

S 4204 KRUEGER Same as A 7998 Bradley
ON FILE: 04/17/09 Tax Law
TITLE....Relates to the brownfield redevelopment tax
credit
Currently on Senate Committee Agenda
Senate Standing Committee on Investigations and
Government Operations
Senator Craig Johnson, Chair
12:30 PM, Tuesday, May 26, 2009
Room 814 LOB
04/16/09 REFERRED TO INVESTIGATIONS AND
GOVERNMENT OPERATIONS

A7998 Bradley Same as S
4204 KRUEGER
Tax Law
TITLE....Relates to the
brownfield redevelopment tax
credit
05/01/09referred to ways and
means

KRUEGER, THOMPSON
Amd S21, Tax L
Relates to the brownfield redevelopment tax credit.

STATE OF NEW YORK

4204

2009-2010 Regular Sessions

IN SENATE

April 16, 2009

Introduced by Sens. KRUEGER, THOMPSON -- read twice
and ordered printed,
and when printed to be committed to the
Committee on Investigations
and Government Operations

AN ACT to amend the tax law, in relation to a
brownfield redevelopment
tax credit

The People of the State of New York, represented
in Senate and Assem-
bly, do enact as follows:

1 Section 1. Subparagraph (A) of paragraph 3-a of
subdivision (a) of

2 section 21 of the tax law, as added by chapter 390
of the laws of 2008,

3 is amended to read as follows:

4 (A) Notwithstanding any other provision of law to
the contrary, the

5 tangible property credit component available
pursuant to paragraph three

6 of this subdivision for (i) any qualified site
[~~pursuant to paragraph~~

7 ~~three of this subdivision~~] as defined in this
section and (ii) any site

8 for which a denial of a request for
participation in the brownfield

9 cleanup program under section 27-1407 of the
environmental conservation

10 law has been overturned by a court of competent
jurisdiction shall not

11 exceed thirty-five million dollars or three times
the costs included in

12 the calculation of the site preparation credit
component and the on-site

13 groundwater remediation credit component under
paragraphs two and four,

14 respectively, of this subdivision, whichever is
less; provided, however,

15 that: (1) in the case of a qualified site to be
used primarily for manu-

16 facturing activities, the tangible property credit
component available

17 for any qualified site pursuant to paragraph
three of this subdivision

18 shall not exceed forty-five million dollars or
six times the costs

19 included in the calculation of the site preparation
credit component and

20 the on-site groundwater remediation credit
component under paragraphs

21 two and four, respectively, of this subdivision,
whichever is less; and

22 (2) the provisions of this paragraph shall not
apply to any qualified

23 site for which the department of environmental
conservation has issued a

24 notice to the taxpayer before June twenty-third,
two thousand eight that

EXPLANATION--Matter in italics (underscored) is new; matter in brackets [-] is old law to be omitted.

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S. 4204

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1 its request for participation has been accepted under subdivision six of

2 section 27-1407 of the environmental conservation law.

3 § 2. This act shall take effect immediately and shall be deemed to

4 have been in full force and effect on and after July 21, 2008.

**NEW YORK STATE SENATE
INTRODUCER'S MEMORANDUM IN SUPPORT
submitted in accordance with Senate Rule VI. Sec 1**

BILL NUMBER: S4204

SPONSOR: KRUEGER

TITLE OF BILL:

An act to amend the tax law, in relation to a brownfield redevelopment tax credit

PURPOSE:

This bill would cap the tax credits available for the redevelopment of Brownfield sites whose request for participation in the Brownfield Cleanup Program (BCP) was denied by the Department of Environmental Conservation (DEC), but the denial was overturned in Court.

SUMMARY OF PROVISIONS:

Section 1 would amend subparagraph (A) of paragraph 3-a of subdivision (a) of section 21 of the tax law to provide that any site which has been

denied access into the Brownfield Cleanup Program, but the denial was overturned in court, will be eligible for the tax credits as capped by Chapter 390 of the laws of 2008.

EXISTING LAW:

The current statute awards tax credits based on the date that DEC grants eligibility, leaving some ambiguity as to the relevant date for court ordered access.

JUSTIFICATION:

Under this proposal, the State's exposure in cases being litigated due to the Department's denial of an application to the Brownfield Cleanup Program (BCP) would be limited to the cap contained in Chapter 390 of the Laws of 2008 -- \$45 million for a manufacturing site and \$35 million for others. To receive the redevelopment credits the property must have a Certificate of Completion (COC) though credits may be claimed over a period of 10 years following issuance of the COC.

Chapter 390 of the Laws of 2008 capped the amount of the tangible property tax credit (redevelopment credits) available under the Brownfield Cleanup Program (BCP). This was an important step in reforming the BCP, in that it placed a limit on the lucrative refundable tax credits for individual projects. There is now a maximum brownfield redevelopment benefit of \$45 million for manufacturing projects and \$35 million for all others. The effective date of Chapter 390 provided that the revised system of tax credits would apply to sites acquired on or after April 1,

2005. This proposal is an attempt to address the State's fiscal vulnerability represented by a number of court cases challenging the eligibility requirements of the BCP. To the extent that the recently enacted caps on brownfield tax credits will help reduce the dramatic outlays of cash rewards going forward, the state is currently in litigation over several very costly projects that were denied access to the program and, thus, to the immense pre-2008 reform financial benefits. Since the inception of the Brownfield Cleanup Program in 2003, DEC has interpreted the statute and used its discretion in such a way as to exclude sites where the degree of contamination or other factors did not justify the investment of significant state resources.

LEGISLATIVE HISTORY:

New bill.

FISCAL IMPLICATIONS:

While it is impossible to know how all of the litigation will be ultimately decided, if, hypothetically, all cases were resolved against the State, the cost to New York taxpayers will likely exceed one billion dollars. In light of the legislative action taken last year, it is reasonable to statutorily limit the amount of the court awards allowable to conform with the 2008 reform bill that caps the tax credits.

LOCAL FISCAL IMPLICATIONS:

None noted.

EFFECTIVE DATE:

Immediately and shall be deemed to have been in full force and effect on and after July 21, 2008.

