

107TH CONGRESS
1ST SESSION

H. R. 2502

To amend the Internal Revenue Code of 1986 to assist small business refiners in complying with Environmental Protection Agency sulfur regulations.

IN THE HOUSE OF REPRESENTATIVES

JULY 16, 2001

Mr. HORN (for himself, Mr. WATKINS of Oklahoma, Mr. PETERSON of Pennsylvania, Mr. WATTS of Oklahoma, Mr. DOOLITTLE, Mr. DOOLEY of California, Mr. INSLEE, Mr. DICKS, Mr. MCINNIS, and Mr. ENGLISH) 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 assist small business refiners in complying with Environmental Protection Agency sulfur regulations.

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. EXPENSING OF CAPITAL COSTS INCURRED IN**
4 **COMPLYING WITH ENVIRONMENTAL PROTEC-**
5 **TION AGENCY SULFUR REGULATIONS.**

6 (a) IN GENERAL.—Section 179(b) of the Internal
7 Revenue Code of 1986 (relating to election to expense cer-

tain depreciable business assets) is amended by adding at the end the following new paragraph:

“(5) LIMITATION FOR SMALL BUSINESS REFINERS.—

“(A) IN GENERAL.—In the case of a small business refiner electing to expense qualified costs, in lieu of the dollar limitations in paragraph (1), the limitation on the aggregate costs which may be taken into account under subsection (a) for any taxable year shall not exceed 75 percent of the qualified costs.

“(B) QUALIFIED COSTS.—For purposes of this paragraph, the term ‘qualified costs’ means costs paid or incurred by a small business refiner for the purpose of complying with the Highway Diesel Fuel Sulfur Control Requirements of the Environmental Protection Agency.

“(C) SMALL BUSINESS REFINER.—For purposes of this paragraph, the term ‘small business refiner’ means, with respect to any taxable year, a refiner which, within the refining operations of the business, employs not more than 1,500 employees on business days during such taxable year and has less than 155,000 barrels per day total capacity.”.

1 (b) EFFECTIVE DATE.—The amendment made by
2 this section shall apply to taxable years beginning after
3 the date of the enactment of this Act.

4 **SEC. 2. ENVIRONMENTAL TAX CREDIT.**

5 (a) IN GENERAL.—Subpart D of part IV of sub-
6 chapter A of chapter 1 of the Internal Revenue Code of
7 1986 (relating to business-related credits) is amended by
8 adding at the end the following new section:

9 **“SEC. 45G. ENVIRONMENTAL TAX CREDIT.**

10 “(a) IN GENERAL.—For purposes of section 38, the
11 amount of the environmental tax credit determined under
12 this section with respect to any small business refiner for
13 any taxable year is an amount equal to 5 cents for every
14 gallon of 15 parts per million or less sulfur diesel produced
15 at a facility by such small business refiner.

16 “(b) MAXIMUM CREDIT.—For any small business re-
17 finer, the aggregate amount allowable as a credit under
18 subsection (a) for any taxable year with respect to any
19 facility shall not exceed 25 percent of the qualified capital
20 costs incurred by such small business refiner with respect
21 to such facility not taken into account in determining the
22 credit under subsection (a) for any preceding taxable year.

23 “(c) DEFINITIONS.—For purposes of this section—

24 “(1) SMALL BUSINESS REFINER.—The term
25 ‘small business refiner’ means, with respect to any

1 taxable year, a refiner which, within the refining op-
2 erations of the business, employs not more than
3 1,500 employees on business days during such tax-
4 able year and has less than 155,000 barrels per day
5 total capacity.

6 “(2) QUALIFIED CAPITAL COSTS.—The term
7 ‘qualified capital costs’ means, with respect to any
8 facility, those costs paid or incurred during the ap-
9 plicable period for compliance with the applicable
10 EPA regulations with respect to such facility, includ-
11 ing expenditures for the construction of new process
12 operation units or the dismantling and reconstruc-
13 tion of existing process units to be used in the pro-
14 duction of 15 parts per million or less sulfur diesel
15 fuel, associated adjacent or offsite equipment (in-
16 cluding tankage, catalyst, and power supply), engi-
17 neering, construction period interest, and sitework.

18 “(3) APPLICABLE EPA REGULATIONS.—The
19 term ‘applicable EPA regulations’ means the High-
20 way Diesel Fuel Sulfur Control Requirements of the
21 Environmental Protection Agency.

22 “(4) APPLICABLE PERIOD.—The term ‘applica-
23 ble period’ means, with respect to any facility, the
24 period beginning with the date of the enactment of
25 this section and ending with the date which is one

1 year after the date on which the taxpayer must com-
2 ply with the applicable EPA regulations with respect
3 to such facility.

4 “(d) REDUCTION IN BASIS.—For purposes of this
5 subtitle, if a credit is determined under this section with
6 respect to any property by reason of qualified capital
7 costs, the basis of such property shall be reduced by the
8 amount of the credit so determined.

9 “(e) CERTIFICATION.—

10 “(1) REQUIRED.—Not later than the date
11 which is 30 months after the first day of the first
12 taxable year in which the environmental tax credit is
13 allowed with respect to a facility, the small business
14 refiner must obtain certification from the Secretary,
15 in consultation with the Administrator of the Envi-
16 ronmental Protection Agency, that the taxpayer’s
17 qualified capital costs with respect to such facility
18 will result in compliance with the applicable EPA
19 regulations.

20 “(2) CONTENTS OF APPLICATION.—An applica-
21 tion for certification shall include relevant informa-
22 tion regarding unit capacities and operating charac-
23 teristics sufficient for the Secretary, in consultation
24 with the Administrator of the Environmental Protec-
25 tion Agency, to determine that such qualified capital

1 costs are necessary for compliance with the applica-
2 ble EPA regulations.

3 “(3) REVIEW PERIOD.—Any application shall
4 be reviewed and notice of certification, if applicable,
5 shall be made within 60 days of receipt of such ap-
6 plication.

7 “(4) RECAPTURE.—Notwithstanding subsection
8 (f), failure to obtain certification under paragraph
9 (1) constitutes a recapture event under subsection
10 (f) with an applicable percentage of 100 percent.

11 “(f) RECAPTURE OF ENVIRONMENTAL TAX CRED-
12 IT.—

13 “(1) IN GENERAL.—Except as provided in sub-
14 section (e), if, as of the close of any taxable year,
15 there is a recapture event with respect to any facility
16 of the small business refiner, then the tax of such
17 refiner under this chapter for such taxable year shall
18 be increased by an amount equal to the product of—

19 “(A) the applicable recapture percentage,
20 and

21 “(B) the aggregate decrease in the credits
22 allowed under section 38 for all prior taxable
23 years which would have resulted if the qualified
24 capital costs of the taxpayer described in sub-

1 section (c)(2) with respect to such facility had
2 been zero.

3 “(2) APPLICABLE RECAPTURE PERCENTAGE.—

4 “(A) IN GENERAL.—For purposes of this
5 subsection, the applicable recapture percentage
6 shall be determined from the following table:

“If the recapture event occurs in:	The applicable recapture percentage is:
Year 1	100
Year 2	80
Year 3	60
Year 4	40
Year 5	20
Years 6 and thereafter	0.

7 “(B) YEARS.—For purposes of subpara-
8 graph (A), year 1 shall begin on the first day
9 of the taxable year in which the qualified cap-
10 ital costs with respect to a facility described in
11 subsection (c)(2) are paid or incurred by the
12 taxpayer.

13 “(3) RECAPTURE EVENT DEFINED.—For pur-
14 poses of this subsection, the term ‘recapture event’
15 means—

16 “(A) FAILURE TO COMPLY.—The failure
17 by the small business refiner to meet the appli-
18 cable EPA regulations within the applicable pe-
19 riod with respect to the facility.

20 “(B) CESSATION OF OPERATION.—The
21 cessation of the operation of the facility as a fa-

1 facility which produces 15 parts per million or
2 less sulfur diesel after the applicable period.

3 “(C) CHANGE IN OWNERSHIP.—

4 “(i) IN GENERAL.—Except as pro-
5 vided in clause (ii), the disposition of a
6 small business refiner’s interest in the fa-
7 cility with respect to which the credit de-
8 scribed in subsection (a) was allowable.

9 “(ii) AGREEMENT TO ASSUME RECAP-
10 TURE LIABILITY.—Clause (i) shall not
11 apply if the person acquiring such interest
12 in the facility agrees in writing to assume
13 the recapture liability of the person dis-
14 posing of such interest in effect imme-
15 diately before such disposition. In the
16 event of such an assumption, the person
17 acquiring the interest in the facility shall
18 be treated as the taxpayer for purposes of
19 assessing any recapture liability (computed
20 as if there had been no change in owner-
21 ship).

22 “(4) SPECIAL RULES.—

23 “(A) TAX BENEFIT RULE.—The tax for
24 the taxable year shall be increased under para-
25 graph (1) only with respect to credits allowed

1 by reason of this section which were used to re-
2 duce tax liability. In the case of credits not so
3 used to reduce tax liability, the carryforwards
4 and carrybacks under section 39 shall be appro-
5 priately adjusted.

6 “(B) NO CREDITS AGAINST TAX.—Any in-
7 crease in tax under this subsection shall not be
8 treated as a tax imposed by this chapter for
9 purposes of determining the amount of any
10 credit under subpart A, B, or D of this part.

11 “(C) NO RECAPTURE BY REASON OF CAS-
12 UALTY LOSS.—The increase in tax under this
13 subsection shall not apply to a cessation of op-
14 eration of the facility by reason of a casualty
15 loss to the extent such loss is restored by recon-
16 struction or replacement within a reasonable pe-
17 riod established by the Secretary.

18 “(g) CONTROLLED GROUPS.—For purposes of this
19 section, all persons treated as a single employer under sub-
20 section (b), (c), (m), or (o) of section 414 shall be treated
21 as a single employer.”.

22 (b) CREDIT MADE PART OF GENERAL BUSINESS
23 CREDIT.—Subsection (b) of section 38 of the Internal
24 Revenue Code of 1986 (relating to general business credit)
25 is amended by striking “plus” at the end of paragraph

1 (14), by striking the period at the end of paragraph (15)
2 and inserting “, plus”, and by adding at the end the fol-
3 lowing new paragraph:

4 “(16) in the case of a small business refiner,
5 the environmental tax credit determined under sec-
6 tion 45G(a).”.

7 (c) DENIAL OF DOUBLE BENEFIT.—Section 280C of
8 the Internal Revenue Code of 1986 (relating to certain
9 expenses for which credits are allowable) is amended by
10 adding at the end the following new subsection:

11 “(d) ENVIRONMENTAL TAX CREDIT.—No deduction
12 shall be allowed for that portion of the expenses otherwise
13 allowable as a deduction for the taxable year which is
14 equal to the amount of the credit determined for the tax-
15 able year under section 45G(a).”.

16 (d) CREDIT ALLOWED AGAINST REGULAR AND MIN-
17 IMUM TAX.—

18 (1) IN GENERAL.—Subsection (c) of section 38
19 of the Internal Revenue Code of 1986 (relating to
20 limitation based on amount of tax) is amended by
21 redesignating paragraph (3) as paragraph (4) and
22 by inserting after paragraph (2) the following new
23 paragraph:

24 “(3) SPECIAL RULES FOR ENVIRONMENTAL TAX
25 CREDIT.—

1 “(A) IN GENERAL.—In the case of the en-
2 vironmental tax credit—

3 “(i) this section and section 39 shall
4 be applied separately with respect to the
5 credit, and

6 “(ii) in applying paragraph (1) to the
7 credit—

8 “(I) subparagraphs (A) and (B)
9 thereof shall not apply, and

10 “(II) the limitation under para-
11 graph (1) (as modified by subclause
12 (I)) shall be reduced by the credit al-
13 lowed under subsection (a) for the
14 taxable year (other than the environ-
15 mental tax credit).

16 “(B) ENVIRONMENTAL TAX CREDIT.—For
17 purposes of this subsection, the term ‘environ-
18 mental tax credit means the credit allowable
19 under subsection (a) by reason of section
20 45G.’.”.

21 (2) CONFORMING AMENDMENT.—Subclause (II)
22 of section 38(c)(2)(A)(ii) of such Code is amended
23 by inserting “or the environmental tax credit” after
24 “employment credit”.

1 (e) BASIS ADJUSTMENT.—Section 1016(a) of the In-
2 ternal Revenue Code of 1986 (relating to adjustments to
3 basis) is amended by striking “and” at the end of para-
4 graph (27), by striking the period at the end of paragraph
5 (28) and inserting “, and”, and by adding at the end the
6 following new paragraph:

7 “(29) in the case of a facility with respect to
8 which a credit was allowed under section 45G, to the
9 extent provided in section 45G(d).”.

10 (f) CLERICAL AMENDMENT.—The table of sections
11 for subpart D of part IV of subchapter A of chapter 1
12 of the Internal Revenue Code of 1986 is amended by add-
13 ing at the end the following new item:

 “Sec. 45G. Environmental tax credit.”.

14 (g) EFFECTIVE DATE.—The amendments made by
15 this section shall apply to expenses paid or incurred after
16 the date of the enactment of this Act.

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