

# Department of Finance and Administration

## Legislative Impact Statement

**Bill: SB575**

**Bill Subtitle: TO AUTHORIZE PRIVATE FUNDING FOR REMEDIAL ACTIVITIES AT ENVIRONMENTAL SITES; AND TO ESTABLISH THE DIVISION OF ENVIRONMENTAL QUALITY DESIGNATED ENVIRONMENTAL SITE REMEDIATION TRUST FUND AND AN ENVIRONMENTAL TAX CREDIT.**

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### **Basic Change :**

**Sponsors: Sens. Teague, Caldwell  
Rep. L. Fite**

SB575 creates a nonrefundable income tax credit to fund the cleanup and remediation of environmental sites where the dumping of solid waste and used tires has occurred. The Arkansas Division of Environmental Quality (DEQ) will designate eligible sites. Taxpayers may contribute funds to a Designated Environmental Site Remediation Trust Fund (Fund). The DEQ will use the Fund to pay for the cleanup and remediation. Once the cleanup is finished, DEQ will issue a certificate confirming a taxpayer's eligibility for the credit. The tax credit expires one year from the date of the DEQ certification. The Arkansas Department of Finance and Administration (DFA) may not allow the use of credits exceeding \$2,000,000 in a calendar year. SB575 is effective for tax years beginning on January 31, 2021 and expires on December 31, 2023.

### **Revenue Impact :**

**FY2022 through FY2024 - \$2 million reduction in General Revenues.**

### **Taxpayer Impact :**

A taxpayer will be able to contribute to the Division of Environmental Quality Designated Environmental Site Remediation Trust Fund. A taxpayer will receive a tax credit for the amount that was used for the completed cleanup and remediation of a designated site.

A taxpayer may be assessed for tax due if the credit cap is exceeded in any single year causing the proration of the credit as required in the bill. A taxpayer must maintain records and evidence under the rules adopted to administer this section to prove eligibility for the credit. Records must be retained for six years.

### **Resources Required :**

Computer programs, tax forms, and instructions will need to be updated.

### **Time Required :**

Adequate time is provided for implementation.

### **Procedural Changes :**

Department employees will need to be educated as well as the tax community. Updates to the Income Tax Rules will need to be promulgated and updated instructions published. DFA is authorized to promulgate rules to implement this section.

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### Other Comments :

If DFA receives claims for tax credits that exceed the cap in a single year, DFA shall prorate the credit to all eligible taxpayers claiming the credit based on their eligible donations. This provision may result in DFA assessing taxpayers who initially received a full tax credit, but later had the credit reduced due to proration. DFA currently does not administer any income tax credits that require this type of proration and re-billing.

DFA is given authority to promulgate rules to implement the credit. The bill is effective for tax years beginning on or after January 1, 2021 and expires on December 31, 2023. This provision is unclear concerning whether credit can no longer be established or claimed after December 31, 2023.

It is possible that a business entity might contribute to the Division of Environmental Quality Designated Environmental Site Remediation Trust Fund and also be the same entity that actually cleans up the specific site.

There is no provision limiting contribution deductions for the amount of the tax credit which would result in the taxpayer receiving full reimbursement for the donation as well as being able to deduct that same donation from taxable income.

### Legal Analysis :

SB575 provides a tax credit to encourage private entities to donate money for the cleanup of designated environmental sites. DEQ will designate the sites and administer the Fund to pay for the cleanup. Once DEQ has verified completion of the cleanup, DEQ will issue a certificate to the donor reflecting the amount of the donated funds used. Private entities that deposit money into the Fund will receive an income tax credit equal to the amount of their donation used to clean up the site.

The income tax credits expire one year from the date the taxpayer receives the certification from DEQ. The credit claimed by the taxpayer may not exceed the income tax due from that taxpayer. Credits awarded in a tax year may not exceed \$2,000,000. If DFA receives claims for tax credits exceeding \$2,000,000, DFA must prorate the available credits among eligible taxpayers based on their eligible donations. The tax credit is effective for tax years beginning on January 1, 2021 and expires on December 31, 2023.

SB575 limits the tax credits received by a taxpayer to the amount of the taxpayer's donation actually used for cleanup. A credit is not available for the portion of a donation that exceeds this cost. The bill may benefit from an amendment addressing the tax treatment of donations that exceed the cost of cleanup. Also, the bill may benefit from an amendment addressing what DEQ should do with deposits to the Fund that are not used for cleanup of a site.

DFA may encounter problems administering the bill's provisions that cap the available tax credits at \$2,000,000 per year and that require DFA to prorate the available credits if the amount claimed by

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taxpayers exceeds \$2,000,000. DFA receives income tax returns throughout the year. While some taxpayers file their tax returns without extensions, others receive extensions that delay the filing of their tax returns for several months. DFA will not know whether all available tax credits have been claimed and, therefore, whether proration will be necessary, until it has processed each tax return claiming a tax credit. This would cause those taxpayers that file their income tax returns without an extension to wait for several months before receiving a tax refund while DFA accumulates all returns claiming the credit. The bill may benefit from an amendment that limits the amount of credit certifications DEQ may issue to \$2,000,000 per year.

The bill may benefit from clarification of the effective date. The bill provides that the credit is effective for tax years beginning January 1, 2021. While most individuals have a tax year that begins on January 1, many businesses report their taxes on a fiscal year basis. Without an amendment, otherwise eligible taxpayers that have a tax year that begins on a date other than January 1, 2021 may not be able to claim the credit.

The bill would also benefit from clarification concerning whether the tax credit is effective for tax years beginning in 2022 or 2023. The bill currently provides that the credit is only available "for tax years beginning on January 1, 2021" but that language appears to conflict with other provisions of the bill providing that the bill expires on December 31, 2023 and the credits expire one year from the date of the DEQ certification. The addition of language that provides that the bill is effective for tax years beginning "on or after January 1, 2021" may increase clarity and reduce confusion. It is also unclear whether the bill's expiration date of December 31, 2023 is the last date a taxpayer may donate to the Fund, the last date DEQ may issue a certification, or the last date that a taxpayer may file a tax return claiming the credit.