Simpson Thacher

Memorandum

House Bill Would Eliminate Tax Credits for Most Future Clean Energy Projects

May 28, 2025

On May 22, 2025, the House of Representatives passed H.R. 1, the "One Big Beautiful Bill Act" (the "Bill").

Among its numerous proposed amendments to U.S. income tax law, the Bill would eliminate, for most future projects, the federal clean electricity production tax credit and clean electricity investment tax credit, which had each previously been expanded under the Inflation Reduction Act of 2022 (the "IRA"). The Bill also imposes broad "prohibited foreign entities" restrictions. These restrictions purport to (1) limit parties that can claim tax credits if owned by restricted foreign persons and (2) disqualify projects that receive certain assistance from restricted foreign persons. However, some projects may benefit from the Bill, most notably those intended to qualify for the tax credit for clean transportation fuel production.

This memorandum summarizes certain key provisions of the Bill affecting these tax credits and highlights planning considerations for investors in the affected industries. Based on messaging from senators, including Republican senators, following the passage of the Bill by the House of Representatives, we anticipate the Senate will seek to revise the Bill in ways that will at least partially narrow the scope of the changes contained in the Bill. We also anticipate that the drafting for certain provisions will need to be clarified in future iterations of the Bill, in order to streamline its implementation.

Current Law

Under the IRA, a 10-year production tax credit ("PTC") is available for certain facilities that generate electricity with zero net greenhouse gas emissions, which can include both wind and solar energy facilities. An investment tax credit ("ITC") equal to a percentage of a taxpayer's investment in such facilities, as well as in property used for the storage of electricity, hydrogen, or thermal energy ("energy storage technology" or "EST"), is also available. Under the IRA, the PTC and the ITC are each subject to a gradual phase-out that would begin for facilities and EST that start construction two calendar years after the year in which annual U.S. greenhouse gas emissions from the production of electricity are 25% or less of their 2022 level (but in no case earlier than 2032).

In addition, in lieu of claiming the PTC or the ITC, the IRA permits certain taxpayers to transfer the credits by selling them to another taxpayer in exchange for a payment in cash or cash equivalents.

Proposed Changes

ACCELERATED SUNSET DATE

Under the Bill, the PTC and the ITC would be eliminated for clean energy generation projects or EST that either (i) begin construction more than 60 days after the date the Bill is enacted into law or (ii) are placed in service after December 31, 2028. An exception would apply for certain nuclear facilities (and certain expansions of existing nuclear facilities, in the case of the PTC) that begin construction no later than December 31, 2028. Thus, clean energy generation facilities or EST would be "grandfathered" and remain potentially eligible to qualify for the credits under the current IRA rules (including after enactment of the Bill, but subject to the limitations on transactions with foreign entities summarized below), if they (i) have already begun construction or will begin construction no more than 60 days after the Bill's date of enactment and, in each case, will be placed in service before December 31, 2028 or (ii) have already been placed in service and qualified for a PTC or ITC.

In addition, certain projects that began construction prior to 2025 and which qualify for the previous versions of the PTC or ITC (i.e. under Sections 45 and 48 of the Internal Revenue Code (the "Code")), rather than the version of the PTC and ITC introduced by the IRA (i.e. under Sections 45Y and 48E of the Code), would remain eligible for these pre-IRA version of these credits (importantly without the restrictions on transactions with foreign entities imposed by the Bill).

Beginning in 2026, the Bill would eliminate the PTC and ITC for residential solar leases, though this change is expected to practically impact only a small number of states whose laws impede rooftop solar companies from directly entering into power purchase agreements with customers (and where leasing is therefore more prevalent as an alternative). This prohibition would also apply to residential wind leases.

BONUS CREDITS GENERALLY PRESERVED

Any entitlement to bonus credits (or "adders") for qualifying projects would be preserved under the Bill, including the "energy community" adder and the "domestic content" adder. However, the Bill would cut off the ITC low-income community bonus credit program after 2028. Any projects seeking to receive an allocation under this program would need (in addition to being ITC-eligible) to be placed in service no later than December 31, 2028 or four years after the date of the allocation, if later.

TRANSFERABILITY GENERALLY PRESERVED

The ability of taxpayers to sell PTCs and ITCs for clean energy generation or EST projects to other taxpayers would be preserved for both new and existing projects. An earlier draft of the Bill had proposed to eliminate transferability for certain new projects, but this change would have been largely redundant in light of the accelerated sunset date for such credits. Restrictions on transferability could yet be reintroduced when the Senate takes up the Bill.

EXTENSION FOR CLEAN TRANSPORTATION FUELS

The Bill would extend the clean fuel production tax credit under Code Section 45Z (the "45Z credit") for sales of sustainable aviation fuels and other clean transportation fuels through 2031. This credit was scheduled to expire in 2027 under the IRA. Further, the criteria for the lifecycle greenhouse gas emissions analysis used to determine eligibility for the 45Z credit appears to be more generous than under the IRA.

However, the Bill would impose new restrictions to qualify for the 45Z credit. Notably, in order to qualify for the credit, the fuel would need to be "exclusively" derived from feedstock produced or grown in the United States, Mexico, or Canada. Transferability of the 45Z credit would also be eliminated for credits generated by sales of fuel occurring after 2027.

ELIMINATION OF OTHER CREDITS

Several other credits relating to electric vehicles ("EV") and their related infrastructure would be eliminated after 2025, including the Code Section 30C credit (for installation of EV charging stations), the Code Section 30D credit (for buyers of new clean vehicles), and the Code Section 45W credit (for buyers of commercial clean vehicles). In the case of the Section 45W credit, an exception would apply for vehicles acquired pursuant to a written contract entered into before May 12, 2025 that are placed in service prior to 2033.

The Bill would also eliminate the production and investment tax credits for hydrogen facilities for projects that begin construction after 2025. The transferability of credits generated by existing hydrogen projects would be preserved.

The Bill would accelerate the phase-out of the Code Section 45X advanced manufacturing production credit from 2033 to 2028 for wind energy components and from 2033 to 2032 for all other eligible components. Transferability of the credit would be eliminated for credits generated by sales of eligible components occurring after 2027.

The Bill would also accelerate the phase-out of the Code Section 45U zero-emission nuclear power production tax credit from 2033 to 2032 while preserving the transferability of the credit.

RESTRICTIONS ON TRANSACTIONS WITH FOREIGN ENTITIES

The Bill would prohibit taxpayers that engage in certain transactions with foreign entities from claiming tax credits. These prohibitions fall into two categories: (1) restrictions related to ownership, funding and services (the "prohibited foreign entity" restrictions) and (2) restrictions related to procurement and construction (the "material assistance" restrictions). These prohibitions were added to the Bill primarily to address the direct and indirect reliance of the clean energy industry on the Chinese supply chain and some of these prohibitions apply to existing, operating projects in addition to new projects.

If enacted, the prohibited foreign entity restrictions would take effect in two phases, with certain requirements applicable to taxable years beginning after the date of enactment and a second, more stringent, set of requirements taking effect for taxable years beginning more than two years after the date of enactment. These restrictions would apply to all of the tax credits discussed above, with the exception of the EV tax credits and the pre-IRA PTC and ITC credits.

The material assistance restrictions would apply to projects that begin construction after 2025. In contrast to the prohibited foreign entity restrictions, the material assistance restrictions would apply only to the Code Section 45X advanced manufacturing production credit and the post-IRA versions of the PTC and ITC under Code Sections 45Y and 48E.

Observations

IMPLICATIONS FOR EXISTING PROJECTS

Due to the grandfathering provisions contained in the Bill described above, projects that are currently operational or that have begun construction generally would remain eligible for the PTC and the ITC as well as for the credit transferability provisions of the IRA. However, unless a project began construction before 2025 and qualifies for the pre-IRA PTC and ITC (under Code Sections 45 and 48), owners of the project would still be subject to the Bill's new restrictions on transactions with foreign entities and could become ineligible to claim the tax credits or be subject to recapture of ITCs in future taxable years after such restrictions take effect.

IMPLICATIONS FOR NEW PROJECTS

The Bill passed by the House of Representatives reflects a shift in energy policy, as the Bill aggressively moved up the sunset date originally proposed by the Ways & Means Committee for many of the clean energy tax credits. It may be advisable for investors and developers to start planning for how to grandfather projects in development through the start of construction safe harbor, which requires a taxpayer to either (1) begin physical construction on site or (2) incur 5% of expenditures with respect to a project. Projects that do not begin construction by the date that is 60 days after the date of enactment of the Bill would be ineligible for any PTC or ITC.

Historically, whenever the PTC and ITC were scheduled to sunset, eligibility for the credits was based on when a project started construction. The new Bill would make PTC and ITC eligibility dependent, in part, on the timeframe for a project to be "placed in service." This would likely generate renewed focus on construction schedules and appropriate risk mitigants by developers, investors, and lenders.

IMPLICATIONS OF FOREIGN TRANSACTION PROHIBITIONS ON EXISTING AND NEW PROJECTS

The Bill's prohibitions on foreign ownership and assistance are complex and drafted broadly such that they could potentially capture inadvertent indirect transactions with certain foreign entities and many of the prohibitions could apply to existing projects in addition to future projects. U.S. investors and developers are advised to speak to their tax advisors on how these new prohibitions may apply to them.

We Can Help

Simpson Thacher is actively monitoring the progress of the Bill and its implications for the clean energy sector and its investors.

For further information regarding this memorandum or the Bill, please speak to your regular contact in the Simpson Thacher Corporate or Tax departments or one of the following:

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