

108TH CONGRESS
2D SESSION

S. 2926

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

IN THE SENATE OF THE UNITED STATES

OCTOBER 7, 2004

Mr. VOINOVICH (for himself and Mr. COLEMAN) introduced the following bill; which was read twice and referred to the Committee on Finance

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”.

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

8 (a) IN GENERAL.—Subpart D of part IV of sub-
9 chapter A of chapter 1 of the Internal Revenue Code of

1 1986 (relating to business related credits) is amended by
2 adding at the end the following new section:

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

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

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

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

19 “(2) the complete demolition of any structure
20 on such site if any portion of such structure is de-
21 molished in connection with such abatement or con-
22 trol,

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

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

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

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

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

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

22 “(3) MANNER OF ALLOCATION.—

23 “(A) ALLOCATION MUST BE PURSUANT TO
24 PLAN.—No amount may be allocated under this
25 subsection to any qualified contaminated site

1 unless such amount is allocated pursuant to a
2 qualified allocation plan of the State develop-
3 ment agency of the State in which such site is
4 located.

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

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

12 “(ii) which gives preference in allo-
13 cating credit amounts under this section to
14 qualified contaminated sites based on—

15 “(I) the extent of poverty,

16 “(II) whether the site is located
17 in an enterprise zone or renewal com-
18 munity,

19 “(III) whether the site is located
20 in the central business district of the
21 local jurisdiction,

22 “(IV) the extent of the required
23 environmental remediation,

24 “(V) the extent of the commer-
25 cial, industrial, or residential redevel-

1 opment of the site in addition to envi-
2 ronmental remediation,

3 “(VI) the extent of the financial
4 commitment to such redevelopment,
5 and

6 “(VII) the amount of new em-
7 ployment expected to result from such
8 redevelopment.

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

16 “(d) STATE ENVIRONMENTAL REMEDIATION CREDIT
17 CEILING.—

18 “(1) IN GENERAL.—The State environmental
19 remediation credit ceiling applicable to any State for
20 any calendar year shall be an amount equal to the
21 sum of—

22 “(A) the unused State environmental re-
23 mediation credit ceiling (if any) of such State
24 for the preceding calendar year,

1 “(B) such State’s share of the national en-
2 vironmental remediation credit limitation for
3 the calendar year,

4 “(C) the amount of State environmental
5 remediation credit ceiling returned in the cal-
6 endar year, plus

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

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

15 “(2) NATIONAL ENVIRONMENTAL REMEDIATION
16 CREDIT LIMITATION.—

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

20 “(B) STATE’S SHARE OF LIMITATION.—A
21 State’s share of such limitation is the amount
22 which bears the same ratio to the limitation ap-
23 plicable under subparagraph (A) for the cal-
24 endar year as such State’s population bears to
25 the population of the United States.

1 “(3) UNUSED ENVIRONMENTAL REMEDIATION
2 CREDIT CARRYOVERS ALLOCATED AMONG CERTAIN
3 STATES.—

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

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

14 “(i) the unused State environmental
15 remediation credit ceiling for the year pre-
16 ceding such year, over

17 “(ii) the aggregate environmental re-
18 mediation credit amount allocated for such
19 year.

20 “(C) FORMULA FOR ALLOCATION OF UN-
21 USED ENVIRONMENTAL REMEDIATION CREDIT
22 CARRYOVERS AMONG QUALIFIED STATES.—
23 Rules similar to the rules of clauses (iii) and
24 (iv) of section 42(h)(3)(D) shall apply for pur-
25 poses of this paragraph.

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

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

8 “(A) such dollar amount, multiplied by

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

14 Any increase determined under the preceding sen-
15 tence shall be rounded to the nearest multiple of
16 \$500,000.

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

19 “(1) ELIGIBLE AREA.—

20 “(A) IN GENERAL.—The term ‘eligible
21 area’ means the entire area encompassed by a
22 local governmental unit if such area contains at
23 least 1 census tract having a poverty rate of at
24 least 20 percent.

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

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

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

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

19 “(f) CREDIT MAY BE ASSIGNED.—

20 “(1) IN GENERAL.—If a taxpayer elects the ap-
21 plication of this subsection for any taxable year, the
22 amount of credit determined under this section for
23 such year which would (but for this subsection) be
24 allowable to the taxpayer shall be allowable to the
25 person designated by the taxpayer. The person so

1 designated shall be treated as the taxpayer for pur-
2 poses of subsection (h).

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

8 “(g) TREATMENT OF POTENTIAL RESPONSIBLE PAR-
9 TIES.—

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

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

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

7 “(h) RECAPTURE OF CREDIT IF ENVIRONMENTAL
8 REMEDIATION NOT PROPERLY COMPLETED.—

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

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

21 “(A) the aggregate decrease in the credits
22 allowed to the taxpayer under section 38 for all
23 prior taxable years which would have resulted if
24 the credit allowable by reason of this section
25 were not allowed, plus

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

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

9 “(3) SPECIAL RULES.—

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

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

23 “(i) DENIAL OF DOUBLE BENEFIT.—

24 “(1) IN GENERAL.—No deduction shall be al-
25 lowed for that portion of the qualified remediation

1 expenditures otherwise allowable as a deduction for
2 the taxable year which is equal to the amount of the
3 credit determined for such taxable year under this
4 section.

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

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

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

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

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

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

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

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

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

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

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