

111TH CONGRESS
1ST SESSION

H. R. 1724

To amend the Internal Revenue Code of 1986 to provide tax incentives
for the remediation of contaminated sites.

IN THE HOUSE OF REPRESENTATIVES

MARCH 25, 2009

Mr. TURNER (for himself and Ms. SUTTON) introduced the following bill;
which was referred to the Committee on Ways and Means

A BILL

To amend the Internal Revenue Code of 1986 to provide
tax incentives for the remediation of 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 “America’s Brownfield
5 Cleanup Act 2009”.

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. 45R. 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 at the qualified contaminated site in ac-
16 cordance with an approved remediation plan,

17 “(2) the demolition of any structure (or portion
18 thereof) on such site if any portion of such structure
19 is demolished in connection with such abatement or
20 control,

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

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

1 Such term includes the cost of financial assurances (in-
2 cluding bonding) and insurance described in subsection
3 (g)(4).

4 “(c) QUALIFIED CONTAMINATED SITE.—For pur-
5 poses of this section—

6 “(1) IN GENERAL.—The term ‘qualified con-
7 taminated site’ means any area—

8 “(A) which is an eligible response site as
9 defined in section 101(41) of the Comprehen-
10 sive Environmental Response, Compensation,
11 and Liability Act of 1980,

12 “(B) which is held by the taxpayer for use
13 in a trade or business or for the production of
14 income, or which is property described in sec-
15 tion 1221(a)(1) in the hands of the taxpayer,

16 “(C) at or on which there has been a re-
17 lease (or threat of release) or disposal of any
18 hazardous substance, and

19 “(D) with respect to which an approved re-
20 mediation plan and an approved redevelopment
21 plan are both in effect.

22 “(2) NATIONAL PRIORITIES LISTED SITES NOT
23 INCLUDED.—Such term shall not include any site
24 which is on, or proposed for, the national priorities
25 list under section 105(a)(8)(B) of the Comprehen-

1 sive Environmental Response, Compensation, and
2 Liability Act of 1980 (as in effect on the date of the
3 enactment of this section).

4 “(d) HAZARDOUS SUBSTANCE.—For purposes of this
5 section—

6 “(1) IN GENERAL.—The term ‘hazardous sub-
7 stance’ means—

8 “(A) any substance which is a hazardous
9 substance as defined in section 101(14) of the
10 Comprehensive Environmental Response, Com-
11 pensation, and Liability Act of 1980,

12 “(B) any substance which is designated as
13 a hazardous substance under section 102 of
14 such Act, and

15 “(C) any petroleum product (within the
16 meaning of section 4612(a)(3)).

17 “(2) EXCEPTION.—Such term shall not include
18 any substance with respect to which a removal or re-
19 medial action is not permitted under section 104 of
20 such Act by reason of subsection (a)(3) thereof.

21 “(e) APPROVED REMEDIATION PLAN.—For purposes
22 of this section, the term ‘approved remediation plan’
23 means, with respect to any site, any plan for the conduct
24 of the activities described in paragraphs (1) through (4)
25 of subsection (b)—

1 “(1) which is approved by a State environ-
2 mental agency—

3 “(A) pursuant to a response program
4 which includes each of the elements listed in
5 section 128(a)(2) of the Comprehensive Envi-
6 ronmental Response, Compensation, and Liabil-
7 ity Act of 1980, and

8 “(B) after a determination by such agency
9 that the plan provides for the abatement or
10 control of the hazardous substances at such
11 site, and

12 “(2) which includes a written statement from
13 such agency that such site meets the requirements
14 of paragraphs (1)(A), (1)(C), and (2) of subsection
15 (c).

16 “(f) APPROVED REDEVELOPMENT PLAN.—For pur-
17 poses of this section, the term ‘approved redevelopment
18 plan’ means, with respect to any site, any plan for the
19 redevelopment of such site which is approved by the State
20 development agency after a determination by such agency
21 that the plan provides for the redevelopment of such site
22 in a manner beneficial to the State and local economy and
23 to the local community generally.

24 “(g) CREDIT MAY NOT EXCEED ALLOCATION.—

1 “(1) IN GENERAL.—The environmental remedi-
2 ation credit determined under this section with re-
3 spect to any qualified contaminated site shall not ex-
4 ceed the credit amount allocated under this section
5 by the State development agency to the taxpayer
6 with respect to such site.

7 “(2) TIME FOR MAKING ALLOCATION.—An allo-
8 cation shall be taken into account under paragraph
9 (1) for any taxable year only if made before the
10 close of the calendar year in which such taxable year
11 begins.

12 “(3) MANNER OF ALLOCATION.—

13 “(A) ALLOCATION MUST BE PURSUANT TO
14 PLAN.—No amount may be allocated under this
15 subsection to any qualified contaminated site
16 unless—

17 “(i) an approved remediation plan and
18 an approved redevelopment plan are both
19 in effect with respect to such site, and

20 “(ii) such amount is allocated pursu-
21 ant to a qualified allocation plan of the
22 State development agency.

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

1 “(i) which sets forth selection criteria
2 to be used to determine priorities of the
3 State development agency in allocating
4 credit amounts under this section, and

5 “(ii) which gives preference in allo-
6 cating credit amounts under this section to
7 qualified contaminated sites based on—

8 “(I) the extent of poverty,

9 “(II) whether the site is located
10 in an empowerment zone, enterprise
11 community, or renewal community,

12 “(III) whether the site is located
13 in the central business district of the
14 local jurisdiction,

15 “(IV) the extent of the required
16 environmental remediation,

17 “(V) the extent of the commer-
18 cial, industrial, or residential redevel-
19 opment of the site in addition to envi-
20 ronmental remediation,

21 “(VI) the extent of the financial
22 commitment to such redevelopment,

23 “(VII) the amount of new em-
24 ployment expected to result from such
25 redevelopment, and

1 “(VIII) whether it is reasonably
2 expected that under the approved re-
3 mediation plan at least 25 percent of
4 the estimated total qualified remedi-
5 ation expenditures will be borne by
6 one or more persons who are poten-
7 tially liable under section 107(a) of
8 the Comprehensive Environmental Re-
9 sponse, Compensation, and Liability
10 Act of 1980.

11 “(4) STATES MAY IMPOSE OTHER CONDI-
12 TIONS.—Nothing in this section shall be construed
13 to prevent any State from requiring—

14 “(A) assurances, including bonding, that
15 any project for which a credit amount is allo-
16 cated under this section will be properly com-
17 pleted or that the financial commitments of the
18 taxpayer are actually carried out,

19 “(B) that the taxpayer obtain insurance
20 which reimburses qualified remediation expendi-
21 tures in excess of the total estimated amount of
22 such expenditures, or

23 “(C) that the taxpayer obtain insurance
24 covering liability for personal injury, death, or
25 property damage.

1 “(h) STATE ENVIRONMENTAL REMEDIATION CREDIT
2 CEILING.—For purposes of this section—

3 “(1) LIMITATION.—The aggregate credit
4 amounts allocated by the State development agency
5 during any calendar year shall not exceed the State
6 environmental remediation credit ceiling applicable
7 to such State for such calendar year.

8 “(2) DETERMINATION OF LIMITATION
9 AMOUNT.—The State environmental remediation
10 credit ceiling applicable to any State for any cal-
11 endar year shall be an amount equal to the sum of—

12 “(A) such State’s share of the national en-
13 vironmental remediation credit limitation for
14 the calendar year,

15 “(B) the unused State environmental re-
16 mediation credit ceiling (if any) of such State
17 for the calendar year,

18 “(C) the amount of State environmental
19 remediation credit ceiling returned in the cal-
20 endar year, plus

21 “(D) the amount (if any) allocated under
22 paragraph (5) to such State by the Secretary.

23 “(3) NATIONAL ENVIRONMENTAL REMEDIATION
24 CREDIT LIMITATION.—

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

4 “(B) STATE’S SHARE OF LIMITATION.—A
5 State’s share of such limitation is the amount
6 which bears the same ratio to the limitation ap-
7 plicable under subparagraph (A) for the cal-
8 endar year as such State’s population bears to
9 the population of the United States.

10 “(4) UNUSED STATE ENVIRONMENTAL REMEDI-
11 ATION CREDIT CEILING.—The unused State environ-
12 mental remediation credit ceiling for any calendar
13 year is the excess (if any) of—

14 “(A) the State environmental remediation
15 credit ceiling applicable to the State for the pre-
16 ceding calendar year (determined without re-
17 gard to paragraph (2)(B)), over

18 “(B) the aggregate environmental remedi-
19 ation credit amount allocated by the State for
20 such preceding year.

21 “(5) UNUSED ENVIRONMENTAL REMEDIATION
22 CREDIT ALLOCATED AMONG STATES AFTER 1-YEAR
23 CARRYFORWARD.—

24 “(A) IN GENERAL.—The excess unused en-
25 vironmental remediation credit of a State for

1 any calendar year shall be assigned to the Sec-
2 retary for allocation among qualified States for
3 the succeeding calendar year.

4 “(B) EXCESS UNUSED ENVIRONMENTAL
5 REMEDIATION CREDIT.—For purposes of this
6 paragraph, the excess unused environmental re-
7 mediation credit of a State for any calendar
8 year is the excess (if any) of—

9 “(i) the unused State environmental
10 remediation credit ceiling for the preceding
11 calendar year, over

12 “(ii) the aggregate environmental re-
13 mediation credit amount allocated by the
14 State for such preceding year.

15 “(C) FORMULA FOR ALLOCATION OF EX-
16 CESS UNUSED ENVIRONMENTAL REMEDIATION
17 CREDIT AMONG STATES.—Rules similar to the
18 rules of clauses (iii) and (iv) of section
19 42(h)(3)(D) shall apply for purposes of this
20 paragraph.

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

24 “(7) INFLATION ADJUSTMENT.—In the case of
25 any calendar year after 2010, the \$1,000,000,000

1 amount contained in paragraph (3) shall be in-
2 creased by an amount equal to—

3 “(A) such dollar amount, multiplied by

4 “(B) the cost-of-living adjustment deter-
5 mined under section 1(f)(3) for the calendar
6 year, determined by substituting ‘calendar year
7 2009’ for ‘calendar year 1992’ in subparagraph
8 (B) thereof.

9 Any increase determined under the preceding sen-
10 tence shall be rounded to the nearest multiple of
11 \$500,000.

12 “(i) OTHER DEFINITIONS AND SPECIAL RULE.—For
13 purposes of this section—

14 “(1) ELIGIBLE AREA.—

15 “(A) IN GENERAL.—The term ‘eligible
16 area’ means the entire area encompassed by a
17 local governmental unit or Indian tribal govern-
18 ment if such entire area contains at least 1 cen-
19 sus tract having a poverty rate of at least 20
20 percent.

21 “(B) USE OF EQUIVALENT COUNTY DIVI-
22 SIONS.—In the case of any area which is not
23 tracted for population census tracts, the equiva-
24 lent county divisions (as defined by the Bureau
25 of the Census for purposes of defining poverty

1 areas) shall be treated as census tracts for pur-
2 poses of subparagraph (A).

3 “(C) USE OF CENSUS DATA.—For pur-
4 poses of this paragraph, population and poverty
5 rate shall be determined by the most recent de-
6 cennial census data available.

7 “(2) STATE ENVIRONMENTAL AGENCY.—The
8 term ‘State environmental agency’ means any State
9 agency specifically authorized by gubernatorial act
10 or State statute to carry out the functions and re-
11 sponsibilities of a State environmental agency for
12 purposes of this section.

13 “(3) STATE DEVELOPMENT AGENCY.—The
14 term ‘State development agency’ means any State
15 agency specifically authorized by gubernatorial act
16 or State statute to carry out the functions and re-
17 sponsibilities of a State development agency for pur-
18 poses of this section.

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

22 “(5) SPECIAL RULES FOR HAZARDOUS SUB-
23 STANCES THAT ARE PETROLEUM PRODUCTS.—In the
24 case of an area at or on which there has been a re-
25 lease (or threat of release) or disposal of any haz-

1 ardous substance that is a petroleum product, the
2 following rules shall apply:

3 “(A) The requirement of subsection
4 (c)(1)(A) shall be deemed to be met.

5 “(B) The requirement of subsection
6 (e)(1)(A) shall be deemed to be met.

7 “(C) Subsection (e)(2) shall be applied by
8 substituting ‘(1)(C) and (2)’ for ‘(1)(A), (1)(C),
9 and (2)’.

10 “(j) CREDIT MAY BE ASSIGNED.—

11 “(1) IN GENERAL.—If a taxpayer elects the ap-
12 plication of this subsection for any taxable year, the
13 amount of credit determined under this section for
14 such year which would (but for this subsection) be
15 allowable to the taxpayer shall be allowable to the
16 person designated by the taxpayer. The person so
17 designated shall be treated as the taxpayer for pur-
18 poses of this title (other than this paragraph).

19 “(2) TREATMENT OF AMOUNTS PAID FOR AS-
20 SIGNMENT.—If any amount is paid to the person
21 who assigns the credit determined under this sec-
22 tion, no portion of such amount shall be includible
23 in such person’s gross income.

1 “(k) RECAPTURE OF CREDIT IF APPROVED REMEDI-
2 ATION PLAN OR APPROVED REDEVELOPMENT PLAN NOT
3 PROPERLY COMPLETED.—

4 “(1) IN GENERAL.—If—

5 “(A) the State environmental agency deter-
6 mines that the approved remediation plan for
7 the qualified contaminated site was not properly
8 completed, or

9 “(B) the State development agency deter-
10 mines that the approved redevelopment plan for
11 such site was not properly completed,
12 the taxpayer’s tax under this chapter for the taxable
13 year in which such determination is made shall be
14 increased by the credit recapture amount.

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

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

23 “(B) interest at the overpayment rate es-
24 tablished under section 6621 on the amount de-
25 termined under subparagraph (A) for each

1 prior taxable year for the period beginning on
2 the due date for filing the return for the prior
3 taxable year involved.

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

6 “(3) SPECIAL RULES.—

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

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

20 “(1) DENIAL OF DOUBLE BENEFIT.—

21 “(1) IN GENERAL.—No deduction shall be al-
22 lowed for that portion of the qualified remediation
23 expenditures otherwise allowable as a deduction for
24 the taxable year which is equal to the amount of the

1 credit determined for such taxable year under this
2 section.

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

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

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

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

14 “(3) CONTROLLED GROUPS.—In the case of a
15 corporation which is a member of a controlled group
16 of corporations (within the meaning of section
17 41(f)(5)) or a trade or business which is treated as
18 being under common control with other trades or
19 businesses (within the meaning of section
20 41(f)(1)(B)), this subsection shall be applied under
21 rules prescribed by the Secretary similar to the rules
22 applicable under subparagraphs (A) and (B) of sec-
23 tion 41(f)(1).

24 “(m) COST OF REMOVAL OR REMEDIAL ACTION.—

25 The credit allowed under this section shall not be treated

1 as a cost of removal or remedial action incurred by the
 2 United States for purposes of section 107(a)(4)(A) of the
 3 Comprehensive Environmental Response, Compensation,
 4 and Liability Act of 1980.”.

5 (b) GROSS INCOME EXCLUSION BY SITE OWNER OF
 6 REMEDIATION EXPENDITURES PAID BY POTENTIALLY
 7 RESPONSIBLE PARTIES.—Part III of subchapter B of
 8 chapter 1 of such Code is amended by inserting after sec-
 9 tion 139B the following new section:

10 **“SEC. 139C. QUALIFIED REMEDIATION CONTRIBUTIONS**
 11 **FOR BROWNFIELD CLEANUP.**

12 “(a) IN GENERAL.—Gross income shall not include
 13 any amount received as a qualified remediation contribu-
 14 tion.

15 “(b) QUALIFIED REMEDIATION CONTRIBUTION.—
 16 For purposes of this section, the term ‘qualified remedi-
 17 ation contribution’ means any amount which is paid—

18 “(1) to or for the benefit of the owner of any
 19 property,

20 “(2) by a person who is potentially liable with
 21 respect to such property under section 107(a) of the
 22 Comprehensive Environmental Response, Compensa-
 23 tion, and Liability Act of 1980, and

1 “(3) for qualified remediation expenditures (as
2 defined in section 45R(b)) with respect to such prop-
3 erty.

4 “(c) DENIAL OF DOUBLE BENEFIT.—Notwith-
5 standing any other provision of this subtitle—

6 “(1) no deduction or credit shall be allowed (to
7 the person for whose benefit a qualified remediation
8 contribution is made) for, or by reason of, any ex-
9 penditure to the extent of the amount excluded
10 under this section with respect to such expenditure,
11 and

12 “(2) no increase in the basis of any property
13 shall result from any amount excluded under this
14 section with respect to such property.”.

15 (c) CREDIT TREATED AS BUSINESS CREDIT.—Sec-
16 tion 38(b) of such Code is amended by striking “plus”
17 at the end of paragraph (34), by striking the period at
18 the end of paragraph (35) and inserting “, plus”, and by
19 adding at the end the following new paragraph:

20 “(36) the environmental remediation credit de-
21 termined under section 45R(a).”.

22 (d) CLERICAL AMENDMENTS.—

23 (1) The table of sections for subpart D of part
24 IV of subchapter A of chapter 1 of such Code is

1 amended by adding at the end the following new
2 item:

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

3 (2) The table of sections for part III of sub-
4 chapter B of chapter 1 of such Code is amended by
5 inserting after the item relating to section 139A the
6 following new item:

“Sec. 139C. Remediation contributions by potentially responsible parties.”.

7 (e) EFFECTIVE DATE.—The amendments made by
8 this section shall apply to taxable years beginning after
9 December 31, 2009.

○