

Insights: Alerts

Omnibus Funding and Tax Extenders Legislation Includes Important Extensions for Renewable Energy Projects

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Written by

On December 18, Congress passed and the President signed into law the “Consolidated Appropriations Act, 2016” and the “Protecting Americans from Tax Hikes (PATH) Act of 2015,” funding the government and providing a number of significant tax changes, including important extensions to tax incentives available for the development of renewable energy projects.

Production Tax Credits

Extension for Qualifying Wind Facilities through 2019

The legislation revises the Section 45 ten (10)-year production tax credit (PTC) to provide that qualifying wind facilities for which construction commenced prior to January 1, 2017, will be eligible for the current PTC rate (2.3 cents per kilowatt, adjusted for inflation). Qualifying wind facilities for which construction commences on or after January 1, 2017 and prior to January 1, 2020, will be eligible for PTCs at a reduced rate, as set forth on the following schedule:

- 20% reduction of the current PTC rate, for projects for which construction begins in 2017;
- 40% reduction of the current PTC rate, for projects for which construction begins in 2018; and
- 60% reduction of the current PTC rate, for projects for which construction begins in 2019.

Qualifying wind facilities that commence construction after 2019 will not be eligible for the PTC. The 30% investment tax credit (ITC) election in lieu of the PTC is also preserved for qualifying wind facilities and phases down as follows:

- 24% for qualifying wind facilities for which construction begins in 2017;
- 18% for qualifying wind facilities for which construction begins in 2018; and
- 12% for qualifying wind facilities for which construction begins in 2019.

Extension for Other Renewable Energy Facilities through 2016

The legislation also extended the 10-year PTC at the current PTC rate for projects for which construction commences on or before December 31, 2016 for the following: closed loop biomass facilities, open loop

biomass facilities, geothermal facilities, landfill gas facilities, trash facilities, qualified hydropower facilities and marine and hydrokinetic renewable energy facilities. The 30% investment tax credit election in lieu of the PTC is also preserved for these qualifying renewable energy facilities through 2016.

Extension of the Investment Tax Credit for Qualifying Solar Facilities

The legislation also provides for an extension of the 30% ITC rate for qualifying solar facilities if construction commences prior to January 1, 2020. This change is a significant departure from prior law, which required that qualifying solar facilities be placed in service during the applicable credit year. Qualifying solar facilities for which construction commences on or after January 1, 2020, will be eligible for ITCs at a reduced rate, as set forth on the following schedule:

- 26% for projects for which construction begins in 2020;
- 22% for projects for which construction begins in 2021;
- 10% for projects for which construction begins after December 31, 2021.

The revised rules further provide, that unless the qualifying solar facility is placed in service prior to January 1, 2024, any project for which construction begins before January 1, 2022, will be entitled to a 10% ITC. The Section 25D credit for residential solar energy systems is also extended for systems placed in service prior to January 1, 2022, and is subject to the same reduced rates as the ITC.

Other Renewable Energy Provisions Affected by the Legislation

- *Section 25C Nonbusiness Energy Tax Credit* of 10% of the qualified energy expenditures up to a lifetime cap of \$500 was extended through December 31, 2016.
- *Section 40 Second Generation Biofuel Producer Credit* of \$1.01 per gallon was extended through December 31, 2016.
- *Section 40A Biodiesel and Renewable Diesel Incentives* of \$1.00 per gallon were extended through December 31, 2016.
- *Section 45D New Markets Tax Credit* of 39% of qualifying expenditures was extended through December 31, 2019 at funding levels of \$3.5 billion per year.
- *Section 179D Energy Efficient Commercial Buildings Deduction* for certain energy efficient commercial building property placed in service up to a per building maximum of \$1.80 per square foot was extended through December 31, 2016.

For more information regarding these renewable energy incentives, please contact the attorneys listed on this legal alert.

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