Incentives and credits tax provisions in “One Big Beautiful Bill Act”

KPMG analysis and observations

This report reflects the legislation signed into law by the president on July 4, 2025 (Pub. L. No. 119-21) and was last updated July 28, 2025.

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Contents

Introduction

The House of Representatives on May 22, 2025, passed H.R. 1 (House bill), the budget reconciliation bill known as the "One Big Beautiful Bill Act" (OBBBA) (read *TaxNewsFlash*). On July 1, 2025, the Senate passed its version of H.R. 1 (Senate bill), which made various amendments to the bill, including changes to the tax subtitle that was included in the House bill (read *TaxNewsFlash*). On July 3, 2025, the House passed the Senate bill without amendment, and the bill was signed into law by President Trump on July 4, 2025 (Pub. L. No. 119-21).[1]

This analysis of the legislation generally describes current law (meaning the law prior to enactment of the legislation), the House bill, and the amended Senate bill ultimately passed by the House and signed by the president.

Both the House and Senate bills would generally make permanent the tax provisions of the TCJA. Both bills also would temporarily provide for tax benefits promised by the president for tip income, overtime pay, and auto loan interest, and introduce a host of revenue-raising provisions. However, the enacted Senate bill differs from the House bill in several ways, as described below.

Among the important business provisions of the enacted Senate bill are provisions that:

- Reinstate and make permanent expensing of R&D costs, the higher EBITDA cap on the deduction for interest, and 100% bonus depreciation (the House bill would only extend these provisions for five years)
- Make permanent the section 199A deduction for passthrough business income (at the current 20% rate instead of the higher 23% rate of the House bill)
- Renew and reform the Opportunity Zone program
- Add a 100% first-year depreciation deduction for real property used in a production activity (the House bill included a similar proposal)

Note that the House bill included a proposed retaliatory tax on certain foreign corporations under new section 899 that was removed in the enacted Senate bill following the announcement of an agreement with the other G7 countries regarding the tax (read *TaxNewsFlash*).

The enacted Senate bill also includes revenue-raising provisions that:

- Repeal or phase out energy tax credits created by the Inflation Reduction Act (IRA) (though in some cases extending the credits further than the House bill)
- Make extensive reforms to the U.S. international tax regime, including to foreign-derived deduction eligible income (FDDEI), global intangible low-taxed income (GILT), and the base erosion anti-abuse tax (BEAT), and permanently extend the CFC look-through rule of 954(c)(6)
- Temporarily increase the $10,000 cap on the state and local tax (SALT) deduction to $40,000, with no significant changes to the treatment of passthrough entity taxes

[1] The Joint Committee on Taxation (JCT) has provided a number of documents estimating the revenue effects of the various versions of the bill:

- JCX-26-25R, which estimates the revenue effects of the provisions of the bill as passed by the House on May 22, 2025
- JCX-35-25, which estimates the Senate-approved bill using a present law baseline (the same baseline used for the estimates for the House bill provided above) that assumes that tax provisions of current law expire according to their terms
- JCX-34-25, which estimates the Senate-approved bill using a "current policy baseline" as adopted by the Senate, which assumes that tax policies currently in effect (such as the lower Tax Cuts and Jobs Act (TCJA) individual tax rates) are permanent and therefore extending those provisions has no revenue effect

- Impose a 1% tax on remittances to a recipient outside the United States (would have been 3.5% under the House bill)
- Increase taxes on college endowments (but at lower rates than those of the House bill and omitting a provision on private foundations)
- Bar the IRS from making payment on certain employee retention credit claims filed after January 31, 2024

This report includes initial analysis and observations regarding the provisions in the bill related to tax incentives and credits. This is one of a series of reports that KPMG has prepared on the bill, which can all be found **here**.

Credits terminated

House bill (secs. 112001-112007)

The House bill includes proposals to terminate a number of tax credits as follows:

- Previously owned clean vehicle credit (section 25E) on December 31, 2025
- Clean vehicle credit (section 30D) on December 31, 2025 (except an additional year would be provided for certain electric vehicles (EVs) if 200,000 or less have been sold for use in the United States between 2010-2025)
- Qualified commercial clean vehicle credit (section 45W) on December 31, 2025 (except for vehicles placed in service before January 1, 2033, and acquired pursuant to a written binding contract entered into before May 12, 2025)
- Alternative fuel vehicle refueling property credit (section 30C) on December 31, 2025
- Energy efficient home improvement credit (section 25C) on December 31, 2025
- Residential clean energy credit (section 25D) on December 31, 2025
- New energy efficient home credit (section 45L) on December 31, 2025 (except an additional year would be provided for homes which began construction before May 12, 2025)

The JCT estimates that the repeal of these sections will raise $296.3 billion.

KPMG observation

The House bill proposals would have had a broad impact on tax credits related to EVs and residential energy efficiency expenditures. Specifically, the proposals would terminate all tax credits related to the purchase of EVs (both for individual and commercial purchases) and the installation of EV charging stations. For the most part, the proposals would be effective for EVs and charging stations placed in service after December 31, 2025, with the exception of qualified commercial EVs acquired pursuant to a written binding contract entered into before the date of introduction of the bill (May 12, 2025) and EVs that have not met the 200,000 cap of vehicles sold in the United States by 2025. Additionally, the proposals would terminate tax credits for individuals making certain investments in residential energy efficient property and for the construction of certain energy efficient homes. Similar to the effective date for the sections affecting EVs, the repeal would be effective for investments placed in serve after December 31, 2025, except an additional year would be allowed for qualified new energy efficient homes beginning construction prior to May 12, 2025. While the proposals would not repeal direct pay for certain tax-exempt and governmental entities, the termination of the tax credits for the installation of EV charging stations and the acquisition of commercial EVs may have an impact on these entities.

Senate bill enacted as OBBBA (secs. 70501-70508)

The Senate bill as enacted terminated certain tax credits and deductions as follows:

- Previously owned clean vehicle credit (section 25E) for vehicles acquired after September 30, 2025
- Clean vehicle credit (section 30D) for vehicles acquired after September 30, 2025
- Qualified commercial clean vehicle credit (section 45W) for vehicles acquired after September 30, 2025
- Alternative fuel vehicle refueling property credit (section 30C) for property placed in service after June 30, 2026
- Energy efficient home improvement credit (section 25C) for property placed in service after December 31, 2025
- Residential clean energy credit (section 25D) for expenditures made after December 31, 2025
- Energy efficient commercial buildings deduction (section 179D) for property beginning construction after June 30, 2026
- New energy efficient home credit (section 45L) for new homes acquired after June 30, 2026

KPMG observation

In general, the Senate bill accelerated the termination of the EV credits to September 30, 2025, even faster than the House bill would have terminated the credits. The credit for EV charging stations fared slightly better, terminating for property placed in service after June 30, 2026. Residential energy efficiency credits will terminate at the end of 2025. The energy efficient commercial buildings deduction, as well as the new energy efficient home credit will terminate after June 30, 2026.

Enhancement of advanced manufacturing investment credit

Current law

Eligible taxpayers are allowed a credit under section 48D equal to 25% of qualified property placed in service in a tax year that is part of an advanced manufacturing facility. An advanced manufacturing facility is generally defined as a facility with the primary purpose of manufacturing semiconductors or semiconductor manufacturing equipment.

The credit is not available for qualified property for which construction begins after 2026.

House bill

This provision is unique to the Senate bill.

Senate bill enacted as OBBBA (sec. 70308)

The Senate bill as enacted increases the credit rate to 35% for property placed in service after 2025. It does not modify the requirement that construction must begin before 2026.

KPMG observation

While the Senate bill increases the credit to 35% for qualified property placed in service after 2025, it does not address the treatment of qualified progress expenditures. Taxpayers that have elected to claim the credit on qualified progress expenditures in the year such expenditures are incurred, rather than claiming the credit to the placed-in-service-date year, would presumably claim a 25% credit rather than a 35% credit, even if the qualified property is placed in service after 2025.

Clean electricity production tax credit (PTC)

Current law

Under current law, section 45Y allows a PTC for electricity produced by the taxpayer at a qualified facility and sold to an unrelated person during the tax year. The credit is also available where the electricity is consumed or stored by the taxpayer if the facility is equipped with a metering device owned and operated by an unrelated person. The credit is available for electricity produced during a 10-year credit period beginning when the qualified facility is placed in service.

The base credit is 0.3 cents per kWh, and the credit amount is increased to 1.5 cents per kWh for facilities that have a maximum output of less than 1 MW of electricity, that meet certain prevailing wage and apprenticeship requirements, or that began construction prior to January 29, 2023. The credit amount is inflation-adjusted.

The credit amount is increased by 10% for qualified facilities located in an “energy community” and by an additional 10% for qualified facilities meeting certain domestic content requirements.

A qualified facility is an electricity generation facility in the United States owned by the taxpayer that is placed in service after 2024 and for which the greenhouse gas emissions rate is not more than zero. A qualified facility includes property placed in service after 2024 that expands the capacity of a facility placed in service prior to 2025, and a credit is available on the increased production.

The credit is phased out for facilities for which construction begins after the “applicable year,” which is defined as the later of 2032, or the calendar year in which the Secretary determines that the annual greenhouse gas emissions from the production of electricity in the United States are equal to or less than 25% of the 2022 emissions. Qualified facilities for which construction begins in the year following the applicable year receive the full credit; qualified facilities for which construction begins in the second or third year following the applicable year will receive a reduced credit of 75% or 50%, respectively, of the credit amount; and qualified facilities for which construction begins more than three years after the applicable year will not be eligible for the credit.

The credit is transferable under current law, and certain tax exempt and government entities are eligible for direct pay.

To be eligible for the credit, tax-exempt and government entities are generally required to meet certain domestic content requirements for qualified facilities with net output of at least 1MW for which construction begins after 2025. For qualified facilities for which construction begins after 2023 and before 2026, a reduced credit is allowed.

House bill (sec. 112008)

The proposal would generally terminate the PTC for any facility for which construction begins more than 60 days after the date of enactment or that is placed in service after 2028. Advanced nuclear facilities and certain expansions of nuclear facilities would continue to qualify for the credit so long as construction begins before 2029.

The proposal would also prohibit the credit for certain residential clean energy property if the taxpayer rents or leases the property to a third party and the lessee would qualify for the credit under section 25D if the lessee owned the property. This provision would be effective for tax years beginning after the date of enactment.

Prohibited foreign entity (PFE) rules

The proposal would provide that a qualified facility does not include facilities for which construction begins after 2025 if the facility includes any "material assistance" from a "prohibited foreign entity" (PFE).

Material assistance from a PFE would be deemed to occur if a property includes any component, subcomponent, or critical mineral that is extracted, processed, recycled, manufactured, or assembled by a PFE, or if any design of a property is based on a copyright or patent held by, or any know-how or trade secret provided by, a PFE. It would not include assembly parts or constituent materials than meet all three of the following criteria:

- They are not directly acquired from a PFE
- They are not uniquely designed for use in the construction of a qualified facility
- They are not exclusively or predominantly produced, processed or extracted by a PFE.

The proposal would further deny the credit, in tax years beginning after the date of enactment, to a taxpayer that is a "specified foreign entity", and would deny the credit in tax years beginning more than two years after date of enactment to a taxpayer that is a "foreign-influenced entity" or that makes payments of a certain level to one or more PFEs.

A **PFE** would be defined as a "specified foreign entity" or a "foreign-influenced entity".

A **specified foreign entity** would include:

- Certain foreign entities of concern as described in the *William M. (Mac) Thornberry National Defense Authorization Act of FY 2021*,
- Chinese military companies operating in the United States,
- Any entity on a list required by the strategy to enforce prohibition on imported goods made through forced labor in the Xinjiang Uyghur autonomous region,
- Any entity listed as ineligible for Department of Defense battery acquisition in the *National Defense Authorization Act of FY 2024*, and
- Foreign-controlled entities.

A **foreign-controlled entity** would include:

- The government of a covered nation (i.e., the Democratic People's Republic of North Korea; the People's Republic of China; the Russian Federation; and the Islamic Republic of Iran),
- A person who is a citizen, national or resident of a covered nation provided the person is not a US citizen or lawful permanent resident,
- An entity or qualified business unit incorporated or organized under the laws of or having its principal place of business in a covered nation, or
- An entity controlled by a foreign-controlled entity.

For purposes of determining whether an entity is a foreign-controlled entity, control would generally be defined as a greater than 50% ownership of the stock of a corporation, the profits or capital interests of a partnership, or the beneficial interests in any other entity.

In any tax year, an entity would be considered a **foreign-influenced entity** if:

- A specified foreign entity has the direct or indirect authority to appoint a "covered officer" (i.e., an executive-level officer, a member of the board of directors, or equivalent individual)
- A single specified foreign entity owns at least 10% of such entity
- One or more specified foreign entities own, in total, at least 25% of such entity or hold at least 25% of the debt
- In the preceding tax year, the entity knowingly made fixed, determinable, annual, or periodic (FDAP) payments to a specified foreign entity equal to at least 10% of the total such payments made in that tax year
- In the preceding tax year made FDAP payments to one or more specified foreign entities equal to at least 25% of the entity's total FDAP payments in that tax year.

In determining whether the 10% or 25% ownership thresholds are met, constructive ownership rules would apply, with the House proposal turning off section 318(a)(3) downward attribution.

KPMG observation

The House proposal would have a monumental effect on the ITC and PTC, requiring facilities to begin construction within 60 days of enactment and be placed in service before 2028. This is a significant change from the initial Ways and Means proposed phase-down of the credit.

Additionally, the introduction of certain FEOC rules is novel and introduces additional complex rules into the regime.

The continuation of the energy community adder and the domestic content adder, as well as direct pay for tax-exempt and governmental entities, is welcome news for industry.

Senate bill enacted as OBBBA (sec. 70512)

The Senate bill as enacted retained the current law phase-out schedule for qualified facilities other than wind and solar facilities, although it defines the "applicable year" as 2032 (i.e., it eliminated the potential for a later phase-out if the targeted emissions rate is met after 2032).

For wind and solar facilities, the bill generally terminated the credit so that qualified wind and solar facilities will not be credit eligible unless they either begin construction within 12 months from enactment or if they are placed in service by December 31, 2027.

For purposes of determining the credit on increased production at a qualified facility, the bill provides rules for determining capacity. The bill also allows the use of existing studies for purposes of determining the greenhouse gas emissions rate of a qualified facility.

The bill denies the credit for small wind and solar water heating property leasing arrangements and expands it to include all such leases, rather than just leases to individuals.

Further, solely for purposes of the PTC, the Senate bill added an additional category to the energy community credit increase. Specifically, it added certain advanced nuclear facilities if located in a metropolitan statistical area with 0.17% or greater employment related to the advancement of nuclear power.

The bill is generally effective for tax years beginning after the date of enactment, July 4, 2025.

Prohibited foreign entity (PFE) rules

The Senate bill denies the credit for qualified facilities that begin construction after 2025 and receive material assistance from a prohibited foreign entity (PFE) but provides a completely different definition of such **material assistance**.

Under the Senate bill, a qualified facility that begins construction after 2025 is required to have a material assistance cost ratio under the threshold percentage. For a qualified facility that begins construction in 2026, the threshold percentage is 40% - meaning 60% of manufactured products (including components) could be directly or indirectly acquired from PFEs. The threshold percentage increases by 5% per year until it reaches 60% for qualified facilities for which construction begins after 2029. The material assistance cost ratio is the percentage equal to (A) the total direct costs to the taxpayer attributable to all manufactured components that are incorporated into the qualified facility or energy storage minus (B) the total direct costs to the taxpayer attributable to all manufactured products (including components) that are mined, produced, or manufactured by a PFE, divided by (C) the total direct costs computed in (A).

For energy storage technology that begins construction in 2026, the threshold percentage is 55%. The percentage increases by 5% per year until it reaches 75% for energy storage that begins construction after 2029.

KPMG observation

While the House bill would make the section 45Y credit unavailable if even a single component, subcomponent, or critical mineral (directly or indirectly) produced by a PFE was used to construct the qualified facility, the Senate bill allows manufactured products to be acquired from PFEs up to a threshold ratio. The threshold ratio is reduced over time.

The Senate bill also denies the credit, in tax years beginning after the date of enactment, if the taxpayer is itself a PFE, which is defined as a specified foreign entity or a foreign-influenced entity.

The Senate bill retains the definition of a **specified foreign entity** provided in the House proposal. A specified foreign entity includes a foreign-controlled entity.

The bill also generally retains the House proposal’s definition of a **foreign-controlled entity** but clarifies that foreign-controlled entities include sub-national governments of covered nations and agencies and instrumentalities thereof.

The bill retains the general definition of a **foreign-influenced entity** from the House proposal but would increase the ownership thresholds triggering such classification. Under the Senate bill, an entity is a foreign-influenced entity if a single specified foreign entity has an ownership interest of at least 25%, or if one or more specified foreign entities own in the aggregate at least 40% of such entity or hold at least 15% of the entity’s debt.

A foreign-influenced entity is one that not only exceeds one of the ownership or debt-holding thresholds described above (or one for which a specified foreign entity has the direct authority to appoint a covered officer) but that also makes a prohibited category of payment to the entity during a previous tax year. The Senate bill treats an entity as a foreign-influenced entity if the payments to the specified foreign entities are pursuant to an agreement that entitles the specified foreign entity to exercise *effective control* over a qualified facility or an energy storage technology (for energy storage technology, this would be relevant under the clean electricity ITC discussed in the next section). The bill generally provides that a contractual counterparty has effective control when it has specific authority over key aspects of the production of energy generation in a qualified facility, or energy storage. With respect to payments exercising effective control, the credit is disallowed only if the payments are made related to the qualified facility or energy storage property. The bill authorizes Treasury to provide guidance and specifies rules that are required to be followed in the interim.

The bill includes special rules that prevent certain publicly traded entities from being classified as a foreign-controlled or a foreign-influenced entity under the applicable rules.

Additionally, for tax years beginning after enactment on July 4, 2025, the bill prohibits the transfer of any portion of the credit to specified foreign entities.

KPMG observation

The final Senate bill language as enacted requiring wind and solar projects to begin construction within 12 months of enactment or be placed in service by 2027 is easier to handle than an earlier draft of the bill, but the new law will still have a monumental effect on the wind and solar industry. The introduction of the PFE rules will introduce a complex regime requiring taxpayers to pay close attention to the sourcing of the materials used for a project.

Clean electricity investment tax credit (ITC)

Current law

Taxpayers may claim an ITC under section 48E for any qualified facility or energy storage technology placed in service in a tax year. A qualified facility is generally defined as depreciable tangible property with a placed-in-service date after 2024 that is used for the generation of electricity and that has a greenhouse gas emissions rate no greater than zero. A qualified facility also includes certain interconnection property.

The base ITC rate is 6%, and the rate is increased to 30% for facilities that have a maximum net output of less than 1 MW of electricity, which meet certain prevailing wage and apprenticeship requirements, or that began construction prior to January 29, 2023.

Potential credit increases are available for placing the facility in service in an energy community or meeting certain domestic content thresholds.

Currently, the credit begins to phase out in the “applicable year,” which is defined as the later of 2032, or the calendar year in which the Secretary determines that the annual greenhouse gas emissions from the production of electricity in the United States are equal to or less than 25% of the 2022 emissions.

The credit is transferable under current law, and certain tax exempt and government entities are eligible for direct pay.

House bill (sec. 112009)

The proposal would generally terminate the ITC for any qualified facility or energy storage technology for which construction begins more than 60 days after the date of enactment or that is placed in service after 2028. Advanced nuclear facilities would continue to qualify for the credit so long as construction begins before 2029.

The proposal would also prohibit the credit for certain residential clean energy property if the taxpayer rents or leases the property to a third party and the lessee would qualify for the credit under section 25D if the lessee owned the property. This provision would be effective for tax years beginning after the date of enactment.

The proposal would apply the same prohibited foreign entity (PFE) rules to the investment credit under section 48E that would apply to the production credit under section 45Y. (See discussion of those rules in the section addressing the section 45Y production credit.) Under these rules, the credit would be denied to entities that receive material assistance from a PFE or that are themselves PFEs.

A recapture rule would apply in the event an “applicable payment” is made by a specified taxpayer during the 10-year window beginning with placed in service. An applicable payment would be defined as an FDAP payment to a PFE of at least 5% of the total expenditures related to the production of electricity or storage of energy, or if the taxpayer makes FDAP payments to more than one PFE of at least 15% of such total expenditures, in aggregate. This rule would apply to any taxpayers claiming the credit for any tax year beginning more than two years after enactment.

The JCT estimates that these changes would raise $182.4 billion over 10 years.

Senate bill enacted as OBBBA (sec. 70513)

The Senate bill as enacted retained the current law phase-out schedule for qualified facilities other than wind and solar facilities, and for energy storage technology, although it defines the “applicable year” as 2032 (i.e., it eliminated the potential for a later phase-out if the targeted emissions rate is met after 2032).

For wind and solar facilities, the bill terminated the credit so that qualified wind and solar facilities will not be eligible unless they begin construction within 12 months from enactment or if they are placed in service by December 31, 2027.

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The bill increased the percentage of domestic content required to qualify for the domestic content adder, as follows:

- For projects that begin construction after June 16, 2025, and prior to 2026: 45% (27.5% for offshore wind)
- For projects that begin construction in 2026: 50% (35% for offshore wind)
- For projects that begin construction after 2026: 55%

The change is effective for qualified facilities and energy storage technology for which construction begins after June 16, 2025.

The Senate bill denies the ITC for lessors of small wind and solar water heating property and expands it to exclude all such leased property, rather than just leases to individuals. This provision is effective for tax years beginning after the date of enactment, July 4, 2025.

Additionally, the Senate bill adds a provision allowing qualified fuel cell property to qualify for the 30% credit, without meeting the greenhouse gas emissions rate requirements. The 30% credit rate will not be increased for being placed in service in an energy community or meeting the domestic content requirements. Further, the credit rate will not be dependent on meeting prevailing wage and apprenticeship requirements. This rule is effective for facilities beginning construction after 2025.

The Senate bill provides PFE rules for the section 48E ITC that are generally be the same as those provided for the section 45Y PTC. Under those rules, the credit will be denied for qualified facilities, qualified interconnection property, or energy storage property that begin construction after 2025 and receive material assistance from a PFE.

The credit will also be denied in tax years beginning after the date of enactment if the taxpayer is itself a PFE. Additionally, for tax years beginning after enactment (July 4, 2025), the transfer of any portion of the credit to specified foreign entities is prohibited. (See discussion in the section 45Y portion of this booklet for a full discussion of the PFE rules.)

The bill requires 100% recapture of the clean electricity ITC if an "applicable payment" is made by a specified taxpayer during the 10-year window beginning with the placed in service date of a qualified facility or energy storage technology. An applicable payment is defined as a payment to a specified foreign entity pursuant to an agreement entitling that entity to exercise effective control over a qualified facility or energy storage technology owned by the taxpayer. This recapture provision applies to credits allowed in tax years beginning more than two years after the date of enactment, July 4, 2025.

KPMG observation

The final Senate bill language as enacted requiring wind and solar projects to begin construction within 12 months of enactment or be placed in service by 2027 is easier to handle than an earlier draft of the bill, but the new law will still have a monumental effect on the wind and solar industry. The introduction of the PFE rules will introduce a complex regime requiring taxpayers to pay close attention to the sourcing of the materials used for a project.

Clean fuel production tax credit

Current law

Under current law, section 45Z provides for an income tax credit for clean transportation fuel produced in the United States after 2024 and sold before 2028. Eligible fuels are generally classified as either sustainable aviation fuel (SAF) or non-SAF transportation fuel.

To qualify for the credit in a given tax year, taxpayers must produce the qualifying "transportation fuel" within the United States for sale to an unrelated person for certain specified purposes. Generally, a non-SAF transportation fuel cannot be produced using certain feedstocks, must be suitable for use in a highway vehicle or aircraft, and must have a lifecycle greenhouse gas (GHG) emissions rate of no greater than 50kg CO_2 per mmBTU.

In addition, SAF must meet certain industry specifications and additional feedstock requirements and be sold for use in an aircraft.

A taxpayer calculates its section 45Z credit by multiplying the volume of qualifying fuel produced (in gallons or gallon equivalent) by a base rate, referred to as the "applicable amount," and an "emissions factor." The applicable amount is $0.20 for non-SAF transportation fuel and $0.35 for SAF (or $1.00 and $1.75, respectively, if the taxpayer satisfies prevailing wage requirements under section 45). The "applicable amount" is inflation-adjusted for years after 2024. The "emissions factor" is inversely proportional to the lifecycle GHG emissions potential of the fuel produced. A given fuel's lifecycle GHG emissions are determined using an emissions rate computed using an emissions model as provided for by guidance, including a table listing fuels and feedstock published annually by the Treasury (the "Annual Table").

House bill (secs. 111111 and 112010)

The proposal would extend the clean fuel production credit through December 31, 2031.

Effective for transportation fuel sold after December 31, 2025, the proposal would require that clean fuel be derived exclusively from a feedstock produced or grown in the United States, Mexico, or Canada.

Effective for emissions rates published for tax years beginning after December 31, 2025, the proposal would make two changes. First, it would require that the lifecycle GHG emissions be adjusted as necessary to exclude any emissions attributed to indirect land use change. Any such adjustment would be based on regulations or methodologies determined by the Secretary in consultation with the Administrator of the Environmental Protection Agency and the Secretary of Agriculture.

In addition, for transportation fuels derived from animal manure, the proposal would require the Annual Table to provide a distinct emissions rate with respect to each specific feedstock used to produce such fuel, including dairy manure, swine manure, poultry manure and such other sources as are determined appropriate by the Secretary.

Additionally, if the taxpayer is a specified foreign entity (as described herein and defined in proposed section 7701(a)(51)(B)), no clean fuel production credit would be allowed for any tax year beginning after the date of enactment. If the taxpayer is a foreign-influenced entity (as defined in proposed section 7701(a)(51)(D)), no clean fuel production credit would be allowed for any tax year beginning two years after the date of enactment. This amendment would be effective for tax years beginning after the date of enactment of the bill.

Lastly, the proposal would terminate the election to transfer the section 45Z credit for fuel produced after December 31, 2027.

The JCT estimates that these changes would increase the overall deficit by $45.4 billion over 10 years.

KPMG observation

The proposal may be viewed favorably by the clean fuels industry, especially the extension of the credit. It also appears that the amendments for standardizing the emissions rates with respect to the ILUC and animal manure would provide more certainty to taxpayers who are required to calculate estimates.

However, the proposal to exclude feedstocks not produced in the United States, Mexico, or Canada may require taxpayers to rethink where they source their feedstocks.

Senate bill enacted as OBBBA (sec. 70521)

The Senate bill as enacted provides for a two-year extension of the clean fuel production credit for transportation fuel sold through 2029.

Like the House proposal, the Senate bill limits credit eligibility to fuel produced from feedstocks from the United States, Mexico, or Canada, but for fuel *produced* (rather than sold) after December 31, 2025. Additionally, the Senate bill prohibits "double credits" by disallowing the credit for any fuel produced from another fuel for which a credit under section 45Z is allowable.

With respect to determining the emissions rate of a transportation fuel, the bill prohibits negative emissions rates for such fuel produced after 2025.

Similar to the House bill, the Senate bill directs the Secretary to publish unique emissions rates for different animal manure feedstocks, permitting a negative rate in this instance. The Secretary is also authorized to issue rules related to the sale of fuel to related persons other than in the manner contemplated under section 52(b).

With respect to Sustainable Aviation Fuel (SAF), the Senate bill:

- Terminated the section 6426(k) sustainable aviation fuel excise tax credit effective September 30, 2025.
- Reduced the section 45Z credit for SAF by an amount equal to any credit claimed under section 6426(k)(1) for SAF sold after 2024 and prior to October 1, 2025.

- Removed the higher special rate for SAF, creating parity with non-SAF transportation fuels under section 45Z after 2025.

The Senate bill additionally extended and modified the Small Agribiodiesel Producer Credit under section 40A(b)(4). A credit at a rate of 20 cents per gallon of fuel produced is available through December 31, 2026. This provision allows stacking with a credit determined under section 45Z. Additionally, transfer under section 6418 is permitted for credit generated under section 40A(b)(4).

The Senate bill generally mirrors the House bill and denies the credit to specified foreign entities in tax years beginning after enactment and to foreign-influenced entities in tax years beginning more than two years after date of enactment. However, in determining whether a taxpayer is a foreign-influenced entity, it will not apply a certain provision in the "effective control" rules of amended section 7701(a)(51)(D)(i)(II) (not present in the House bill) related to payments yielding "effective control" over PTC or ITC property to a specified foreign entity.

Unlike the House bill, the Senate bill will not universally disallow transferability for fuel produced after 2027. It will, however, disallow transferability to specified foreign entities upon enactment.

KPMG observation

The Senate bill as enacted may be viewed favorably by the clean fuels industry, especially the extension of the credit. It also appears that the amendments for standardizing the emissions rates with respect to the ILUC and animal manure will provide more certainty to taxpayers who are required to calculate estimates.

However, the bill's exclusion of feedstocks not produced in the United States, Mexico, or Canada may require taxpayers to rethink where they source their feedstocks.

Credit for carbon oxide sequestration

Current law

Under current law, section 45Q allows credits to taxpayers who capture and sequester qualifying carbon oxide. The credit amount depends on a number of variables, including how the captured carbon oxide is used and whether the taxpayer met the prevailing wage and apprenticeship requirements during the construction, alteration or repair of the facility.

The credit is available for projects for which construction begins prior to 2033, and the current credit rates are as follows:

- Secure geological storage: Base credit rate of $17; bonus credit rate of $85 per metric ton
- EOR projects or utilization: Base credit rate of $12; bonus credit rate of $60 per metric ton
- Direct air capture (secure storage): Base rate of $36; bonus rate of $180 per metric ton
- Direct air capture (EOR/utilization): Base rate of $26; bonus rate of $130 per metric ton

To claim the section 45Q credit at the bonus credit rate, taxpayers must satisfy the:

- Prevailing wage requirement for the 12-year credit period
- Apprenticeship requirements during the construction of the project

The minimum capture thresholds under section 45Q are as follows:

- Direct air capture facilities must capture no less than 1,000 metric tons of carbon oxide per year
- Electricity generating facilities must capture no less than 18,750 metric tons of carbon oxide and, with respect to any carbon capture equipment for the applicable electric generating unit, have a capture design capacity of not less than 75% of baseline carbon oxide production
- Other industrial facilities must capture no less than 12,500 metric tons of carbon oxide

For carbon capture equipment placed in service after 2022, the section 45Q credit is eligible for the direct pay election, making it one of three credits deemed as refundable, regardless of whether the taxpayer is an applicable entity. This is available to the taxpayer for the first five years that the facility is in service.

Taxpayers may also elect, annually, to transfer the credit (or any portion of the credit) to an unrelated taxpayer for cash consideration.

House bill (sec. 112011)

The House proposal would disallow the section 45Q credit for any tax year beginning after the date of enactment if the taxpayer is a specified foreign entity (as described herein and as defined in proposed section 7701(a)(51)(B)).

It also would disallow the section 45Q credit for any tax year beginning two years after the date of enactment if the taxpayer is a foreign-influenced entity (as described herein and as defined in proposed section 7701(a)(51)(D)).

Lastly, the bill would terminate the transferability of the section 45Q credit for carbon capture equipment that begins construction after the date that is two years after the date of enactment.

Outside of these modifications, the section 45Q credit would remain as presently provided under the current law.

The JCT estimates these changes will raise $18 billion over 10 years.

KPMG observation

Most notably, and likely most welcome, the proposal would largely retain the structure and rates for the section 45Q credit for projects that begin construction prior to 2033. Carbon capture technology is capital intensive, so this is welcome news to taxpayers investing in this technology.

In addition, the retention of the direct pay rules maintains a useful monetization option for these projects. Notably, the proposal would terminate transferability for taxpayers who begin construction two years after date of enactment. This could create a planning opportunity for projects to remain eligible for the transferability election for the duration of the 12-year credit period based on the beginning of construction date.

Lastly, as mentioned in other observations, the introduction of the FEOC restrictions may require taxpayers to consider particularly complex rules and the legal structures in which these projects reside.

Senate bill enacted as OBBBA (sec. 70522)

The Senate bill as enacted disallows a benefit under section 45Q for specified foreign entities (as described under section 7701(a)(51)(B)), and foreign-influenced entities (as described under section 7701(a)(51)(D)) for tax years beginning after date of enactment. However, the Senate bill will not apply a certain provision in the “effective control” rules of section 7701(a)(51)(D)(i)(II) (not present in the House Bill) related to payments pursuant to agreements yielding “effective control” over PTC or ITC property to a specified foreign entity.

Unlike the House bill, the Senate bill as enacted will not repeal elective transferability. However, it will disallow transfers to specified foreign entities upon enactment.

Lastly, while current law allowed a lesser benefit at the inflation-adjusted amount of $12/$60 for carbon captured and used as a tertiary injectant in enhanced oil recovery (EOR) or utilized in a commercial product or process, the bill increases the base rate for these uses to correspond to the secure geological storage credit rate for facilities placed in service subsequent to enactment on July 4, 2025.

KPMG observation

The Senate bill as enacted largely retains the structure and rates for the section 45Q credit for projects that begin construction prior to 2033. Carbon capture technology is capital intensive, so this is welcome news to taxpayers investing in this technology. In addition, the retention of the direct pay rules maintains a useful monetization option for these projects.

Additionally, the bill brings parity with the different storage options for carbon oxide captured, increasing the credit rate for carbon captured and used in EOR or utilized in a commercial product or process.

Lastly, as mentioned in other observations, the introduction of the FEOC restrictions may require taxpayers to consider particularly complex rules and the legal structures in which these projects reside.

Zero-emission nuclear power production credit

Current law

Section 45U provides, for tax years beginning after 2023, a production tax credit for the production and sale of nuclear power from an existing qualified nuclear power facility. The credit is not available for tax years beginning after 2032.

The credit can be transferred or sold to third parties.

House bill (sec. 112012)

The House bill would make two major modifications to section 45U. It would:

- Accelerate the termination of the credit
- Provide that qualified nuclear power facilities that have certain forms of non-U.S. ownership would no longer be eligible for the credit

Under the proposal, section 45U would terminate for electricity produced and sold after 2031.

For any tax year beginning subsequent to the date of enactment, no credit would be available to a specified foreign entity. For a tax year beginning two years following the date of enactment, no credit would be available to a foreign-influenced entity.

The JCT estimates that these changes would raise $10.4 billion over 10 years.

Senate bill enacted as OBBBA (secs. 70510 and 70512)

Like the House bill, the Senate bill denies the section 45U credit to specified foreign entities in tax years beginning after the date of enactment and to foreign-influenced entities in tax years beginning more than two years after the date of enactment.

In addition, elective transfers of the credit will be denied in tax years beginning after the date of enactment if the transferee is a specified foreign entity (as defined in section 7701(a)(51)(B)).

Credit for production of clean hydrogen

Current law

Under current law, the section 45V credit provides for a production tax credit that is generally determined based on the amount of clean hydrogen produced during the 10-year period following the date the production facility is placed in service, and the emissions intensity of the process used to produce the hydrogen.

To be eligible, the hydrogen produced must have emissions of 4 kg of CO2e per kg of hydrogen produced or less, and the credit amount is higher when the hydrogen production process' emissions are lower. The maximum credit rate is $3/kg of hydrogen produced. In lieu of the clean hydrogen production tax credit, a taxpayer can elect to treat the facility (or a portion of the facility) as energy property under section 48. (The energy percentage would range from 1.2 to 6% base rate and 6 to 30% bonus rate depending on the type of clean hydrogen that is produced.)

A qualified clean hydrogen facility must currently begin construction by December 31, 2033, to be eligible for the clean hydrogen production credit.

For qualified clean hydrogen production facilities placed in service after 2022, taxpayers may elect to receive a direct payment of this credit. Such an election must be made separately with respect to each facility, be made for the tax year in which the facility is placed in service (or within one year of the date of enactment) and would apply to such tax year and four subsequent tax years. Such an election may only be made with respect to any tax years beginning before 2033.

In addition, a taxpayer may elect to transfer the credit (or any portion of the credit) to an unrelated taxpayer and exclude such sale proceeds from gross income. For any tax years for which a direct pay election is made, taxpayers may also not elect to transfer the credit. The election for transferability would be made annually and with respect to each facility for which the credit is determined.

House bill (sec. 112013)

The proposal would terminate the credit for facilities the construction of which begins after December 31, 2025.

The JCT estimates that this change will raise $9.2 billion over 10 years.

KPMG observation

Although this is a disappointment for the hydrogen industry, many have been of the opinion that the final Treasury regulations are largely unworkable for the industry.

This would have, however, provide an opportunity for those taxpayers who begin construction prior to 2026. The proposal also does not provide restrictions with respect to the direct pay or transferability of qualified projects. Thus, the opportunity to monetize the credits may still be available for qualified facilities that begin construction before the end of this year. Additionally, many “blue” hydrogen projects can choose between the section 45V and section 45Q credits, providing an alternative for projects that do not meet the beginning of construction date.

Senate bill enacted as OBBBA (sec. 70511)

The Senate bill as enacted terminated the credit for facilities the construction of which begins after December 31, 2027.

KPMG observation

In a win for the hydrogen industry, the Senate bill adds two years on the life of this credit (beyond the House bill), terminating the credit for facilities that begin construction after 2027. Given the complexity of these projects, this is a welcome development for the industry.

Advanced manufacturing production credit

Current law

Under current law, section 45X provides a production credit for the U.S. production and sale of certain eligible components. These components include wind, battery, and solar components, as well as certain “critical minerals” supporting these supply chains. Under current law, the production of most eligible components phases out starting after 2032; there is no phase-out for the production of critical materials. Generally, the credit is claimed in the year the eligible component is sold.

House bill (sec. 112014)

The proposal would make three major modifications to section 45X. It would:

- Accelerate the phaseout of the credit
- Provide that production facilities that have certain forms of non-U.S. ownership or receive material assistance from a PFE would no longer be eligible for the credit
- Phase out transferability

Under the proposed legislation, wind energy components sold after 2027 would be ineligible for the credit.

Additionally, the full phaseout for other eligible components would be accelerated by a year (that is, excluding sales after 2031 rather than 2032), and the phaseout schedule would apply to critical minerals.
For any tax year beginning after the date of enactment, no credit would be available to a specified foreign entity. For a tax year beginning two years following the date of enactment, no credit would be available to a foreign-influenced entity.

Further, no credit would be allowed for any tax year beginning after the date that is two years after enactment if the taxpayer makes a payment of dividends, interest, compensation for services, rentals or royalties, guarantees or any other FDAP amount.

- To a PFE in an amount equal to or greater than 5% of such total payments made by the taxpayer, related to the production of eligible components within such eligible component category, during the tax year; or
- To more than one PFE in an amount that, in aggregate, is equal to or greater than 15% of such total payments made by the taxpayer, related to the production of eligible components within such eligible component category, during the tax year. (For this purpose, the eligible component categories are solar energy components, wind energy components, certain inverters, qualifying battery components, and applicable critical minerals.)

Further, eligible components sold in a tax year that begins more than two years after the date of enactment would be ineligible for a credit if produced with material assistance from a PFE or produced subject to a licensing agreement, valued in excess of $1,000,000, with a PFE.

Material assistance from a PFE would be deemed to occur if an eligible component includes any component, subcomponent, or critical mineral that is extracted, processed, recycled, manufactured, or assembled by a PFE, or if any design of an eligible component is based on a copyright or patent held by, or any know-how or trade secret provided by, a PFE. It would not include assembly parts or constituent materials that meet all three of the following criteria:

- Assembly parts or constituent materials that are not directly acquired from a PFE
- Assembly parts or constituent materials are not uniquely designed for use in the construction of a qualified facility and
- Assembly parts or constituent materials are not exclusively or predominantly produced, processed or extracted by a PFE.

Finally, the proposal would terminate elective transferability of a section 45X credit for eligible components sold after 2027.

The JCT estimates that these changes would raise $44.2 billion over 10 years.

KPMG observation

Overall, the section 45X credit appears to have received favorable treatment in the House proposal, but the inclusion of the broad FEOC rules may make qualifying for the credit difficult for some industries.

Senate bill enacted as OBBBA (sec. 70514)

The Senate bill as enacted makes three major modifications to section 45X, the bill:

- Modifies the phaseout of the credit
- Adds metallurgical coal as a critical mineral under the credit
- Provides that production facilities that have certain forms of non-U.S. ownership or receive material assistance from a prohibited foreign entity (PFE) will no longer be eligible for the credit

Phaseout modification

Under the Senate bill, wind energy components sold after 2027 will not be eligible for a credit.

The bill limits the ability of taxpayers to stack credits if they are manufacturing multiple eligible types of eligible components. A secondary component is an eligible component if produced at the same manufacturing facility as the initial eligible component and the secondary eligible component and it is sold to an unrelated person. In addition, the secondary component must have at least 65% of its direct material costs be attributable to the initial component that are produced or manufactured in the United States. The provision is effective for tax years beginning after 2026.

Additionally, the credit for “critical minerals” will have a staggered phaseout beginning with critical minerals produced in 2031.

Metallurgical coal

The Senate bill added metallurgical coal to the list of applicable critical minerals for tax years beginning after enactment. No credit will be available related to production of metallurgical coal after December 31, 2029. The credit amount will be 2.5% of production costs.

Prohibited foreign entity rules

Under the Senate bill, the section 45X credit will be unavailable to a PFE for tax years beginning after the date of enactment.

While the House bill would have denied the section 45X credit if even a single component, subcomponent, or critical mineral were directly or indirect produced by a PFE and used to construct an eligible component, the Senate bill will allow direct and indirect material costs to be acquired from PFEs up to a threshold ratio. The threshold ratio will be reduced over time. Separate threshold ratios are provided for solar energy components, wind energy components, battery components, and critical minerals.

Under the bill, a producer could acquire (directly or indirectly) materials from PFEs in the following amounts in the following years (based on the date the eligible component is sold) and still claim the credit:

- Solar energy components – 50% in 2026, 40% in 2027, 30% in 2028, 20% in 2029 and 15% thereafter
- Wind energy components – 15% in 2026, 10% in 2027
- Inverters – 50% in 2026, 45% in 2027, 40%, in 2028, 35% in 2029, and 30% thereafter
- Battery energy components – 40% in 2026, 35% in 2027, 30% in 2028, 20% in 2029, and 15% thereafter
- Critical minerals – 2026-2029, no restrictions, 75% in 2030, 70% in 2031, 60% in 2032, and 50% in 2033 and thereafter (subject to adjustment by the Secretary based on availability in the United States, national security, and supply chain constraints)

While both the House and Senate bills apply certain elements of the foreign entity rules proposed within the respective bills to the clean energy PTC and ITC, there are differences. The Senate bill makes all changes related to material assistance applicable to tax years beginning after the date of enactment (July 4, 2025) and will not directly apply a separate provision related to licensing agreements. Under the Senate bill, for any tax year beginning after the date of enactment, no credit will be available to a PFE or for “property which includes any material assistance” from a PFE.

The Senate bill will not disallow transfers of a 45X credit, except for the transfer of a credit to a specified foreign entity. Those transfers will be disallowed upon enactment.

KPMG observation

The introduction of the PFE and material assistance rules to the section 45X credit could prove challenging for taxpayers. The Senate bill provision to disallow the credit based on the percentage of materials in a component that were acquired from a PFE, with the percentage increasing over time, attempts to allow more time for U.S. supply chains to be built.

Phase-out of credit for certain energy property

Current law

Under current law, most technologies that were previously eligible for the section 48 energy tax credit terminated if they began construction after December 31, 2024, but geothermal heat pumps for which construction begins before January 1, 2035, are still eligible for the section 48 investment tax credit.

House bill (sec. 112015)

The proposal would modify the phase-out of the investment credit for geothermal heat pump property. The base credit for geothermal heat pump property that begins construction before January 1, 2030, and is placed in service after December 31, 2021, is 6%. The base credit for geothermal heat pump property that begins construction after December 31, 2029, and before January 1, 2031, is 5.2%. The base credit for geothermal heat pump property that begins construction after December 31, 2030, and before January 1, 2032, is 4.4%. No investment credit is available for geothermal heat pump property that begins construction on or after January 1, 2032.

The proposal would disallow any credit for any tax year beginning after the date of enactment if the taxpayer is a specified foreign entity (as described herein, and as defined in proposed section 7701(a)(51)(B)).

The proposal would disallow any credit for any tax year beginning after the date that is two years after the date of enactment if the taxpayer is a foreign-influenced entity (as defined in proposed section 7701(a)(51)(D)).

The proposal would terminate transferability of the credit for property that begins construction after the date that is two years after the date of enactment.

The JCT estimates that these changes would raise $22 million over 10 years.

KPMG observation

It appears that this is an attempt to more closely align the phase-out of the geothermal investment incentives with the other investment credit technologies.

Senate bill

This provision is unique to the House bill. It was not in the Senate bill and is not part of the new law.

Restriction on the extension of advanced energy project credit program

Current law

Section 48C provides an allocated credit for qualified investments in qualifying advanced energy projects. The credit is allowed in the year the property constituting the qualified investment is placed in service.

Credits are allocated to the sponsors of qualifying advanced energy projects through a qualifying advanced energy project program established by Treasury. The total amount of credits available for allocation under the program is $10 billion.

Recipients of an allocation have two years to place the project into service. If this placed-in-service date requirement is not met, the allocation to that recipient is revoked and the amount of the allocation may be reallocated to one or more different recipients by Treasury.

House bill

This provision is unique to the Senate bill.

Senate bill enacted as OBBBA (sec. 70515)

The Senate bill as enacted provides that any section 48C credit allocation amounts that are revoked will not be reallocated to a different recipient.

This provision is effective upon enactment on July 4, 2025.

Expansion of the definition of qualifying income of certain publicly traded partnerships treated as corporations

Current law

Under present law, a publicly traded partnership generally is treated as a corporation for federal tax purposes. An exception from corporate treatment is provided for certain publicly traded partnerships, if 90% or more of the gross income of the publicly traded partnership is “qualifying income.”

Qualifying income includes interest, dividends, and gains from the disposition of a capital asset (or of property described in section 1231(b)) that is held to produce qualifying income. Qualifying income also includes rents from real property, gains from the sale or other disposition of real property, and income and gains from the exploration, development, mining or production, processing, refining, transportation (including pipelines transporting gas, oil, or products thereof), or the marketing of any mineral or natural resource (including fertilizer, geothermal energy, and timber), industrial source carbon dioxide, or the transportation or storage of any alcohol fuel mixture, biodiesel fuel mixture or alternative fuel described in subsection (b), (c), (d), or (e) of section 6426, or any alcohol fuel defined in section 6426(b)(4)(A) or any biodiesel fuel as defined in section 40A(d)(1). It also includes income and gains from commodities (not described in section 1221(a)(1)) or futures, options, or forward contracts with respect to such commodities (including foreign currency transactions of a commodity pool) in the case of a partnership, a principal activity of which is the buying and selling of such commodities, futures, options or forward contracts

House bill (sec. 112016)

The House proposal would expand the definition of qualifying income of a publicly traded partnership to include:

- Income and gains with respect to the transportation or storage of sustainable aviation fuel as described in section 40B(d)(1)
- Income and gains with respect to the transportation or storage of liquified hydrogen or compressed hydrogen
- Income and gains with respect to the generation, availability for such generation, or storage of electric power, or the capture of carbon dioxide by a "qualified facility" whose total carbon oxide production is at least 50% "qualified carbon oxide"

For this purpose, a qualified facility would be defined under section 45Q(d) but determined without regard to any date by which construction of the facility is required to begin. Qualified carbon oxide is defined in section 45Q(c).

The House proposal would apply to tax years beginning after 2025.

The JCT estimates that these changes would increase the deficit by $2 billion over 10 years.

Senate bill enacted as OBBBA (sec. 70524)

The Senate bill as enacted includes the expansion of the definition of qualifying income of a publicly traded partnership included in the House bill and further expands the definition to include:

- Income and gains with respect to the production of electricity from any advanced nuclear facility (as defined in section 45J(d)(2)),
- Income and gains with respect to the production of electricity or thermal energy exclusively using a geothermal energy resource or a qualified hydropower production resource as described in sections 45(c)(1)(D) or (H), and
- Income and gains with respect to the operation of geothermal energy property described in sections 48(a)(3)(A)(iii) or (vii) (determined without regard to any requirement under such section with respect to the date on which construction of property begins).

The bill applies to tax years beginning after 2025.

Qualified Opportunity Zones (sec. 111102 of House bill and sec. 70421 of Senate bill)

Designation of QOZ

Current law

The Qualified Opportunity Zone program was designed to incentivize economic development and long-term equity investments in areas designated "Qualified Opportunity Zones (QOZs)" by providing certain tax benefits to investors, as discussed in further detail below.

As originally enacted, certain low-income communities and census tracts contiguous to low-income communities were designated as QOZs.[2] These initial QOZ designations expire on December 31, 2028.[3]

House bill

The House bill renews the QOZ program for 2027 through 2033 and provides certain enhancements to the program for low-income communities designated as QOZs that are comprised entirely of rural areas.

As passed by the House, the current designation of census tracts as QOZs would expire on December 31, 2026 (rather than December 31, 2028). A second round of QOZs would be designated and would be in effect from January 1, 2027, through December 31, 2033.

Under a revised definition of a low-income community in the bill, fewer census tracts would be eligible to be designated as QOZs in the second round. In addition, a census tract that is not a low-income community but is contiguous to a low-income community would not be eligible to be designated as a QOZ.

For the second round of QOZ designations, a minimum number (at least 33 percent) of the designated QOZs in each state must be low-income communities comprised entirely of a rural area ("Rural QOZs"). The determination of whether a low-income community is comprised entirely of a rural area would be determined by the Treasury Department in consultation with the Secretary of Agriculture.

Senate bill enacted as OBBBA

The Senate bill as enacted created a permanent QOZ program that allows the Secretary to designate new QOZs every 10 years. With the exception of QOZs in Puerto Rico, the Senate bill doesn't terminate the designation of QOZs prior to their expiration on December 31, 2028. Instead, the Senate bill provides a 90-day window every 10 years beginning July 2026 for a State to nominate census tracts to be designated as QOZs. The Senate bill, however, repeals the special rule under current law that designated each low-income community census tract in Puerto Rico as a QOZ.[4] This repeal is effective on December 31, 2026.

Like the House bill, the Senate bill revises the definition of "low-income community" to limit the tracts eligible for QOZ designation and provides that census tracts that are not low-income communities but are

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[2] Notice 2018-48, 2018-28 I.R.B. 9.
[3] Section 1400Z-1(f).
[4] Section 1400Z-1(b)(3).

contiguous to a low-income community are ineligible to be designated as a QOZ. However, the Senate bill does not require a minimum number of QOZs to be comprised entirely of a rural area.

Gain deferral benefit

Current law

Under current law, taxpayers can elect to defer recognition of certain capital and section 1231 gains that have been invested in a “Qualified Opportunity Fund (QOF)” until December 31, 2026.[5] To qualify for deferral, a taxpayer must invest an amount equal to the deferred gain in a QOF generally during the 180-day period beginning on the date of the sale or exchange that generated the gain.[6] Taxpayers cannot elect to defer gain on any sales or exchanges that occur after December 31, 2026, and ordinary income may not be deferred.

House bill

Under the House bill, only amounts invested before January 1, 2027, would be taken into income on December 31, 2026. Amounts invested after December 31, 2026, but before January 1, 2034, would be taken into income on December 31, 2033.

Taxpayers can defer recognition of ordinary income of up to $10,000 in the aggregate over the life of the QOZ program. The initial tax basis of the taxpayer’s QOF investment attributable to ordinary income would not be reduced to zero and, if held for at least 10 years, the taxpayer would be eligible to exclude gain realized on the sale of such QOF investment.

Senate bill enacted as OBBBA

Gains invested prior to December 31, 2026, are still taken into account in accordance with the current law. Recognition of gains realized after December 31, 2026, will be eligible for deferral under the QOZ program. Gains invested in a QOF after December 31, 2026, will be recognized on the date that is five years after the date of investment in the QOF.

Ordinary income will continue to be ineligible for a deferral election under the QOZ program.

Gain reduction benefit

Current law

If the taxpayer holds its QOF investment for at least five years before December 31, 2026, 10% of the deferred gain may be eliminated. An additional 5% of the deferred gain may be eliminated if the taxpayer holds the QOF investment for at least seven years before December 31, 2026.[7]

House bill

Under the House bill, if a taxpayer invests gain in a QOF after December 31, 2026, and holds that investment for at least five years by December 31, 2033, the taxpayer’s basis in that investment would be increased by 10% of the deferred gain. If the taxpayer invests in a “Qualified Rural Opportunity Fund

[5] Section 1400Z-2(a); (b)(1).
[6] Section 1400Z-2(a).
[7] Section 1400Z-2(b)(2)(B)(iii) and (iv).

(QROF)" —a QOF in which 90% of its assets are (A) QOZ business property used within a QOZ comprised entirely of a rural area, or (B) stock or partnership interests in a "Qualified Opportunity Zone Business (QOZB)," substantially all of the tangible property of which is used within a QOZ comprised entirely of a rural area—then the basis increase would be 30% of the deferred gain.

Senate bill enacted as OBBBA

The Senate bill is consistent with the House bill. The basis of any QOF investment held for at least five years will be increased by an amount equal to 10% of the deferred gain. The basis increase will be 30% of the deferred gain for investments in a QROF. The basis increase will be treated as occurring before the deferred gain is recognized.

Gain elimination benefit

Current law

A taxpayer who holds its QOF investment for at least 10 years would be able to elect, on the sale or exchange of that QOF investment, to adjust the tax basis of the disposed investment to its fair market value on the date of sale.[8] Under regulations, the ability to elect to adjust tax basis on a disposition expires on December 31, 2047.[9]

House bill

No change to current law.

Senate bill enacted as OBBBA

A taxpayer who holds its QOF investment for at least 10 years will be able to elect, on the sale or exchange of that QOF investment, to adjust the tax basis of the disposed investment to (a) its fair market value on the date of sale (in the case of QOF investments sold prior to the 30th anniversary of the investment date) or (b) the fair market value of such investment on the 30th anniversary of the investment date (in the case of QOF investments sold after the 30th anniversary of the investment date).

Substantial improvement of existing structures in a rural QOZ

Current law

Under current law, a certain percentage of property held by a QOZB, and some QOFs, must be QOZ business property. To be QOZ business property, the property must (among other things) be tangible property 1) the original use of which in a QOZ commences with the QOF or QOZB; or 2) that is substantially improved by the QOF or QOZB. Under current law, property is substantially improved if, during any 30-month period, the QOF or QOZB doubles the basis of the property—that is, there are additions to the basis of the property in an amount that exceeds the basis of the property at the beginning of the 30-month period.

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[8] Section 1400Z-2(c).
[9] Section 1.1400Z2(c)-1(c).

House bill

Under the bill, tangible property located in a Rural QOZ would be considered substantially improved if additions to the basis of the property exceed only 50% of the adjusted basis of the property at the beginning of the 30-month period.

Senate bill enacted as OBBBA

The Senate bill as enacted is consistent with the House bill.

Enhanced QOF and QOZB reporting, including impact reporting

Current law

Current law does not subject QOFs or QOZBs to specific reporting requirements or require the Treasury Department to publish information related to the QOZ program.

House bill

Under the House bill, every QOF would be required to file electronically an annual return containing certain specified information. Much of the required information is already reported by a QOF on Form 8996, *Qualified Opportunity Fund.* However, under the bill, a QOF would also be required to provide 1) the name and address of its QOZBs, 2) each North American Industry Classification System (NAICS) code that applies to the trades or businesses conducted by the QOF and its QOZBs; 3) the approximate number of residential units, if any, for any real property held by the QOF or its QOZBs; and 4) the approximate average monthly number of full-time equivalent employees of the QOF or its QOZBs. Every QOZB would be required to provide each of its QOFs with a written statement providing information to be prescribed by Treasury for purposes of enabling a QOF to comply with its reporting requirements.

If a QOF fails to file timely a complete and correct return, the QOF would be subject to a penalty of $500 for each day the failure continues. The maximum penalty under this provision would be $50,000 for a large QOF and $10,000 for all other QOFs. A large QOF would be defined as one whose gross assets (determined on the last day of the tax year) exceed $10 million. The penalties would increase if the failure were due to an intentional disregard. The penalty amounts would be adjusted for inflation and would be subject to relief for a reasonable cause.

Additionally, the Treasury Department would be required annually to publish a report on QOFs and a separate report on QROFs. The report is required to include statistical metrics designed to show the impact of the QOZ designation on census tracts and the efficacy of the QOZ program.

Senate bill enacted as OBBBA

The Senate bill as enacted is identical in all material respects to the information reporting provisions in the House bill.

Low-income housing credit

Current law

Under current law, low-income housing credits are claimed annually over a 10-year period with respect to certain costs of building or rehabilitating rental housing occupied by low-income tenants. To be eligible for the credit, a low-income building must have received a credit allocation from the state (the “state housing credit”) or must have been financed with proceeds from certain tax-exempt bonds that are subject to the private activity bond volume limit (the “volume cap”).

For newly constructed or substantially rehabilitated housing receiving a state housing credit, the credit amount is calculated such that the present value of the credits claimed over the 10-year credit period is at least 70% of the building’s qualified basis. These credits are sometimes referred to as “9% credits.”

For newly constructed or substantially rehabilitated housing financed with proceeds from certain tax-exempt bonds, the credit amount is calculated such that the present value of the credits claimed over the 10-year credit period is at least 30% of the building’s qualified basis. These credits are sometimes referred to as “4% credits.”

For any calendar year, the total amount of state housing credits available for allocation by a state is limited to the state housing credit ceiling.

The state housing credit ceiling is an amount equal to the sum of four components: (1) the unused state housing credit ceiling (if any) for the preceding calendar year (the “unused carryforward component”), (2) the population component, (3) the amount of state housing credit ceiling returned in the calendar year (the “returned credit component”), plus (4) the amount (if any) that the Secretary allocates to the state from the national pool of unused housing credits (the “national pool component”).

For calendar year 2025, the population component of the state housing credit ceiling is equal to the greater of (1) $3.00 multiplied by the state population or (2) $3,455,000.

With respect to tax-exempt bond financing, under current law, if 50% or more of the aggregate basis of the building and the land on which the building is located is financed by the proceeds of tax-exempt bonds, the 4% credit is allowable with respect to the entire eligible basis of the project without an allocation from the state or local housing credit agency. If less than 50% of the aggregate basis is so financed, a low-income housing tax credit is allowable only with respect to the portion financed by the proceeds of tax-exempt bonds.

Lastly, buildings located in certain census tracts and difficult development areas, as designated by the Secretary of Housing and Urban Development, are eligible for an increased housing credit. The increase in housing credit is affected by increasing a building’s eligible basis from 100% to 130% of the otherwise applicable eligible basis (in the case of a new building) or rehabilitation expenditures (in the case of an existing building). A building designated by a state housing credit agency as requiring an increased housing credit to be financially feasible is treated as being located in a difficult development area.

House bill (sec. 111109)

State housing credit ceiling

The proposal would provide an increase in the state housing credit ceiling for calendar years 2026, 2027, 2028, and 2029 by increasing the population component for each state. In each of the calendar years, the population component of the state housing credit ceiling (after application of the cost-of-living adjustment) would be increased by multiplying the dollar amounts for that year by 1.125.

The increase in state housing ceiling amounts would be effective for calendar years after 2025.

Tax-exempt bond financing

The proposal would modify the tax-exempt bond financing requirement to allow additional buildings financed with tax exempt bonds to qualify for housing credits without receiving a credit allocation from the state housing credit ceiling. Under the proposal, a building would be allowed 4% credits with respect to the entire eligible basis of the project without an allocation from the state or local housing credit agency if at least 25% (rather than 50%) of the aggregate basis of the building is financed with one or more qualified obligations, and one or more of such obligations are part of an issue that (1) has an issue date after 2025, and (2) provides the financing for at least 5% of the aggregate basis of the building and the land on which the building is located. A qualified obligation would be a tax-exempt bond that is part of an issue with an issue date before 2030.

The modification of the tax-exempt bond financing requirement would be effective for buildings placed in service in tax years beginning after 2025. However, in the case of a building with respect to which any expenditures are treated as a separate new building under section 42(e), both the existing building and the separate new building would be treated as having been placed in service on the date the expenditures are treated as placed in service under section 42(e)(4).

Temporary inclusion of Indian areas and rural areas as difficult development areas

Lastly, the proposal would provide a temporary increase in housing credit by expanding the definition of difficult development areas to include certain Indian areas and certain rural areas in the case of buildings place in service after 2025, and before 2030. Such buildings would be eligible for increased housing credit to be calculated by increasing a building's eligible basis from 100% to 130% of the otherwise applicable eligible basis (in the case of a new building) or rehabilitation expenditures (in the case of an existing building).

The JCT estimates that these changes would increase the deficit by $14.1 billion over 10 years.

Senate bill enacted as OBBBA (sec. 70422)

The Senate bill as enacted makes permanent the increase in the state housing credit ceiling that was available in calendar years 2018 through 2021 but decreases the ceiling amount to 12% (instead of 12.5%). This is effective for calendar years beginning after 2025.

Additionally, the Senate bill makes the changes to the tax-exempt bond financing rules proposed by the House bill.

The Senate bill does not include the House bill proposal for the temporary inclusion of Indian areas and rural areas as difficult development areas.

New Markets Tax Credits

Current law

The New Markets Tax Credit (NMTC) is a competitively awarded non-refundable tax credit intended to encourage private capital investment in eligible, low-income communities. Low-income communities are designated by the Community Development Financial Institutions Fund (CDFI), a bureau within the

Department of the Treasury using criteria set forth in the statute. NMTCs are allocated to Community Development Entities (CDEs) by the CDFI under a competitive application process. Investors interested in receiving the credits make Qualified Equity Investments into partnerships with CDEs which then generally loan the amounts to Qualified Active Low Income Community Businesses at below market rates. The investors are allocated the NMTCs from the partnership and reduce their federal income tax liability by claiming the credit (39% over seven years). The NMTC is set to expire on December 31, 2025, with any unallocated NMTCs allowed to be carried forward to 2030.

House bill

This provision is unique to the Senate bill.

Senate bill enacted as OBBBA (sec. 70423)

The Senate bill as enacted permanently extended the NMTC program allowing the CDFI to allocate $5 billion of NMTCs each year going forward. The bill also provides a five-year carryforward for any NMTCs that are not allocated by the CDFI to CDEs in a given year.

The provision is effective beginning in calendar year 2026.

Termination of five-year cost recovery for energy property

Current law

Under present law, section 168(e)(3)(B) lists specific categories of assets that are five-year property for MACRS purposes. Under section 168(e)(3)(B)(vi)(I), this list includes any property described in section 48(a)(3)(A) (applied by substituting “solar or wind energy” for “solar energy” in section 48(a)(3)(A)(i) and disregarding the last sentence of section 48(a)(3)). Thus, for example, this five-year property class includes assets such as equipment using solar or wind energy to generate electricity (e.g., solar panels).

House bill

This proposal is unique to the Senate bill.

Senate bill enacted as OBBBA (sec. 70509)

The Senate bill as enacted strikes section 168(e)(3)(B)(vi)(I) from the Code, removing energy property from being five-year recovery property for purposes of section 168, unless such property is described in another category of section 168(e)(3)(B) or properly included in an asset class of Rev. Proc. 87-56, 1987-2 C.B. 674, that has a five-year MACRS recovery period.

The provision to remove energy property from the five-year property class in the statute is effective for property the construction of which begins after December 31, 2024.

KPMG observation

The removal of wind and solar energy property from the statutory five-year property class will cause taxpayers engaged in such activities to need to determine which asset class would otherwise apply to such assets. Combined with the Senate bill’s permanent reinstatement of 100%-bonus depreciation, this change might not have a significant impact on a taxpayer’s depreciation deduction (e.g., if the otherwise applicable asset class would provide a MACRS recovery period of 20 years or less). However, depending on the activity in which an asset is used, some of these assets might no longer be eligible for bonus depreciation (e.g., if they would have a MACRS recovery period of more than 20 years). Further, since many states decouple from the federal bonus depreciation deduction, this change could impact taxpayers' state income tax liabilities.

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