

## New Law Extends Tax Credits For Wind and Other Renewable Power Plants

***A favorable outcome for wind and other renewable projects, but solar and storage are left out.***

### **Key Points:**

- Qualifying wind projects on which construction begins after December 31, 2019 and before January 1, 2021 will be eligible for 60% of the PTC or an 18% ITC.
- Qualifying closed-loop biomass, open-loop biomass, geothermal, landfill gas, municipal solid waste, hydropower, and marine and hydrokinetic energy projects on which construction began after December 31, 2017 and before January 1, 2021 will be eligible for the full PTC or ITC.

The Fiscal Year 2020 Further Consolidated Appropriations Act (the Act), which President Trump signed into law on December 20, 2019, extends the production tax credit (PTC) and investment tax credit (ITC) for qualifying wind energy projects and qualifying closed-loop biomass, open-loop biomass, geothermal, landfill gas, municipal solid waste, hydropower, and marine and hydrokinetic energy projects that are under construction on or before December 31, 2020.

The Act does not change the ITC available for qualifying solar energy projects and does not introduce a stand-alone tax credit for qualifying battery storage systems.

### **Extension of Production Tax Credits**

Internal Revenue Code (Code) Section 45 allows taxpayers to claim PTCs for each kilowatt hour of electricity produced by a qualifying wind project and sold to unrelated persons during a 10-year period following the project's placed-in-service date. Since 2009, taxpayers have had the option of claiming an ITC in lieu of PTCs for qualifying wind projects.

Prior to the extension of the PTC under the Act, the owner of a qualifying wind project could claim PTCs (or an ITC in lieu of PTCs) if construction of the project began before January 1, 2020, but the amount of the credit has stepped down over time (as shown in the comparison table below).

If construction on the qualifying wind project began on or after January 1, 2020, the project was not eligible for any PTC or ITC.

Under IRS guidance, a taxpayer generally can establish the commencement of construction either by incurring 5% of the total eligible costs of the project, or by commencing actual physical construction of the project prior to the applicable deadline. Thereafter, the taxpayer is required to make “continuous efforts” or maintain a “continuous program of construction” to complete the project. This continuity requirement is deemed satisfied if the project is placed in service within four years of the last day of the year in which construction on the project began.

The Act extends the PTC for qualifying wind projects on which construction begins before January 1, 2021. If construction begins on a qualifying wind project in 2020, the project will qualify for 60% of the PTC or an 18% ITC. This is an increase from the rate applicable to qualifying projects on which construction began in 2019.

<b>Comparison of Credit Eligibility for Qualifying Wind Facilities under Previous Law and the Act</b>				
<b>Start of Construction</b>	<b>Qualifying wind facility credit eligibility (Old Law)</b>	<b>Reduction</b>	<b>Qualifying wind facility credit eligibility (Act)</b>	<b>Reduction</b>
Before January 1, 2017	100% PTC or 30% ITC	0%	100% PTC or 30% ITC	0%
After December 31, 2016 and before January 1, 2018	80% PTC or 24% ITC	20%	80% PTC or 24% ITC	20%
After December 31, 2017 and before January 1, 2019	60% PTC or 18% ITC	40%	60% PTC or 18% ITC	40%
After December 31, 2018 and before January 1, 2020	40% PTC or 12% ITC	60%	40% PTC or 12% ITC	60%
After December 31, 2019 and before January 1, 2021	Not applicable	100%	60% PTC or 18% ITC	40%

Code Section 45 also previously allowed taxpayers to claim PTCs or the 30% ITC for each kilowatt hour of electricity produced by a qualifying closed-loop biomass, open-loop biomass, geothermal, landfill gas, municipal solid waste, hydropower, and marine and hydrokinetic energy project and sold to unrelated persons during a 10-year period following such a project’s placed-in-service date, if construction began on the project before January 1, 2018.

The Act extends the full PTC (and 30% ITC) for qualifying closed-loop biomass, open-loop biomass, geothermal, landfill gas, municipal solid waste, hydropower, and marine and hydrokinetic energy projects on which construction begins before January 1, 2021, with a retroactive extension from January 1, 2018.

### **Implications of the PTC Extension for Wind**

As noted above, the PTC (and ITC in lieu of the PTC) will increase from 40% to 60% (and from a 12% ITC to an 18% ITC) for qualified wind projects on which construction commences in 2020, rather than 2019. This “step up” in tax credit eligibility creates an odd market dynamic. Under prior law, wind project owners were incentivized to begin construction as early as possible as the tax credit rate was gradually

being phased down. Taxpayers that begin construction on wind projects in 2020 are now better off than those that began construction in 2019. Existing IRS guidance is unclear on whether a taxpayer can restart construction in a later year once construction on a wind project has commenced. The IRS has historically issued supplementary guidance soon after Congress has extended the tax credit deadline. The wind industry would benefit from IRS guidance with clear rules on the circumstances, if any, under which project owners may requalify a wind project as under construction for tax credit qualification purposes.

### **No Change for Solar or Storage**

The Act does not alter the language of Code Section 48, which currently allows taxpayers to claim a 30% ITC for qualifying solar energy projects placed in service on or before December 31, 2023 on which construction began before January 1, 2020. The rate of the ITC will drop to 26% for qualifying solar energy projects placed in service on or before December 31, 2023 on which construction begins before January 1, 2021, and 22% for qualifying solar energy projects placed in service on or before December 31, 2023 on which construction begins before January 1, 2022. For all other solar projects, the ITC will be limited to 10%.

The Act did not include a stand-alone tax credit for energy storage projects. Under current law, energy storage equipment may be eligible for tax credits only if it is part of a qualifying renewable energy project and satisfies certain other criteria.

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