



How the Big Beautiful Bill will affect Transferable Renewable Energy Tax Credits: What's Changed & What Hasn't

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Creation of Transferable, Federal Tax Credits for Clean Energy

On August 16th, 2022, former President Biden signed H.R. 5376, the Inflation Reduction Act of 2022, which enacted several comprehensive clean and renewable energy provisions.

In order to further incentivize this development, this legislation created 26 U.S. Code § 6418 for “*Transfer of Certain Tax Credits*”. This enables the transfer of Federal tax credits without an equity investment or partnership allocation, much like certificated tax credits available in some states.





Overview



TYPES OF CLEAN ENERGY TAX CREDITS

- Alternative Fuel Refueling Property (§ 30C)
- Production Tax Credit (§ 45)
- Carbon Dioxide Sequestration (§ 45Q)
- Zero-Emission Nuclear Power Production (§ 45U)
- Clean Hydrogen Production (§ 45V)
- Advanced Manufacturing Production (§ 45X)
- Clean Electricity PTC (§ 45Y)
- Clean Fuel Production (§ 45Z)
- Investment Tax Credit (§ 48)
- Qualifying Advanced Energy project (§ 48C)
- Clean Electricity ITC (§ 48E)
- New Production Tax Credit (§ 45Y – effective for qualified facilities placed in service after Dec. 31, 2024)
- New Investment Tax Credit (§ 48E – effective for qualified facilities placed in service after Dec. 31, 2024)

RULES FOR TRANSFERABILITY

Taxpayers may elect to transfer all, or a portion, of the tax credits.

- A one-time transfer is allowed;
- Credits are required to be paid for in cash;
- Any discount achieved on utilizing the credits is not taxable; and
- A 20% penalty could apply if any excessive credits are transferred.

The One Big Beautiful Bill Act

The One Big Beautiful Bill Act, signed into law on July 4th, introduces significant changes to renewable energy tax credits, including the production tax credit (PTC) and investment tax credit (ITC), affecting eligibility timelines and credit structures for various energy projects.

While the changes have significant effects on sellers of tax credits, there are relatively few changes that impact buyers.





No Change to Buyers' Eligibility Rules, Transfer Dates, or Usage

ELIGIBILITY RULES ARE UNCHANGED

Taxpayers eligible to utilize these credits include:

- Widely-held C Corporations
- Closely-held C Corporations (except for portfolio income tax); and,
- Taxpayers with passive income tax liabilities such as family wealth offices, certain real estate investors, etc.

FILING AND TRANSFER DATES UNCHANGED

- Credits must be purchased before the Seller files its annual tax return for the year, including extensions; and,
- The purchase price must be paid between the first day of the Seller's tax credit year and the earlier of the date that the Seller or Buyer files its annual tax return.

CREDIT USAGE RULES UNCHANGED

- Generally, can be used up to 100% of an individual's passive tax liability, or 75% of a corporate entity's tax year liability;
- Carried back 3 years or carried forward 20 (sometimes 22) years; and,
- Buyer's CPA/tax advisors to attach IRS Form 3800, Form 8582-CR and a "transfer election statement" to the annual tax return.



Changes Affecting Sellers of Tax Credits

- Solar and wind projects must be placed in service by the end of 2027 to qualify for PTC or ITC, with exceptions for projects beginning construction before the Act's one-year anniversary. These “Safe Harbored” projects will have extended eligibility under current rules.
- Energy storage paired with wind or solar remains ITC-eligible through 2032 even if the main facility is not.
- Extended eligibility for other technologies: Storage technology, hydropower, marine and hydrokinetic, geothermal, nuclear fission, and other non-wind/solar projects remain eligible for PTC or ITC if construction begins by the end of 2033, with phasedown rules applying thereafter.
- Qualified fuel cell and some other forms of fossil fueled generation are eligible for a 30% ITC if construction starts after December 31, 2025. PWA and emissions qualifications are mostly eliminated.
- 30C credits for EV charging installations are eliminated for projects not completed by July 4th, 2026.
- Section 45X manufacturing credits for wind components is eliminated after 2027 and there are phasedowns for critical minerals as well as stacking limitations.
- The hydrogen production credit under Section 45V now applies only to projects starting construction before 2028, while the clean transportation fuels credit under Section 45Z is extended through 2029 with adjusted credit amounts.
- The Act corrects a technical issue in the Inflation Reduction Act by setting domestic content thresholds for ITC-eligible facilities starting construction after June 16, 2025, escalating from 40% to 55%.



Changes Affecting Both Buyers and Sellers

SUPPLY OF FEDERAL TAX CREDITS

- Due to new required dates for starting construction and project completion, many projects planned for future years (i.e. 2026, 2027, 2028) will likely be pulled into 2025 and 2026 tax years.
- This primarily impacts solar and wind energy projects.
- As such, we expect this result in a larger supply of renewable energy tax credits for 2025, 2026, and 2027 tax years, but obviously less after those years.

FOREIGN ENTITY OF CONCERN (FEOC) RESTRICTIONS

- Prohibits the earning of tax credits, or claiming of such tax credits, from projects with either substantial equipment or financing from China, Iran, North Korea, or Russia.
- Takes effect for 2026 tax year.
- Does not apply to (1) 2024 tax year credits or (2) projects that have begun construction by December 2025.
- Pursuant to the Executive Order issued on July 7, 2025, treasury is currently drafting (on an expedited basis) rules and regulations on the FEOC restrictions and other matters such as the definition of the term “safe harbor” with regard to identifying a date for “beginning construction.” For now, these restrictions do not impact 2024 and 2025 tax year credit purchases.



Key Points for Buyers

DUE DILIGENCE

Buyers should conduct due diligence before purchasing Federal tax credits, including:

- Documentation that the project(s) exist, were placed in service, and are operational;
- Verification that developers have complied with, or are exempted from, wage and apprentice requirements, FEOC requirements; and,
- Confirmation that developers qualified for any bonus credits/adders included in the transferred credits.

PURCHASE TERMS

- Credits must be purchased 100% in cash and at market value;
- Buyer and Seller cannot be related (more than 50% common ownership);
- Production Tax Credits (PTCs) Buyers are required to purchase on a year-by-year basis;
- Investment Tax Credits (ITCs): Credits are allowed to be purchased as generated up front;
- Credits cannot be resold.

TAX ATTRIBUTES

- Cash received by the Seller is not taxable income;
- Any spread (discount) earned on the credits used is not taxable income; and,
- Cash amounts paid for the credits are not deductible.



Risks Remain Low

RISKS

- Recapture on ITCs – Recapture could occur if there is a disposition of the project within five years of the placed in service date, or if part of the project goes out of service; and,
- Disallowance – Disallowance on credits could also occur due to other reasons, such as inflated tax basis calculations. In such cases, the Buyer is responsible for 120% of any disallowed credits (disallowed credit + a 20% penalty).

HOW THESE RISKS ARE MITIGATED

- Due diligence/cost segregation report – This is a third-party, independent analysis of the project's costs, depreciation schedules and assessment of the ITCs/PTCs generated for the tax year;
- Property insurance – Since the recapture period for ITCs is five years, Buyers should verify that property insurance is in place for renewable energy installation;
- Indemnification to Purchaser – Buyers should request an indemnification from the sponsor for any disallowed credits as part of any tax credit transfer agreements, unless other warranties/guarantees are in place; and,
- Other due diligence documents – In addition, due diligence of other documents is key, such as prevailing wage/apprenticeship information, FEOC compliance, placed in service verification, permits, engineering reports, entity information, etc.



What are the benefits?



CASH SAVINGS ON FEDERAL TAXES

The most immediate benefit of utilizing Federal renewable energy tax credits is the cash discount to face value. Again, this discount to face value is not taxable.



SUSTAINABILITY

Many corporations, and especially financial institutions, are rated on their sustainability achievements. Tax credits derived from renewable energy investments will almost certainly be beneficial to such corporate objectives.



RECOGNITION IN PUBLIC DOCUMENTS/DISCLOSURES

Most sponsors will be agreeable to usage of project photographs and other media within annual reports, press releases, social media, etc.



Summary

- New tax savings opportunity for clients
- Benefits include:
 - ✓ Cash savings (both prior and current tax years)
 - ✓ Sustainability
 - ✓ Recognition in Public Documents/Disclosures
- Risk can be mitigated with due diligence, documentation, and indemnification.

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