “retail motor fuel site” mean the same as defined in section 214A.1.
  - b. “Flexible fuel vehicle” means the same as defined in section 452A.2.
  - c. “Motor fuel” means the same as defined in section 452A.2.
  - d. “Motor fuel pump” means the same as defined in section 214.1.
  - e. “Sell” means to sell on a retail basis.
  - f. “Tax credit” means the ethanol promotion tax credit as provided in this section.
2. The special terms provided in section 452A.31 shall also apply to this section.
3. The taxes imposed under this division, less the credits allowed under section 422.12, shall be reduced by an ethanol promotion tax credit for each tax year that the taxpayer is eligible to claim the tax credit under this section. In order to be eligible, all of the following must apply:
  - a. The taxpayer is a retail dealer who sells and dispenses ethanol blended gasoline through a motor fuel pump located at the retail dealer’s retail motor fuel site during the determination period or parts of the determination periods for which the tax credit is claimed as provided in this section.
  - b. The retail dealer complies with requirements of the department to administer this section.
4. a. When first claiming the tax credit, the retail dealer shall elect to compute and claim the tax credit on a company-wide basis or site-by-site basis in the same manner as provided in section 452A.33.
  - (1) In making a company-wide election, the retail dealer must compute and claim the tax credit based on calculations as provided in this section for all retail motor fuel sites where the retail dealer sells and dispenses motor fuel on a retail basis. The retail dealer shall not claim the tax credit based on a calculation which does not include all such retail motor fuel sites. A retail dealer shall use the company-wide election in order to calculate the retail dealer’s biofuel threshold percentage as provided in subsection 5, paragraph “b”.
  - (2) In making a site-by-site election, the retail dealer must compute and claim the tax credit based on calculations as provided in this section for each retail motor fuel site where the retail dealer sells and dispenses motor fuel on a retail basis. The retail dealer shall not claim the tax credit based on a calculation which includes two or more retail motor fuel sites. Nothing in this subparagraph requires the retail dealer to compute or claim a tax credit for a particular retail motor fuel site. The retail dealer shall not use the site-by-site election in order to calculate the retail dealer’s biofuel threshold percentage as provided in subsection 5, paragraph “b”.
  - b. Once the retail dealer makes an election as provided in paragraph “a”, the retail dealer shall not change the election without the written consent of the department.
5. In order to receive the tax credit, the retail dealer must calculate all of the following:
  - a. The retail dealer’s biofuel distribution percentage which is the sum of the retail dealer’s total ethanol gallonage plus the retail dealer’s total biodiesel gallonage expressed as a percentage of the retail dealer’s total gasoline gallonage, in the retail dealer’s applicable determination period.
  - b. The retail dealer’s biofuel threshold percentage is as follows:
    - (1) For a retail dealer who sells and dispenses more than two hundred thousand gallons of motor fuel in an applicable determination period, the retail dealer’s biofuel threshold percentage is as follows:
      - (a) Ten percent for the determination period beginning on January 1, 2009, and ending December 31, 2009.
      - (b) Eleven percent for the determination period beginning on January 1, 2010, and ending December 31, 2010.
      - (c) Twelve percent for the determination period beginning on January 1, 2011, and ending December 31, 2011.
      - (d) Thirteen percent for the determination period beginning on January 1, 2012, and ending December 31, 2012.

(e) Fourteen percent for the determination period beginning on January 1, 2013, and ending December 31, 2013.

(f) Fifteen percent for the determination period beginning on January 1, 2014, and ending December 31, 2014.

(g) Seventeen percent for the determination period beginning on January 1, 2015, and ending December 31, 2015.

(h) Nineteen percent for the determination period beginning on January 1, 2016, and ending December 31, 2016.

(i) Twenty-one percent for the determination period beginning on January 1, 2017, and ending December 31, 2017.

(j) Twenty-three percent for the determination period beginning on January 1, 2018, and ending December 31, 2018.

(k) Twenty-five percent for each determination period in the period beginning on January 1, 2019, and ending on December 31, 2020.

(2) For a retail dealer who sells and dispenses two hundred thousand gallons of motor fuel or less in an applicable determination period, the biofuel threshold percentages shall be:

(a) Six percent for the determination period beginning on January 1, 2009, and ending December 31, 2009.

(b) Six percent for the determination period beginning on January 1, 2010, and ending December 31, 2010.

(c) Ten percent for the determination period beginning on January 1, 2011, and ending December 31, 2011.

(d) Eleven percent for the determination period beginning on January 1, 2012, and ending December 31, 2012.

(e) Twelve percent for the determination period beginning on January 1, 2013, and ending December 31, 2013.

(f) Thirteen percent for the determination period beginning on January 1, 2014, and ending December 31, 2014.

(g) Fourteen percent for the determination period beginning on January 1, 2015, and ending December 31, 2015.

(h) Fifteen percent for the determination period beginning on January 1, 2016, and ending December 31, 2016.

(i) Seventeen percent for the determination period beginning on January 1, 2017, and ending December 31, 2017.

(j) Nineteen percent for the determination period beginning on January 1, 2018, and ending December 31, 2018.

(k) Twenty-one percent for the determination period beginning on January 1, 2019, and ending December 31, 2019.

(l) Twenty-five percent for the determination period beginning on January 1, 2020, and ending December 31, 2020.

(3) (a) Notwithstanding paragraph "a", the governor may adjust a biofuel threshold percentage for a determination period if the governor finds that exigent circumstances exist. Exigent circumstances exist due to potential substantial economic injury to the state's economy. Exigent circumstances also exist if it is probable that a substantial number of retail dealers cannot comply with a biofuel threshold percentage during a determination period due to any of the following:

(i) Less than the target number of flexible fuel vehicles are registered under chapter 321. The target numbers of flexible fuel vehicles are as follows:

(A) On January 1, 2011, two hundred fifty thousand.

(B) On January 1, 2014, three hundred fifty thousand.

(C) On January 1, 2017, four hundred fifty thousand.

(D) On January 1, 2019, five hundred fifty thousand.

(ii) A shortage in the biofuel feedstock resulting in a dramatic decrease in biofuel inventories.

(b) If the governor finds that exigent circumstances exist, the governor may reduce the applicable biofuel threshold percentage by replacing it with an adjusted biofuel threshold

percentage. The governor shall consult with the department of revenue and the office of renewable fuels and coproducts pursuant to section 159A.3. The governor shall make the adjustment by giving notice of intent to issue a proclamation which shall take effect not earlier than thirty-five days after publication in the Iowa administrative bulletin of a notice to issue the proclamation. The governor shall provide a period of notice and comment in the same manner as provided in section 17A.4, subsection 1. The adjusted biofuel threshold percentage shall be effective for the following determination period.

c. The retail dealer's biofuel threshold percentage disparity which is a positive percentage difference obtained by taking the minuend which is the retail dealer's biofuel threshold percentage and subtracting from it the subtrahend which is the retail dealer's biofuel distribution percentage, in the retail dealer's applicable determination period.

6. a. For a retail dealer whose tax year is the same as a determination period beginning on January 1 and ending on December 31, the retail dealer's tax credit is calculated by multiplying the retail dealer's total ethanol gallonage by a tax credit rate, which may be adjusted based on the retail dealer's biofuel threshold percentage disparity. The tax credit rate is as follows:

(1) For any tax year in which the retail dealer has attained a biofuel threshold percentage for the determination period, the tax credit rate is eight cents.

(2) For any tax year in which the retail dealer has not attained a biofuel threshold percentage for the determination period, the tax credit rate shall be adjusted based on the retail dealer's biofuel threshold percentage disparity. The amount of the adjusted tax credit rate is as follows:

(a) If the retail dealer's biofuel threshold percentage disparity equals two percent or less, the tax credit rate is six cents.

(b) If the retail dealer's biofuel threshold percentage disparity equals more than two percent but not more than four percent, the tax credit rate is as follows:

(i) For calendar year 2011, two and one-half cents.

(ii) For calendar year 2012 and for each subsequent calendar year, four cents.

(c) A retail dealer is not eligible for a tax credit if the retail dealer's biofuel threshold percentage disparity equals more than four percent.

b. For a retail dealer whose tax year is not the same as a determination period beginning on January 1 and ending on December 31, the retail dealer shall calculate the tax credit as follows:

(1) If a retail dealer has not claimed a tax credit in the retail dealer's previous tax year, the retail dealer may claim the tax credit in the retail dealer's current tax year for that period beginning on January 1 of the retail dealer's previous tax year to the last day of the retail dealer's previous tax year. For that period the retail dealer shall calculate the tax credit in the same manner as a retail dealer who will calculate the tax credit on December 31 of that calendar year as provided in paragraph "a".

(2) (a) For the period beginning on the first day of the retail dealer's tax year until December 31, the retail dealer shall calculate the tax credit in the same manner as a retail dealer who calculates the tax credit on that same December 31 as provided in paragraph "a".

(b) For the period beginning on January 1 to the end of the retail dealer's tax year, the retail dealer shall calculate the tax credit in the same manner as a retail dealer who will calculate the tax credit on the following December 31 as provided in paragraph "a".

7. a. A retail dealer is eligible to claim an ethanol promotion tax credit as provided in this section even though the retail dealer claims one or all of the following related tax credits:

(1) The E-85 gasoline promotion tax credit pursuant to section 422.11O.

(2) The E-15 plus gasoline promotion tax credit pursuant to section 422.11Y.

b. The retail dealer may claim the ethanol promotion tax credit and one or more of the related tax credits as provided in paragraph "a" for the same tax year and for the same ethanol gallonage.

8. Any credit in excess of the retail dealer's tax liability shall be refunded. In lieu of claiming a refund, the retail dealer may elect to have the overpayment shown on the retail dealer's final, completed return credited to the tax liability for the following tax year.

9. An individual may claim the tax credit allowed a partnership, limited liability company,

S corporation, estate, or trust electing to have the income taxed directly to the individual. The amount claimed by the individual shall be based upon the pro rata share of the individual's earnings of a partnership, limited liability company, S corporation, estate, or trust.

10. This section is repealed on January 1, 2021.

2006 Acts, ch 1142, §39, 49; 2006 Acts, ch 1175, §10 – 14, 17, 23; 2007 Acts, ch 126, §66; 2007 Acts, ch 161, §15, 22; 2010 Acts, ch 1031, §248; 2011 Acts, ch 25, §143; 2011 Acts, ch 113, §3 – 9, 13, 14

Referred to in §2.48, 422.5, 422.11O, 422.11Y, 422.16, 422.33

[SP] For provisions relating to availability and calculation of an ethanol promotion tax credit in calendar year 2020 for a retail dealer whose tax year ends prior to December 31, 2020, see 2006 Acts, ch 1142, §49; 2006 Acts, ch 1175, §17; 2011 Acts, ch 113, §11, 13, 14

[SP] 2011 amendments by 2011 Acts, ch 113, §3 – 9, take effect May 26, 2011, and apply retroactively to tax years beginning on and after January 1, 2011; 2011 Acts, ch 113, §13, 14