Energy Tax Alert

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House Passes the One, Big, Beautiful Bill: The Good, the Bad, and the Ugly for the Energy Transition

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On Thursday, May 22, 2025, the House of Representatives passed the bill known as the One, Big, Beautiful Bill (the Final House Bill), including certain amendments related to energy transition tax credits (the Energy Transition Provisions), as part of the budget reconciliation process.

The House Committee on Ways and Means first released the tax-related provisions of the bill, including an initial version of the Energy Transition Provisions (House W&M Draft), on Tuesday, May 12, 2025. The Energy Transition Provisions in the Final House Bill are the same as the House W&M Draft, subject to certain critical amendments made on the evening of Wednesday, May 21, 2025 as part of the House Rules Committee markup (referred to as the Manager's Amendment).[1]

The Final House Bill now moves to the Senate for review, consideration, and revision over the next few weeks. President Trump has requested that the final bill be ready for his signature by July 4. Meeting this timeline may prove challenging and will require the Senate to proceed swiftly with anticipated revisions.

Although the Final House Bill includes a few provisions that ultimately could prove beneficial to the energy transition, the balance of the bill spans a continuum from adverse to severely detrimental, including a few changes that were made significantly worse by the Manager's Amendment.

The following is our take on the good, the bad, and the ugly of the Final House Bill:

The Good

- The Final House Bill would not touch the Section 45 PTC or the Section 48 ITC. As widely expected, the Final House Bill would not apply to the production tax credit under Section 45 (PTC) or the investment tax credit under Section 48 (ITC),[2] which generally are available for projects that began construction[3] before 2025. As a result, the robust pipeline of renewable generation and energy storage projects that began construction in 2024 (or earlier), including in anticipation of tax reform, would continue to be eligible for the Section 45 PTC or the Section 48 ITC, as the case may be, at full rates, without early phase down and with the full benefit of transferability.

[1] Click here for a summary of the Energy Transition Provisions in the Final House Bill, which highlights the eleventh-hour changes made by the Manager's Amendment. In addition, click here for a deep dive into the Foreign Entity Provisions (as defined below) in the Final House Bill.

[2] All "Section" references herein are intended to refer to sections of the Internal Revenue Code of 1986, as amended.

[3] See, e.g., Notice 2022-61; Notice 2018-59; Notice 2013-29.

- Transferability would remain in place for the Section 45Y CEPC and the Section 48E CEIC. The House W&M Draft would have repealed transferability for the clean electricity production credit under Section 45Y (CEPC) and the clean electricity investment credit under Section 48E (CEIC), in each case, for projects that began construction more than two years after the bill's enactment. The Final House Bill walks back the repeal and would fully restore transferability for these credits. However, this change certainly feels like a hollow gesture in light of the early sunset provision that would apply to the Section 45Y CEPC and the Section 48 CEIC (as discussed below).
- The direct pay election lives to fight another day. The Final House Bill would not repeal or limit the direct pay election. This election generally permits non-profit organizations, state and local governmental entities, and other non-taxpaying entities to receive a cash payment in lieu of claiming energy transition tax credits. Taxable entities may make the election only for the carbon capture and sequestration credit under Section 45Q (CCS Credit), the advanced manufacturing production credit under Section 45X (AMPC), and the clean hydrogen production credit under Section 45V (CHPC) and, in each case, only for a 5-year period. However, as discussed below, the Section 45V CHPC would be repealed for hydrogen facilities that do not begin construction before 2026.
- The Section 45Q CCS Credit would come out relatively unscathed. The good news is that the Section 45Q CCS Credit—available under current law for carbon capture equipment that begins construction before 2033—would continue to have room to run. The bad news is that the Section 45Q CCS Credit would be subject to both the transferability repeal (except for carbon capture equipment that begins construction within two years of the bill's enactment) and the project-level Foreign Entity Provisions. Carbon capture projects without the benefit of transferability may struggle to utilize the Section 45Q CCS Credit outside of the 5-year direct pay period, unless a more robust tax equity market develops for this incentive.
- The Section 45Z CFPC would get a big win. The Final House Bill would extend the clean fuel production credit under Section 45Z (CFPC) for four years (through the end of 2031) and would exempt this credit from the Foreign Entity Provisions. Yes, the Section 45Z CFPC would be subject to transferability repeal for clean transportation fuel produced and sold after 2027. However, under current law, the Section 45Z CFPC would have expired at the end of 2027, anyway, and therefore the transferability window of the Section 45Z CFPC essentially would be unchanged under the Final House Bill. Finally, the Energy Transition Provisions would liberalize certain aspects of the required life cycle analysis for purposes of the Section 45Z CFPC—a very welcomed change within the clean fuels industry.

The Bad

- The Final House Bill would repeal several tax credits with short transition periods. The Section 45V CHPC would be repealed for hydrogen facilities that do not begin construction before 2026. This proposal effectively puts the hydrogen industry on notice that, assuming the Final House Bill is enacted in current form, taxpayers must take steps to satisfy the Physical Work Test or the Five Percent Safe Harbor for any planned qualified hydrogen facility in the next ~6 months in order to secure the credit. Similarly, the alternative fuel vehicle refueling property credit under Section 30C would be repealed for EV charging stations placed in service after 2025, which would put an extremely short fuse on this credit.[4]

[4] In addition, the Final House Bill would repeal (a) the previously-owned clean vehicle credit under Section 25E with respect to any vehicle acquired after 2025, (b) the clean vehicle credit under Section 30D with respect to any vehicle placed in service after 2025 (subject to a transition rule for vehicles placed in service in 2026), (c) the qualified commercial clean vehicles credit under Section 45W acquired after 2025 (subject to a transition rule), (d) the energy efficient home improvement credit under Section 25C with respect to any property placed in service after 2025, (e) the residential clean energy credit under Section 25D with respect to any property placed in service after 2025, and (f) the new energy efficient home credit under Section 45L with respect to any qualified new energy efficient home acquired after 2025 (subject to a transition rule).

- The Section 45Y CEPC and Section 48E CEIC would be subject to an unforgiving sunset provision. Under the Final House Bill, in order to be eligible for the Section 45Y CEPC or the Section 48E CEIC, a project must (1) begin construction within the first 60 days after the bill's enactment **AND** (2) be placed in service before 2029.[5] This sunset provision would replace a more taxpayer-friendly phase down—proposed in the House W&M Draft—that would have first applied to projects placed in service in 2029.[6] The sunset provision would present several challenges to developers, including:
  - First, the clock is ticking to achieve start of construction for new projects. If the Senate adopts this particular aspect of the Final House Bill, developers would have between now and 60 days after enactment (call it October 15 if the final reconciliation bill is signed into law in mid-August) to achieve start of construction, which may start (or perhaps already has started) a mad sprint by developers to purchase equipment or commission physical work for projects in their pipelines.
  - Second, even if developers clear the start-of-construction hurdle described above for projects in their pipelines, these developers would have to come to grips with highly-accelerated development, construction, and financing schedules in order to place their projects in service by the end of 2028, with significant risk that routine delays could push placed-in-service dates into 2029 and eliminate credit eligibility altogether.
  - Finally, the sunset provision has a subtle retroactive quality. The sunset provision would apply to credit-eligible projects that began construction early in 2025 (that is, before taxpayers had notice of the Manager's Amendment on May 21, 2025) and presumably were under development long before that. Owners surely set construction schedules and milestones, secured financing, and broke ground for these projects under current law (which included a phase out starting in 2032 at the earliest) and long before they had any notice of the sunset.
- The Final House Bill would curtail the Section 45X AMPC. The Section 45X AMPC would be subject to an accelerated phase down and the Foreign Entity Provisions (discussed below). This came as a surprise to many. Commentators and practitioners generally expected the Section 45X AMPC to escape the current budget reconciliation process unscathed given its contribution to onshoring manufacturing and the perceived alignment with the Republican agenda.
- The Final House Bill would eliminate the Section 48E CEIC for residential solar leasing. In an unexpected development, the Manager's Amendment would eliminate the Section 48E CEIC for residential solar providers that install solar equipment (i.e., rooftop PV systems and solar hot water heaters) on private homes, retain ownership, and then lease the equipment to the homeowners, provided that the equipment would have qualified for the residential clean energy credit under Section 25D if the homeowner owned the equipment. This provision would apply to any investment made with respect to leased solar equipment starting in 2026.[7]

[5] The Manager's Amendment would provide an exception for (1) any advanced nuclear facility defined in Section 45J(d)(2) if the facility begins construction before 2029 and (2) in the case of Section 45Y CEPC, any nuclear facility the reactor design for which is approved by the Nuclear Regulatory Commission if expansion begins before 2029.

[6] Under the House W&M Draft, these credits would have phased down to 80 percent for projects placed in service in 2029, 60 percent for projects placed in service in 2030, 40 percent for projects placed in service in 2031, and 0 percent thereafter.

[7] The provision would not apply to solar providers that retain ownership of the solar equipment and sell electricity to homeowners under a power purchase agreement.

The Ugly

- The Foreign Entity Provisions would put significant restrictions and limitations on projects.
  - The Final House Bill would include new provisions (the Foreign Entity Provisions) that would limit tax credit eligibility for projects deemed to have connectivity to certain foreign countries, particularly China.
  - Starting in 2026, the Foreign Entity Provisions would prevent the owner of a project from claiming the Section 45Y CEPC, the Section 48E CEIC, the Section 45X AMPC, the Section 45Q CCS Credit, or the zero-emission nuclear power production credit under Section 45U if more than 50 percent of the project owner's equity is held, directly or indirectly, by the Chinese government or an entity that is organized, or has its principal place of business located in, China (Specified Foreign Entities).[8] The Foreign Entity Provisions would become more restrictive in 2028, at which point the five credits listed above would be disallowed for any project owner if one Specified Foreign Entity owns 10 percent of the owner's equity or multiple Specified Foreign Entities hold 25 percent or more of the owner's debt or equity (such owner, a Foreign-Influenced Entity).
  - Starting in 2028, the Foreign Entity Provisions would prevent a project owner from claiming the five types of tax credits listed above for any year if, in the immediately prior year, the owner knowingly makes payments to Specified Foreign Entities above certain thresholds.[9] A similar provision would prevent a project owner from claiming the Section 45Y CEPC, the Section 48E CEIC, or the Section 45X AMPC if the owner makes yearly payments above even more restrictive thresholds to Specified Foreign Entities and/or Foreign-Influenced Entities.[10] In the case of the Section 48E CEIC, any violation of the latter provision in the 10 years following the applicable project's placed-in-service date would require recapture of 100 percent of the credit.
  - Finally, the Foreign Entity Provisions would apply a project-level restriction. Renewable generation and energy storage projects generally would be ineligible for the Section 45Y CEPC or the Section 48E CEIC, as applicable, if the applicable project includes any component, subcomponent, or critical mineral that is extracted, processed, recycled, manufactured, or assembled by a Specified Foreign Entity or Foreign-Influenced Entity, subject to a limited exception for certain subcomponents and materials included in the project. This prohibition is perhaps the most concerning of the Final House Bill because of the sheer number of current and planned projects with components (particularly solar) and critical minerals (particularly battery storage) produced in China, and the significant due diligence challenge that this prohibition would present to the investors, lenders, and tax credit purchasers trying to underwrite projects and the corresponding tax credits. Under a transition rule, this restriction would not apply to projects that begin construction before 2026.

[8] The term "Specified Foreign Entity" also would include entities that are controlled by Russia, Iran, and North Korea, along with certain listed foreign entities of concern. Nonetheless, the Foreign Entity Provisions appear to be primarily aimed at Chinese participation in the US renewables market.

[9] Generally, dividends, interest, compensation for services, rentals, or royalties, guarantees, or any other fixed, determinable, annual, or periodic (FDAP) payments to (a) one Specified Foreign Entity in an amount equal to or greater than 10 percent of its total FDAP payments for the previous year or (b) multiple Specified Foreign Entities in an amount equal to or greater than 25 percent of its total FDAP payments for previous year.

[10] Generally, FDAP payments to (a) any one Specified Foreign Entity or Foreign-Influenced Entity during the year equal to or greater than 5 percent of the total FDAP payments related to the applicable tax credit generating activity (i.e., the production of electricity, storage, or the production of eligible components within a particular category) or (b) multiple Foreign Controlled Entities or Foreign-Influenced Entities during the year equal to or greater than 15 percent of the total FDAP related to the applicable tax credit generating activity.

The Wild Card

- The Final House Bill's general business tax cuts could have an impact on the tax credit market.
  - The Final House Bill would provide significant general tax cuts to US businesses. Most notably, the bill would restore 100 percent bonus depreciation for property that is placed in service or acquired between January 20, 2025 and the end of 2029; allow for full expensing of research and development costs incurred between January 1, 2025 and the end of 2029; and modify the limitation on interest deductibility under Section 163(j) to equal 30 percent of a taxpayer's EBITDA rather than EBIT between January 1, 2025 and the end of 2029, thereby increasing the limitation for many taxpayers and permitting additional yearly interest deductions for these years.
  - These provisions are not bad or ugly. To the contrary, these provisions would provide valuable reduction and/or deferral of federal income tax to many taxpayers, including taxpayers constructing, owning and/or operating credit-eligible projects. In particular, the restoration of 100 percent bonus depreciation would significantly reduce the after-tax cost of constructing or acquiring a project and, depending on a project owner's particular circumstances, the Section 163(j) amendment could reduce the after-tax cost of project financing and other borrowings.
  - However, as a result of these changes, corporate taxpayers that routinely acquire depreciable property and/or are highly levered could have federal income tax liability below current projections for the foreseeable future. This trend could reduce demand for tax credit transfers and even tax equity investment, particularly as a broader population of corporates has entered the tax equity market in recent years. Moreover, given that these tax cuts would be retroactive to January 2025, the Final House Bill, if finalized in current form, could cause many corporates to find themselves with less projected federal income tax liability, and therefore reduced tax credit appetite, for 2025, which could impact 2025 tax credit transfers currently under negotiation.[11]

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[11] This dynamic could even prompt affected corporates to renegotiate transactions that have signed but are awaiting funding.

If you have questions concerning the contents of this alert, or would like more information about Weil's Tax practice, please speak to your regular contact at Weil, or to:

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