



LEGAL ALERT

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Build Back Better Act Proposal Includes Clean Energy Tax Incentives

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The Build Back Better Act package released by Congress last week includes a significant amount of tax benefits for clean energy production. Below is a summary of what we are watching:

Extension of the PTC

- Extends the production tax credit (PTC), which allows energy producers to claim a credit based on electricity produced from renewable energy resources.
 - The provision provides a base credit rate of 0.5 cents/kilowatt hour, or a bonus credit rate of 2.5 cents/kilowatt hour
 - In order to claim the bonus, taxpayers must satisfy the:
 - 1.) prevailing wage requirements for the duration of the construction of the project and for each year during the ten-year credit period and
 - 2.) apprenticeship requirements during the construction of the project.
 - 10% increase in credit for facilities that meet domestic content requirements (any steel, iron, or manufactured product was produced in the United States)
 - Extended through 2026 for:
 - Wind (increased to full applicable credit rate)
 - Solar
 - Landfill gas (municipal solid waste), trash (municipal solid waste), qualified hydropower, marine and hydrokinetic renewable energy facilities, and geothermal.
 - Reduction in credit for facilities financed using tax exempt bonds

Extension of the ITC

- Extends the investment tax credit (ITC), which allows taxpayers to claim a tax credit for the cost of energy property. In most cases, the provision extends the credit through 2026.
 - Base credit rate of 6% of the basis of energy property or a bonus credit rate of 30% of the basis of energy property for:
 - Solar, geothermal, fiber-optic solar equipment, fuel cell property, microturbine property, combined heat and power property, small wind energy property, biogas property, waste energy recovery property, and offshore wind property
 - Newly added: energy storage technology, biogas property, microgrid controllers, dynamic glass, and linear generators
 - The ITC for other property provides a base credit rate of 2% or a bonus credit rate of 10%



- In order to claim the ITC at the bonus credit rate, taxpayers must satisfy:
 - 1.) prevailing wage requirements for the duration of the construction of the project and for five years after the project is placed into service, and
 - 2.) apprenticeship requirements during the construction of the project.
- 2% increase in credit for property that meets domestic content requirements (10% if it also meets the prevailing wage and apprenticeship requirements)
- 2% increase in credit for property placed in service within an energy community (10% if it also meets the prevailing wage and apprenticeship requirements)
- Reduction in credit for property financed using tax exempt bonds
- Provides an enhanced credit for solar and wind projects which receive an allocation of environmental justice solar capacity limitation receive:
 - Additional 10% credit if located in a low-income community (as defined within the New Markets Tax Credit program under section 45D) or on Indian land
 - Additional 20% credit if such project is a qualifying low-income residential building project (a New York HDFC qualifies) or a low-income economic benefit project.

Election to Make Credits Refundable through a Direct Pay Mechanism

- Subject to specific limitations and requirements, permits taxpayers to elect to treat the amount of credit as a payment of tax rather than carry forward certain credits to years when their credits can offset their tax liability.

Extension of Incentives for Biodiesel, Renewable Diesel, and Alternatives Fuels

- Extends the income and excise tax credits for biodiesel, biodiesel mixtures at \$1.00 per gallon through 2026.
- Extends the \$0.10 per gallon small agri-biodiesel producer credit through the end of 2031.
- Extends the \$0.50 per gallon excise tax credits for alternative fuels and alternative fuel mixtures through 2026.
 - Alternative fuel mixtures apply to a variety of fuels, including compressed or liquefied biomass and certain liquid fuels derived from biomass, excluding ethanol, methanol, biodiesel, or fuels derived from the production of pulp or paper.

Sustainable Fuel Aviation Fuel Credit

- Beginning in 2023, this provision provides a refundable blenders tax credit for each gallon of sustainable aviation fuel sold as part of a qualified fuel mixture. The credits allowed under this provision expire after December 31, 2026
 - The value of the credit is determined on a sliding scale, equal to \$1.25 plus an additional \$.01 for each percentage point by which the lifecycle emissions reduction of such fuel exceeds 50%.
 - Taxpayers may elect to claim this credit as an excise tax credit against section 4041 excise tax liability.



Clean Hydrogen

- New tax credit for the production of clean hydrogen at a qualified clean hydrogen facility beginning in 2022 during the ten-year period beginning on the date such facility is placed in service. No credit shall be allowed for facilities which begin construction in 2029 and thereafter.
 - The amount of the credit is equal to the applicable percentage of the base rate of \$0.60 or the bonus rate of \$3.00, indexed to inflation, multiplied by the volume (in kilograms) of clean hydrogen produced.
 - In order to claim the hydrogen production credit at the bonus credit rate, taxpayers must satisfy:
 - 1.) prevailing wage requirements for the duration of the construction of the project and for each year during the ten-year credit period; and
 - 2.) apprenticeship requirements during the construction of the project.
 - Taxpayers may claim the section 45 PTC for electricity produced from renewable resources if such electricity is used at a qualified clean hydrogen facility to produce qualified clean hydrogen. A taxpayer may elect to treat a qualified clean hydrogen facility as energy property for purposes of the section 48 ITC in lieu of the credit for the production of clean hydrogen.
 - For taxpayers making such election, the credit allowed under section 48 shall equal the applicable percentage multiplied by the energy percentage. No credit shall be allowed for clean hydrogen produced at a facility which includes property for which a credit is allowed under section 45Q.
 - Reduction in credit for property financed using tax exempt bonds

Expansion of the 179D Deduction for Energy Efficient Buildings

- Expand the impact of the Energy Efficient Commercial Buildings Deduction (179D Deduction) which was made permanent in late 2020.
 - The amount of the base deduction would be modified from the current amount of \$1.80 per square foot for a 50% reduction in energy usage to a sliding scale that would start at \$0.50 per square foot for a 25% energy reduction and increase by \$0.02 per square foot for each percentage point of energy savings over 25%, up to a maximum of \$1.00 per square foot.
 - Additionally, a bonus deduction would be available equal to \$2.50 per square foot, increased by \$0.10 per square foot for every percentage point of energy savings over 25%, up to a maximum of \$5.00 per square foot.
 - Allow for an alternative, similar deduction for energy efficiency improvements as part of a qualified retrofit project.
- Replace the existing lifetime limitation on the amount of the deduction allowed for any building with a three-year cap.



Our team is closely monitoring these provisions as the Build Back Better Act advances through Congress. Please do not hesitate to contact us with any questions you may have regarding developments and how they may impact you.



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