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HOUSE BILL NO. 1744**AMENDMENT IN THE NATURE OF A SUBSTITUTE**(Proposed by the House Committee on Finance
on February 2, 2005)

(Patron Prior to Substitute—Delegate Putney)

A BILL to amend and reenact § 58.1-439.7 of the Code of Virginia and to amend the Code of Virginia by adding sections numbered 58.1-338.1 and 58.1-338.2, relating to individual and corporate income tax credits for machinery and equipment for processing recyclable materials.

Be it enacted by the General Assembly of Virginia:

1. That § 58.1-439.7 of the Code of Virginia is amended and reenacted and that the Code of Virginia is amended by adding sections numbered 58.1-338.1 and 58.1-338.2 as follows:

§ 58.1-338.1. Carry over period for a tax credit acquired under former law for purchase of machinery and equipment for processing recyclable materials.

Any individual having a tax credit under former § 58.1-338 based on the purchase price paid for recycling machinery and equipment that was acquired on or after January 1, 1995, and having any unused portion of the credit remaining on January 1, 2004, may carry over the unused portion of the credit and apply it against the tax imposed pursuant to § 58.1-320 for the 20 taxable years succeeding the year in which the individual was first allowed to take the credit until the total credit amount is used.

§ 58.1-338.2. Tax credit for purchase of machinery and equipment for processing recyclable materials.

A. For taxable years beginning on or after January 1, 2004, but before January 1, 2007, any individual shall be allowed a credit against the tax imposed pursuant to § 58.1-320 in an amount equal to 10 percent of the purchase price paid during the taxable year for machinery and equipment used exclusively in or on the premises of manufacturing facilities or plant units within the Commonwealth that manufacture, process, compound, or produce for sale items of tangible personal property from recyclable materials. For purposes of determining "purchase price paid" under this section, the taxpayer may use the original total capitalized cost of such machinery and equipment, less capitalized interest. The Department of Environmental Quality shall certify that such machinery and equipment are integral to the recycling process before the individual shall be entitled to the tax credit under this section. The individual shall also submit purchase receipts, invoices, and such other documentation as may be necessary to confirm the taxpayer's statement of purchase price paid, with the income tax return to verify the amount of purchase price paid for the recycling machinery and equipment.

B. The total credit allowed under this section in any taxable year shall not exceed 40 percent of the Virginia income tax liability of such taxpayer.

C. Any tax credit not used for the taxable year in which the purchase price on recycling machinery and equipment was paid may be carried over for credit against the individual's income taxes in the 20 succeeding taxable years until the total credit amount is used.

D. For purposes of this section, the amount of a credit earned by a pass-through entity as defined in § 58.1-390.1 shall be allocated to the owners in proportion to their ownership or interest in the pass-through entity.

E. Any taxpayer holding a credit under this article may transfer unused credits for use by another taxpayer on Virginia income tax returns. A taxpayer who transfers any amount of credit under this article shall file a notification of such transfer to the Department in accordance with procedures and forms prescribed by the Tax Commissioner. For purposes of this subsection, "unused credit" means (i) the amount of credit that may be claimed by the taxpayer for the taxable year in accordance with subdivision A of this section plus (ii) the amount of credit that may be carried forward by the taxpayer to subsequent taxable years remaining in the carry-forward period in accordance with the maximum annual credit limitations and the maximum carry-forward period under this section and § 58.1-338.1, which amounts have not been claimed as credit or transferred by the taxpayer.

F. The Tax Commissioner shall establish guidelines regarding procedures for transferring the tax credit provided by this section. Such guidelines shall be exempt from Administrative Process Act (§ 2.2-4000 et seq.) but shall be published as provided in § 58.1-204. Actions of the tax Commissioner pursuant to such guidelines shall be sustained unless unreasonable or plainly inconsistent with applicable law.

§ 58.1-439.7. Tax credit for purchase of machinery and equipment for processing recyclable materials.

A. For taxable years beginning on and after January 1, 1999, but before January 1, 2007, a corporation shall be allowed a credit against the tax imposed pursuant to § 58.1-400 in an amount equal to 10 percent of the purchase price paid during the taxable year for machinery and equipment used

60 exclusively in or on the premises of manufacturing facilities or plant units which manufacture, process,
61 compound, or produce items of tangible personal property from recyclable materials, within the
62 Commonwealth, for sale. For purposes of determining "purchase price paid" under this section, the
63 taxpayer may use the original total capitalized cost of such machinery and equipment, less capitalized
64 interest. The Department of Environmental Quality shall certify that such machinery and equipment are
65 integral to the recycling process before the corporation shall be entitled to the tax credit under this
66 section. The corporation shall also submit purchase receipts, invoices, and such other documentation as
67 may be necessary to confirm the taxpayer's statement of purchase price paid, with the income tax return
68 to verify the amount of purchase price paid for the recycling machinery and equipment.

69 B. The total credit allowed under this section in any taxable year shall not exceed 40 percent of the
70 Virginia income tax liability of such taxpayer.

71 C. Any tax credit not used for the taxable year in which the purchase price on recycling machinery
72 and equipment was paid may be carried over for credit against the corporation's income taxes in the 40
73 20 succeeding taxable years until the total credit amount is used.

74 D. A taxpayer claiming the tax credit provided by § 58.1-439.8 shall not be eligible for the tax credit
75 provided by this section.

76 E. For purposes of this section, the amount of any credit earned by a pass-through entity as defined
77 in § 58.1-390.1 shall be allocated to the owners in proportion to their ownership or interest in the
78 pass-through entity.

79 F. Any taxpayer holding a credit under this article may transfer unused credits for use by another
80 taxpayer on Virginia income tax returns. A taxpayer who transfers any amount of credit under this
81 article shall file a notification of such transfer to the Department in accordance with procedures and
82 forms prescribed by the Tax Commissioner. For purposes of this subsection, "unused credit" means (i)
83 the amount of credit that may be claimed by the taxpayer for the taxable year in accordance with
84 subdivision A of this section plus (ii) the amount of credit that may be carried forward by the taxpayer
85 to subsequent taxable years remaining in the carry-forward period in accordance with the maximum
86 annual credit limitations and the maximum carry-forward period under this section, which amounts have
87 not been claimed as credit or transferred by the taxpayer.

88 G. The Tax Commissioner shall establish guidelines regarding procedures for transferring the tax
89 credit provided by this section. Such guidelines shall be exempt from the Administrative Process Act
90 (§ 2.2-4000 et seq.) but shall be published as provided in § 58.1-204. Actions of the Tax Commissioner
91 pursuant to such guidelines shall be sustained unless unreasonable or plainly inconsistent with
92 applicable law.