

Division of Land Protection & Revitalization



Memorandum

SUBJECT: Division of Land Protection & Revitalization Guidance
Document No. LPR-2020-01 — Guidance for the Certification of
Recycling Machinery and Equipment for State Income Tax Credit

TO: Taxpayers as Owners/Operators of Recycling Machinery and Equipment
in the Commonwealth of Virginia

FROM: Jeffery Steers *Jeffery A. Steers*
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Through: Leslie Beckwith *Leslie Beckwith*
Director, Office of Financial Responsibility and Waste Programs

DATE: January 21, 2021

Summary:

The Code of Virginia, § 58.1-439.7, directs DEQ to certify certain machinery and equipment that is used for advanced recycling or integral to the recycling process before the taxpayer is entitled to a state income tax credit.

The attached updated guidance document reflects the legislative changes to § 58.1-439.7 in 2020. *This guidance replaces, Waste Guidance Memo No LPR-2015 - Guidance for the Certification of Recycling Machinery and Equipment for State Income Tax Credit.* Specifically, the following sections of the guidance were updated:

The tax credit continues to remain in effect for taxpayers ("C" corporations, individuals and "pass-through" corporations) until January 1, 2025.

Qualifying recycling machinery and equipment include:

(i) machinery and equipment used 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 and (ii) machinery and equipment used predominantly in or on the premises of facilities that are predominantly engaged in advanced recycling.

The Department of Taxation will be developing its own guidance document to reflect changes to § 58.1-439.7 relative to its processing of the DEQ certified applications. For assistance on taxation matters please contact the Virginia Department of Taxation at 804-225-4265.

A copy of the 2020 legislation is attached.

Electronic Copy:

Once effective, an electronic copy of this guidance will be available on the Virginia Regulatory Town Hall under the Virginia Waste Management Board at <https://townhall.virginia.gov/L/gdocs.cfm?boardid=119>

Contact Information:

Please contact Sanjay Thirunagari at (804) 698-4193 or sanjay.thirunagari@deq.virginia.gov with any questions regarding the application of this guidance.

Certification: As required by Subsection B of § 2.2-4002.1 of the APA, the agency certifies that this guidance document conforms to the definition of a guidance document in § 2.2-4101 of the Code of Virginia.

Disclaimer:

This document is provided as guidance and, as such, set forth standard operation procedures for the agency. However, it does not mandate any particular method nor does it prohibit any alternative method. If alternative proposals are made, such proposals will be reviewed and accepted or denied based upon their technical adequacy and compliance with appropriate laws and regulations.

COMMONWEALTH OF VIRGINIA

Department of Environmental Quality

GUIDANCE FOR THE CERTIFICATION OF RECYCLING MACHINERY AND EQUIPMENT FOR STATE INCOME TAX CREDIT UNDER SECTIONS 58.1-439.7 OF THE CODE OF VIRGINIA

Revised January 21, 2021

**GUIDANCE FOR THE CERTIFICATION OF
RECYCLING MACHINERY AND EQUIPMENT
FOR STATE INCOME TAX CREDIT**

INTRODUCTION:

Section 58.1-439.7 of the Code of Virginia directs the Department of Environmental Quality to certify certain machinery and equipment as integral to the recycling process before the taxpayer is entitled to a state income tax credit. The provisions of § 58.1-439.7 apply to both individuals and corporations.

The tax credit continues to remain in effect for taxpayers (“C” corporations, individuals and “pass-through” corporations) until January 1, 2025.

The machinery and equipment must be certified for recycling by the Department of Environmental Quality in accordance with § 58.1-439.7 of the *Code of Virginia*.

I. DEFINITIONS:

For the purpose of this standard, the following terms have these meanings:

“**Advanced Recycling**” means the operation of a single-stream or multi-stream recycling plant that converts waste materials into new materials for resale by processing them and breaking them down into their raw constituents. "Advanced recycling" includes the operation of a materials recovery facility or materials reclamation facility that receives, separates, and prepares recyclable materials for sale to end-user manufacturers.

"**Certification**" means a signed statement (see Form DEQ 50-11S) by the director of the Department of Environmental Quality that the identified machinery and equipment qualify as integral to the recycling process.

"**Department**" means the Department of Environmental Quality.

"**Director**" means the director of the Department of Environmental Quality or his designee.

"**Integral to the recycling process**" means that the machinery and equipment or system of machinery and equipment is used primarily to process recyclable material to meet a manufacturer's material input specifications or to incorporate recyclable materials into a manufacturing process.

"**Finished product**" means material that has been processed and is ready for sale except for packaging.

"**Machinery or equipment**" means a mechanical unit or system which processes material.

“**Manufacturing facility**” means any facility which is used in the manufacturing or production of tangible personal property, including the processing resulting in a change of condition of such

property, or any facility which is functionally related and subordinate to a manufacturing facility if such facility is located on the same site as the manufacturing facility.

"Primarily" means greater than fifty (50) percent of time, of usage, or other appropriate measure.

"Process" or **"Processing"** means preparation, treatment, or conversion of a product or material by an action, change or function or a series of actions, changes, or functions that bring about a desired end result.

"Recyclable" means capable of being diverted or reclaimed from the waste stream and prepared for further beneficial use through the recycling process.

"Recycled" means having reached the end of one useful life or one intended purpose, and then being converted and utilized as a raw material in the production of another product which may or may not be similar to the original product. The resultant manufactured product is said to have "recycled" content.

"Recycling" means the process of separating a given product or material from the waste stream and processing it so that it is used again as a raw material for a product which may or may not be similar to the original product.

"Taxable year" means, for the purpose of this standard, all taxable years beginning on and after January 1, 1993 and continuing until the availability of this credit is no longer extended by the General Assembly. Virginia's taxable year follows the calendar or fiscal year for federal taxable purposes.

II. QUALIFYING MACHINERY AND EQUIPMENT:

1. In order to qualify, recycling machinery and equipment must be operated at a facility located in Virginia.
2. Qualifying recycling machinery and equipment include: (i) machinery and equipment used 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-and (ii) machinery and equipment used predominantly in or on the premises of facilities that are predominantly engaged in advanced recycling. Processing may include (but is not limited to) flattening, shredding, melting, pulping, compaction, granulation, liquefaction, or classification.
3. Qualifying recycling machinery and equipment also include any piece or system of machinery or equipment in a manufacturing facility used to incorporate recycled material into the production process.

4. Exceptions:

- A. Machinery and equipment used in the preparation of all or any part of the solid waste stream for the purpose of combustion, unless otherwise determined by the director to be a process with a significant recycling value.
- B. Machinery and equipment used to incorporate a finished product with recycled content, which is no longer considered to be a solid waste, unless otherwise determined by the director.
- C. Machinery and equipment used exclusively to handle finished products, unless otherwise determined by the director.
- D. Non-processing or non-manufacturing equipment.
- E. Buildings or other structures.
- F. Repairs and maintenance items.

III. EQUIPMENT CERTIFICATION

The applicant should apply for the tax credit certification by submitting Form DEQ 50-11S (available at www.deq.virginia.gov) to:

The Department of Environmental Quality
Attention: Equipment Certification Officer
P.O. Box 1105
Richmond, VA 23218

The applicant should provide the following information:

1. The purchaser's name and address;
2. The name and location of the facility in which the machinery and equipment will be used;
3. A description of the machinery and equipment and its intended use in the facility;
4. A statement by the purchaser of the machinery and equipment that would qualify the purchase for tax credit; and
5. Documentation of ownership (copies of purchase receipts, invoices, or such other documents as may be necessary to confirm the purchaser's statement of purchase price paid) appropriate to filing with the Virginia Department of Taxation.

IV. CERTIFICATION REVIEW:

The department will review the information provided on Form DEQ 50-11S to determine if the machinery and equipment meets the criteria specified in the Code. Upon completion of the review, the department will return the applicant's form with a written explanation of the certification of the machinery and equipment.

For further assistance about the certification review, call the Department of Environmental Quality at 804-698-4000.

V. APPEAL PROCEDURE:

All appeals taken from actions of the director relative to any request for certification pursuant to § 58.1-439.7 shall be governed by the Virginia Administrative Process Act § 2.2-4000 et seq. of the *Code of Virginia*

VI. TO RECEIVE TAX CREDIT:

Upon certification, the form and attachments will be returned to the applicant. In order to qualify for a state income tax credit, along with the tax return submitted to the Virginia Department of Taxation, the applicant should attach the approved Form DEQ 50-11S (or other certification document prepared by the Department of Environmental Quality), and documentary proof of purchase price paid for the equipment. For further assistance on taxation matters please call 804-225-4265.

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

A. 1. For taxable years beginning on and after January 1, 1999, but before January 1, 2025, 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 20 percent of the purchase price paid during the taxable year for (i) machinery and equipment used 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 and (ii) machinery and equipment used predominantly in or on the premises of facilities that are predominantly engaged in advanced recycling. 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. For purposes of this section, "advanced recycling" means the operation of a single-stream or multi-stream recycling plant that converts waste materials into new materials for resale by processing them and breaking them down into their raw constituents. "Advanced recycling" includes the operation of a materials recovery facility or materials reclamation facility that receives, separates, and prepares recyclable materials for sale to end-user manufacturers.

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

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.

1998, c. [253](#); 2001, c. [91](#); 2004, c. [611](#); 2007, cc. [529](#), [593](#); 2009, c. [34](#); 2015, cc. [49](#), [94](#); 2020, c. [789](#).