

110TH CONGRESS
1ST SESSION

S. 2129

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

IN THE SENATE OF THE UNITED STATES

OCTOBER 3, 2007

Mr. DORGAN (for himself and Mr. GRAHAM) introduced the following bill; which was read twice and referred to the Committee on Finance

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 Incentives Act of 2007”.

6 SEC. 2. HYDROGEN INSTALLATION, INFRASTRUCTURE, AND 7 FUEL COSTS

8 (a) IN GENERAL.—Subpart B of part IV of sub-
9 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 INSTALLATION, INFRASTRUCTURE,
4 AND FUEL 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 installation and infrastruc-
9 ture costs credit determined under subsection (b),
10 and

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

13 “(b) HYDROGEN INSTALLATION AND INFRASTRUC-
14 TURE COSTS CREDIT.—

15 “(1) IN GENERAL.—For purposes of subsection
16 (a), the hydrogen installation and infrastructure
17 costs credit determined under this subsection with
18 respect to each eligible hydrogen production and dis-
19 tribution facility of the taxpayer is an amount equal
20 to—

21 “(A) 30 percent of so much of the installa-
22 tion costs which when added to such costs
23 taken into account with respect to such facility
24 for all preceding taxable years under this sub-
25 paragraph does not exceed \$200,000, plus

1 “(B) 30 percent of so much of the infra-
2 structure costs for the taxable year as does not
3 exceed \$200,000 with respect to such facility,
4 and which when added to such costs taken into
5 account with respect to such facility for all pre-
6 ceding taxable years under this subparagraph
7 does not exceed \$600,000.

8 Nothing in this section shall permit the same cost to
9 be taken into account more than once.

10 “(2) ELIGIBLE HYDROGEN PRODUCTION AND
11 DISTRIBUTION FACILITY.—For purposes of this sub-
12 section, the term ‘eligible hydrogen production and
13 distribution facility’ means a hydrogen production
14 and distribution facility which is placed in service
15 after December 31, 2008.

16 “(c) HYDROGEN FUEL COSTS CREDIT.—

17 “(1) IN GENERAL.—For purposes of subsection
18 (a), the hydrogen fuel costs credit determined under
19 this subsection with respect to each eligible hydrogen
20 device of the taxpayer is an amount equal to the
21 qualified hydrogen expenditure amounts with respect
22 to such device.

23 “(2) QUALIFIED HYDROGEN EXPENDITURE
24 AMOUNT.—For purposes of this subsection—

1 “(A) IN GENERAL.—The term ‘qualified
2 hydrogen expenditure amount’ means, with re-
3 spect to each eligible hydrogen energy conver-
4 sion device of the taxpayer with a production
5 capacity of not more than 25 kilowatts of elec-
6 tricity per year, the lesser of—

7 “(i) 30 percent of the amount paid or
8 incurred by the taxpayer during the tax-
9 able year for hydrogen which is consumed
10 by such device, and

11 “(ii) \$2,000.

12 In the case of any device which is not owned by
13 the taxpayer at all times during the taxable
14 year, the \$2,000 amount in subparagraph (B)
15 shall be reduced by an amount which bears the
16 same ratio to \$2,000 as the portion of the year
17 which such device is not owned by the taxpayer
18 bears to the entire year.

19 “(B) HIGHER LIMITATION FOR DEVICES
20 WITH MORE PRODUCTION CAPACITY.—In the
21 case of any eligible hydrogen energy conversion
22 device with a production capacity of—

23 “(i) more than 25 but less than 100
24 kilowatts of electricity per year, subparagraph (A) shall be applied by substituting

1 ‘\$4,000’ for ‘\$2,000’ each place it appears,
2 and

3 “(ii) not less than 100 kilowatts of
4 electricity per year, subparagraph (A) shall
5 be applied by substituting ‘\$6,000’ for
6 ‘\$2,000’ each place it appears.

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

9 “(A) IN GENERAL.—The term ‘eligible hy-
10 drogen energy conversion device’ means, with
11 respect to any taxpayer, any hydrogen energy
12 conversion device which—

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

15 “(ii) is wholly owned by the taxpayer
16 during the taxable year.

17 If an owner of a device (determined without re-
18 gard to this subparagraph) provides to the pri-
19 mary user of such device a written statement
20 that such user shall be treated as the owner of
21 such device for purposes of this section, then
22 such user (and not such owner) shall be so
23 treated.

1 “(B) HYDROGEN ENERGY CONVERSION
2 DEVICE.—The term ‘hydrogen energy conver-
3 sion device’ means—

4 “(i) any electrochemical device which
5 converts hydrogen into electricity, and
6 “(ii) any combustion engine which
7 burns hydrogen as a fuel.

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

14 “(e) APPLICATION WITH OTHER CREDITS.—

15 “(1) BUSINESS CREDIT TREATED AS PART OF
16 GENERAL BUSINESS CREDIT.—So much of the credit
17 which would be allowed under subsection (a) for any
18 taxable year (determined without regard to this sub-
19 section) that is attributable to amounts which (but
20 for subsection (g) would be allowed as a deduction
21 under section 162 shall be treated as a credit listed
22 in section 38(b) for such taxable year (and not al-
23 lowed under subsection (a)).

24 “(2) PERSONAL CREDIT.—The credit allowed
25 under subsection (a) (after the application of para-

1 graph (1)) for any taxable year shall not exceed the
2 excess (if any) of—

3 “(A) the regular tax liability (as defined in
4 section 26(b)) reduced by the sum of the credits
5 allowable under subpart A and sections 27, 30,
6 30B, and 30C, over

7 “(B) the tentative minimum tax for the
8 taxable year.

9 “(f) DENIAL OF DOUBLE BENEFIT.—The amount of
10 any deduction or other credit allowable under this chapter
11 for any cost taken into account in determining the amount
12 of the credit under subsection (a) shall be reduced by the
13 amount of such credit attributable to such cost.

14 “(g) RECAPTURE.—The Secretary shall, by regula-
15 tions, provided for recapturing the benefit of any credit
16 allowable under subsection (a) with respect to any prop-
17 erty which ceases to be property eligible for such credit.

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

22 “(i) REGULATIONS.—The Secretary shall prescribe
23 such regulations as necessary to carry out the provisions
24 of this section.

1 “(j) TERMINATION.—This section shall not apply to
2 any costs after December 31, 2010.”.

3 (b) CONFORMING AMENDMENTS.—

4 (1) Section 38(b) of the Internal Revenue Code
5 of 1986 is amended by striking “plus” at the end of
6 paragraph (30), by striking the period at the end of
7 paragraph (31) and inserting “plus”, and by adding
8 at the end the following new paragraph:

9 “(32) the portion of the hydrogen installation,
10 infrastructure, and fuel credit to which section
11 30D(e)(1) applies.”.

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

14 (3) Section 1016(a) of such Code is amended
15 by striking “and” at the end of paragraph (36), by
16 striking the period at the end of paragraph (37) and
17 inserting “, and”, and by adding at the end the fol-
18 lowing new paragraph:

19 “(38) to the extent provided in section
20 30D(d).”.

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

23 (5) The table of sections for subpart B of part
24 IV of subchapter A of chapter 1 of such Code is

1 amended by inserting after the item relating to sec-
2 tion 30C the following new item:

“See. 30D. Hydrogen installation, infrastructure, and fuel costs.”.

3 (c) EFFECTIVE DATE.—The amendments made by
4 this section shall apply to amounts paid or incurred after
5 December 31, 2007, in taxable years ending after such
6 date.

○