

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.

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

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 traced 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.

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