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SENATE BILL NO. 1205

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the Senate Committee on Finance
on January 28, 2015)

(Patron Prior to Substitute—Senator Wagner)

A BILL to amend and reenact § 58.1-439.7 of the Code of Virginia, relating to the recyclable materials tax credit.

Be it enacted by the General Assembly of Virginia:

1. That § 58.1-439.7 of the Code of Virginia is amended and reenacted as follows:

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

A. 1. For taxable years beginning on and after January 1, 1999, but before January 1, 2015 2020, a taxpayer shall be allowed a credit against the tax imposed pursuant to Articles 2 (§ 58.1-320 et seq.) and 10 (§ 58.1-400 et seq.) of Chapter 3 of this title, in an amount equal to 40 20 percent of the purchase price paid during the taxable year for machinery and equipment used ~~exclusively~~ predominantly in or on the premises of manufacturing facilities or plant units which manufacture, process, compound, or produce items of tangible personal property from recyclable materials, within the Commonwealth, for sale. 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.

2. The Department of Environmental Quality shall certify that such machinery and equipment are integral to the recycling process before the taxpayer shall be ~~entitled to~~ allowed the tax credit under this section. The taxpayer shall also submit purchase receipts, ~~and 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.

3. No taxpayer shall be denied the credit under this section based solely on another person's use of the tangible personal property produced by the taxpayer, provided that the tangible personal property was sold by the taxpayer to an unaffiliated person in an arm's-length sale.

4. No credit shall be allowed under this section for machinery and equipment unless the machinery and equipment manufacture, process, compound, or produce items of tangible personal property from recyclable materials.

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 taxpayer's income taxes in the 10 succeeding taxable years until the total credit amount is used.

D. The Department of Taxation shall administer the tax credits under this section. Beginning with credits allowable for taxable year 2015, in no case shall the Department issue more than \$2 million in tax credits pursuant to this section in any fiscal year of the Commonwealth. A taxpayer shall not be allowed to claim any tax credit unless it has applied to the Department of Environmental Quality for certification as described in subdivision A 2 and the Department of Environmental Quality has issued a written certification stating that the machinery and equipment purchased are integral to the recycling process. If the amount of tax credits approved under this section by the Department of Taxation for any taxable year exceeds \$2 million, the Department shall apportion the credits by dividing \$2 million by the total amount of tax credits so approved, to determine the percentage of otherwise allowed tax credits each taxpayer shall receive.

~~D.~~ E. In the event a corporation converts to a partnership, limited liability company, or electing small business corporation (S corporation), such business entity shall be entitled to any unused credits of the corporation. Credits earned by a partnership, limited liability company, electing small business corporation (S corporation), or a predecessor corporation entitled to such credits, shall be allocated to the individual partners, members, or shareholders, respectively, in proportion to their ownership or interest in such business entities.

2. That the Department of Taxation, in consultation with the Department of Environmental Quality, shall develop and update as necessary guidelines implementing the provisions of this act. Such guidelines shall be exempt from the provisions of the Administrative Process Act (§ 2.2-4000 et seq.).

3. That the provisions of this act shall become effective for taxable years beginning on or after January 1, 2015.