## 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

distribution facility' means a hydrogen production

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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

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

lowed under subsection (a)).

- "(2) Personal credit.—The credit allowed under subsection (a) (after the application of paragraph (1)) for any taxable year shall not exceed the excess (if any) of—
- "(A) the regular tax liability (as defined in section 26(b)) reduced by the sum of the credits allowable under subpart A and sections 27, 30, 30B, and 30C, over
- 16 "(B) the tentative minimum tax for the taxable year.
- "(f) DENIAL OF DOUBLE BENEFIT.—The amount of any deduction or other credit allowable under this chapter for any cost taken into account in determining the amount 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

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- 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
- of 1986 is amended by striking "plus" at the end of
- paragraph (30), by striking the period at the end of
- 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-
- 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 sec13 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.

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