

108TH CONGRESS
1ST SESSION

S. _____

IN THE SENATE OF THE UNITED STATES

Mr. WYDEN introduced the following bill; which was read twice and referred to the Committee on _____

A BILL

To promote the use of hydrogen fuel cell vehicles, 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 Transpor-
5 tation Wins Over Growing Reliance on Oil (H2 GROW)
6 Act”.

7 **SEC. 2. REFERENCES; TABLE OF CONTENTS.**

8 (a) REFERENCES.—Except as otherwise expressly
9 provided, whenever in this Act an amendment or repeal
10 is expressed in terms of an amendment to, or repeal of,
11 a section or other provision, the reference shall be consid-

1 ered to be made to a section or other provision of the In-
 2 ternal Revenue Code of 1986.

3 (b) TABLE OF CONTENTS.—The table of contents of
 4 this Act is as follows:

Sec. 1. Short title.

Sec. 2. References; table of contents.

TITLE I—HYDROGEN FUEL CELL VEHICLES

Sec. 101. Fuel cell vehicle credit.

Sec. 102. No depreciation limit for hydrogen vehicles.

Sec. 103. Minimum Federal fleet requirement.

Sec. 104. Replacement of reliance on foreign oil through hydrogen powered fuel
 cells.

TITLE II—HYDROGEN FUEL

Sec. 201. Credit for retail sale of hydrogen fuel as motor vehicle fuel.

Sec. 202. Credit for production of hydrogen fuel.

Sec. 203. Tax holiday for hydrogen fuel.

Sec. 204. Sense of Congress regarding hydrogen fuel taxes.

Sec. 205. Hydrogen fueling fringe benefit.

Sec. 206. Exclusion of earnings from hydrogen fuel sales.

Sec. 207. Credit for use of ethanol or renewable motor fuel to produce hydro-
 gen fuel.

TITLE III—HYDROGEN FUELING INFRASTRUCTURE

Sec. 301. Credit for installation of alternative fueling stations.

Sec. 302. Exclusion of earnings from hydrogen fueling equipment sales.

Sec. 303. Extension of deduction for hydrogen fueling infrastructure.

Sec. 304. Deduction for refueling use of hydrogen fuel cells.

Sec. 305. Accelerated depreciation for qualified hydrogen fueling equipment.

5 **TITLE I—HYDROGEN FUEL CELL** 6 **VEHICLES**

7 **SEC. 101. FUEL CELL VEHICLE CREDIT.**

8 (a) IN GENERAL.—Subpart B of part IV of sub-
 9 chapter A of chapter 1 (relating to foreign tax credit, etc.)
 10 is amended by adding at the end the following new section:

1 **“SEC. 30B. FUEL CELL VEHICLE CREDIT.**

2 “(a) ALLOWANCE OF CREDIT.—There shall be al-
3 lowed as a credit against the tax imposed by this chapter
4 for the taxable year an amount equal to the new qualified
5 fuel cell motor vehicle credit determined under subsection
6 (b).

7 “(b) NEW QUALIFIED FUEL CELL MOTOR VEHICLE
8 CREDIT.—

9 “(1) IN GENERAL.—For purposes of subsection
10 (a), the new qualified fuel cell motor vehicle credit
11 determined under this subsection with respect to a
12 new qualified fuel cell motor vehicle placed in service
13 by the taxpayer during the taxable year is equal
14 to—

15 “(A) in the case of any vehicle placed in
16 service before 2010, the lesser of—

17 “(i) 25 percent of the retail sale price
18 of such fuel cell motor vehicle, or

19 “(ii) \$50,000

20 “(B) in the case of any vehicle placed in
21 service after 2009 and before 2012, the lesser
22 of—

23 “(i) 15 percent of the retail sale price
24 of such fuel cell motor vehicle, or

25 “(ii) \$25,000, and

1 “(C) in the case of any vehicle placed in
2 service after 2012, the lesser of—

3 “(i) 5 percent of the retail sale price
4 of such fuel cell motor vehicle, or

5 “(ii) \$10,000.

6 “(2) INCREASE FOR FUEL EFFICIENCY.—

7 “(A) IN GENERAL.—The amount deter-
8 mined under paragraph (1)(A) with respect to
9 a new qualified fuel cell motor vehicle which is
10 a passenger automobile or light truck shall be
11 increased by—

12 “(i) \$1,000, if such vehicle achieves at
13 least 125 percent but less than 150 per-
14 cent of the 2000 model year city fuel econ-
15 omy,

16 “(ii) \$2,000, if such vehicle achieves
17 at least 150 percent but less than 175 per-
18 cent of the 2000 model year city fuel econ-
19 omy,

20 “(iii) \$3,000, if such vehicle achieves
21 at least 175 percent but less than 200 per-
22 cent of the 2000 model year city fuel econ-
23 omy,

24 “(iv) \$4,000, if such vehicle achieves
25 at least 200 percent but less than 225 per-

1 cent of the 2000 model year city fuel econ-
2 omy, and

3 “(v) \$5,000, if such vehicle achieves
4 at least 225 percent of the 2000 model
5 year city fuel economy.

6 “(B) 2000 MODEL YEAR CITY FUEL ECON-
7 OMY.—For purposes of subparagraph (A), the
8 2000 model year city fuel economy with respect
9 to a vehicle shall be determined in accordance
10 with the following tables:

11 “(i) In the case of a passenger auto-
12 mobile:

“If vehicle inertia weight class is:	The 2000 model year city fuel economy is:
1,500 or 1,750 lbs	43.7 mpg
2,000 lbs	38.3 mpg
2,250 lbs	34.1 mpg
2,500 lbs	30.7 mpg
2,750 lbs	27.9 mpg
3,000 lbs	25.6 mpg
3,500 lbs	22.0 mpg
4,000 lbs	19.3 mpg
4,500 lbs	17.2 mpg
5,000 lbs	15.5 mpg
5,500 lbs	14.1 mpg
6,000 lbs	12.9 mpg
6,500 lbs	11.9 mpg
7,000 to 8,500 lbs	11.1 mpg.

13 “(ii) In the case of a light truck:

“If vehicle inertia weight class is:	The 2000 model year city fuel economy is:
1,500 or 1,750 lbs	37.6 mpg
2,000 lbs	33.7 mpg
2,250 lbs	30.6 mpg
2,500 lbs	28.0 mpg
2,750 lbs	25.9 mpg
3,000 lbs	24.1 mpg
3,500 lbs	21.3 mpg
4,000 lbs	19.0 mpg
4,500 lbs	17.3 mpg

“If vehicle inertia weight class is:	The 2000 model year city fuel economy is:
5,000 lbs	15.8 mpg
5,500 lbs	14.6 mpg
6,000 lbs	13.6 mpg
6,500 lbs	12.8 mpg
7,000 to 8,500 lbs	12.0 mpg.

1 “(C) VEHICLE INERTIA WEIGHT CLASS.—
2 For purposes of subparagraph (B), the term
3 ‘vehicle inertia weight class’ has the same
4 meaning as when defined in regulations pre-
5 scribed by the Administrator of the Environ-
6 mental Protection Agency for purposes of the
7 administration of title II of the Clean Air Act
8 (42 U.S.C. 7521 et seq.).

9 “(3) NEW QUALIFIED FUEL CELL MOTOR VEHI-
10 CLE.—For purposes of this subsection, the term
11 ‘new qualified fuel cell motor vehicle’ means a motor
12 vehicle—

13 “(A) which is propelled by power derived
14 from 1 or more cells which convert chemical en-
15 ergy directly into electricity by combining oxy-
16 gen with hydrogen fuel which is stored on board
17 the vehicle in any form and may or may not re-
18 quire reformation prior to use,

19 “(B) which, in the case of a passenger
20 automobile or light truck for 2003 and later
21 model vehicles, has received a certificate of con-
22 formity under the Clean Air Act and meets or

1 exceeds the equivalent qualifying California low
2 emission vehicle standard under section
3 243(e)(2) of the Clean Air Act for that make
4 and model year,

5 “(C) the original use of which commences
6 with the taxpayer,

7 “(D) which is acquired for use or lease by
8 the taxpayer and not for resale, and

9 “(E) which is made by a manufacturer.

10 “(c) APPLICATION WITH OTHER CREDITS.—The
11 credit allowed under subsection (a) for any taxable year
12 shall not exceed the excess (if any) of—

13 “(1) the sum of the regular tax plus the tax im-
14 posed by section 55, over

15 “(2) the sum of the credits allowable under sec-
16 tions 27, 29, and 30A, for the taxable year.

17 “(d) CREDIT MAY BE TRANSFERRED.—

18 “(1) IN GENERAL.—A taxpayer may transfer
19 the credit allowable under this section through an
20 assignment. Such transfer may be revoked only with
21 the consent of the Secretary.

22 “(2) REGULATIONS.—The Secretary shall pre-
23 scribe such regulations as necessary to ensure that
24 any credit described in paragraph (1) is claimed

1 once and not reassigned by an assignee described in
2 paragraph (1).

3 “(e) OTHER DEFINITIONS AND SPECIAL RULES.—

4 For purposes of this section—

5 “(1) MOTOR VEHICLE.—The term ‘motor vehi-
6 cle’ has the meaning given such term by section
7 30(c)(2).

8 “(2) CITY FUEL ECONOMY.—The Secretary of
9 Energy shall calculate the city fuel economy of fuel
10 cell motor vehicles which are passenger automobiles
11 and light trucks in a manner consistent with the
12 procedures for calculating the fuel economy for al-
13 ternative fuel automobiles under section 32905(a) of
14 title 49, United States Code.

15 “(3) RETAIL SALES PRICE.—The retail sales
16 price for any vehicle shall be determined under the
17 rules of section 4052(b).

18 “(4) OTHER TERMS.—The terms ‘automobile’,
19 ‘passenger automobile’, ‘light truck’, and ‘manufac-
20 turer’ have the meanings given such terms in regula-
21 tions prescribed by the Administrator of the Envi-
22 ronmental Protection Agency for purposes of the ad-
23 ministration of title II of the Clean Air Act (42
24 U.S.C. 7521 et seq.).

1 “(5) REDUCTION IN BASIS.—For purposes of
2 this subtitle, the basis of any property for which a
3 credit is allowable under subsection (a) shall be re-
4 duced by the amount of such credit so allowed (de-
5 termined without regard to subsection (c)).

6 “(6) RECAPTURE.—

7 “(A) IN GENERAL.—The Secretary shall,
8 by regulations, provide for recapturing the ben-
9 efit of any credit allowable under subsection (a)
10 with respect to any property which ceases to be
11 property eligible for such credit (including re-
12 capture in the case of a lease period of less
13 than the economic life of a vehicle).

14 “(B) ECONOMIC LIFE.—The regulations
15 provided by the Secretary pursuant to subpara-
16 graph (A) shall provide that the economic life
17 of a vehicle is 4 years.

18 “(7) PROPERTY USED OUTSIDE UNITED
19 STATES, ETC., NOT QUALIFIED.—No credit shall be
20 allowed under subsection (a) with respect to any
21 property referred to in section 50(b) or with respect
22 to the portion of the cost of any property taken into
23 account under section 179.

24 “(8) ELECTION TO NOT TAKE CREDIT.—No
25 credit shall be allowed under subsection (a) for any

1 vehicle if the taxpayer elects to not have this section
2 apply to such vehicle.

3 “(9) CARRYBACK AND CARRYFORWARD AL-
4 LOWED.—

5 “(A) IN GENERAL.—If the credit amount
6 allowable under subsection (a) for a taxable
7 year exceeds the amount of the limitation under
8 subsection (c) for such taxable year (in this
9 paragraph referred to as the ‘unused credit
10 year’), such excess shall be allowed as a credit
11 carryback for each of the 3 taxable years begin-
12 ning after January 1, 2003, which precede the
13 unused credit year and a credit carryforward
14 for each of the 20 taxable years which succeed
15 the unused credit year.

16 “(B) RULES.—Rules similar to the rules of
17 section 39 shall apply with respect to the credit
18 carryback and credit carryforward under sub-
19 paragraph (A).

20 “(10) INTERACTION WITH AIR QUALITY AND
21 MOTOR VEHICLE SAFETY STANDARDS.—Unless oth-
22 erwise provided in this section, a motor vehicle shall
23 not be considered eligible for a credit under this sec-
24 tion unless such vehicle is in compliance with—

1 “(A) the applicable provisions of the Clean
2 Air Act for the applicable make and model year
3 of the vehicle (or applicable air quality provi-
4 sions of State law in the case of a State which
5 has adopted such provision under a waiver
6 under section 209(b) of the Clean Air Act), and

7 “(B) the motor vehicle safety provisions of
8 sections 30101 through 30169 of title 49,
9 United States Code.

10 “(f) REGULATIONS.—

11 “(1) IN GENERAL.—Except as provided in para-
12 graph (2), the Secretary shall promulgate such regu-
13 lations as necessary to carry out the provisions of
14 this section.

15 “(2) COORDINATION IN PRESCRIPTION OF CER-
16 TAIN REGULATIONS.—The Secretary of the Treas-
17 ury, in coordination with the Secretary of Transpor-
18 tation and the Administrator of the Environmental
19 Protection Agency, shall prescribe such regulations
20 as necessary to determine whether a motor vehicle
21 meets the requirements to be eligible for a credit
22 under this section.

23 “(g) TERMINATION.—This section shall not apply to
24 any property placed in service after December 31, 2015.”.

25 (b) CONFORMING AMENDMENTS.—

1 “(D) HYDROGEN VEHICLES.—Subpara-
 2 graph (A) shall not apply to any motor vehicle
 3 with respect to which a credit is allowable under
 4 section 30B.”.

5 (b) EFFECTIVE DATE.—The amendment made by
 6 this section shall apply to property placed in service after
 7 December 31, 2002, in taxable years ending after such
 8 date.

9 **SEC. 103. MINIMUM FEDERAL FLEET REQUIREMENT.**

10 (a) IN GENERAL.—Section 303(b) of the Energy Pol-
 11 icy Act of 1992 (42 U.S.C. 13212(b)) is amended by add-
 12 ing at the end the following:

13 “(4) HYDROGEN FUEL CELL VEHICLES.—In
 14 each of the fiscal years specified in the following
 15 table, not fewer than the specified percentage of the
 16 number of vehicles acquired under paragraph (1)(D)
 17 for any Federal fleet of the specified size shall be
 18 hydrogen fuel cell vehicles that meet standards for
 19 performance, reliability, cost, and maintenance es-
 20 tablished by the Secretary of Energy (unless the
 21 Secretary determines, after making best efforts to
 22 acquire such vehicles, that such vehicles are unavail-
 23 able):

“Fleet size:	Fiscal year:	Percentage:
100 or more	2006 or 2007	5

“Fleet size:	Fiscal year:	Percentage:
100 or more	2008 or 2009	10
100 or more	2010 or 2011	20
50 or more	2012 or 2013	20.”.

1 (b) REFUELING.—Section 304 of the Energy Policy
2 Act of 1992 (42 U.S.C. 13213) is amended—

3 (1) by redesignating subsection (b) as sub-
4 section (c);

5 (2) in the second sentence of subsection (a), by
6 striking “If publicly” and inserting the following:

7 “(b) COMMERCIAL ARRANGEMENTS.—

8 “(1) IN GENERAL.—If publicly”; and

9 (3) in subsection (b) (as designated by para-
10 graph (2)), by adding at the end the following:

11 “(2) MANDATORY ARRANGEMENTS.—

12 “(A) IN GENERAL.—In a case in which
13 publicly available fueling facilities are not con-
14 venient or accessible to the locations of 2 or
15 more Federal fleets for which hydrogen fuel cell
16 vehicles are required to be purchased under sec-
17 tion 303(b)(4), the Federal agency for which
18 the Federal fleets are maintained (or the Fed-
19 eral agencies for which the Federal fleets are
20 maintained, acting jointly under a memo-
21 randum of agreement providing for cost shar-

1 ing) shall enter into a commercial arrangement
2 as provided in paragraph (1).

3 “(B) SUNSET.—Subparagraph (A) ceases
4 to be effective at the end of fiscal year 2013.”.

5 **SEC. 104. REPLACEMENT OF RELIANCE ON FOREIGN OIL**
6 **THROUGH HYDROGEN POWERED FUEL**
7 **CELLS.**

8 (a) GOAL.—It shall be a goal to replace reliance on
9 30,000,000 barrels of foreign oil through the use of hydro-
10 gen powered fuel cells by December 31, 2012.

11 (b) FUEL CELL MOTOR VEHICLE DEFINED.—For
12 the purposes of this section, the term “fuel cell motor vehi-
13 cle” means a motor vehicle that is propelled by power de-
14 rived from one or more cells which convert chemical energy
15 directly into electricity by combining oxygen with hydrogen
16 fuel which is stored on board the vehicle in any form and
17 may or may not require reformation prior to use.

18 (c) ADVISORY COMMISSION ON ACHIEVEMENT OF
19 GOAL.—

20 (1) ESTABLISHMENT AND DUTIES.—

21 (A) ESTABLISHMENT.—The Secretary of
22 Transportation shall establish an advisory com-
23 mission to provide the Secretary and Congress
24 with advice regarding the commercialization of

1 fuel cell motor vehicles, including the achieve-
2 ment of the goal set forth in subsection (a).

3 (B) DUTIES.—The commission shall have
4 the following duties:

5 (i) Make recommendations for uni-
6 form industry codes and standards for fuel
7 cell motor vehicles and hydrogen fueling
8 equipment or a process for developing such
9 codes and standards.

10 (ii) Make recommendations on how to
11 achieve the goal set forth in subsection (a).

12 (iii) Identify any impediments to
13 achieving such goal.

14 (iv) Make any other recommendations
15 relating to such goal that the commission
16 determines appropriate.

17 (2) MEMBERSHIP AND CHAIRMAN.—The com-
18 mission shall be composed of 5 members appointed
19 by the Secretary, as follows:

20 (A) One representative of fuel cell motor
21 vehicle manufacturers in the United States.

22 (B) One representative of fuel cell motor
23 vehicle manufacturers outside the United
24 States.

1 (C) One person from academia who is a
2 scientist with particular expertise in—

3 (i) fuel cell technology for the propul-
4 sion of motor vehicles; and

5 (ii) the manufacture of fuel cell motor
6 vehicles.

7 (D) One representative of an environ-
8 mental protection interest group having a sig-
9 nificantly numerous nationwide membership in
10 the United States.

11 (E) One representative of the Secretary,
12 who shall serve as Chairman of the commission.

13 (3) PERIOD OF APPOINTMENT; VACANCIES.—
14 Members shall be appointed for the life of the com-
15 mission. Any vacancy in the commission shall not af-
16 fect its powers, but shall be filled in the same man-
17 ner as the original appointment.

18 (4) MEETINGS.—

19 (A) SCHEDULING.—

20 (i) IN GENERAL.—The commission
21 shall meet at the call of the Chairman.

22 (ii) MANDATORY MEETING IF GOAL
23 NOT MET.—If the goal specified in sub-
24 section (a) is not achieved by December
25 31, 2013, the commission shall meet not

1 later than January 31, 2014, and within
2 90 days of such meeting shall make rec-
3 ommendations to the Secretary and Con-
4 gress on how to achieve such goal at the
5 earliest possible date.

6 (B) QUORUM.—A majority of the members
7 of the commission shall constitute a quorum,
8 but a lesser number of members may hold hear-
9 ings.

10 (5) POWERS.—

11 (A) HEARINGS.—The commission may
12 hold such hearings, sit and act at such times
13 and places, take such testimony, and receive
14 such evidence as the commission considers ad-
15 visable to carry out this section.

16 (B) INFORMATION FROM FEDERAL AGEN-
17 CIES.—The commission may secure directly
18 from any Federal department or agency such
19 information as the commission considers nec-
20 essary to carry out this section. Upon request
21 of the Chairman of the commission, the head of
22 such department or agency shall furnish such
23 information to the commission.

24 (C) POSTAL SERVICES.—The commission
25 may use the United States mails in the same

1 manner and under the same conditions as other
2 departments and agencies of the Federal Gov-
3 ernment.

4 (6) PERSONNEL MATTERS.—

5 (A) COMPENSATION OF MEMBERS.—Each
6 member of the commission who is not an officer
7 or employee of the Federal Government shall be
8 compensated at a rate equal to the daily equiva-
9 lent of the annual rate of basic pay prescribed
10 for level IV of the Executive Schedule under
11 section 5315 of title 5, United States Code, for
12 each day (including travel time) during which
13 such member is engaged in the performance of
14 the duties of the commission. All members of
15 the commission who are officers or employees of
16 the United States shall serve without compensa-
17 tion in addition to that received for their serv-
18 ices as officers or employees of the United
19 States.

20 (B) TRAVEL EXPENSES.—The members of
21 the commission shall be allowed travel expenses,
22 including per diem in lieu of subsistence, at
23 rates authorized for employees of agencies
24 under subchapter I of chapter 57 of title 5,
25 United States Code, while away from their

1 homes or regular places of business in the per-
2 formance of services for the commission.

3 (C) STAFF.—

4 (i) IN GENERAL.—The Chairman of
5 the commission may, without regard to the
6 civil service laws and regulations, appoint
7 and terminate an executive director and
8 such other additional personnel as may be
9 necessary to enable the commission to per-
10 form its duties. The employment of an ex-
11 ecutive director shall be subject to con-
12 firmation by the commission.

13 (ii) COMPENSATION.—The Chairman
14 of the commission may fix the compensa-
15 tion of the executive director and other
16 personnel without regard to chapter 51
17 and subchapter III of chapter 53 of title 5,
18 United States Code, relating to classifica-
19 tion of positions and General Schedule pay
20 rates, except that the rate of pay for the
21 executive director and other personnel may
22 not exceed the rate payable for level V of
23 the Executive Schedule under section 5316
24 of such title.

1 (D) DETAIL OF GOVERNMENT EMPLOY-
2 EES.—Any Federal Government employee may
3 be detailed to the commission without reim-
4 bursement, and such detail shall be without
5 interruption or loss of civil service status or
6 privilege.

7 (E) PROCUREMENT OF TEMPORARY AND
8 INTERMITTENT SERVICES.—The Chairman of
9 the commission may procure temporary and
10 intermittent services under section 3109(b) of
11 title 5, United States Code, at rates for individ-
12 uals which do not exceed the daily equivalent of
13 the annual rate of basic pay prescribed for level
14 V of the Executive Schedule under section 5316
15 of such title.

16 (7) TERMINATION OF COMMISSION.—The com-
17 mission shall terminate on the earlier of—

18 (A) the date that is 90 days after the date
19 on which the commission submits to the Sec-
20 retary of Transportation and Congress a find-
21 ing that the goal set forth in subsection (a) has
22 been achieved; or

23 (B) September 30 of the second vehicle
24 model year following the vehicle model year
25 specified in subsection (a).

1 (8) AUTHORIZATION OF APPROPRIATIONS.—
2 There is authorized to be appropriated for the com-
3 mission \$_____ for fiscal year 2004 and for each
4 of the subsequent fiscal years during which the com-
5 mission operates.

6 **TITLE II—HYDROGEN FUEL**

7 **SEC. 201. CREDIT FOR RETAIL SALE OF HYDROGEN FUEL**
8 **AS MOTOR VEHICLE FUEL.**

9 (a) IN GENERAL.—Subpart D of part IV of sub-
10 chapter A of chapter 1 (relating to business related cred-
11 its) is amended by inserting after section 40 the following
12 new section:

13 **“SEC. 40A. CREDIT FOR RETAIL SALE OF HYDROGEN AS**
14 **MOTOR VEHICLE FUEL.**

15 “(a) GENERAL RULE.—For purposes of section 38,
16 the hydrogen fuel retail sales credit for any taxable year
17 is 50 cents for each gasoline gallon equivalent of hydrogen
18 sold at retail by the taxpayer during such year as a fuel
19 to propel any qualified motor vehicle.

20 “(b) DEFINITIONS.—For purposes of this section—

21 “(1) GASOLINE GALLON EQUIVALENT.—The
22 term ‘gasoline gallon equivalent’ means the amount
23 (determined by the Secretary) of hydrogen fuel hav-
24 ing a Btu content of 114,000.

1 “(2) QUALIFIED MOTOR VEHICLE.—The term
2 ‘qualified motor vehicle’ means any motor vehicle (as
3 defined in section 30(c)(2)) which meets any appli-
4 cable Federal or State emissions standards with re-
5 spect to hydrogen fuel.

6 “(3) SOLD AT RETAIL.—

7 “(A) IN GENERAL.—The term ‘sold at re-
8 tail’ means the sale, for a purpose other than
9 resale, after manufacture, production, or impor-
10 tation.

11 “(B) USE TREATED AS SALE.—If any per-
12 son uses hydrogen (including any use after im-
13 portation) as a fuel to propel any motor vehicle
14 (as defined in section 30(c)(2)) before such fuel
15 is sold at retail, then such use shall be treated
16 in the same manner as if such fuel were sold
17 at retail as a fuel to propel such a vehicle by
18 such person.

19 “(c) PASS-THRU IN THE CASE OF ESTATES AND
20 TRUSTS.—Under regulations prescribed by the Secretary,
21 rules similar to the rules of subsection (d) of section 52
22 shall apply.

23 “(d) TERMINATION.—This section shall not apply to
24 any fuel sold at retail after December 31, 2013.”.

1 (b) CREDIT TREATED AS BUSINESS CREDIT.—Sec-
2 tion 38(b) (relating to current year business credit) is
3 amended by striking “plus” at the end of paragraph (14),
4 by striking the period at the end of paragraph (15) and
5 inserting “, plus”, and by adding at the end the following
6 new paragraph:

7 “(16) the hydrogen fuel retail sales credit deter-
8 mined under section 40A(a).”.

9 (c) TRANSITIONAL RULE.—Section 39(d) (relating to
10 transitional rules) is amended by adding at the end the
11 following new paragraph:

12 “(11) NO CARRYBACK OF SECTION 40A CREDIT
13 BEFORE EFFECTIVE DATE.—No portion of the un-
14 used business credit for any taxable year which is
15 attributable to the hydrogen fuel retail sales credit
16 determined under section 40A(a) may be carried
17 back to a taxable year ending before January 1,
18 2003.”.

19 (d) CLERICAL AMENDMENT.—The table of sections
20 for subpart D of part IV of subchapter A of chapter 1
21 is amended by inserting after the item relating to section
22 40 the following new item:

“Sec. 40A. Credit for retail sale of hydrogen as motor vehicle fuel.”.

23 (e) EFFECTIVE DATE.—The amendments made by
24 this section shall apply to fuel sold at retail after Decem-
25 ber 31, 2002, in taxable years ending after such date.

1 **SEC. 202. CREDIT FOR PRODUCTION OF HYDROGEN FUEL.**

2 (a) HYDROGEN PRODUCED FROM ANY SOURCE.—

3 Section 29 (relating to credit for producing fuel from non-
4 conventional sources) is amended by adding at the end the
5 following new subsection:

6 “(h) HYDROGEN FUEL.—

7 “(1) HYDROGEN FUEL PRODUCED FROM ANY
8 SOURCE.—There shall be allowed as a credit against
9 the tax imposed by this chapter for the taxable year
10 an amount equal to—

11 “(A) \$10, multiplied by

12 “(B) the barrel-of-oil equivalent of hydro-
13 gen fuel—

14 “(i) sold by the taxpayer to an unre-
15 lated person during the taxable year, and

16 “(ii) the production of which is attrib-
17 utable to the taxpayer.

18 “(2) ADDITIONAL CREDIT FOR PRODUCTION
19 FROM RENEWABLE SOURCES.—In the case of hydro-
20 gen which is produced from a renewable source,
21 paragraph (1)(A) shall be applied by substituting
22 ‘\$20’ for ‘\$10’.

23 “(3) EXCLUSION ON SALE FOR CERTAIN
24 USES.—No credit shall be allowed under this sub-
25 section for hydrogen fuel sold by the taxpayer the

1 use of which is for the production or refining of
2 other petroleum products.

3 “(4) TERMINATION.—This subsection shall not
4 apply to hydrogen fuel produced after December 31,
5 2013.”.

6 (b) EFFECTIVE DATE.—The amendments made by
7 this section shall apply to hydrogen produced after Decem-
8 ber 31, 2002, in taxable years ending after such date.

9 **SEC. 203. TAX HOLIDAY FOR HYDROGEN FUEL.**

10 (a) IN GENERAL.—Subchapter B of chapter 65 (re-
11 lating to abatements, credits, and refunds) is amended by
12 adding at the end the following new section:

13 **“SEC. 6429. FUELS USED IN HYDROGEN POWERED VEHI-**
14 **CLES.**

15 “(a) IN GENERAL.—If any fuel taxable under section
16 4041 or 4081 is used to produce hydrogen as a means
17 of propelling a hydrogen fuel cell vehicle during the appli-
18 cable period, the Secretary shall pay (without interest) to
19 the ultimate purchaser of such fuel an amount equal to
20 the amount determined by multiplying the number of gal-
21 lons so used by the rate at which tax was imposed on such
22 fuel under section 4041 or 4081.

23 “(b) APPLICABLE PERIOD.—The term ‘applicable pe-
24 riod’ means the period beginning after December 31,
25 2002, and ending before January 1, 2014.

1 “(c) HYDROGEN FUEL CELL VEHICLE.—The term
2 ‘hydrogen fuel cell vehicle’ has the meaning given such
3 term by section 136A(b)(1).”.

4 (b) CONFORMING AMENDMENT.—The table of sec-
5 tions for subchapter B of chapter 65 is amended by insert-
6 ing after the item relating to section 6428 the following
7 new item:

 “Sec. 6429. Fuels used in hydrogen powered vehicles.”.

8 **SEC. 204. SENSE OF CONGRESS REGARDING HYDROGEN**
9 **FUEL TAXES.**

10 It is the sense of Congress that no tax should be im-
11 posed on hydrogen fuel before January 1, 2014.

12 **SEC. 205. HYDROGEN FUELING FRINGE BENEFIT.**

13 (a) IN GENERAL.—Paragraph (1) of section 132(c)
14 (relating to qualified employee discounts) is amended by
15 striking “or” at the end of subparagraph (A), by striking
16 the period and inserting “, or” at the end of subparagraph
17 (B), and by adding at the end the following new subpara-
18 graph:

19 “(C) in the case of hydrogen fuel, 50 per-
20 cent of the price at which such fuel is being of-
21 fered by the employer to customers.”.

22 (b) EFFECTIVE DATE.—The amendments made by
23 this section shall apply to taxable years beginning after
24 December 31, 2002.

1 **SEC. 206. EXCLUSION OF EARNINGS FROM HYDROGEN**
2 **FUEL SALES.**

3 (a) IN GENERAL.—Part III of subchapter B of chap-
4 ter 1 (relating to items specifically excluded from gross
5 income) is amended by inserting after section 136 the fol-
6 lowing new section:

7 **“SEC. 136A. INCOME FROM HYDROGEN FUEL SALES.**

8 “(a) EXCLUSION.—Gross income shall not include in-
9 come attributable to the sale of hydrogen fuel sold for use
10 in a hydrogen fuel cell vehicle.

11 “(b) DEFINITION OF HYDROGEN FUEL CELL VEHI-
12 CLE.—For purposes of this section, the term ‘hydrogen
13 fuel cell vehicle’ means a motor vehicle (as defined in sec-
14 tion 30(c)(2)) which is propelled by power derived from
15 1 or more cells which convert chemical energy directly into
16 electricity by combining oxygen with hydrogen fuel which
17 is stored on board the vehicle in any form and may or
18 may not require reformation prior to use.

19 “(c) TERMINATION.—This section shall not apply to
20 income attributable to sales after December 31, 2013.”.

21 (b) CONFORMING AMENDMENT.—The table of sec-
22 tions for subpart B of part III of subchapter B of chapter
23 1 is amended by inserting after the item relating to section
24 136 the following new item:

“Sec. 136A. Income from hydrogen fuel sales.”.

1 (c) EFFECTIVE DATE.—The amendments made by
2 this section shall apply to income received after December
3 31, 2002, in taxable years ending after such date.

4 **SEC. 207. CREDIT FOR USE OF ETHANOL OR RENEWABLE**
5 **MOTOR FUEL TO PRODUCE HYDROGEN FUEL.**

6 (a) DEFINITIONS.—In this section:

7 (1) GALLON-EQUIVALENT UNIT.—The term
8 “gallon-equivalent unit” means a quantity of ethanol
9 or renewable motor fuel used in the production of
10 hydrogen fuel that the Secretary of Energy deter-
11 mines is equivalent in energy value to the use of a
12 gallon of ethanol or renewable motor fuel (whichever
13 is applicable) used in the production of motor fuel.

14 (2) HYDROGEN FUEL.—The term “hydrogen
15 fuel” means hydrogen fuel produced for use in a hy-
16 drogen fuel vehicle.

17 (b) CREDIT FOR USE OF HYDROGEN FUEL.—In sat-
18 isfaction of all or part of the requirement under any Fed-
19 eral law (enacted before, on, or after the date of enactment
20 of this Act) under which a refiner of motor fuel is required
21 to use a gallon of ethanol or renewable motor fuel in the
22 production of motor fuel in any year or an importer of
23 motor fuel is required to import a gallon of ethanol (in-
24 cluding ethanol blended with motor fuel) or renewable
25 motor fuel in any year, a refiner or importer shall receive

1 credit for 100 gallons of ethanol or renewable motor fuel
2 (whichever is applicable) for each gallon-equivalent unit
3 used to produce refined or imported hydrogen fuel.

4 **TITLE III—HYDROGEN FUELING**
5 **INFRASTRUCTURE**

6 **SEC. 301. CREDIT FOR INSTALLATION OF ALTERNATIVE**
7 **FUELING STATIONS.**

8 (a) IN GENERAL.—Subpart B of part IV of sub-
9 chapter A of chapter 1 (relating to foreign tax credit, etc.),
10 as amended by this Act, is amended by adding at the end
11 the following new section:

12 **“SEC. 30C. RESIDENTIAL HYDROGEN FUEL CELL VEHICLE**
13 **REFUELING PROPERTY CREDIT.**

14 “(a) CREDIT ALLOWED.—There shall be allowed as
15 a credit against the tax imposed by this chapter for the
16 taxable year an amount equal to 50 percent of the amount
17 paid or incurred by the taxpayer during the taxable year
18 for the installation of qualified residential hydrogen fuel
19 cell vehicle refueling property.

20 “(b) LIMITATION.—The credit allowed under sub-
21 section (a) shall not exceed \$1,000.

22 “(c) YEAR CREDIT ALLOWED.—The credit allowed
23 under subsection (a) shall be allowed in the taxable year
24 in which the qualified residential hydrogen fuel cell vehicle
25 refueling property is placed in service by the taxpayer.

1 “(d) DEFINITION OF QUALIFIED RESIDENTIAL HY-
2 DROGEN FUEL CELL VEHICLE REFUELING PROPERTY.—

3 The term ‘qualified residential hydrogen fuel cell vehicle
4 refueling property’ means any property (not including a
5 building and its structural components) if—

6 “(1) such property is of a character subject to
7 the allowance for depreciation,

8 “(2) the original use of such property begins
9 with the taxpayer,

10 “(3) such property is for the storage or dis-
11 pensing of hydrogen fuel into the fuel tank of a
12 motor vehicle propelled by such fuel, but only if the
13 storage or dispensing of the fuel is at the point
14 where such fuel is delivered into the fuel tank of the
15 motor vehicle, and

16 “(4) such property is installed on property
17 which is used as the principal residence (within the
18 meaning of section 121) of the taxpayer.

19 “(e) APPLICATION WITH OTHER CREDITS.—The
20 credit allowed under subsection (a) for any taxable year
21 shall not exceed the excess (if any) of—

22 “(1) the regular tax for the taxable year re-
23 duced by the sum of the credits allowable under sub-
24 part A and sections 27, 29, 30, and 30B, over

1 “(2) the tentative minimum tax for the taxable
2 year.

3 “(f) BASIS REDUCTION.—For purposes of this title,
4 the basis of any property shall be reduced by the portion
5 of the cost of such property taken into account under sub-
6 section (a).

7 “(g) NO DOUBLE BENEFIT.—No deduction shall be
8 allowed under section 179A or 179B with respect to any
9 property with respect to which a credit is allowed under
10 subsection (a).

11 “(h) CARRYFORWARD ALLOWED.—

12 “(1) IN GENERAL.—If the credit amount allow-
13 able under subsection (a) for a taxable year exceeds
14 the amount of the limitation under subsection (e) for
15 such taxable year (referred to as the ‘unused credit
16 year’ in this subsection), such excess shall be allowed
17 as a credit carryforward for each of the 20 taxable
18 years following the unused credit year.

19 “(2) RULES.—Rules similar to the rules of sec-
20 tion 39 shall apply with respect to the credit
21 carryforward under paragraph (1).

22 “(i) SPECIAL RULES.—Rules similar to the rules of
23 paragraphs (4) and (5) of section 179A(e) shall apply.

1 “(j) REGULATIONS.—The Secretary shall prescribe
2 such regulations as necessary to carry out the provisions
3 of this section.

4 “(k) TERMINATION.—This section shall not apply to
5 any property placed in service after December 31, 2013.”.

6 (b) CONFORMING AMENDMENTS.—

7 (1) Section 1016(a), as amended by this Act, is
8 amended by striking “and” at the end of paragraph
9 (28), by striking the period at the end of paragraph
10 (29) and inserting “, and”, and by adding at the
11 end the following new paragraph:

12 “(30) to the extent provided in section
13 30C(f).”.

14 (2) Section 55(c)(2), as amended by this Act, is
15 amended by inserting “30C(e),” after “30B(e),”.

16 (3) The table of sections for subpart B of part IV
17 of subchapter A of chapter 1, as amended by this Act,
18 is amended by inserting after the item relating to section
19 30B the following new item:

 “Sec. 30C. residential hydrogen fuel cell vehicle refueling property credit.”.

20 (c) EFFECTIVE DATE.—The amendments made by
21 this section shall apply to property placed in service after
22 September 30, 2002, in taxable years ending after such
23 date.

1 **SEC. 302. EXCLUSION OF EARNINGS FROM HYDROGEN**
2 **FUELING EQUIPMENT SALES.**

3 (a) IN GENERAL.—Subsection (a) of section 136A
4 (as added by section 206) is amended—

5 (1) by striking “of hydrogen” and inserting
6 “of—

7 “(1) hydrogen”,

8 (2) by striking the period and inserting “,
9 and”, and

10 (3) by inserting at the end the following new
11 paragraph:

12 “(2) hydrogen fueling equipment suitable for
13 vehicle refueling.”.

14 (b) DEFINITION OF HYDROGEN FUELING EQUIP-
15 MENT.—Subsection (b) of section 136A (as added by sec-
16 tion 206) is amended—

17 (1) by striking “DEFINITION OF HYDROGEN
18 FUEL CELL VEHICLE.—” and inserting “DEFINI-
19 TIONS.—

20 “(1) HYDROGEN FUEL CELL VEHICLE.—”, and

21 (2) by inserting at the end the following new
22 paragraph:

23 “(2) HYDROGEN FUELING EQUIPMENT.—For
24 purposes of this section, the term ‘hydrogen fueling
25 equipment’ means equipment used in the process of
26 reforming, storing, supplying, or replenishing fuel

1 used in a hydrogen fuel cell vehicle, an off-road vehi-
2 cle, or a stationary fuel cell that displaces a gener-
3 ator or other equipment powered by gasoline, diesel,
4 or oil.”.

5 (c) CONFORMING AMENDMENTS.—

6 (1) SECTION HEADING.—The heading of section
7 136A is amended by inserting “**AND HYDROGEN**
8 **FUELING EQUIPMENT**” before “**SALES**”.

9 (2) TABLE OF SECTIONS.—The item relating to
10 section 136A in the table of sections for subpart B
11 of part III of subchapter B of chapter 1 is amended
12 to read as follows:

“Sec. 136A. Income from hydrogen fuel and hydrogen fueling equipment
sales.”.

13 (d) EFFECTIVE DATE.—The amendments made by
14 this section shall apply to taxable years beginning after
15 December 31, 2002.

16 **SEC. 303. EXTENSION OF DEDUCTION FOR HYDROGEN**
17 **FUELING INFRASTRUCTURE.**

18 Section 179A(f) (relating to the termination of de-
19 ductions for clean-fuel vehicles and certain refueling prop-
20 erty) is amended—

21 (1) by striking “This section” and inserting:

22 “(1) QUALIFIED CLEAN-FUEL VEHICLE PROP-
23 erty.—The deduction under subparagraph (A) of
24 subsection (a)(1)”, and

1 (2) by adding at the end the following:

2 “(2) QUALIFIED CLEAN-FUEL VEHICLE RE-
3 FUELING PROPERTY.—The deduction under sub-
4 paragraph (B) of subsection (a)(1) shall not apply to
5 any property placed in service after December 31,
6 2013.”.

7 **SEC. 304. DEDUCTION FOR REFUELING USE OF HYDROGEN**
8 **FUEL CELLS.**

9 (a) IN GENERAL.—Part VI of subchapter B of chap-
10 ter 1 (relating to itemized deduction for individuals and
11 corporations) is amended by adding after section 179A the
12 following new section:

13 **“SEC. 179B. DEDUCTION FOR COPRODUCTION OF HYDRO-**
14 **GEN FUEL CELLS.**

15 “(a) IN GENERAL.—There shall be allowed as a de-
16 duction an amount equal to the cost of any qualified hy-
17 drogen refueling property in the taxable year.

18 “(b) LIMITATION.—The aggregate amount which
19 may be taken into account under this section with respect
20 to any qualified hydrogen refueling property shall not ex-
21 ceed the excess (if any) of—

22 “(1) \$300,000, over

23 “(2) the aggregate amount taken into account
24 under this section for the qualified hydrogen refuel-
25 ing property for all preceding taxable years.

1 “(c) DEFINITIONS.—For the purposes of this
2 section—

3 “(1) QUALIFIED HYDROGEN REFUELING PROP-
4 ERTY.—

5 “(A) IN GENERAL.—The term ‘qualified
6 hydrogen refueling property’ means a building
7 that—

8 “(i) uses hydrogen fuel cells to pro-
9 vide power to the building,

10 “(ii) has facilities that allow such hy-
11 drogen fuel cells to be used for public re-
12 fueling of hydrogen fuel cell vehicles, and

13 “(iii) has a building plan filed with
14 the Secretary in accordance with such reg-
15 ulations as the Secretary may prescribe.

16 “(B) BUILDING.—As used in paragraph
17 (1), the term ‘building’ means any building, ex-
18 cept that such building may not be within .5
19 miles of another qualified hydrogen refueling
20 property with respect to which a credit under
21 this section is allowed to the taxpayer.

22 “(2) HYDROGEN FUEL CELL VEHICLE.—The
23 term ‘hydrogen fuel cell vehicle’ has the meaning
24 given such term in section 136A(b)(1).

1 “(d) RECAPTURE.—The Secretary shall, by regula-
2 tions, provide for recapturing the benefit of the deduction
3 allowable under this section if such qualified hydrogen re-
4 fueling property is not placed in service.

5 “(e) TERMINATION.—This section shall not apply to
6 any property placed in service after December 31, 2013.”.

7 (b) CONFORMING AMENDMENT.—The table of sec-
8 tions for part VI of subchapter B of chapter 1 is amended
9 by inserting after the item relating to section 179A the
10 following new item:

“Sec. 179B. Deduction for coproduction of hydrogen fuel cells.”.

11 (c) EFFECTIVE DATE.—The amendments made by
12 this section shall apply in taxable years beginning after
13 December 31, 2002.

14 **SEC. 305. ACCELERATED DEPRECIATION FOR QUALIFIED**
15 **HYDROGEN FUELING EQUIPMENT.**

16 (a) RECOVERY PERIOD.—Subparagraph (B) of sec-
17 tion 168(e)(3) (relating to 5-year property) is amended
18 by striking “and” in clause (v), by striking the period and
19 inserting “, and” in subclause (III) of clause (vi), and by
20 adding at the end the following new clause:

21 “(vii) any qualified hydrogen fueling equip-
22 ment, as defined in subsection (l)(2).”.

23 (b) DEPRECIATION ALLOWANCE.—Section 168 is
24 amended by adding at the end the following new sub-
25 section:

1 “(1) SPECIAL ALLOWANCE FOR INVESTMENTS IN RE-
2 FORMERS AND OTHER HYDROGEN FUELING APPLI-
3 ANCES.—

4 “(1) ADDITIONAL ALLOWANCE.—In the case of
5 qualified hydrogen fueling equipment—

6 “(A) the depreciation deduction provided
7 by section 167(a) for the taxable year in which
8 such property is placed in service shall include
9 an allowance equal to 25 percent of the ad-
10 justed basis of the qualified hydrogen fueling
11 equipment, and

12 “(B) the adjusted basis of the qualified
13 property shall be reduced by the amount of
14 such deduction before computing the amount
15 otherwise allowable as a depreciation deduction
16 under this chapter for such taxable year and
17 any subsequent taxable year.

18 “(2) QUALIFIED HYDROGEN FUELING EQUIP-
19 MENT.—For purposes of this subsection:

20 “(A) IN GENERAL.—The term ‘qualified
21 hydrogen fueling equipment’ means storage
22 containers, reformers, fuel processors, and hy-
23 drogen compressors.

24 “(B) REFORMER.—The term ‘reformer’
25 means a device used to produce or extracts hy-

1 drogen from another source in order to power
2 the vehicle.

3 “(3) TERMINATION.—This subsection shall not
4 apply to equipment placed in service after December
5 31, 2007.”.

6 (c) EFFECTIVE DATE.—The amendments made by
7 this section shall apply to taxable years beginning after
8 December 31, 2002.