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The One, Big, Beautiful Bill: Way & Means Chairman’s Mark - Energy Tax Credit Implications

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The One, Big, Beautiful Bill (TOB^3)

- TOB^3 would take a scalpel, not a sledgehammer, to the IRA tax credits
- If enacted the clean energy industry would feel some pain, but it looks like it would survive
  - The biggest loss would likely be the loss of tax credit transferability for projects that begin construction after the second anniversary of the enactment of TOB^3
- TOB^3 appears to reflect negotiations between Speaker Johnson and the Republican supporters of the IRA tax credits (e.g., Rep. Andrew Garbarino (New York, 2nd District))
- The text of TOB^3 is available at The-One-Big-Beautiful-Bill-Section-by-Section.pdf
- The Joint Committee on Taxation's (JCT) summary is available at JCX-21-25 | Joint Committee on Taxation
- JCT's scoring report as of May 13 is available at JCX-22-25 | Joint Committee on Taxation

Tech Neutral ITC (48E) & PTC (45Y)

- For projects placed in service in **2029**, multiply the otherwise available credit by **80%**;

  for projects placed in service in **2030**, multiply the otherwise available credit by **60%**;

  for projects placed in service in **2031**, multiply the otherwise available credit by **40%**; and

  for projects placed in service in **2031**, multiply the otherwise available credit by **0**%
- Note, the use of **placed in service**, rather than beginning construction (i.e., no safe harboring rule)
- Combined the changes are scored by JCT as raising $183 billion
  - $155 billion from the ITC changes
  - $28 billion from the PTC changes

Advanced Manufacturing Production Credit (45X)

- There would be no manufacturing credit for **wind** components made after **2027**
- The manufacturing credit would be repealed for **all other technologies** for components made after **2031**
- These changes are scored by the JCT as raising $44 billion

Residential Clean Energy Credit (25D)

- Section 25D would be repealed for equipment placed in service after December 31, 2025
- This credit applies to homeowners who install solar, geothermal heat pumps, etc., on their homes
  - (Does **not** mean if SunRun ***owns*** solar on a home, that there is no ITC for SunRun (see slide on 48E above))
- The repeal is scored by the JCT as raising $77 billion

Other credits repealed for new equipment after December 31, 2025

- Energy efficient home improvement (25C)
- New energy efficient home (45L)
- Commercial electric vehicles (45W)
- EV charging (30C)
- Used EVs (25E)
- Note, the credit for consumers that buy new EVs will be terminated by the earlier of when the manufacturer sells 200,000 units and December 31, **2026**

Geothermal heat pumps (48(a))

- Geothermal heat pumps uniquely are currently covered by 48(a) (traditional ITC) for projects that begin construction before the end of 2032
- TOB[3] would change that to

  construction begins before 2030 – 30% ITC;

  construction begins in 2030 – 26% ITC;

  construction begins in 2031 – 22%; and

  construction begins during or after 2032 – 0% ITC

- The above percentages assume compliance with the prevailing wage and apprentice rules or that the project is under the equivalent of 1 MW
- Geothermal heat pumps would have a “construction begins” date transition rule, while 45Y and 48E would have a “placed in service” date transition rule
- JCT scores the change as raising $22 billion

Carbon Capture Credit (45Q)

- No change in the amount of the credit
- No change in the years the credit is available
  - Treated more generously than wind, solar, storage or nuclear
- See slide below for elimination of transferability
- Direct pay would still be available

Nuclear Power Credit (45U)

- Phase-out starting in **2029**.
- The otherwise available credit would be multiplied by:

  80% in 2029;

  60% in 2030;

  40% in 2031; and

  0% after 2031
- JCT scores the change as raising $18 billion
- Some thought nuclear would be spared but apparently not

Hydrogen Production Credit (45V)

- Repealed for projects that **begin construction** after **2025**
- Some thought hydrogen would be spared but apparently not
- JCT scores the repeal as raising $9 billion
- Much of the hydrogen industry in the US was on the ropes after the Biden Administration's "three pillars" requirements in the 45V tax regulations

Clean Fuel Production Credit (45Z)

- Only energy tax credit that a beneficial change is proposed for
- Rather than being limited to sales before 2028, it would apply to sales **before 2032**
- No transferability for 45Z for fuel produced after 2027 (see next slide)

Transferability (6418) repealed with transition period

- No transferability if the project **begins construction** after the **second anniversary of the enactment** of TOB[3]
  - Credits under 45Q (carbon capture), 45Y (tech neutral PTC), 48E (tech neutral ITC) & 48(a) (geothermal heat pumps)
  - Note, use of **begins construction**
  - Carbon capture appears to still be eligible for direct pay, even if the project is placed in service after the second anniversary
- Special rules for certain technologies

– 45U (nuclear) – no transferability for electricity generated after **2027**

– 45Z (clean fuels) – no transferability for fuel produced after **2027**

– 45X (manufacturing) – no transferability for components manufactured after **2027**

  - But direct pay appears to still be available for 45X after 2027

Direct pay (6417)
No change

- Direct pay would not be changed
- Likely due to lobbying by rural electric co-ops of Republican leadership
  - Such co-ops are tax-exempt and qualify for direct pay
- Still hearing reports that clients have not received their direct payments
  - Will that change now that the Republicans seem to have endorsed

New foreign entity of concern (FEOC) limitations

- Restrictions on FEOCs would be added to all energy tax credits
  - Adds new definitions of “prohibited foreign entity, “specified foreign entity” and “foreign-influenced entity”
- A “specified foreign entity” any company that is owned:
  - More than 50% by the Chinese, Russian, North Korean or Iranian government;
  - By a company organized or having its principal place of business in one of the four countries;
  - By CATL, Gotion, BYD, EVE Energy Company, Hithium Energy Storage Technology; and
  - Companies on the OFAC list or companies that make products that benefit from Uyghur forced labor in Xinjiang in western China
- FEOC restrictions would become more onerous starting in 2028
  - At that point, no tax credits can be claimed by any "foreign-influenced entity"
  - The ownership restriction drops to 10% and some contractual relationships with specified foreign entities also become a problem
- Also, broad prohibition on “material assistance” with respect to supplying a non-unique component or subcomponent or a critical mineral from a FEOC

Adders: unchanged (generally)

- The adders for domestic content, energy communities and projects that benefit low-income communities would generally be left alone
  - TOB[3] would eliminate the ability for any unused capacity under the LMI adder program to be carried forward by the program and allocated to applicants after 2031
- The fact that the domestic content percentage ratchets up from 40% under section 45Y (tech neutral PTC) but not section 48E (tech neutral ITC) was not included as a correction (i.e., a project under 48E could qualify for the domestic content with only 40%, while the same project under 45Y would need a higher percentage)

Bonus depreciation

- The option for 100% bonus deprecation would be available for property placed in service after January 19, 2025 through the end of 2025
- This is scored by JCT as costing the Treasury $37 billion

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