

P.L. 2008, CHAPTER 6, *approved March 26, 2008*
Assembly, No. 1910 (*Third Reprint*)

1 AN ACT concerning the recycling tax on solid waste generation,
2 ³[and]³ amending ²P.L.1981, c.278 and² P.L.2007, c.311 ³, and
3 supplementing P.L.2007, c.62³ .
4

5 **BE IT ENACTED** by the Senate and General Assembly of the State
6 of New Jersey:
7

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

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

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

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

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

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

32 (d) The recycling tax shall not be imposed on the owner or
33 operator of a resource recovery facility for the acceptance for
34 disposal of solid waste originating from in-state sources under a
35 contract awarded prior to December 31, 2007 if the contract does
36 not include a change-in-law or similar mechanism by which the

EXPLANATION – Matter enclosed in bold-faced brackets **[thus]** in the above bill is not enacted and is intended to be omitted in the law.

Matter underlined thus is new matter.

Matter enclosed in superscript numerals has been adopted as follows:

¹Assembly AEN committee amendments adopted January 28, 2008.

²Assembly floor amendments adopted February 7, 2008.

³Assembly AEN committee amendments adopted March 6, 2008.

1 recycling tax imposed by this section may be passed through as a
2 fee or surcharge on the rates and charges set forth in the contract.

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

7 (2) ~~【There】~~ Beginning on April 1, 2008, there is levied upon
8 every solid waste collector that transports solid waste for
9 transshipment or direct transportation to an out-of-state disposal
10 sitea recycling tax. The recycling tax shall be levied on the solid
11 waste collector at the rate of \$3.00 per ton on all solid waste
12 collected for transportation to a railroad transfer station or other
13 facility designed to transport waste on railroads or directly to an
14 out-of-state disposal site.

15 b. (1) Every person subject to the recycling tax shall, ~~【within 30~~
16 ~~days of the effective date of this act】~~ by ³~~【March 1, 2008】~~ April 1,
17 2008³, register with the director on forms prescribed by the
18 director.

19 (2) Every person subject to the recycling tax shall, on or before
20 ~~【the first day of the first full fiscal quarter following the effective~~
21 ~~date of this act】~~ ¹~~【 July 1, 2008】~~ July 20, 2008¹, and quarterly
22 thereafter ¹with returns due the 20th day of the first month following
23 the end of the quarter¹, render a return under oath to the director,
24 on such forms as may be prescribed by the director, indicating the
25 number of tons of solid waste accepted for disposal or transfer, or
26 collected, as appropriate, and at that time shall pay the full amount
27 due.

28 c. If a return required by this section is not filed, or if a return
29 when filed is incorrect or insufficient in the opinion of the director,
30 the amount due shall be determined by the director from such
31 information as may be available. Notice of the determination shall
32 be given to the person subject to the recycling tax. The
33 determination shall finally and irrevocably fix the amount due,
34 unless the person on whom it is imposed, within 90 days after the
35 giving of the notice of the determination, shall file a protest in
36 writing as provided in R.S.54:49-18 and request a hearing, or unless
37 the director on the director's own motion shall redetermine the
38 same. After the hearing the director shall give notice of the
39 determination to the person on whom the recycling tax is imposed.

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

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

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

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

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

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

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

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

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

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

44 (2) The recycling tax imposed by this section shall not be
45 imposed on a solid waste collector or the owner or operator of a
46 solid waste facility for the collection or acceptance for disposal or
47 transfer of residue resulting from the operations of a scrap

1 processing facility as defined in section 2 of P.L.1987, c.102
2 (C.13:1E-99.12).

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

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

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

20 (cf: P.L.2007, c.311, s.4)

21

22 ²2. Section 3 of P.L.2007, c.311 ³[(C.13:1E-96.5)] (C.13:1E-
23 96.4)³ is amended to read as follows:

24 ³3. For the purposes of this act:³

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

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

32 "Commissioner" means the Commissioner of Environmental
33 Protection.

34 "Department" means the Department of Environmental
35 Protection.

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

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

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

45 "Materials recovery facility" means a transfer station or other
46 authorized solid waste facility at which nonhazardous solid waste,
47 which material is not source separated by the generator thereof prior
48 to collection, is received for onsite processing and separation

1 utilizing manual or mechanical methods for the purposes of
2 recovering recyclable materials for disposition and recycling prior
3 to the disposal of the residual solid waste at an authorized solid
4 waste facility.

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

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

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

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

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

29 "Solid waste" means the same as that term is defined in section 3
30 of P.L.1970, c.39 (C.13:1E-3), except that, as used in the provisions
31 of P.L.2007, c.311 (C.13:1E-96.2 et al.), "solid waste" shall be
32 limited to the following solid waste ID types: Type 10 Municipal;
33 **【Type 12 Dry sewage sludge;】** Type 13 Bulky waste; Type 13C
34 Construction and Demolition waste; Type 23 Vegetative waste;
35 Type 25 Animal and food processing wastes; and Type 27 Dry
36 industrial waste, including Type 27-A Asbestos-containing waste,
37 as set forth in N.J.A.C.7:26-1.6 and N.J.A.C.7:26-2.13.

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

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

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

1 "Solid waste facilities" means and includes the plants, structures
2 and other real and personal property acquired, constructed or
3 operated or to be acquired, constructed or operated by, or on behalf
4 of, any person, public authority or county pursuant to the provisions
5 of P.L.1970, c.39 (C.13:1E-1 et seq.) or any other act, including
6 transfer stations, incinerators, resource recovery facilities, sanitary
7 landfill facilities or other plants for the disposal of solid waste, and
8 all vehicles, equipment and other real and personal property and
9 rights therein and appurtenances necessary or useful and convenient
10 for the collection or disposal of solid waste in a sanitary manner.²

11 (cf: P.L.2007, c.311, s.3)

12

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

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

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

23 (1) Not less than 60% of the estimated annual balance of the
24 fund shall be used for the annual expenses of a program for direct
25 recycling grants to municipalities or counties in those instances
26 where a county, at its own expense, provides for the collection,
27 processing and marketing of recyclable materials on a regional
28 basis. The amount of a direct recycling grant shall be calculated on
29 the basis of the total number of tons of recyclable materials
30 annually recycled from residential, commercial and institutional
31 sources within a particular municipality, or group of municipalities
32 in the case of a county recycling program. No direct recycling grant
33 shall exceed \$10 per ton of recyclable materials recycled. All grant
34 moneys received by a municipality shall be expended only for its
35 recycling program. The department may allocate a portion of the
36 direct recycling grant moneys as bonus grants to municipalities and
37 counties whenever a municipality or county, at its own expense,
38 provides for the collection of recyclable materials in its recycling
39 program. The department shall announce each year the total
40 amount of moneys available in the bonus grant fund.

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

47 A municipality may designate any nonprofit group as a recycling
48 agent. A recycling agent shall receive that part of the municipality's

1 direct recycling grant under this paragraph that represents the
2 percentage of the grant received by the municipality due to the
3 documented tonnage contributed by that recycling agent. Moneys
4 received by a recycling agent shall be expended only for its
5 recycling program. Any moneys not used for recycling shall be
6 returned by the recycling agent to the municipality.

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

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

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

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

38 (2) 5% of the estimated annual balance of the fund shall be used
39 for State recycling program planning and program funding,
40 including the administrative expenses thereof;

41 (3) 25% of the estimated annual balance of the fund shall be
42 used to provide State aid to counties for preparing, revising, and
43 implementing solid waste management plans, including the
44 implementation of the goals of the State Recycling Plan. The
45 moneys may also be used by the counties to support community
46 oversight projects and to establish a citizens' advisory committee. A
47 county receiving State aid shall not expend more than 2% of the
48 amount of aid received in any year for the costs of administering the

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

15 (4) 5% of the estimated annual balance of the fund shall be used
16 by counties for public information and education programs
17 concerning recycling activities; and

18 (5) Not more than 5% of the estimated annual balance of the
19 fund shall be used by the department to provide grants to
20 institutions of higher education **[to conduct research in]** for
21 recycling demonstration, research or education, including
22 professional training.

23 (cf: P.L.2007, c.311, s.7)²

24
25 ³4. (New section) Notwithstanding the provisions of section 10
26 of P.L.2007, c.62 (C.40A:4-45.45) to the contrary, amounts
27 required to be raised to pay the recycling tax imposed by section 4
28 of P.L.2007, c.311 (C.13:1E-96.5) shall be treated as an exclusion
29 that shall be added to the calculation of the adjusted tax levy.³

30
31 ³[²[2.] 4.²] 5.³ This act shall take effect immediately ³and
32 section 1 shall be retroactive to January 13, 2008³.

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37 Delays effective date of recycling tax and adjusts allocation of
38 moneys in the State Recycling Fund.