

CREDIT FOR PROPERTY USED TO COLLECT OR PROCESS RECLAIMABLE MATERIAL

REVENUE INTERIM COMMITTEE
MEGAN MOORE - NOVEMBER 2023

EXPLANATION OF CREDIT

There is a credit, provided for in [Title 15, chapter, 32, part 6](#), against the individual income tax or corporate income tax for investment in property used to collect or process reclaimable material. The credit may be claimed in the year of the investment and may not be carried to another tax year.

The credit is available for the first \$1 million of investment as follows:

- 25% of the first \$250,000 invested;
- 15% of the next \$250,000 invested;
- 5% of the next \$500,000 invested.

If the investment in eligible property is \$1 million or more, the credit is equal to \$125,000.

Claiming the credit does not prevent a taxpayer from claiming a depreciation or amortization deduction for the investment or from claiming other tax incentives under Title 15.

Definitions

Collect: the collection and delivery of reclaimable materials to a recycling or reclaimable materials processing facility

Process: includes but is not limited to the treatment of hazardous wastes as defined in [75-10-403*](#)

Reclaimable material: material that has useful physical or chemical properties after serving a specific purpose that would normally be disposed of as solid waste, as defined in [75-10-203](#), by a consumer processor, or manufacturer.

***Hazardous waste** means a waste or combination of wastes that, because of its quantity, concentration, or physical, chemical, or infectious characteristics, may: (i) cause or significantly contribute to an increase in mortality or an increase in serious irreversible or incapacitating reversible illness; or (ii) pose a substantial present or potential hazard to human health or the environment when improperly treated, stored, transported, or disposed of or otherwise managed. The term does not include those substances governed by laws about reclamation of coal and uranium mines.

Solid Waste



Putrescible and non-putrescible wastes, including but not limited to garbage; rubbish; refuse; ashes; sludge from sewage treatment plants, water supply treatment plants, or air pollution control facilities; construction and demolition wastes; dead animals, including offal; discarded home and industrial appliances; and wood products or wood byproducts and inert materials



Municipal sewage, industrial wastewater effluents, mining wastes regulated under the mining and reclamation laws administered by the Department of Environmental Quality, slash and forest debris regulated under laws administered by the Department of Natural Resources and Conservation, or marketable byproducts.

EXAMPLES OF EQUIPMENT ELIGIBLE FOR CREDIT

Administrative Rule [42.4.2604](#) lists 24 examples of equipment that may qualify for the credit. Some of those examples are balers, compactors, containers, conveyors, cranes with grapple hooks or magnets, crushers, end loaders, forklifts, magnetic separators, scales, screeners, shredders, and vacuum systems.

RECLAIMABLE MATERIAL FURTHER LIMITED

The definition of reclaimable material in [15-32-601](#) contains an additional restriction that material may not be considered reclaimed by the consumer, processor, or manufacturer that generated the material unless:

- the person generating the waste historically disposed of the waste on site or in a landfill; and
- standard industrial practice does not generally include the reuse of the waste in the manufacturing process.

In addition, [15-32-604](#) provides that a credit may not be claimed for property used to produce energy from reclaimed material.

PURPOSE

The Legislature did not include a purpose statement when enacting the credit for property used to collect or process reclaimable material. However, legislation enacting the credit in 1991 included a statement of intent. At

CREDIT FOR PROPERTY USED TO COLLECT OR PROCESS RECLAIMABLE MATERIAL

the time, state law required a procedure in legislative rules for including a statement of intent when a bill contained a delegation of authority.¹

The 1991 statement of intent outlined an expectation that the Department of Revenue "adopt rules that will promote the reclamation of materials that would normally be discarded, by encouraging the collection, processing, and reuse of reclaimable and recycled materials by businesses." The statement went on to outline a broad scope of business activity that would qualify for the credit, including encouraging:

The original purpose of the credit was to promote the reclamation of materials that would normally be discarded.

- retail grocery stores to collect reclaimable material "even if they do not directly receive a business-related profit from the equipment or collection operation;"
- recyclers to purchase collection and processing equipment; and
- manufacturers to purchase equipment to make products from reclaimed material.

The statement also mentioned costs and benefits: "The in-state advantages to building industry based upon reclamation and recycling may have local and interstate benefits that far outweigh the cost of a tax credit and additional deduction."²

MONTANA LIKELY MEETS 22% RECYCLING, COMPOSTING TARGET SET IN 2015

The Legislature sets target rates for recycling and composting in [75-10-803](#). The most recent target is 22% for 2015. Data from Department of Environmental Quality surveys shows a consistent 18%-19% recycling rate.

However, completion of the surveys is voluntary, and the agency believes the amount of recycling and composting is underreported. For example, grocery stores are common recycling collection locations, but they do not complete the survey. After accounting for underreporting, the state is likely currently meeting the 22% goal.³

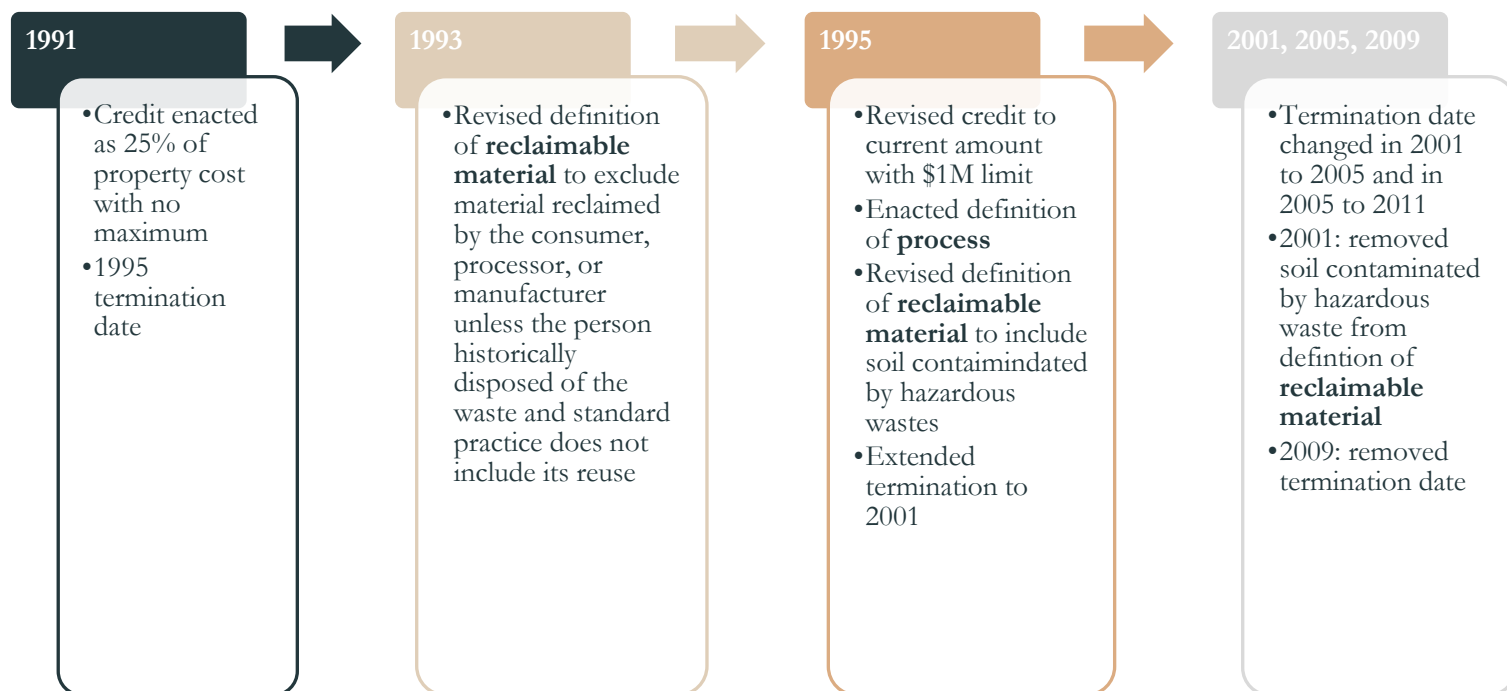
Decision Point: Would requiring taxpayers who claim the credit to report to DEQ be useful for determining whether the purpose of the credit is being achieved?

¹ Former 5-4-404, MCA. Repealed Ch. 11, L. 1997.

² Ch. 712, L. 1991

³ Phone conversation with Dusti Johnson, Materials Management Specialist at Montana Department of Environmental Quality, Oct. 13, 2023.

LEGISLATIVE HISTORY



The legislation enacting the credit in 1991 required the Department of Revenue (DOR) to report to the 1993 and 1995 Legislatures on the amounts of credit claimed, the number and type of businesses claiming the credit, and the general effectiveness of the credit. Neither DOR nor Legislative Services could find these reports, though DOR tax expenditure reports do include data on the amount and number of credits claimed.

The 1993 and 1995 Legislatures both amended the credit, but it is not clear whether the amendments addressed information contained in the required reports. Typically, testimony on a bill would reference a report if it influenced a bill. The meeting minutes do not include references to the reports.

1993 AMENDMENTS EXPAND ELIGIBILITY TO INCLUDE WASTE BY-PRODUCTS

The 1993 Legislature revised the definition of **reclaimable material** to include material generated by the consumer, processor, or manufacturer provided that the material was historically disposed of and industry standard practice does not generally include its reuse.

By amending this definition, the credit for purchase of equipment used to collect or process reclaimable material expanded to additional applications.

Testimony provided to the Senate Taxation Committee included two examples of by-products for which investment in equipment could qualify for the credit:

The 1993 statement of intent expanded on the purpose of the credit, stating a goal of reducing solid waste and pollution by increasing the longevity of landfills.

CREDIT FOR PROPERTY USED TO COLLECT OR PROCESS RECLAIMABLE MATERIAL

- fly ash, a by-product of coal combustion, which can be used in concrete products, gypsum board, and the manufacturing of lightweight aggregate; and
- sawdust or other wood waste used for wood pellets and other wood products.⁴

Because the bill provided rulemaking authority it included a statement of intent. The statement identified the purpose of the credit to "reduce solid waste and pollution," and to lengthen the time that landfills will last and reduce the pollution they will create.⁵

1995 BILL REVISES CREDIT, ADDS SOIL REMEDIATION, EXTENDS TERMINATION

The 1995 Legislature paired a restructured credit with its expansion to equipment that processes soil contaminated by hazardous wastes and an extension of the credit's termination date to 2001.⁶ The credit calculation contained in the 1995 legislation remains in effect today.

By including "soil contaminated by hazardous wastes " in the definition of **reclaimable material**, the legislation extended the credit to equipment used to process such soil. Testimony on the bill indicated that the eligible equipment renders the soil non-hazardous by recovering heavy metals.⁷

2001: EXTENSION OF TERMINATION DATE, REMOVAL OF SOILS EQUIPMENT

The 2001 Legislature extended the termination date of the credit to 2005 and removed eligibility for equipment used to process soil contaminated by hazardous waste.

An employee of the Department of Environmental Quality testified that recycling businesses still face difficulties such as long transportation distances to recycling markets and low profits. He also indicated no taxpayers claimed the credit for processing contaminated soil.⁸

2005 LEGISLATION AGAIN EXTENDS TERMINATION DATE

The 2005 Legislature extended the credit for an additional 6 years and set 2011 as the new termination date.

2009 LEGISLATURE MAKES CREDIT PERMANENT

A 2009 bill by request of the Environmental Quality Council (EQC) removed the termination date on the credit. The EQC examined recycling tax incentives as part of a 2007-2008 study on issues related to climate change and recommended removing the sunset on the credit for property used to collect or process reclaimable material.⁹

During testimony on the bill, a representative of the Department of Environmental Quality stated that the cost effectiveness of recycling in Montana is an ongoing concern.¹⁰

⁴ Testimony of Ann-Marie Gritzuk, Department of Natural Resources and Conservation, Senate Taxation Committee, March 23, 1993.

⁵ Ch. 569, L. 1993.

⁶ Ch. 542, L. 1995.

⁷ Testimony of Mike Stevenson, Envirocon, House Taxation Committee, March 30, 1995.

⁸ Testimony of Art Compton, Department of Environmental Quality, Senate Committee on Natural Resources, Jan. 12, 2001.

⁹ "[Climate Change: An Analysis of Climate Change Policy Issues in Montana](#)," prepared by Sonja Nowakowski, Nov. 2008.

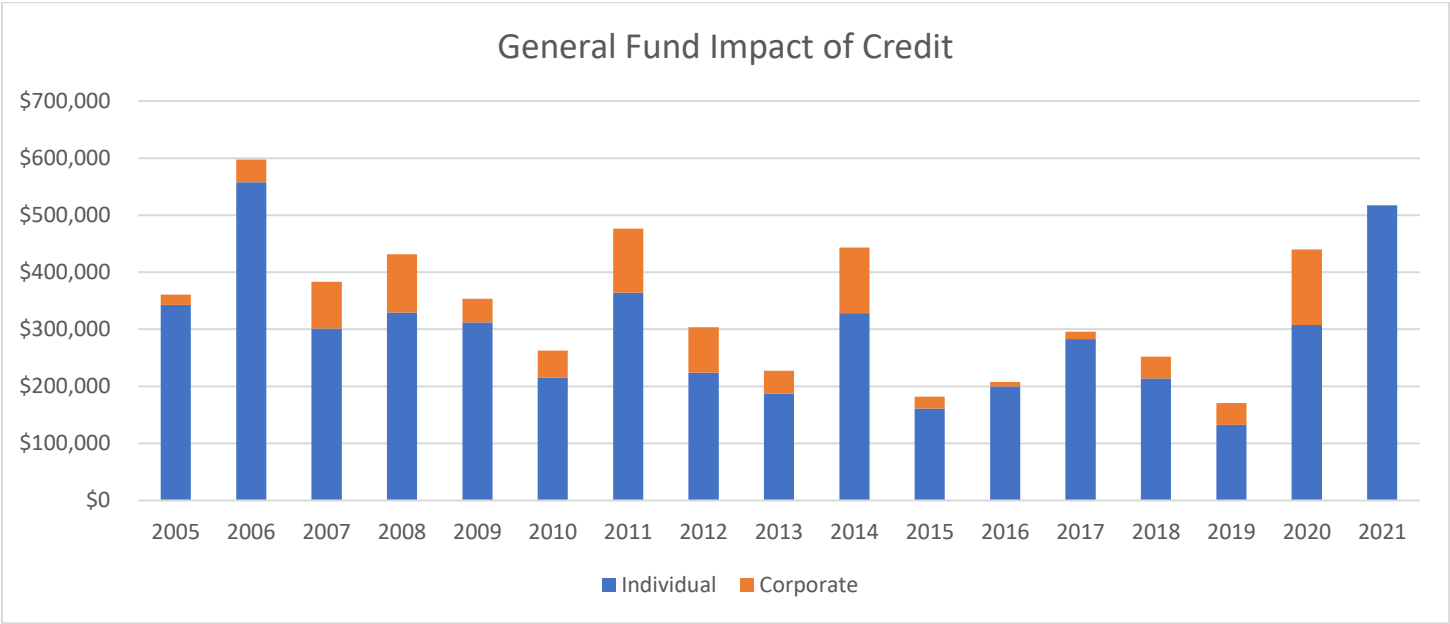
¹⁰ Testimony of Lou Moore, Department of Environmental Quality, House Natural Resources Committee, Jan. 12, 2009.

TAXPAYER USE OF CREDIT

\$6 MILLION IN CREDITS CLAIMED SINCE 2005

Since 2005, the total general fund impact of the credit for property used to collect or process reclaimable material was \$5.9 million. Annual revenue loss ranges from a low of about \$170,000 in 2019 to almost \$600,000 in 2006.¹¹ Individual income taxpayers claimed most of the credits: nearly \$5 million since 2005, compared with \$928,000 claimed by corporate income taxpayers over the same period.

The most recent available data shows \$517,000 in credit claimed by individual income taxpayers in 2021 and \$132,350 in corporate income tax credit claims in 2020.



RESIDENT INDIVIDUALS CLAIM BIGGEST NUMBER OF CREDITS

A look at the number of credits by year since 1997 shows that resident individuals claim the highest number of credits.¹² Businesses that do not form as C. corporations pass through income to the individual taxpayer and pay individual income tax rather than corporate income tax.

Through 2003, individual credits generally numbered fewer than 50 claimed. Since 2004, annual individual credits numbered between 60 and 100 in most years but reached more than 118 in 2020.

Before 1998, there were 15 or fewer corporate income tax credits claimed each year. Since then, the number of corporate income tax credits has not generally been reported because they numbered fewer than 10 credits.

¹¹ Data provided via email by Aaron McNay, Department of Revenue, Sept. 27, 2023.

¹²Except for individual income credits between 1992 and 1996, data provided via email by Aaron McNay, Department of Revenue, Sept. 27, 2023. Individual income credits between 1992 and 1996 are from Department of Revenue Biennial Reports.

CREDIT FOR PROPERTY USED TO COLLECT OR PROCESS RECLAIMABLE MATERIAL

The following table shows individual income and corporate income tax credits claimed by year since the credit became available in 1992.

For individual income credits, the dollar amount is the credit amount reported by the taxpayer. In some cases, this does not reflect the actual amount by which the credit reduced tax liability because the calculated credit is more than the tax liability of the claimant and the credit is not refundable.

UNCLEAR WHETHER \$1 MILLION CREDIT LIMIT REDUCED CREDITS

Credits claimed after 1995 are calculated only on the first \$1 million in value and are equal 25% of the cost only for the first \$250,000 with a reduced amount thereafter.

Examining the impact of this change is difficult due to insufficient data. Data on actual dollars of credit claimed by individual taxpayers between 1992 and 2004 is not available. On the corporate side, the number of credits claimed is not available in most years after 1998 because fewer than 10 taxpayers claimed credits. In addition, there are only four years of data for comparison before the change went into effect in 1996.

CREDITS FOR PROPERTY USED TO COLLECT OR PROCESS RECLAIMABLE MATERIAL, 1992-2022

Tax Year	Individual - Resident		Individual - Non-resident		Individual - Part-year Res.		Individual Total		Corporate	
	#	\$	#	\$	#	\$	#	\$	#	\$
1992							89	\$217,699	9	\$23,207
1993							42	\$165,594	13	\$180,586
1994							75	\$242,506	15	\$83,548
1995			No detail available				65	\$116,710	10	\$219,611
1996							41	\$52,643	15	\$231,567
1997	38	\$99,146	*	\$310	0	\$0	>38	\$99,456	14	\$91,421
1998	46	\$257,108	*	\$4,611	0	\$0	>46	\$261,719	15	\$140,544
1999	42	\$95,489	*	\$273	0	\$0	>42	\$95,762	*	\$54,290

CREDIT FOR PROPERTY USED TO COLLECT OR PROCESS RECLAIMABLE MATERIAL

Tax Year	Individual - Resident		Individual - Non-resident		Individual - Part-year Res.		Individual Total		Corporate	
	#	\$	#	\$	#	\$	#	\$	#	\$
2000	51	\$261,529	*	\$2,025	*	\$25,179	>51	\$288,733	*	\$87,912
2001	31	\$102,071	*	\$5,726	0	\$0	>31	\$107,797	*	\$119,060
2002	40	\$66,369	*	\$713	0	\$0	>40	\$67,082	*	\$5,440
2003	40	\$121,309	*	\$50	0	\$0	>40	\$121,359	*	\$2,718
2004	62	\$307,678	*	\$2,603	*	\$830	>62	\$311,111	*	\$17,905
2005	71	\$410,785	*	\$1,967	*	\$825	>71	\$413,577	*	\$39,700
2006	83	\$757,543	0	\$0	0	\$0	83	\$757,543	12	\$81,892
2007	76	\$386,110	0	\$0	*	\$979	>76	\$387,089	10	\$102,037
2008	72	\$527,908	*	\$25,593	*	\$1,645	>72	\$555,146	*	\$41,560
2009	76	\$439,254	*	\$24,077	*	\$50	>76	\$463,381	*	\$47,884
2010	103	\$492,609	*	\$20,425	*	\$1,594	>103	\$514,628	*	\$112,359
2011	87	\$538,163	*	\$45,110	*	\$600	>87	\$583,873	*	\$79,815
2012	85	\$368,940	*	\$9,606	*	\$400	>85	\$378,946	*	\$40,379
2013	82	\$289,907	*	\$216	*	\$763	>82	\$290,886	*	\$114,755
2014	97	\$548,118	*	\$14,872	*	\$285	>97	\$563,275	*	\$20,777
2015	71	\$279,657	*	\$1,762	*	\$500	>71	\$281,919	*	\$7,605
2016	101	\$329,343	*	\$4,448	*	\$30	>101	\$333,821	*	\$12,982
2017	106	\$473,540	*	\$27,029	*	\$110	>106	\$500,679	*	\$38,176
2018	91	\$545,086	*	\$12,700	10	\$4,480	>101	\$562,266	*	\$38,232
2019	83	\$426,741	*	\$1,602	*	\$9,195	>83	\$437,538	*	\$132,349
2020	118	\$508,351	*	\$14,187	*	\$53	>118	\$522,591	9	\$23,207
2021	105	\$884,053	*	\$24,274	*	\$1,073	> 105	\$909,400	Not yet available	

CREDIT ADMINISTRATION

When asked about administration of the credit, the Department of Revenue did not raise any concerns.

TAX FORM AND ADMINISTRATIVE RULE INCLUDE REPEALED SOIL LANGUAGE

A taxpayer claims the credit for property used to collect or process reclaimable material on [Form RCYL](#). In Part II of the form, question 4 asks about the use of the equipment to determine eligibility for the credit. Question 4.c. asks "Is the machinery/equipment used to treat soils contaminated by hazardous waste?"

Administrative Rule [42.4.2604](#) also lists equipment used to treat soil contaminated by hazardous waste as a use eligible for the credit. However, legislation enacted in 2001 revised the definition of reclaimable material to remove the inclusion of soil that has been contaminated by hazardous wastes.

Decision Point: The committee may wish to recommend that the Department of Revenue update Form RCYL and ARM 42.4.2604 to remove references to soil contaminated by hazardous waste.

CREDITS IN OTHER STATES

RECYCLING CREDITS OFFERED IN 11 STATES

Ten states in addition to Montana offer credits for recycling equipment or recycling operations costs. Eight state credits, including Montana's, are for the purchase of equipment, while two states offer the credit for equipment purchases and operation expenses, and one state gives a credit only for operation expenses.

The most common credit amount for equipment is 20% of the cost, though credit amounts range from 5% in Florida to 30% in Arkansas. Georgia's credit ranges from 1% to 8%, with a higher credit available in less prosperous counties. The Montana credit varies based on the amount of the investment. The credit equals 12.5% if claimed on the \$1 million maximum investment amount to which the credit may apply.

Many states limit the credits in some way, such as limiting:

- the maximum credit claimed (Idaho, Utah);
- the maximum expense to which the credit applies (Colorado, Montana);
- the amount by which the credit may reduce tax liability (Colorado, Georgia, Kentucky, Louisiana, Utah); or
- total credits claimed (Virginia).

ALL STATES OTHER THAN MONTANA ALLOW CARRYFORWARD OF CREDITS

Montana is the only state that does not allow carryforward of its recycling tax credit. Half of the states with a carryforward allow a 3-year or 5-year carryforward. Kentucky allows a 30-year carryforward, but its credit requires significant investment and job creation. Louisiana's credit may be claimed until it is exhausted, but no more than 20% of the calculated credit may be claimed in each year.

CREDIT FOR PROPERTY USED TO COLLECT OR PROCESS RECLAIMABLE MATERIAL

State	Credit	Equip.	Oper.	Eligible Expense	Credit Calculation	Carry Forward	Additional Details
AR	Recycling Equipment Tax Credit	✓		Equipment used exclusively for collecting, separating, processing, modifying, converting, or treating solid waste or for manufacturing products containing at least 50% recovered materials of which at least 10% is post-consumer waste	30% of purchase price	3 years	May not claim other credits
CO	Plastic Recycling Investment Tax Credit	✓	✓	Rent, wages, supplies, consumable tools, equipment, test inventory and utilities made for new plastic recycling technology in Colorado	20% of the first \$10,000 of net expenditures	5 years	Limited to individuals, sole proprietors, and single-member LLCs Only reduces tax liability for income from qualifying plastic recycling activities
FL	Hazardous Waste Facility Tax Credit	✓	✓	Commercial hazardous waste recycling facility that incurs expenses for hydrologic, geologic, or soil site evaluations and permit fees Stationary facility equipment used for recycling hazardous wastes	100% of expenses 5% of equipment cost	5 years	
GA	Investment Tax Credit	✓		Investment in recycling equipment	1%-8% of capital investment of \$50,000 or more (larger credit in less prosperous counties)	10 years	May not exceed 50% of annual tax liability May not claim this and Jobs Tax Credit

CREDIT FOR PROPERTY USED TO COLLECT OR PROCESS RECLAIMABLE MATERIAL

State	Credit	Equip.	Oper.	Eligible Expense	Credit Calculation	Carry Forward	Additional Details
ID	Tax Credit for Qualified Equipment Utilizing Postconsumer Waste or Postindustrial Waste	✓		Qualified equipment for which at least 90% of production of equipment is used to manufacture products using 50% or more postconsumer waste or postindustrial waste	20% of cost of equipment	7 years	\$30,000 maximum credit
KY	Major Recycling Credit	✓		Major project with recycling or composting equipment to be used exclusively within the state for recycling or composting postconsumer waste, minimum recycling investment of \$10 million and 400 employees and total plant and equipment cost of \$500 million	25% of installed cost	30 years	May not exceed 75% of annual tax liability
LA	Recycling Tax Credit	✓		Purchase of qualified new recycling manufacturing or process equipment and/or qualified service contracts	20% of equipment or contract cost (less amount of other tax credits received for the purchase)	Until exhausted	May not exceed 50% of annual tax liability and only 20% of credit may be claimed each year
MT	Credit for Property Used to Collect or Process Reclaimable Material	✓		Investment in property used to collect or process reclaimable material	25% for first \$250,000 invested, 15% for next \$250,000 invested, 5% for next \$500,000 invested	No	No credit for investment amount above \$1 million
OR	Pollution Control Facilities Tax Credit	✓		Purchase, addition to, reconstruction of, or improvement of land, structure, building, installation, excavation, machinery, equipment, or device with a principal purpose of recycling	35% of certified cost X certified percentage allocable to pollution control divided by the facility's years of useful life (up to 10 years)	3 years	

CREDIT FOR PROPERTY USED TO COLLECT OR PROCESS RECLAIMABLE MATERIAL

State	Credit	Equip.	Oper.	Eligible Expense	Credit Calculation	Carry Forward	Additional Details
UT	Recycling Market Development Zone Tax Credit		✓	Operating expenses for establishing and operating recycling and composting technology, includes payment to third parties for rent, wages, supplies, tools, test inventory, and utilities	20% of operating expenses, \$2,000 maximum	3 years	<p>Business must be located in Recycling Market Development Zone</p> <p>May not exceed 40% of annual tax liability</p> <p>May not claim this and Enterprise Zone Tax Credit or Targeted Business Income Tax Credit</p>
VA	Recyclable Materials Processing Equipment Tax Credit	✓		Purchase of machinery and equipment used predominantly on premises of manufacturing facility or plant that manufactures, processes, compounds, or produces items of tangible personal property from recyclable materials within Virginia for sale	20% of purchase price in year purchased	10 years	Aggregate credit limit of \$2 million, reduced on pro rata basis if limit is exceeded