

108TH CONGRESS  
2D SESSION

# H. R. 4480

To amend the Internal Revenue Code of 1986 to allow taxpayers a credit against income tax for expenditures to remediate contaminated sites.

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## IN THE HOUSE OF REPRESENTATIVES

JUNE 2, 2004

Mr. TURNER of Ohio (for himself, Mr. BOEHNER, Mr. BRADLEY of New Hampshire, Mr. CHABOT, Mr. CHOCOLA, Mr. ENGLISH, Mr. GERLACH, Mr. GILLMOR, Ms. HART, Mr. HOBSON, Mr. HOEKSTRA, Mrs. JOHNSON of Connecticut, Mr. KLINE, Mr. LATOURETTE, Mr. NEY, Mr. OXLEY, Mr. PORTMAN, Ms. PRYCE of Ohio, Mr. REGULA, Mr. ROGERS of Michigan, Mr. SHAYS, Mr. TIBERI, Mrs. JONES of Ohio, and Mr. WALSH) introduced the following bill; which was referred to the Committee on Ways and Means

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## A BILL

To amend the Internal Revenue Code of 1986 to allow taxpayers a credit against income tax for expenditures to remediate contaminated sites.

1 *Be it enacted by the Senate and House of Representa-*  
2 *tives of the United States of America in Congress assembled,*

### 3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Brownfields Revitaliza-  
5 tion Act of 2004”.

1 **SEC. 2. CREDIT FOR EXPENDITURES TO REMEDIATE CON-**  
2 **TAMINATED SITES.**

3 (a) IN GENERAL.—Subpart D of part IV of sub-  
4 chapter A of chapter 1 of the Internal Revenue Code of  
5 1986 (relating to business related credits) is amended by  
6 adding at the end the following new section:

7 **“SEC. 45G. ENVIRONMENTAL REMEDIATION CREDIT.**

8 “(a) IN GENERAL.—For purposes of section 38, the  
9 environmental remediation credit determined under this  
10 section is 50 percent of the qualified remediation expendi-  
11 tures paid or incurred by the taxpayer during the taxable  
12 year with respect to a qualified contaminated site located  
13 in an eligible area.

14 “(b) QUALIFIED REMEDIATION EXPENDITURES.—  
15 For purposes of this section, the term ‘qualified remedi-  
16 ation expenditures’ means expenditures, whether or not  
17 chargeable to capital account, in connection with—

18 “(1) the abatement or control of any hazardous  
19 substance (as defined in section 198(d)), petroleum,  
20 or any petroleum by-product at the qualified con-  
21 taminated site in accordance with an approved reme-  
22 diation and redevelopment plan,

23 “(2) the complete demolition of any structure  
24 on such site if any portion of such structure is de-  
25 molished in connection with such abatement or con-  
26 trol,

1           “(3) the removal and disposal of property in  
2           connection with the activities described in para-  
3           graphs (1) and (2), and

4           “(4) the reconstruction of utilities in connection  
5           with such activities.

6   For purposes of this section, the term ‘approved remedi-  
7   ation and redevelopment plan’ means any plan for such  
8   abatement, control, and redevelopment of a qualified con-  
9   taminated site which is approved by the State development  
10   agency for the State in which the qualified contaminated  
11   site is located.

12       “(c) CREDIT MAY NOT EXCEED ALLOCATION.—

13           “(1) IN GENERAL.—The environmental remedi-  
14           ation credit determined under this section with re-  
15           spect to any qualified contaminated site shall not ex-  
16           ceed the credit amount allocated under this section  
17           by the State development agency to the taxpayer for  
18           the remediation and redevelopment plan submitted  
19           by the taxpayer with respect to such site.

20           “(2) TIME FOR MAKING ALLOCATION.—An allo-  
21           cation shall be taken into account under paragraph  
22           (1) for any taxable year only if made before the  
23           close of the calendar year in which such taxable year  
24           begins.

25           “(3) MANNER OF ALLOCATION.—

1           “(A) ALLOCATION MUST BE PURSUANT TO  
2           PLAN.—No amount may be allocated under this  
3           subsection to any qualified contaminated site  
4           unless such amount is allocated pursuant to a  
5           qualified allocation plan of the State develop-  
6           ment agency of the State in which such site is  
7           located.

8           “(B) QUALIFIED ALLOCATION PLAN.—For  
9           purposes of this paragraph, the term ‘qualified  
10          allocation plan’ means any plan—

11           “(i) which sets forth selection criteria  
12           to be used to determine priorities of the  
13           State development agency in allocating  
14           credit amounts under this section, and

15           “(ii) which gives preference in allo-  
16           cating credit amounts under this section to  
17           qualified contaminated sites based on—

18           “(I) the extent of poverty,

19           “(II) whether the site is located  
20           in an enterprise zone or renewal com-  
21           munity,

22           “(III) whether the site is located  
23           in the central business district of the  
24           local jurisdiction,

1 “(IV) the extent of the required  
2 environmental remediation,

3 “(V) the extent of the commer-  
4 cial, industrial, or residential redevel-  
5 opment of the site in addition to envi-  
6 ronmental remediation,

7 “(VI) the extent of the financial  
8 commitment to such redevelopment,  
9 and

10 “(VII) the amount of new em-  
11 ployment expected to result from such  
12 redevelopment.

13 “(4) STATES MAY IMPOSE OTHER CONDI-  
14 TIONS.—Nothing in this section shall be construed  
15 to prevent any State from requiring assurances, in-  
16 cluding bonding, that any project for which a credit  
17 amount is allocated under this section will be prop-  
18 erly completed or that the financial commitments of  
19 the taxpayer are actually carried out.

20 “(d) STATE ENVIRONMENTAL REMEDIATION CREDIT  
21 CEILING.—

22 “(1) IN GENERAL.—The State environmental  
23 remediation credit ceiling applicable to any State for  
24 any calendar year shall be an amount equal to the  
25 sum of—

1           “(A) the unused State environmental re-  
 2           mediation credit ceiling (if any) of such State  
 3           for the preceding calendar year,

4           “(B) such State’s share of the national en-  
 5           vironmental remediation credit limitation for  
 6           the calendar year,

7           “(C) the amount of State environmental  
 8           remediation credit ceiling returned in the cal-  
 9           endar year, plus

10           “(D) the amount (if any) allocated under  
 11           paragraph (3) to such State by the Secretary.

12       For purposes of subparagraph (A), the unused State  
 13       environmental remediation credit ceiling for any cal-  
 14       endar year is the excess (if any) of the sum of the  
 15       amounts described in subparagraphs (B), (C), and  
 16       (D) over the aggregate environmental remediation  
 17       credit amount allocated for such year.

18           “(2) NATIONAL ENVIRONMENTAL REMEDIATION  
 19       CREDIT LIMITATION.—

20           “(A) IN GENERAL.—The national environ-  
 21       mental remediation credit limitation for each  
 22       calendar year is \$1,000,000,000.

23           “(B) STATE’S SHARE OF LIMITATION.—A  
 24       State’s share of such limitation is the amount  
 25       which bears the same ratio to the limitation ap-

1           plicable under subparagraph (A) for the cal-  
2           endar year as such State’s population bears to  
3           the population of the United States.

4           “(3) UNUSED ENVIRONMENTAL REMEDIATION  
5           CREDIT CARRYOVERS ALLOCATED AMONG CERTAIN  
6           STATES.—

7                   “(A) IN GENERAL.—The unused environ-  
8           mental remediation credit carryover of a State  
9           for any calendar year shall be assigned to the  
10          Secretary for allocation among qualified States  
11          for the succeeding calendar year.

12                  “(B) UNUSED ENVIRONMENTAL REMEDI-  
13          ATION CREDIT CARRYOVER.—For purposes of  
14          this paragraph, the unused environmental reme-  
15          diation credit carryover of a State for any cal-  
16          endar year is the excess (if any) of—

17                          “(i) the unused State environmental  
18                  remediation credit ceiling for the year pre-  
19                  ceding such year, over

20                          “(ii) the aggregate environmental re-  
21                  mediation credit amount allocated for such  
22                  year.

23                  “(C) FORMULA FOR ALLOCATION OF UN-  
24          USED ENVIRONMENTAL REMEDIATION CREDIT  
25          CARRYOVERS AMONG QUALIFIED STATES.—

1 Rules similar to the rules of clauses (iii) and  
 2 (iv) of section 42(h)(3)(D) shall apply for pur-  
 3 poses of this paragraph.

4 “(4) POPULATION.—For purposes of this sub-  
 5 section, population shall be determined in accord-  
 6 ance with section 146(j).

7 “(5) INFLATION ADJUSTMENT.—In the case of  
 8 any calendar year after 2004, the \$1,000,000,000  
 9 amount contained in paragraph (2) shall be in-  
 10 creased by an amount equal to—

11 “(A) such dollar amount, multiplied by

12 “(B) the cost-of-living adjustment deter-  
 13 mined under section 1(f)(3) for the calendar  
 14 year, determined by substituting ‘calendar year  
 15 2003’ for ‘calendar year 1992’ in subparagraph  
 16 (B) thereof.

17 Any increase determined under the preceding sen-  
 18 tence shall be rounded to the nearest multiple of  
 19 \$500,000.

20 “(e) ELIGIBLE AREA; OTHER DEFINITIONS.—For  
 21 purposes of this section—

22 “(1) ELIGIBLE AREA.—

23 “(A) IN GENERAL.—The term ‘eligible  
 24 area’ means the entire area encompassed by a  
 25 local governmental unit if such area contains at

1           least 1 census tract having a poverty rate of at  
2           least 20 percent.

3           “(B) AREAS NOT WITHIN CENSUS  
4           TRACTS.—In the case of an area which is not  
5           tracted for population census tracts, the equiva-  
6           lent county divisions (as defined by the Bureau  
7           of the Census for purposes of defining poverty  
8           areas) shall be used for purposes of determining  
9           poverty rates.

10           “(C) USE OF CENSUS DATA.—Population  
11           and poverty rate shall be determined by the  
12           most recent decennial census data available.

13           “(2) QUALIFIED CONTAMINATED SITE.—The  
14           term ‘qualified contaminated site’ has the meaning  
15           given to such term by section 198, determined by  
16           treating petroleum and petroleum by-products as  
17           hazardous substances.

18           “(3) POSSESSIONS TREATED AS STATES.—The  
19           term ‘State’ includes a possession of the United  
20           States.

21           “(f) CREDIT MAY BE ASSIGNED.—

22           “(1) IN GENERAL.—If a taxpayer elects the ap-  
23           plication of this subsection for any taxable year, the  
24           amount of credit determined under this section for  
25           such year which would (but for this subsection) be

1 allowable to the taxpayer shall be allowable to the  
2 person designated by the taxpayer. The person so  
3 designated shall be treated as the taxpayer for pur-  
4 poses of subsection (h).

5 “(2) TREATMENT OF AMOUNTS PAID FOR AS-  
6 SIGNMENT.—If any amount is paid to the person  
7 who assigns the credit determined under this sec-  
8 tion, no portion of such amount or such credit shall  
9 be includible in the payee’s gross income.

10 “(g) TREATMENT OF POTENTIAL RESPONSIBLE PAR-  
11 TIES.—

12 “(1) IN GENERAL.—No credit shall be allowed  
13 under this section to any potential responsible party  
14 (within the meaning of the Comprehensive Environ-  
15 mental Response, Compensation, and Liability Act  
16 of 1980) with respect to any qualified contaminated  
17 site (including by reason of receiving an assignment  
18 of the credit under subsection (f)) unless at least 25  
19 percent of the cost of remediating such site is borne  
20 by such party.

21 “(2) RELIEF FROM LIABILITY FOR OTHER 75  
22 PERCENT.—If the requirement of paragraph (1) is  
23 met by a potential responsible party, such party  
24 shall not be liable under any Federal law for any

1 cost taken into account in determining whether such  
2 requirement is met.

3 “(3) AMOUNTS PAID FOR CREDIT ASSIGNMENT  
4 NOT ELIGIBLE.—Amounts paid by a potential re-  
5 sponsible party to any person for the assignment by  
6 such person of the credit under subsection (f)) shall  
7 not be taken into account in determining whether  
8 the requirement of paragraph (1) is met.

9 “(h) RECAPTURE OF CREDIT IF ENVIRONMENTAL  
10 REMEDIATION NOT PROPERLY COMPLETED.—

11 “(1) IN GENERAL.—If the State development  
12 agency of the State in which the qualified contami-  
13 nated site is located determines that the environ-  
14 mental remediation which is part of the approved re-  
15 mediation and redevelopment plan for such site was  
16 not properly completed, then the taxpayer’s tax  
17 under this chapter for the taxable year in which  
18 such determination is made shall be increased by the  
19 credit recapture amount.

20 “(2) CREDIT RECAPTURE AMOUNT.—For pur-  
21 poses of paragraph (1), the credit recapture amount  
22 is an amount equal to the sum of—

23 “(A) the aggregate decrease in the credits  
24 allowed to the taxpayer under section 38 for all  
25 prior taxable years which would have resulted if

1 the credit allowable by reason of this section  
2 were not allowed, plus

3 “(B) interest at the overpayment rate es-  
4 tablished under section 6621 on the amount de-  
5 termined under subparagraph (A) for each  
6 prior taxable year for the period beginning on  
7 the due date for filing the return for the prior  
8 taxable year involved.

9 No deduction shall be allowed under this chapter for  
10 interest described in subparagraph (B).

11 “(3) SPECIAL RULES.—

12 “(A) TAX BENEFIT RULE.—The tax for  
13 the taxable year shall be increased under para-  
14 graph (1) only with respect to credits allowed  
15 by reason of this section which were used to re-  
16 duce tax liability. In the case of credits not so  
17 used to reduce tax liability, the carryforwards  
18 and carrybacks under section 39 shall be appro-  
19 priately adjusted.

20 “(B) NO CREDITS AGAINST TAX.—Any in-  
21 crease in tax under this subsection shall not be  
22 treated as a tax imposed by this chapter for  
23 purposes of determining the amount of any  
24 credit or the tax imposed by section 55.

25 “(i) DENIAL OF DOUBLE BENEFIT.—

1           “(1) IN GENERAL.—No deduction shall be al-  
2       lowed for that portion of the qualified remediation  
3       expenditures otherwise allowable as a deduction for  
4       the taxable year which is equal to the amount of the  
5       credit determined for such taxable year under this  
6       section.

7           “(2) SIMILAR RULE WHERE TAXPAYER CAP-  
8       ITALIZES RATHER THAN DEDUCTS EXPENSES.—If—

9           “(A) the amount of the credit determined  
10       for the taxable year under this section, exceeds

11       “(B) the amount allowable as a deduction  
12       for such taxable year for qualified remediation  
13       expenditures (determined without regard to  
14       paragraph (1)),

15       the amount chargeable to capital account for the  
16       taxable year for such expenditures shall be reduced  
17       by the amount of such excess.

18       “(3) CONTROLLED GROUPS.—In the case of a  
19       corporation which is a member of a controlled group  
20       of corporations (within the meaning of section  
21       52(a)) or a trade or business which is treated as  
22       being under common control with other trades or  
23       businesses (within the meaning of section 52(b)),  
24       this subsection shall be applied under rules pre-

1 scribed by the Secretary similar to the rules applica-  
2 ble under subsections (a) and (b) of section 52.”

3 (b) CREDIT TREATED AS BUSINESS CREDIT.—Sec-  
4 tion 38(b) of such Code is amended by striking “plus”  
5 at the end of paragraph (14), by striking the period at  
6 the end of paragraph (15) and inserting “, plus”, and by  
7 adding at the end the following new paragraph:

8 “(16) the environmental remediation credit de-  
9 termined under section 45G(a).”.

10 (c) NO CARRYBACKS BEFORE EFFECTIVE DATE.—  
11 Subsection (d) of section 39 of such Code (relating to  
12 carryback and carryforward of unused credits) is amended  
13 by adding at the end the following:

14 “(11) NO CARRYBACK OF SECTION 45G CREDIT  
15 BEFORE EFFECTIVE DATE.—No portion of the un-  
16 used business credit for any taxable year which is  
17 attributable to the environmental remediation credit  
18 determined under section 45G may be carried back  
19 to a taxable year ending before the date of the en-  
20 actment of section 45G.”.

21 (d) CONFORMING AMENDMENT.—The table of sec-  
22 tions for subpart D of part IV of subchapter A of chapter  
23 1 of such Code is amended by adding at the end the fol-  
24 lowing new item:

“Sec. 45G. Environmental remediation credit.”.

1       (e) EFFECTIVE DATE.—The amendments made by  
2 this section shall apply to taxable years beginning after  
3 the date of the enactment of this Act.

○