

Alert | Energy & Natural Resources/Tax



December 2020

Taxpayer Certainty and Disaster Tax Relief Act of 2020: Spotlight on the Extensions of Certain Alternative Energy Tax Credits

On Dec. 21, 2020, Congress passed a COVID-19 relief bill (the Consolidated Appropriations Act, 2021), which President Trump signed into law on Dec. 27, 2020. The bill includes the Taxpayer Certainty and Disaster Tax Relief Act of 2020, which provides much-anticipated extensions to critical alternative energy tax credits (including those for wind and solar projects) certain of which were on the brink of expiring. Generally, the bill provides for one- to two-year extensions depending on the energy generated from the project and modifies existing tax credit phasedown schedules provided in the Internal Revenue Code (the Code).

In particular, a noteworthy feature of the bill is that offshore wind projects which start construction through 2025 are eligible for a 30% investment tax credit (ITC) (without a phasedown). Additionally, sustaining the solar ITC at the 26% level for an additional two years is a valuable amendment in the bill. Below is a summary of these and other extensions and a new tax credit for waste energy recovery property.

Extensions Summary Table

Energy Source and Tax Credit Type	COVID-19 Relief Bill Impact	
	<i>Start of construction date range including proposed extension</i>	<i>Tax credit level (assuming the project qualifies for the credit when it is placed in service)</i>
Solar ITC—Two-Year Extension	Jan. 1, 2020-Dec. 31, 2022	26% ITC, provided the project is placed in service by Dec. 31, 2025 (otherwise, 10% ITC)
	Jan. 1, 2023-Dec. 31, 2023	22% ITC, provided the project is placed in service by Dec. 31, 2025 (otherwise, 10% ITC)
	Jan. 1, 2024 and later	10% ITC
Residential (Nonbusiness) Solar ITC—Two-Year Extension	Jan. 1, 2020-Dec. 31, 2022	26% ITC
	Jan. 1, 2023-Dec. 31, 2023	22% ITC
Wind ITC (Onshore)—One-Year Extension	Jan. 1, 2020-Dec. 31, 2021	18% ITC
Wind ITC (Offshore)	On or before Dec. 31, 2025	30% ITC
Wind Production Tax Credit (PTC) (an alternative to the ITC)—One-Year Extension	Jan. 1, 2020-Dec. 31, 2021	60% PTC (10-year)
Fuel cell, fiber-optic solar and small wind facilities—Two-year extension <i>-and-</i> Waste energy recovery property (with capacity of 50 MW or less)—New <i>Waste energy recovery property is property that generates electricity solely from heat from buildings or equipment that do not have the primary purpose of generating electricity</i>	Jan. 1, 2020-Dec. 31, 2022	26% ITC, provided the project is placed in service by Dec. 31, 2025
	Jan. 1, 2023-Dec. 31, 2023	22% ITC, provided the project is placed in service by Dec. 31, 2025

Combined heat and power and microturbine facilities—Two-year extension	On or before Dec. 31, 2023	10% ITC
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Other Extensions

- The 12-year PTC provided in Code Section 45Q for carbon oxide sequestration similarly benefits from a two-year extension to begin construction (to the end of 2025).
- Closed-loop biomass, open-loop biomass, geothermal, landfill gas, trash, hydropower, and marine and hydrokinetic renewable energy facilities each receive one-year extensions for beginning construction deadlines (to the end of 2021) for the applicable PTC and, alternatively, the ITC.

Concluding Comments

- The above extensions relate to when construction must begin to qualify for the applicable tax credits and tax credit amounts, but do not affect the rules for qualification for the credits (for instance, the four-year continuous construction safe harbor still applies where applicable).
- While the COVID-19 relief bill provides welcome benefits to various types of renewable energy property (including wind and solar), it does not provide the much-discussed tax credits for standalone energy storage.

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