

LEGAL UPDATES

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The Future of IRA Clean Energy Production and Investment Tax Credits Under Draft GOP Tax Legislation

On May 14, 2025, the Ways & Means Committee of the House of Representatives released much-anticipated draft tax legislation from committee markup. Although tax considerations are only one part of the so-called “Big Beautiful Bill,” they nonetheless promise to represent some of its most significant, and controversial, legislative agenda items. The bill endeavors to make permanent many provisions of the Tax Cuts and Jobs Act of 2017, including increased standard deductions, an enhanced child tax credit, and broadened tax brackets for individuals, all while making the increased alternative minimum tax exemption permanent and continuing to zero out personal exemptions.

However, continuity is not the main theme of this bill. In fact, many of its most divisive provisions aim to upend popular industry initiatives from the Inflation Reduction Act of 2022 (IRA). The components of this legislation of interest to clean energy tax credit merchants and investors deal with the continued existence and transferability of such credits, most of which would be wound down by 2031 under the contemplated legislation. Some would be phased out as soon as the end of 2025, and credit transferability—a key innovation contained within Section 6418 of the IRA—would be repealed for projects that begin construction two years after the date on which the bill is enacted and for components or output produced after December 31, 2027 (for Section 45U, 45Z, and 45X credits). The phaseouts of these Investment and Production Tax Credits generally follow a “placed in service” standard rather than a “beginning of construction” standard; however, transferability repeals are generally tied to the beginning of facility or equipment construction (refer to the chart below

for timelines relevant to many clean energy tax credits, most of which were products of the IRA).

At the same time that this assault on renewable energy tax credits is undertaken, the bill revives and extends a number of manufacturing-friendly provisions, including immediate research and development expensing, 100% bonus depreciation for capital equipment purchases, and the Section 199A qualified business income deduction for passthrough entities, all while liberalizing business interest deductibility. The bill also introduces new restrictions to certain IRA credits related to Foreign Entities of Concern (FEOCs), a term which denotes entities that are deemed to be controlled or influenced by specified foreign countries, including Russia, Iran, China, and North Korea. These FEOC provisions layer additional restrictions onto these renewable energy credits prior to their phasing out, the violation of which may result in total credit disallowance. Tax credit investors should be aware of these additional wrinkles and plan to account for them through both astute drafting and robust due diligence.

Tax Credit	Phase-Out	FEOC Provision	Transferability Repealed
Clean Energy Production Credit (Section 45Y)	Begins to phase-out for facilities placed in service after 2028 and goes to zero after December 31, 2031 (20% credit reduction for those placed in service in 2029, 40% in 2030, and 60% in 2031, unavailable thereafter)	Yes, FEOC Restrictions	Repealed for facilities for which construction begins two years after legislation goes into effect
Clean Electricity Investment Credit (Section 48E)	Begins to phase-out for facilities placed in service after 2028 and goes to zero after December 31, 2031 (20% credit reduction for those placed in service in 2029, 40% in 2030, and 60% in 2031, unavailable thereafter)	Yes, FEOC Restrictions	Repealed for facilities for which construction begins two years after legislation goes into effect
Credit for Production of	Eliminated for facilities where construction begins after December 31, 2025	No FEOC Restrictions	Transferability unaffected

Clean Hydrogen (Section 45V)			
Credit for Carbon Oxide Sequestration (Section 45Q)	Left intact	Yes, FEOC Restrictions	Repealed for carbon capture equipment for which construction begins two years after legislation goes into effect
Advanced Manufacturing Production Credit (Section 45X)	Ends for wind components after December 31, 2027, and all other components after December 31, 2031	Yes, FEOC Restrictions	Repealed for components sold after December 31, 2027
Zero-Emission Nuclear Power Production Credit (Section 45U)	Begins to phase-out for facilities placed in service after 2028 and goes to zero after December 31, 2031 (20% credit reduction for those placed in service in 2029, 40% in 2030, and 60% in 2031, unavailable thereafter)	Yes, FEOC Restrictions	Repealed for fuel produced after December 31, 2027
Clean Fuel Production Credit (Section 45Z)	Extended to clean fuel that is produced before 2031 but is limited to clean fuel produced using feedstock from the U.S., Mexico, and Canada after December 31, 2025	No FEOC Restrictions	Repealed for fuel produced after December 31, 2027
Residential	Eliminated for property placed in service	No FEOC	N/A, not

Clean Energy Credit (Section 45D(h))	after December 31, 2025	Restrictions	transferable
New Energy Efficient Home Credit (Section 45L(h))	Eliminated for homes which are acquired after December 31, 2025. However, homes that begin construction before May 12, 2025 and are subsequently acquired before December 31, 2026 are excepted.	No FEOC Restrictions	N/A, not transferable

What this means to you

Although the final form of the bill may appear substantially different than this initial draft version, tax credit investors need to be aware of these forthcoming changes and their potential sweeping impact on the market for renewable energy tax credit transfers. Indeed, the mere existence of these legislative proposals augurs a sea change in the industry’s perception of this developing—and rapidly growing—market. Its potential congressional foreclosure, so soon after the market’s establishment, would certainly frustrate any longer-term growth projections but may simultaneously provide valuable opportunities for accelerated credit dealings in the interim period. Adept buyers and sellers must be prepared to consummate these transactions in advance of any future phase out periods or transferability repeals.

Contact us

If you have questions regarding this proposal’s implications for tax credits, please contact Doug Jones, Sean Kelly, or your Husch Blackwell attorney.