

SUMMARY ANALYSIS OF AMENDED BILL

Author: Coto Analyst: Angela Raygoza Bill Number: AB 274
 Related Bills: See Prior Analysis Telephone: 845-7814 Amended Date: March 15, 2007
 Attorney: Douglas Powers Sponsor: _____

SUBJECT: Polluted Brownfield Property Clean-Up Credit

- DEPARTMENT AMENDMENTS ACCEPTED. Amendments reflect suggestions of previous analysis of bill as introduced/amended _____.
- AMENDMENTS IMPACT REVENUE. A new revenue estimate is provided.
- AMENDMENTS DID NOT RESOLVE THE DEPARTMENTS CONCERNS stated in the previous analysis of bill as introduced/amended _____.
- FURTHER AMENDMENTS NECESSARY.
- DEPARTMENT POSITION CHANGED TO _____.
- REMAINDER OF PREVIOUS ANALYSIS OF BILL AS INTRODUCED February 9, 2007, STILL APPLIES.
- OTHER – See comments below.

SUMMARY

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

SUMMARY OF AMENDMENTS

The March 15, 2007, amendments would require that the brownfield property be located in this state, redefine “brownfield property” by reference to the Health and Safety Code, and add a definition of “small business” by reference to the Government Code.

As a result of these amendments, the “Federal/State Law,” “This Bill,” and “Economic Impact” discussions as provided in the department’s analysis of the bill as introduced February 9, 2007, have been revised. The “Implementation Considerations” have been revised to include an additional undefined term. The implementation considerations are included below for convenience. The remainder of the analysis still applies.

POSITION

Pending.

Board Position:	Legislative Director	Date
<input type="checkbox"/> S	Brian Putler	4/12/07
<input type="checkbox"/> NA		
<input type="checkbox"/> SA		
<input type="checkbox"/> N		
<input type="checkbox"/> NP		
<input type="checkbox"/> O		
<input type="checkbox"/> NAR		
<input checked="" type="checkbox"/> PENDING		

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 and then deducted 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.

A "brownfield" property is defined in section 44501 of the California Health and Safety Code as a real estate parcel or improvements located on the parcel, or both that parcel and the improvements, which is abandoned, idled, or underused, due to real or perceived environmental contamination, including, but not limited to, soil or groundwater contamination, the presence of underground storage tanks, or the presence of asbestos or lead paint on the parcel or in the improvements located on the parcel, which after assessment and planning, is determined to have a reasonable potential for economically beneficial reuse.

THIS BILL

This bill would allow a qualified brownfield property owner that operates a small business 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 specify that the brownfield property be located within California.

This bill would define "brownfield property" by reference to the Health and Safety Code or as property that is contaminated by petroleum.

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 define "small business" by reference to the Government Code.

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

IMPLEMENTATION CONSIDERATIONS

The bill fails to define the terms "qualified brownfield property owner," "costs to clean up" a brownfield property, "satisfactory level," "hazardous substance release site," and "contaminated by petroleum." Undefined terms can lead to disputes between taxpayers and the department. The author may wish to amend the bill to identify taxpayers that would qualify for this credit as brownfield property owners, and also specifically identify those costs to clean up a brownfield property as costs qualifying for this credit.

The bill requires 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 avoid disputes among taxpayers and the department, the author may wish to include language that would require retaining the “written certification of completion” and that the taxpayer be required to provide it to the Franchise Tax Board upon request.

The bill requires certification that the clean up meets a “satisfactory level.” If the taxpayer were to incur the cost over several taxable years before meeting 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.

ECONOMIC IMPACT

Revenue Estimate

This bill would result in the following revenue losses:

Estimated Revenue Impact of AB 274 Effective for Tax Years BOA 1/1/2007 Assumed Enactment Date After 6/30/07 (\$ in Millions)		
2007/08	2008/09	2009/10
-\$3	-\$3	-\$4

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 by a small business 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.

There is a federal estimate of the cost of the federal brownfield tax incentive. The federal tax incentive for brownfield property allows environmental cleanup costs to be deducted, rather than capitalized, in the year incurred. Costs qualifying for the federal tax incentive are similar to costs that would qualify for this credit.

Federal deductions amount to over \$1 billion, resulting in a tax benefit of the federal tax incentive of \$250 million per year. Based on information from the California Department of Toxic Substances Control (DTSC) website, it is estimated that approximately \$105 million of the \$1 billion per year in federal deductions are related to California properties.

The list prepared by DTSC of the brownfield properties that they approved for the federal tax incentive suggests that none of the federal incentives were claimed by small business. However, analysis of DTSC data indicates that there are some small businesses that are currently in the process of brownfield cleanup. It is estimated that 3% of the small businesses reported from the DTSC data are eligible for the credit. Site assessment, planning, and cleanup to a satisfactory level are required before the credit may be taken. Therefore, it would take a few years before this change in behavior would impact revenue.

The 2007/08 estimated revenue impact is \$3 million (\$105 million federal deductions x 3% eligible CA small businesses = \$3 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.

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FRANCHISE TAX BOARD'S
PROPOSED AMENDMENTS TO AB 274
As Amended March 15, 2007

AMENDMENT 1

On page 2, line 20, insert:

(3) Retain copy of the certification and provide it upon request to the Franchise Tax Board.

On page 2, line 20, strike out (3) and add:

(4)