

CHAPTER 6

AN ACT concerning the recycling tax on solid waste generation, amending P.L.1981, c.278 and P.L.2007, c.311, and supplementing P.L.2007, c.62.

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

1. Section 4 of P.L.2007, c.311 (C.13:1E-96.5) is amended to read as follows:

C.13:1E-96.5 Recycling tax on owner, operator of solid waste facility; applicability; rate.

4. a. (1) Beginning on April 1, 2008, there is levied upon the owner or operator of every solid waste facility a recycling tax of \$3.00 per ton on all solid waste accepted for disposal or transfer at the solid waste facility.

The recycling tax shall not be imposed on solid waste transported from an in-State transfer station from which the recycling tax has been levied on the owner or operator thereof to an in-State solid waste facility for final disposal.

(a) The recycling tax shall not be imposed on the owner or operator of a railroad transfer station or other facility designed exclusively to transport waste on railroads.

(b) The recycling tax shall not be imposed on the owner or operator of a sanitary landfill facility for the acceptance for disposal of the ash residue resulting from the incineration of solid waste at a resource recovery facility.

(c) The recycling tax shall not be imposed on the owner or operator of a solid waste facility for the acceptance for disposal of solid waste originating from out-of-State sources under a contract awarded prior to December 31, 2007 if the contract does not include a change-in-law or similar mechanism by which the recycling tax imposed by this section may be passed through as a fee or surcharge on the rates and charges set forth in the contract.

(d) The recycling tax shall not be imposed on the owner or operator of a resource recovery facility for the acceptance for disposal of solid waste originating from in-State sources under a contract awarded prior to December 31, 2007 if the contract does not include a change-in-law or similar mechanism by which the recycling tax imposed by this section may be passed through as a fee or surcharge on the rates and charges set forth in the contract.

The recycling tax shall be imposed on the owner or operator of a solid waste facility for the acceptance for disposal of solid waste originating from out-of-State sources under any contract awarded after December 31, 2007.

(2) Beginning on April 1, 2008, there is levied upon every solid waste collector that transports solid waste for transshipment or direct transportation to an out-of-State disposal site a recycling tax. The recycling tax shall be levied on the solid waste collector at the rate of \$3.00 per ton on all solid waste collected for transportation to a railroad transfer station or other facility designed to transport waste on railroads or directly to an out-of-State disposal site.

b. (1) Every person subject to the recycling tax shall, by April 1, 2008, register with the director on forms prescribed by the director.

(2) Every person subject to the recycling tax shall, on or before July 20, 2008, and quarterly thereafter with returns due the 20th day of the first month following the end of the quarter, render a return under oath to the director, on such forms as may be prescribed by the director, indicating the number of tons of solid waste accepted for disposal or transfer, or collected, as appropriate, and at that time shall pay the full amount due.

c. If a return required by this section is not filed, or if a return when filed is incorrect or insufficient in the opinion of the director, the amount due shall be determined by the director from such information as may be available. Notice of the determination shall be given to the

person subject to the recycling tax. The determination shall finally and irrevocably fix the amount due, unless the person on whom it is imposed, within 90 days after the giving of the notice of the determination, shall file a protest in writing as provided in R.S.54:49-18 and request a hearing, or unless the director on the director's own motion shall redetermine the same. After the hearing the director shall give notice of the determination to the person on whom the recycling tax is imposed.

d. Any person subject to the recycling tax who fails to file a return when due or to pay any tax when it becomes due, as herein provided, shall be subject to such penalties and interest as provided in the "State Uniform Tax Procedure Law," R.S.54:48-1 et seq. If the director determines that the failure to comply with any provision of this section was excusable under the circumstances, the director may remit that part or all of the penalty as shall be appropriate under the circumstances.

e. The director shall deposit all revenues collected pursuant to this section in the State Recycling Fund established pursuant to section 5 of P.L.1981, c.278 (C.13:1E-96).

f. In addition to the other powers granted to the director in this section, the director is authorized:

(1) To delegate to any officer or employee of the division those powers and duties as the director deems necessary to carry out efficiently the provisions of this section, and the person to whom the power has been delegated shall possess and may exercise all of these powers and perform all of the duties delegated by the director;

(2) To prescribe and distribute all necessary forms for the implementation of this section.

g. (1) Every owner or operator of a solid waste facility may collect the recycling tax imposed by this section by (a) including the amount of recycling tax due as a separate line item on every customer bill or other statement presented to a solid waste collector or solid waste generator; (b) including the amount of recycling tax due as a fee or surcharge on any amount collected under a contract awarded pursuant to the "Local Public Contracts Law," P.L.1971, c.198 (C.40A:11-1 et seq.) or any other law for the provision of solid waste collection or solid waste disposal services; or (c) imposing an automatic surcharge on any tariff established pursuant to law for the solid waste disposal or transfer operations of the solid waste facility.

(2) Every solid waste collector is hereby authorized to calculate, charge and collect rates, fees or surcharges from all solid waste generators serviced by the solid waste collector sufficient to recover the recycling tax collected by the owner or operator of the solid waste facility.

(3) Every solid waste collector subject to the recycling tax is hereby authorized to calculate, charge and collect rates, fees or surcharges from all solid waste generators serviced by the solid waste collector sufficient to recover the recycling tax imposed by this section.

h. The recycling tax imposed by this section shall be governed in all respects by the provisions of the "State Uniform Tax Procedure Law," R.S.54:48-1 et seq., except only to the extent that a specific provision of this section may be in conflict therewith.

i. (1) The recycling tax imposed by this section shall not be imposed on the owner or operator of a materials recovery facility for the acceptance of Type 13C Construction and Demolition waste, provided that the facility meets or exceeds recyclable materials extraction rates as established by the department.

(2) The recycling tax imposed by this section shall not be imposed on a solid waste collector or the owner or operator of a solid waste facility for the collection or acceptance for disposal or transfer of residue resulting from the operations of a scrap processing facility as defined in section 2 of P.L.1987, c.102 (C.13:1E-99.12).

j. The recycling tax imposed by this section shall not be imposed on a solid waste collector or the owner or operator of a solid waste facility for the collection or acceptance for disposal or transfer of residue, provided that the residue is generated as a result of the use of post-consumer waste material in the manufacture of a recycled product which constitutes at least 75% of total annual sales dollar volume of the products manufactured by a manufacturer in this State as determined by the director.

k. The registration issued to any person subject to the recycling tax who violates the provisions of this section may be subject to revocation or suspension pursuant to section 12 of P.L.1970, c.39 (C.13:1E-12).

1. Subsections a. through k. of this section shall be without effect on and after the tenth day following a certification by the Director of the Division of Budget and Accounting in the Department of the Treasury pursuant to subsection b. of section 6 of P.L.2007, c.311 (C.13:1E-96.7).

2. Section 3 of P.L.2007, c.311 (C.13:1E-96.4) is amended to read as follows:

C.13:1E-96.4 Definitions relative to recycling of solid waste.

3. For the purposes of this act:³

"Beverage container" means an individual, separate, hermetically sealed, or made airtight with a metal or plastic cap, bottle or can composed of glass, metal, plastic or any combination thereof, containing a beverage.

"Certified recycling coordinator" means a person or persons designated as such pursuant to section 3 of P.L.1987, c.102 (C.13:1E-99.13) or section 6 of P.L.1987, c.102 (C.13:1E-99.16).

"Commissioner" means the Commissioner of Environmental Protection.

"Department" means the Department of Environmental Protection.

"Director" means the Director of the Division of Taxation in the Department of the Treasury.

"Division" means the Division of Taxation in the Department of the Treasury.

"Materials recovery" means the processing and separation of solid waste utilizing manual or mechanical methods for the purposes of recovering recyclable materials for disposition and recycling prior to the disposal of the residual solid waste at an authorized solid waste facility.

"Materials recovery facility" means a transfer station or other authorized solid waste facility at which nonhazardous solid waste, which material is not source separated by the generator thereof prior to collection, is received for onsite processing and separation utilizing manual or mechanical methods for the purposes of recovering recyclable materials for disposition and recycling prior to the disposal of the residual solid waste at an authorized solid waste facility.

"Post-consumer waste material" means a material or product that would otherwise become solid waste, having completed its intended end use and product life cycle; except that "post-consumer waste material" shall not include secondary waste material or materials and by-products generated from, and commonly used within, an original manufacturing and fabrication process.

"Recycled product" means any product or commodity which is manufactured or produced in whole or in part from post-consumer waste material and which meets the recycled content standard of the United States Environmental Protection Agency as published in the Comprehensive Procurement Guidelines for Products Containing Recovered Material.

"Residue" means any solid waste generated as a result of the use of post-consumer waste material in the manufacture of a recycled product.

"Resource recovery facility" means a solid waste facility constructed and operated for the incineration of solid waste for energy production and the recovery of metals and other materials for reuse; or a mechanized composting facility, or any other solid waste facility constructed or operated for the collection, separation, recycling, and recovery of metals, glass, paper, and other materials for reuse or for energy production.

"Secondary waste material" means waste material generated after the completion of a manufacturing process.

"Solid waste" means the same as that term is defined in section 3 of P.L.1970, c.39 (C.13:1E-3), except that, as used in the provisions of P.L.2007, c.311 (C.13:1E-96.2 et al.), "solid waste" shall be limited to the following solid waste ID types: Type 10 Municipal; Type 13 Bulky waste; Type 13C Construction and Demolition waste; Type 23 Vegetative waste; Type 25 Animal and food processing wastes; and Type 27 Dry industrial waste, including Type 27-A Asbestos-containing waste, as set forth in N.J.A.C.7:26-1.6 and N.J.A.C.7:26-2.13.

"Solid waste collection" means the activity related to pick-up and transportation of solid waste from its source or location to a solid waste facility or other destination.

"Solid waste collector" means a person engaged in the collection of solid waste and registered pursuant to sections 4 and 5 of P.L.1970, c.39 (C.13:1E-4 and 13:1E-5); or any municipality wherein the municipal governing body has established and operates a municipal service system for solid waste collection pursuant to R.S.40:66-1.

"Solid waste disposal" means the storage, treatment, utilization, processing, transfer, or final disposal of solid waste.

"Solid waste facilities" means and includes the plants, structures and other real and personal property acquired, constructed or operated or to be acquired, constructed or operated by, or on behalf of, any person, public authority or county pursuant to the provisions of P.L.1970, c.39 (C.13:1E-1 et seq.) or any other act, including transfer stations, incinerators, resource recovery facilities, sanitary landfill facilities or other plants for the disposal of solid waste, and all vehicles, equipment and other real and personal property and rights therein and appurtenances necessary or useful and convenient for the collection or disposal of solid waste in a sanitary manner.

3. Section 5 of P.L.1981, c.278 (C.13:1E-96) is amended to read as follows:

C.13:1E-96 State Recycling Fund; allocation of moneys.

5. a. The State Recycling Fund (hereinafter referred to as the "fund") is established as a nonlapsing, revolving fund. The fund shall be administered by the Department of Environmental Protection, and shall be credited with all recycling tax revenue collected pursuant to section 4 of P.L.2007, c.311 (C.13:1E-96.5), and all interest received on moneys in the fund.

b. Moneys in the fund shall be appropriated annually solely for the following purposes and no others:

(1) Not less than 60% of the estimated annual balance of the fund shall be used for the annual expenses of a program for direct recycling grants to municipalities or counties in those instances where a county, at its own expense, provides for the collection, processing and marketing of recyclable materials on a regional basis. The amount of a direct recycling grant shall be calculated on the basis of the total number of tons of recyclable materials

annually recycled from residential, commercial and institutional sources within a particular municipality, or group of municipalities in the case of a county recycling program. No direct recycling grant shall exceed \$10 per ton of recyclable materials recycled. All grant moneys received by a municipality shall be expended only for its recycling program. The department may allocate a portion of the direct recycling grant moneys as bonus grants to municipalities and counties whenever a municipality or county, at its own expense, provides for the collection of recyclable materials in its recycling program. The department shall announce each year the total amount of moneys available in the bonus grant fund.

A municipality may distribute a portion of its direct recycling grant moneys to nonprofit groups that are located within that municipality and which have contributed to the receipt of the direct recycling grant, except that this distribution shall not exceed the value of approved documented tonnage contributed by a nonprofit group.

A municipality may designate any nonprofit group as a recycling agent. A recycling agent shall receive that part of the municipality's direct recycling grant under this paragraph that represents the percentage of the grant received by the municipality due to the documented tonnage contributed by that recycling agent. Moneys received by a recycling agent shall be expended only for its recycling program. Any moneys not used for recycling shall be returned by the recycling agent to the municipality.

To be eligible for a direct recycling grant pursuant to this paragraph, a municipality or county in the case of a county recycling program shall demonstrate that the recyclable materials recycled by the municipal or county recycling program were not diverted from a commercial recycling program already in existence on the effective date of the ordinance or resolution establishing the municipal or county recycling program.

To remain eligible for a direct recycling grant pursuant to this paragraph, a municipality or county in the case of a county recycling program shall submit an annual recycling tonnage report to the department in accordance with rules and regulations adopted by the department therefor. Following the designation of a district certified recycling coordinator pursuant to section 3 of P.L.1987, c.102 (C.13:1E-99.13) and the designation of a municipal certified recycling coordinator pursuant to section 6 of P.L.1987, c.102 (C.13:1E-99.16), the department shall not accept an annual recycling tonnage report from a county or municipality unless the report has been signed by a certified recycling coordinator.

No direct recycling grant to any municipality shall be used for constructing or operating any facility for the baling of wastepaper or for the shearing, baling or shredding of ferrous or nonferrous materials.

Whenever a municipality operates a municipal service system for solid waste collection pursuant to R.S.40:66-1, or provides for regular solid waste collection service under a contract awarded pursuant to the "Local Public Contracts Law," P.L.1971, c.198 (C.40A:11-1 et seq.), the amount of grant moneys received by the municipality shall not be less than the annual amount of recycling tax paid by the municipality pursuant to section 4 of P.L.2007, c.311 (C.13:1E-96.5), except that all grant moneys received by the municipality shall be expended only for its recycling program;

(2) 5% of the estimated annual balance of the fund shall be used for State recycling program planning and program funding, including the administrative expenses thereof;

(3) 25% of the estimated annual balance of the fund shall be used to provide State aid to counties for preparing, revising, and implementing solid waste management plans, including the implementation of the goals of the State Recycling Plan. The moneys may also be used by the counties to support community oversight projects and to establish a citizens' advisory committee. A county receiving State aid shall not expend more than 2% of the amount of aid

received in any year for the costs of administering the aid. The State aid shall be distributed to the counties on the basis of the total amount of solid waste generated from within each county during the previous calendar year as determined by the department. In the event that the department determines that any county has failed to fulfill its district solid waste management planning responsibilities, the department may withhold for an entire year or until the county fulfills its responsibilities, all or a portion of the amount of moneys that county would have received in any year pursuant to this paragraph. Any moneys withheld for an entire year shall be distributed among the remaining counties in the same proportion as the other moneys were distributed. The moneys may also be used by the counties for household hazardous waste collection, and for recycling program planning and program funding, including the administrative expenses thereof;

(4) 5% of the estimated annual balance of the fund shall be used by counties for public information and education programs concerning recycling activities; and

(5) Not more than 5% of the estimated annual balance of the fund shall be used by the department to provide grants to institutions of higher education for recycling demonstration, research or education, including professional training.

C.40A:4-45.45a Amounts raised to pay recycling tax treated as exclusion for calculation of adjusted tax levy.

4. Notwithstanding the provisions of section 10 of P.L.2007, c.62 (C.40A:4-45.45) to the contrary, amounts required to be raised to pay the recycling tax imposed by section 4 of P.L.2007, c.311 (C.13:1E-96.5) shall be treated as an exclusion that shall be added to the calculation of the adjusted tax levy.

5. This act shall take effect immediately and section 1 shall be retroactive to January 13, 2008.

Approved March 26, 2008.