

**THOUGHT LEADERSHIP**

LEGAL UPDATES

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**Services**

Solar Energy  
Tax Credits

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## Congress Extends Tax Incentives for Wind and Solar Development

Congress this week extended both the wind production tax credit (PTC) and the solar investment tax credit (ITC) as part of the Consolidated Appropriations Act of 2016, an omnibus government funding package. The extended tax credits provide financial incentives that will help drive development and investment in wind and solar energy projects through the end of this decade.

The PTC expired at the end of 2014 for projects that had not yet begun construction, and the most robust portion of the ITC was scheduled to expire at the end of 2016. Uncertainty over whether or not federal renewable tax credits would continue created an unstable financing environment for wind and solar generation projects.

The Appropriations Act presents an opportunity to stabilize and support the wind and solar industries. The Act allows for the export of crude oil from the United States, a practice that has been banned for 40 years. Many congressional Democrats opposed lifting the ban and were prepared to oppose the Act. Democratic support for the Republican funding bill was contingent on inclusion of the above tax incentives for wind and solar generation.

### **The New Tax Credit Schedule**

The legislation maintains 100 percent of the 2.3 cents per kilowatt hour PTC for 2016, as long as construction on the wind-power project begins before the end of 2016. The PTC then declines each year (to 80 percent of the current credit in 2017, 60 percent in 2018, 40 percent in 2019 and 20 percent in 2020) until it expires at the end of 2020.

The ITC on residential and commercial solar systems continues at 30 percent through 2019. It steps down to 26 percent in 2020 and to 22 percent in 2021,

then is maintained at 10 percent. Eligibility for the ITC is no longer based on the date the project goes into service. Rather, it is now determined by the date construction begins, with one caveat: The solar project must be placed in service by the end of 2023, otherwise the ITC is 10 percent.

It is important for renewable project developers to understand that the IRS has imbued “construction” with legal meaning. The IRS has established two methods by which a developer can begin construction for the purposes of receiving tax credit. The first such method, the “Physical Work Test,” provides that construction begins when physical work of a significant nature has started with respect to a project and thereafter progresses pursuant to a continuous program of construction (the “Continuous Construction Test”). The second method, the “Safe Harbor,” stipulates that construction will have commenced if: (a) a developer incurs expenses in an amount equal to five percent (5%) or more of the total cost of a project; and (b) the developer makes continuous efforts to complete construction of the project (the “Continuous Efforts Test”).

Read our previous alert regarding IRS PTC qualification for renewable and alternative energy facilities for additional information.

### **What This Means to You**

The PTC and ITC extensions provide financial incentives through the end of the decade to help tax credit investors and project owners maximize the use of tax credits to drive development and investment in renewable energy projects.

### **Contact Us**

Our Renewable Energy Tax Credit team represents companies in all phases of development and financing of renewable projects. For additional information on maximizing federal tax credits and renewable generation contracting contact John Crossley at 816.983.8339.