

CHAPTER 321

AN ACT concerning the reuse of treated effluent in industrial facilities, and supplementing P.L.1945, c.162 (C.54:10A-1 et seq.).

BE IT ENACTED by the Senate and General Assembly of the State of New Jersey:

C.54:10A-5.31 Tax credit for purchase of effluent treatment, conveyance equipment.

1. a. (1) A taxpayer who in a privilege period purchases treatment equipment or conveyance equipment for use exclusively within this State, shall be allowed a credit as provided herein against the tax imposed for that privilege period pursuant to section 5 of P.L.1945, c.162 (C.54:10A-5) in an amount equal to 50% of the cost of the treatment equipment or conveyance equipment less the amount of any loan received pursuant to section 5 of P.L.1981, c.278 (C.13:1E-96) and excluding the amount of any sales and use tax paid pursuant to P.L.1966, c.30 (C.54:32B-1 et seq.), provided that the Commissioner of the Department of Environmental Protection has issued a determination under subsection b. of this section that the operation of the system of equipment and the reuse of wastewater effluent that results therefrom are or will be beneficial to the environment. The amount of the credit claimed for the privilege period in which the purchase of treatment equipment or conveyance equipment is made, and the amount of credit claimed therefor in each privilege period thereafter, shall not exceed 20% of the amount of the total credit allowable, shall not, together with any other credits allowed by law, exceed 50% of the tax liability which would be otherwise due, and shall not reduce the amount of tax liability to less than the statutory minimum provided in subsection (e) of section 5 of P.L.1945, c.162 (C.54:10A-5). An unused credit amount may be carried forward, if necessary, for use in future privilege periods. Notwithstanding any other provision of law, the order of priority in which the credit allowed under this section and any other credits allowed by law may be taken shall be as prescribed by the director.

A taxpayer who, in a privilege period, purchased treatment equipment or conveyance equipment, but who did not receive approval of an application for determination pursuant to subsection b. of this section before filing a return for that privilege period, may, in accordance with the provisions of the State Tax Uniform Procedure Law, R.S.54:48-1 et seq., and subject to the provisions of this section, file with the director a claim for the credit for that privilege period and any subsequent privilege period, as appropriate.

For the purposes of this section, "treatment equipment" means any equipment that is used exclusively to treat effluent from a primary wastewater treatment facility, which effluent would otherwise have been discharged into the waters of the State, for purposes of reuse in an industrial process thereafter, and "conveyance equipment" means any equipment that is used exclusively to transport that effluent to the facility in which the treatment equipment has been or is to be installed and to transport the product of that further treatment to the site of that reuse.

(2) If a person who purchases treatment equipment or conveyance equipment for which the Commissioner of the Department of Environmental Protection has issued a determination of environmentally beneficial operation pursuant to subsection b. of this section is a partnership, limited liability company, or other person classified as a partnership for federal tax purposes and not subject to the tax imposed pursuant to section 5 of P.L.1945, c.162 (C.54:10A-5), a portion of the amount of the credit otherwise allowed to the purchaser pursuant to paragraph (1) of this subsection shall be allowed to each owner of that purchaser that is subject to the tax in proportion to the owner's share of the income of the purchaser. The purchaser shall be treated as the taxpayer for the purpose of administering the provisions of this section.

b. In order to qualify for the tax credit pursuant to subsection a. of this section, the taxpayer shall apply for a determination from the Commissioner of the Department of Environmental Protection that the equipment with respect to which the credit is sought (1) qualifies as treatment equipment or conveyance equipment as defined in subsection a. of this section, and (2) is or will be in its operation, considered in conjunction with the reuse of the further treated wastewater effluent that results from that operation, beneficial to the environment. The application shall be submitted in writing in a form as the commissioner shall prescribe and shall specifically include; the date or anticipated date of purchase of the equipment, a physical and functional description of the equipment, the cost, the name and address or location of each primary wastewater treatment facility from which effluent is or is to be received for further treatment, the name and

address or location of each facility to which the effluent is or is to be conveyed after the further treatment for reuse, the nature of the reuse, the location of any site at which the wastewater that has been or is to be further treated is being or is to be discharged either prior to or after reuse, the volume of such wastewater that is or is to be reused, the portion of that volume that is or is to be consumed in that reuse and the portion thereof that is or is to be discharged thereafter, and the taxpayer's explanation of how the operation of the system and the reuse of the wastewater effluent that has been further treated are or will be beneficial to the environment. The application shall also include the taxpayer's affidavit that, to the best of the taxpayer's knowledge, the equipment has not previously qualified for a credit pursuant to this section either for the taxpayer or other owner or for a previous owner.

Upon approval of the application, the Commissioner of the Department of Environmental Protection shall submit a copy of the determination of equipment qualification and environmentally beneficial operation to the taxpayer and the Director of the Division of Taxation. When filing a tax return that includes a claim for a credit pursuant to this section, the taxpayer shall include a copy of the determination and the taxpayer's affidavit that the treatment equipment or conveyance equipment is or will be used exclusively in New Jersey. Any credit shall be initially allowed for the privilege period in which the equipment is purchased, and any unused portion thereof may be carried forward into subsequent privilege periods as provided in subsection a. of this section.

The Commissioner of the Department of Environmental Protection, in consultation with the Director of the Division of Taxation, shall adopt rules and regulations establishing technical and administrative requirements for the qualification of treatment equipment and conveyance equipment, and for the determination that the operation of a system of such equipment and the reuse of wastewater effluent that has been treated thereby are beneficial to the environment, for the purpose of establishing a taxpayer's eligibility for a credit pursuant to this section. In the development and adoption of the rules and regulations prescribed under this act and of any procedure for making application for a credit under subsection a. of this section, the commissioner, in consultation with the director, shall to the greatest extent possible ensure that they are consolidated or consistent with any corresponding rules, regulations, and procedures established under P.L. , c. (C.) (now pending before the Legislature as Senate Bill No. 1210 (1R) and Assembly Bill No. 2695 of 2000) and P.L.2001, c.322.

c. No amount of cost included in calculation of the credit allowed under this section shall be included in the costs for calculation of any other credit against the tax imposed pursuant to section 5 of P.L.1945, c.162 (C.54:10A-5).

d. On or before January 31 of each year, the Commissioner of the Department of Environmental Protection shall submit a report to the Governor, the State Treasurer, and the Legislature setting forth the number of taxpayer applications under subsection b. of this section that were approved during the preceding calendar year and the cost of each type of equipment which has been determined to qualify for the credit.

C.54:10A-5.32 Temporary regulations for effluent treatment tax credit.

2. Notwithstanding the provisions of P.L.1968, c.410 (C.52:14B-1 et seq.) to the contrary, the Commissioner of the Department of Environmental Protection may, immediately upon filing with the Office of Administrative Law, adopt such temporary regulations as the commissioner deems necessary to implement the provisions of section 1 of P.L.2001, c.321 (C.54:10A-5.31), which regulations shall be effective for a period not to exceed 270 days from the date of the filing, but in no case after one year from the effective date of that P.L.2001, c.321. The regulations may thereafter be amended, adopted or readopted by the commissioner as the commissioner deems necessary in accordance with the requirements of P.L.1968, c.410.

3. This act shall take effect immediately and apply to purchases made in privilege periods beginning on or after July 1 next following enactment

Approved January 4, 2002.