Franchise Tax Board

ANALYSIS OF ORIGINAL BILL

Author:	Coto	Analyst:	Angela Raygoza	Bill Number:	AB 274
Related Bills:	See Legislative History	Telephone:	845-7814	Introduced Date:	February 9, 2007
		Attorney:	Patrick Kusiak	Sponsor:	

SUBJECT: Polluted Brownfield Property Clean Up Credit

SUMMARY

This bill would create a tax credit for the cost of cleaning up polluted brownfield property.

PURPOSE OF THE BILL

According to the author's office, the purpose of this bill is to create an incentive to clean up brownfield property to improve economic development.

EFFECTIVE/OPERATIVE DATE

As a tax levy, this bill would be effective immediately upon enactment and operative for taxable years beginning on or after January 1, 2007.

POSITION

Pending.

ANALYSIS

Federal/State Law

Current federal law allows a taxpayer to elect to treat qualified environmental remediation expenditures as an expense deduction in the year in which the costs were incurred, rather than capitalized over time. This federal provision will not apply to expenditures paid or incurred after December 31, 2007. California conforms to this provision for costs paid or incurred before 2004.

Existing state and federal laws provide various tax credits designed to provide tax relief for taxpayers who incur certain expenses (e.g., child adoption) or to influence behavior, including business practices and decisions (e.g., research credits or economic development area hiring credits). These credits generally are designed to provide incentives for taxpayers to perform various actions or activities that they may not otherwise undertake.

Board Position:			Department Director	Date
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A “brownfield” property is defined in the Health and Safety Code as property that meets the following criteria:

- is located in an urban area,
- was previously the site of economic activity, and
- has been vacant or has had no occupant engaged in year-round economically productive activities for a period of not less than the 12 months previous to the date of application for a loan.

"Brownfield" excludes property that is any of the following:

- listed or proposed for listing on the National Priorities List pursuant federal law,
- is or was owned by a department, agency, or instrumentality of the United States, or
- will be the site of a contiguous expansion or improvement of an operating industrial or commercial facility unless the property is located in an Enterprise Zone or other "eligible area" and is owned by a small business, certain nonprofit corporations, or a small business incubator that is undertaking the expansion with the assistance of specified grants or loans.

THIS BILL

This bill would allow a qualified brownfield property owner a credit equal to the costs paid or incurred during the taxable year to clean up a polluted brownfield property to a satisfactory level. A satisfactory level would be determined by a written certification of completion.

This bill would define “brownfield property” by reference to the Health and Safety Code.

This bill would define “written certification of completion” as an evaluation by the Department of Toxic Substances Control of the effectiveness of a removal or remedial action conducted by a responsible party to reduce or eliminate actual or potential threats posed by a hazardous release site.

This bill would specify that any excess credit amounts could be carried forward until exhausted.

IMPLEMENTATION CONSIDERATIONS

The terms “qualified brownfield property owner,” “costs to clean up” a brownfield property, “satisfactory level,” and “hazardous substance release site” are undefined. Lack of defined terms can lead to disputes between taxpayers and the department. The author may wish to amend the bill to provide definitions for these terms.

The bill would require a “written certification of completion” from the Department of Toxic Substances Control as evidence of the removal or remedial action conducted by a responsible party. To assure that the department may verify that the property was certified, it is suggested that the author include language that would require the taxpayer both to retain the “written certification of completion” and to provide it to the Franchise Tax Board upon request.

The bill would require certification that the clean up meets a “satisfactory level.” If the taxpayer were to incur the cost over several taxable years before attaining the “satisfactory level,” it is unclear whether the cost paid in prior taxable years would qualify for this credit. The author may want to amend the bill to clarify how the credit would apply for costs that are incurred over multiple years.

Department staff is available to work with the author’s office to resolve these and other concerns that may be identified.

TECHNICAL CONSIDERATIONS

This bill defines “brownfield property” by making reference to the Health and Safety Code. The Health and Safety Code provision defines only the term "brownfield.” For consistency, the author may wish to amend the bill to define "brownfield property."

LEGISLATIVE HISTORY

AB 912 and AB 2547 (Ridley-Thomas, 2005/2006) would have allowed financial corporations, incorporated in California, to exclude any amount of interest income received on loans made for purposes of redeveloping brownfields located in blighted areas. The brownfield language in AB 912 was amended out of the bill and replaced with Hurricane Katrina legislation. AB 2547 failed to pass out of the Assembly Appropriations Committee.

SB 203 (Romero, 2003/2004) would have created a credit equal to an unspecified percentage of the costs paid or incurred during the taxable year to clean up a polluted “brownfield” property to a satisfactory level. SB 203 failed to pass out of the Senate Revenue and Taxation Committee.

OTHER STATES’ INFORMATION

The laws of *Florida, Illinois, Massachusetts, Michigan, Minnesota,* and *New York* were reviewed because their tax laws are similar to California’s income tax laws. *Illinois, Massachusetts, Minnesota*, and *New York* do not provide a credit comparable to the credit allowed by this bill. However, *Florida* and *Michigan* do provide brownfield credits.

Florida allows a corporate income tax credit equal to 50% of the costs of voluntary cleanup of brownfield sites located in designated brownfield areas.

Michigan allows a brownfield credit against the Single Business Tax to taxpayers that are issued a pre-approval letter for an eligible project by the Department of Treasury or the Michigan Economic Growth Authority. The project must be completed within five years of the pre-approval letter. Generally, the credit is claimed in the year the certificate of completion is issued to the taxpayer. The credit amount is generally 10% of the eligible investment.

FISCAL IMPACT

Until the department’s implementation considerations have been resolved, department staff is unable to develop the costs to administer this bill.

ECONOMIC IMPACT

Revenue Estimate

This bill would generate the following revenue losses:

Estimated Revenue Impact of AB 274 Operative for Tax Years BOA 1/1/2007 Assumed Enactment Date after 6/30/07 ($ in Millions)		
2007/08	2008/09	20009/10
-$90	-$95	-$100

This estimate does not consider the possible changes in employment, personal income, or gross state product that could result from this bill.

Revenue Discussion

This bill would allow a tax credit equal to 100% of the costs paid or incurred during the taxable year to clean up a polluted “brownfield” property. The revenue impact of this bill would result from the amount of brownfield tax credits utilized.

This estimate is based on federal estimates of the cost of the federal brownfield clean up tax incentive. The federal tax incentive for brownfield property allows a taxpayer to elect 100% of the environmental cleanup costs to be deducted, in the year incurred, rather than capitalized. Costs qualifying for the federal tax incentive are similar to costs that would qualify for this credit. This estimate assumes this credit would apply only to California properties. Federal deductions amount to over $1 billion, resulting in a tax benefit of the federal tax incentive of $250 million per year. Based on available information, it is estimated that approximately $105 million of the $1 billion per year in federal deductions are related to California properties. Because credits provide a dollar for dollar reduction in tax, it was assumed that usage of the credit proposed by this bill would increase the $105 million in current federal deductions by 25% ($26.25 million), resulting in a revenue loss of approximately $131.25 million ($105 million + $26.25 million). It is estimated that 50% of the credits would be carried over and utilized in subsequent taxable years.

The estimates in the table above have been converted to fiscal year estimates.

POLICY CONCERNS

This bill would allow for an unlimited carryover period. Consequently, the department would be required to retain the carryover on the tax forms indefinitely. Recent credits have been enacted with a carryover period limitation because experience shows credits typically are exhausted within eight years of being earned.

Generally, credits are limited as a percentage of amounts paid or incurred. This bill would allow a 100% credit, which is unprecedented.

LEGISLATIVE STAFF CONTACT

Angela Raygoza
Franchise Tax Board
(916) 845-7814
angela.raygoza@ftb.ca.gov

Brian Putler
Franchise Tax Board
(916) 845-6333
brian.putler@ftb.ca.gov