

110TH CONGRESS  
2D SESSION

# H. R. 5746

To amend the Internal Revenue Code of 1986 to establish the infrastructure foundation for the hydrogen economy, and for other purposes.

---

## IN THE HOUSE OF REPRESENTATIVES

APRIL 9, 2008

Mr. LARSON of Connecticut (for himself, Mr. DENT, Mr. WYNN, Mr. INGLIS of South Carolina, Ms. DELAURO, Mr. DOYLE, Mr. HOLDEN, Mr. WAMP, Mr. TERRY, Mr. McNULTY, and Mr. BUTTERFIELD) 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 establish the infrastructure foundation for the hydrogen economy, and for other purposes.

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 “Hydrogen Tax Incen-  
5       tives Act of 2008”.

6       **SEC. 2. HYDROGEN INFRASTRUCTURE AND FUEL COSTS.**

7       (a) IN GENERAL.—Subpart B of part IV of sub-  
8       chapter A of chapter 1 of the Internal Revenue Code of

1 1986 (relating to foreign tax credit, etc.) is amended by  
2 adding at the end the following new section:

3 **“SEC. 30D. HYDROGEN INFRASTRUCTURE AND FUEL**  
4 **COSTS.**

5 “(a) ALLOWANCE OF CREDIT.—There shall be al-  
6 lowed as a credit against the tax imposed by this chapter  
7 for the taxable year an amount equal to the sum of—

8 “(1) the hydrogen infrastructure costs credit  
9 determined under subsection (b), and

10 “(2) the hydrogen fuel costs credit determined  
11 under subsection (c).

12 “(b) HYDROGEN INFRASTRUCTURE COSTS CRED-  
13 IT.—

14 “(1) IN GENERAL.—For purposes of subsection  
15 (a), the hydrogen infrastructure costs credit deter-  
16 mined under this subsection with respect to each eli-  
17 gible hydrogen production and distribution facility of  
18 the taxpayer is an amount equal to 30 percent of so  
19 much of the infrastructure costs for the taxable year  
20 as does not exceed \$200,000 with respect to such fa-  
21 cility.

22 “(2) ELIGIBLE HYDROGEN PRODUCTION AND  
23 DISTRIBUTION FACILITY.—For purposes of this sub-  
24 section, the term ‘eligible hydrogen production and  
25 distribution facility’ means a hydrogen production

1 and distribution facility which is placed in service  
2 after December 31, 2007.

3 “(c) HYDROGEN FUEL COSTS CREDIT.—

4 “(1) IN GENERAL.—For purposes of subsection  
5 (a), the hydrogen fuel costs credit determined under  
6 this subsection with respect to each eligible hydrogen  
7 device of the taxpayer is an amount equal to the  
8 qualified hydrogen expenditure amounts with respect  
9 to such device.

10 “(2) QUALIFIED HYDROGEN EXPENDITURE  
11 AMOUNT.—For purposes of this subsection—

12 “(A) IN GENERAL.—The term ‘qualified  
13 hydrogen expenditure amount’ means, with re-  
14 spect to each eligible hydrogen energy conver-  
15 sion device of the taxpayer with a production  
16 capacity of not more than 25 kilowatts of elec-  
17 tricity, the lesser of—

18 “(i) 30 percent of the amount paid or  
19 incurred by the taxpayer during the tax-  
20 able year for hydrogen which is consumed  
21 by such device, and

22 “(ii) \$2,000.

23 In the case of any device which is not owned by  
24 the taxpayer at all times during the taxable  
25 year, the \$2,000 amount in clause (ii) shall be

1 reduced by an amount which bears the same  
2 ratio to \$2,000 as the portion of the year which  
3 such device is not owned by the taxpayer bears  
4 to the entire year.

5 “(B) HIGHER LIMITATION FOR DEVICES  
6 WITH MORE PRODUCTION CAPACITY.—In the  
7 case of any eligible hydrogen energy conversion  
8 device with a production capacity of—

9 “(i) more than 25 but less than 100  
10 kilowatts of electricity, subparagraph (A)  
11 shall be applied by substituting ‘\$4,000’  
12 for ‘\$2,000’ each place it appears, and

13 “(ii) not less than 100 kilowatts of  
14 electricity, subparagraph (A) shall be ap-  
15 plied by substituting ‘\$6,000’ for ‘\$2,000’  
16 each place it appears.

17 “(3) ELIGIBLE HYDROGEN ENERGY CONVER-  
18 SION DEVICES.—For purposes of this subsection—

19 “(A) IN GENERAL.—The term ‘eligible hy-  
20 drogen energy conversion device’ means, with  
21 respect to any taxpayer, any hydrogen energy  
22 conversion device which—

23 “(i) is placed in service after Decem-  
24 ber 31, 2004, and

1 “(ii) is wholly owned by the taxpayer  
2 during the taxable year.

3 If an owner of a device (determined without re-  
4 gard to this subparagraph) provides to the pri-  
5 mary user of such device a written statement  
6 that such user shall be treated as the owner of  
7 such device for purposes of this section, then  
8 such user (and not such owner) shall be so  
9 treated.

10 “(B) HYDROGEN ENERGY CONVERSION  
11 DEVICE.—The term ‘hydrogen energy conver-  
12 sion device’ means—

13 “(i) any electrochemical device which  
14 converts hydrogen into electricity, and

15 “(ii) any combustion engine which  
16 burns hydrogen as a fuel.

17 “(d) REDUCTION IN BASIS.—For purposes of this  
18 subtitle, if a credit is allowed under this section for any  
19 expenditure with respect to any property, the increase in  
20 the basis of such property which would (but for this para-  
21 graph) result from such expenditure shall be reduced by  
22 the amount of the credit so allowed.

23 “(e) APPLICATION WITH OTHER CREDITS.—

24 “(1) BUSINESS CREDIT TREATED AS PART OF  
25 GENERAL BUSINESS CREDIT.—So much of the credit

1       which would be allowed under subsection (a) for any  
2       taxable year (determined without regard to this sub-  
3       section) that is attributable to amounts which (but  
4       for subsection (g) would be allowed as a deduction  
5       under section 162 shall be treated as a credit listed  
6       in section 38(b) for such taxable year (and not al-  
7       lowed under subsection (a)).

8               “(2) PERSONAL CREDIT.—The credit allowed  
9       under subsection (a) (after the application of para-  
10      graph (1)) for any taxable year shall not exceed the  
11      excess (if any) of—

12              “(A) the regular tax liability (as defined in  
13              section 26(b)) reduced by the sum of the credits  
14              allowable under subpart A and sections 27, 30,  
15              30B, and 30C, over

16              “(B) the tentative minimum tax for the  
17              taxable year.

18              “(f) DENIAL OF DOUBLE BENEFIT.—The amount of  
19      any deduction or other credit allowable under this chapter  
20      for any cost taken into account in determining the amount  
21      of the credit under subsection (a) shall be reduced by the  
22      amount of such credit attributable to such cost.

23              “(g) RECAPTURE.—The Secretary shall, by regula-  
24      tions, provided for recapturing the benefit of any credit

1 allowable under subsection (a) with respect to any prop-  
 2 erty which ceases to be property eligible for such credit.

3 “(h) ELECTION NOT TO TAKE CREDIT.—No credit  
 4 shall be allowed under subsection (a) for any property if  
 5 the taxpayer elects not to have this section apply to such  
 6 property.

7 “(i) REGULATIONS.—The Secretary shall prescribe  
 8 such regulations as necessary to carry out the provisions  
 9 of this section.

10 “(j) TERMINATION.—This section shall not apply to  
 11 any costs paid or incurred after the end of the 3-year pe-  
 12 riod beginning on the date of the enactment of this sec-  
 13 tion.”.

14 (b) CONFORMING AMENDMENTS.—

15 (1) Section 38(b) of the Internal Revenue Code  
 16 of 1986 is amended by striking “plus” at the end of  
 17 paragraph (30), by striking the period at the end of  
 18 paragraph (31) and inserting “plus”, and by adding  
 19 at the end the following new paragraph:

20 “(32) the portion of the hydrogen infrastruc-  
 21 ture and fuel credit to which section 30D(e)(1) ap-  
 22 plies.”.

23 (2) Section 55(c)(3) of such Code is amended  
 24 by inserting “30D(e)(2),” after “30C(d)(2),”.

1           (3) Section 1016(a) of such Code is amended  
2       by striking “and” at the end of paragraph (36), by  
3       striking the period at the end of paragraph (37) and  
4       inserting “, and”, and by adding at the end the fol-  
5       lowing new paragraph:

6           “(38) to the extent provided in section  
7       30D(d).”.

8           (4) Section 6501(m) of such Code is amended  
9       by inserting “30D(h),” after “30C(e)(5),”.

10          (5) The table of sections for subpart B of part  
11       IV of subchapter A of chapter 1 of such Code is  
12       amended by inserting after the item relating to sec-  
13       tion 30C the following new item:

“Sec. 30D. Hydrogen infrastructure and fuel costs.”.

14       (c) EFFECTIVE DATE.—The amendments made by  
15       this section shall apply to amounts paid or incurred after  
16       December 31, 2007, in taxable years ending after such  
17       date.

○