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Senate Passes Tax Extenders Deal That Includes Extension of Renewable Energy Incentives.

The US Senate yesterday passed a package of tax extenders as part of the year-end appropriations act that the US House of Representatives passed on December 17, 2019. President Trump is expected to sign the legislation before the end of the today to avoid a government shutdown. The package includes a one-year extension of the production tax credit (PTC) under section 45 for wind and other technologies. It also includes limited extension of other energy tax incentives that were set to expire and a retroactive extension for some credits that had already expired in 2018. Most of the credits will now expire at the end of 2020, setting up the prospect of a broader tax extenders deal during lame duck session after the 2020 election. The bill also included a one-year extension through 2020 of the new markets tax credit under Section 45D at \$5 billion.

Extension of Energy Tax Credits

Many energy tax credits and incentives are scheduled to expire or begin to phase out at the end of 2019 or have already expired. The Further Consolidated Appropriations Act will extend the expiration date to the end of 2020 for many credits. The package did not include an extension or expansion of the Investment Tax Credit (ITC), disappointing the solar industry. The extenders package also did not include the proposed expansion of the ITC for energy storage technology or the extension of energy credits for offshore wind facilities.

Production Tax Credit

The PTC provides a credit for each kilowatt hour of energy production for qualified renewable energy facilities. The PTC expired for non-wind technologies at the end of 2017, while a reduced credit of 40% was available for wind facilities through the end of 2019, expiring for years 2020 and beyond. As we reported previously in [House Passes PTC, NMTC Extension](#), under the tax extenders package, projects that begin construction in year 2019 are eligible for the 40% credit, and projects that begin construction in 2020 will be eligible for a 60% credit. This potentially leaves taxpayers in a frustrating position to the extent they already took steps to begin construction on a wind project in 2019 to take advantage of the 40% credit in anticipation of its expiration at the end of 2019. Taxpayers seeking the increased 60% PTC for wind projects will need careful planning to ensure any work done in 2019 does not attach to the 2020 project, thus dropping the credit to 40%.

Additionally, the full PTC would be retroactively revived and extended through 2020 for:

- Closed loop biomass
- Open loop biomass
- Geothermal plants
- Landfill gas (municipal solid waste)
- Trash (municipal solid waste)
- Qualified hydropower
- Marine and hydrokinetic renewable energy facilities

Under current law, those technologies are generally only eligible for the PTC to the extent construction began before 2018 (other than certain closed-loop biomass and qualified hydropower technologies, which must be placed in service before 2018). Under the extenders package, those dates would all be extended out to the end of 2020.

Investment Tax Credit

The Investment Tax Credit (ITC) allows taxpayers to claim a credit for the cost of investment in qualified energy property. The ITC for solar is scheduled to phase down from a 30% credit where construction begins before December 31, 2019, to a 26% credit where construction begins in 2020, and a 22% credit where construction begins in 2021. The ITC drops to 10% where construction begins before January 1, 2022, and the project is not placed in service before January 1, 2024. A similar phase down applies to fiber-optic solar equipment, fuel cell property, micro-turbine property, combined heat and power property, and certain small wind projects, although those projects are ineligible for any ITC if not placed in service by January 1, 2024.

The tax extenders proposal extends the ITC in lieu of the PTC for wind facilities where construction begins in 2020. Those projects would be eligible for 60% of the ITC (mirroring the phase down to 40% then up again to 60% for wind PTC). Otherwise, the extenders package does not affect the ITC.

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