Happy Earth Day: Potential Changes to Energy Taxes

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Learning Objectives

- Provide participants with an understanding of significant energy-related tax proposals.
- Review the energy related provisions put forth by the Biden Administration.
- Review recent legislative bills and the implications of these possible changes for the energy sector.
Understanding the Overall Tax Landscape

- Corporate rate increase to 25%? 28%?
- Will the SALT cap be repealed?
- Repeal BEAT and replace with SHIELD?
- Book income tax?
- Changes to GILTI?
- New R&D credits?
Current State of Play: Balance of Power

- The Democrats control the House of Representatives
  - They have a 6-8 seat majority
  - This majority is one of the smallest since 1960
  - In the House, an overall consensus within the Democratic party is needed to move legislation. Republican support is helpful, but not necessary

- The Democrats control the Senate
  - Representation is equal 50/50 - Vice President Harris serves as a tie-breaker
  - Democrats and Republicans have a power sharing agreement
    - Democrats will control the agenda and Committee chairs, but Committee make up is equal
    - On the Senate floor, a 60 vote majority will be needed for legislation other than nominations and budget reconciliation, which require a simple majority

- Budget Reconciliation is the likely path forward for tax legislation
  - It can be used to move bills that address (i) revenues, (ii) spending on existing programs, or the (iii) debt
  - Historically, was interpreted to be limited to use once a fiscal year for each
  - However, new parliamentarian view may allow more frequent use
Potential Path Forward

- The most likely vehicle for material tax changes is the forthcoming infrastructure bill
- The contours of the bill are being developed
  - Start, but not the end, is the Administration’s Jobs Plan.
  - Material Congressional input is likely and needed, and ideas from the Democratic caucus are the core of the Administration’s initial plan.
  - Current flurry of bill introduction and reintroduction is the opening of the negotiating process.
- There is potential for a bipartisan effort, but Democratic and Republican caucus politics make that unlikely
  - One thing that could change that is resurgence of earmarks.
- How to handicap the prospects of potential change
  - Better than even odds that a bill gets done before year end, but content of that bill is fluid
  - Reconciliation is the likely path, so evaluate whether a particular change is reconciliation eligible
  - Pay attention to who is a sponsor or proponent of a bill or idea. Are they politically important (e.g., Manchin) or chair of a relevant committee (e.g., Wyden or Neal)?
  - Is the proposal messaging or is there substantive legislative text supporting it?
Carbon Capture: Section 45Q

Biden Plan

- Expand and make easier to use for hard-to-decarbonize industrial applications, direct air capture, and retrofits of existing power plants

- Direct-pay option
  - Allows taxpayers to treat the credits as overpayment of tax. If the taxpayer has no tax liability, the credit would then be refunded to the taxpayer in cash.

- Extension unclear
  - Extended through 2025 under the Consolidated Appropriations Act of 2021

House and Senate Proposals

- H.R. 1062: Accelerating Carbon Capture and Extending Secure Storage through 45Q (ACCESS 45Q) Act
  - Extended to Jan. 1, 2036 (10 year extension)
  - Election to take any portion of 45Q credit as “making a payment against the tax imposed by subtitle A for the taxable year equal to the amount of such portion.”
  - Amend 59A(b) to allow credit taken against BEAT
  - Similar proposals in bills HR 2307, HR 848

- HR 2633: Expansion of 45Q
  - Extend credit for 20 years
  - Increase credit amount
  - Expands definition of “qualified facility” to include facilities which capture
    - Maximum 500,000 metric tons of carbon oxide into the atmosphere during the taxable year, not less than 10,000 metric tons of qualified carbon oxide during the taxable year which is utilized in a manner described in subsection (f)(5)
    - Minimum 25,000 metric tons of qualified carbon oxide during the taxable year
  - Removes construction before 2026 requirement
Carbon Fees
House and Senate Proposals

— S. 685: America’s Clean Future Fund Act
  • Carbon fee on the use, sale, or transfer of fuel that emits greenhouse gases starting after 2022, and transfer the revenue to a clean future trust fund
    • Refund for Carbon Capture, Sequestration & Utilization
    • 75% of carbon fee revenues are paid directly to low- and middle-income individuals through quarterly rebate (Carbon Dividend)

— HR 2307: The Energy Innovation and Carbon Dividend Act of 2021
  • 100% of net revenue would be a rebate to American families in form of “Carbon Dividend”
  • Carbon fee: a carbon fee on any covered entity’s emitting use, or sale or transfer for an emitting use, of any covered fuel
    • Carbon Fee = Greenhouse gas content * carbon fee rate
      • Carbon Fee Rate = $15 in 2021; $10 added to preceding year’s rate for subsequent years
    • Agriculture exemption
  • Carbon Fee imposed for imports of covered fuel, with a credit allowed against the fee on imports for any carbon fee already paid on such fuel
  • This Act amassed 86 bi-partisan sponsors in last session

Bipartisan Support
Section 48C: Clean Advanced Energy Tax Credit

**Biden Plan**
- Extension unclear
- Expansion of 48C to “build a robust U.S. manufacturing capacity to supply clean energy projects with American-made parts and equipment”
- Goal to support domestic clean energy manufacturing

**House Proposals**
- HR 507: Innovative Energy Manufacturing Act of 2021
  - Extends 48C
  - The amount of qualifying advanced project credit limitation shall not exceed:
    - $2,500,000,000 for each of calendar years 2022, 2023, 2024, 2025, and 2026;
    - $0 thereafter
  - Carryover of unused limitation

**Senate Plan**
- American Jobs in Energy Manufacturing Act of 2021 (Manchin, Stabenow)
- Broadens use of Sec. 48C by expanding the definition of “qualifying advanced energy project” and expanding the production activities, including:
  - Energy conservation technologies
  - Electric or fuel cell vehicles & charging infrastructure
  - Hybrid vehicles
- Allows for re-fit of existing facilities

- HR 848: GREEN Act
  - Revives Section 48C qualified advanced energy property credit, with an additional $2.5 billion in credits for each year from 2022 through and including 2026.
**Section 48: Investment Tax Credit (ITC)**

**Biden Plan**
- Extension for 10 years
  - Unclear when this period would begin
- Direct-pay option
- Stand-alone energy storage ITC

**Senate Proposal**
- Biomass Thermal Utilization (BTU) Act
  - Make biomass fuel property eligible for investment ITC at an initial rate of 30% before expiring at the end of 2028
  - Corresponding residential credit at 30% under Sec. 25

**House and Senate Proposals**
- Senate Finance Committee: Restore full value of ITC under BEAT
- HR 1684: Energy Storage Tax Incentive and Deployment Act of 2021; S. 627
  - Energy credit for storage technologies: Sec. 48(a)
    - Equipment which receives, stores, and delivers energy using (including electrolysis), thermal energy storage, regenerative fuel cells, flywheels, capacitors, superconducting magnets, or other technologies identified by the Secretary, and which has a minimum capacity of 5 kilowatt hours
  - Residential energy-efficient property tax credit for battery storage technology
    - Min 3 kilowatt hours
    - Installed on or in connection with a dwelling unit located in the US and used as a residence by the taxpayer
Solar ITC

Biden Plan

- Increase Solar ITC credit from 26% to 30% until 2025
- As is:

<table>
<thead>
<tr>
<th>If construction begins:</th>
<th>And the project is placed in service by:</th>
<th>The applicable ITC percentage is:</th>
</tr>
</thead>
<tbody>
<tr>
<td>Prior to 2020</td>
<td>The end of 2025</td>
<td>30%</td>
</tr>
<tr>
<td>In 2020</td>
<td>The end of 2025</td>
<td>26%</td>
</tr>
<tr>
<td>In 2021</td>
<td>The end of 2025</td>
<td>26%</td>
</tr>
<tr>
<td>In 2022</td>
<td>The end of 2025</td>
<td>26%</td>
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<tr>
<td>In 2023</td>
<td>The end of 2025</td>
<td>22%</td>
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<tr>
<td>Before 2024</td>
<td>After 2025</td>
<td>10%</td>
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<tr>
<td>2024 or later</td>
<td>In any year</td>
<td>10%</td>
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House Proposals

- HR 2356: Sunshine Forever Act
  - Extends Solar ITC for 10 years (through 2034)
  - Reinstate 30% credit

- HR 848: GREEN Act
  - Extends Solar ITC to 2029
  - Solar and Geothermal ITC at 30% rate
New Electric Transmission ITC

Biden Plan

– Incentivizes the buildout of at least 20 gigawatts of high-voltage capacity power lines and mobilizes tens of billions in private capital off the sidelines

Senate and House Proposals

– Electric Power Infrastructure Improvement Act (House and Senate)

– 30% ITC for “qualifying electric power transmission line property”
  • At least 500 megawatts and 275 kilovolts in capacity
  • Deliver power produced in either a rural area or offshore, and
  • Placed in service by December 31, 2031
Section 45: Production Tax Credit (PTC)

**Biden Plan**
- Extend Production Tax Credit for 10 years
- Direct-pay option

**House and Senate Proposals**
- Senate Finance Committee: Restore full value of PTC under BEAT
- HR 848: GREEN Act: PTC for wind energy preserved at the current phase-out level of 60% through the end of 2026
- S. 532: Rural Wind Energy Modernization and Extension Act of 2021
  - Amends Sec. 48 to extend the energy tax credit to distributed wind energy property
  - Distributed wind energy: Property that uses one or more wind turbines in a single project with a total nameplate capacity not exceeding 10 MW which:
    - are installed on properties with annual energy consumption of property at least 50% wind energy, or
    - are used as part of subscription-based/shared-ownership program benefitting min. 5 customers & allocates energy production proportionately and no more than 50% of the energy produced is claimed by any one owner or subscriber.
  - Credit phases down beginning in 2028

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PTC and ITC for Renewable Chemicals

Biden Plan

- No specific plan

Senate and House Proposals

- Renewable Chemicals Act (Reintroduced 2021)
- Creates Sec. 45U, a 5-year credit
- PTC for renewable chemicals: 15% of sales price of each pound of renewable chemical produced by taxpayer or for the taxpayer under a binding written contract and sold for FMV at retail minus a percentage equal to so much of the percentage of the renewable chemical as is not bio-based content
  - Renewable chemical
    - Min 95% is bio-based
    - Produced in US or territory
    - Not sold or used for production for food, feed, fuel, pharmaceuticals
    - USDA certified bio-based product
    - Chemical intermediate under code
- ITC of 30% of basis of eligible property which is a part of a renewable chemical production facility placed in service by the taxpayer during such taxable year
Hydrogen Proposals

Biden Plan

– New PTC for clean energy projects located in distressed communities, such as for decarbonized hydrogen demonstration projects

House Plan

– HR 1788: Clean Hydrogen Innovation Act of 2021
  • Loan Program Office (LPO) funds made available to hydrogen technologies including technology-neutral clean production, infrastructure, storage, and utilization for electrical, industrial, residential, and transportation applications
  • Requires the DoE Secretary to issue a report to the House Energy and Commerce Committee on the projects listed within the legislation
Section 48A & Coal

Biden Plan

- No specific plans other than to reduce reliance on fossil fuels and end tax incentives

Senate Proposals

- S. 759
  - Extend the refined coal tax credit for 10 years “and give new opportunities for facilities to qualify for the tax credit.”
  - 3-year window, from December 31, 2020 through January 1, 2024, in which new coal facilities utilizing refined coal would be able to qualify for the credit

- S. 661: Carbon Capture Modernization Act
  - Sec. 48A tax credit
  - Allow coal facilities to better support the use of carbon capture, utilization and storage (CCUS) technology
  - Relaxes efficiency requirements for new and retrofit projects if they include CCS (CCS units would be treated the same as IGCC (gasification) units)
  - Min. 60% CO2 capture and sequestration required for existing units
Electric Vehicles

**Biden Plan**

- $174B investment
  - POS rebates for customers and tax incentives
  - Grant and incentive programs for state and local governments and private sector
    - Goal: 500k EV chargers by 2030
- Use of EVs as storage: use excess capability from cars/trucks to send back to grids during high need times
- Electrify the federal fleet
  - Production capacity available?

**House Proposals**

  - Expands the alternative fuel refueling property credit, and extends it through 2026
    - Sec. 30C(a): credit = 30% plus up to 20% of costs that exceed the credit's limits if such costs are used for EVs for public use or commercial of governmental vehicles
    - $100k cap on credit, up from $30k (if subject to allowance for depreciation)
- H.R. 1271, the Electric Credit Access Ready at Sale (Electric CARS) Act of 2021
  - Plug-in electric vehicle, Sec. 30D:
    - Extended until 2032
    - The taxpayer to whom the credit is allowed for any taxable year with respect to a vehicle may assign such credit to the person who financed the purchase (or lease of at least 2 years) of such vehicle.
    - Carryforward of unused credit for up to 4 taxable years
  - Alternative Fuel Vehicle Refueling Property Credit
    - 30C: extended until 2031
  - Alternative Motor Vehicle Credit
    - 30B(k): extended to 2031
Alternative Fuels

**Biden Plan**

— Establishes a blender’s tax credit for sustainable aviation fuel, to “[enable] the decarbonization of a key portion of the U.S. transportation sector”

**House Proposal**

— HR 741: Sustainable Aviation Fuel Act
  • National goal established to achieve net 35% reduction in GHG emissions by 2035 and net zero by 2050
  • Benefits for producers and blenders, including:
    • Federal grant program to fund domestic projects to produce, transport, blend, and store SAF through the FAA
    • Investment Tax Credit expansion
    • Blender’s tax credit of $1.50 and $1.75 per gallon for fuel that reduces GHG by 50% and 100%, respectively

— HR 848: Growing Renewable Energy and Efficiency Now (GREEN) Act of 2021
  • Biodiesel and Renewable Diesel Credit
    • Sec. 40A credit extended through 2025
    • Credit per gallon for years after 2022:
      • $0.75 before 2024, $0.50 before 2025, $0.33, before 2026
  • Alternative Fuel Credit
    • Sec. 6426(d) extended through 2025
    • Credit per gallon after 2022:
      • $0.50 before 2023, $0.38 before 2024, $0.25 before 2025, $0.17 before 2026
  • Alternative Fuel Mixture Credit
    • Sec. 6426(e) extended through 2025
    • Same credit phase-outs as Alternative Fuel Credit
  • Extension of second generation biofuel incentives
    • Section 40(b)(6) extended to 2027
Additional Tax Extenders

HR 848: Growing Renewable Energy and Efficiency Now (GREEN) Act

- PTC for geothermal energy is revived and extended through the end of 2021; Geothermal is then eligible for a higher ITC at 30%, with phase-outs

- ITC for fiber-optic solar equipment, fuel cell property, microturbine property, combined heat and power property, small wind energy property, biogas property, waste energy recovery property, and offshore wind property is extended at 30% through the end of 2026

- Energy storage technology and linear generators eligible for ITC at 30% through 2026, then phase-outs

- Creates Sec. 25E, new refundable credit for buyers of used plug-in electric cars through 2026

- Extends the alternative fuel vehicle refueling property credit through 2026 (Section 30C)

- Extends the credit for the purchase of a qualified fuel cell motor vehicle through 2026 (Section 30B)
Additional Tax Extenders

Clean Energy for America Act (Sen. Wyden)

- Taxpayers can choose between PTC or ITC based on the carbon emissions of the electricity generated measured as grams of CO2e emitted per KWh generated.
  - PTC: 2.5 cents per KWh, 10-year period after placed in service
  - ITC: 30% of investment in year placed in service

- Direct-pay election available

- Grid improvements eligible for 30% ITC

- Technology-neutral incentive for the domestic production of clean fuels
  - Phased out over 5-years when EPA/DoE determine carbon emissions down 75% since 2019

- Repeals per-manufacturer cap on EV credit and makes credit to individuals refundable

- Incentives for residential and commercial energy efficiency
The Green New Deal(s)

- Green New Deal
  - Carbon neutral by 2030
    - 10-year to overhaul energy efficiency
  - Potential revival of CCC for green energy jobs
  - Authorize up to $1 trillion for cities, tribes and territories to fund their own localized versions of the Green New Deal

- Green New Deal for Public Housing Act
  - Provides grants for public housing to become energy efficient, including:
    - Deep energy retrofits at public housing
    - Creates Renewable Community Energy Generation.
      - PHAs will be allowed to retain up to 90% of any profits from selling this energy and residents will be given the opportunity where possible to determine how the funds shall be used
Fossil Fuels

Biden and several Congressional proposals seek to end fossil fuel tax incentives

**Biden**
- Eliminate “special” tax preferences given to those in the fossil fuel industry

**HR 8411: End Oil and Gas Tax Subsidies Act of 2021 (expected to be reintroduced)**
- Sec. 45I: Eliminates the tax credit for production from marginal and inefficient wells
- Sec. 167(h): Amortization of geological and geophysical expenditures extended from 24 mo. to 7 years
- Sec. 43: 15% enhancing oil recovery credit eliminated
- Sec. 263(c): Eliminates intangible drilling and development costs in case of oil and gas wells
- Sec. 193: Deduction for tertiary injectants repealed
- Sec. 469(c)(3): Repeals exception to passive loss limitations for working interests in oil and gas properties
- Sec. 199A: Amended to disallow QBI for oil and gas activities
- Sec. 472: LIFO inventory method cannot be used for oil and gas companies (subject to certain thresholds)
- Sec. 4612: Amended to clarify tar sands as crude oil for excise tax purposes
Fossil Fuels

Biden and several Congressional proposals seek to end fossil fuel tax incentives

End Polluter Welfare Act of 2021 (Sen. Sanders)

- Removes government funding for coal plants and other fossil fuel projects
- Repeals the exclusion of foreign oil and gas extraction income from GILTI
- Eliminates the tax credit of between $10 and $20 per metric ton of carbon sequestered available to industrial facilities such as coal plant
- Terminates various tax expenditures, including:
  - Section 461(i)(2): Eliminates the special rule for oil and gas wells that allows oil and gas corporations to accelerate deductions on expenses related to wells.
  - Section 613A: Eliminates the ability of oil and gas companies to deduct 15% of sales revenues to reflect declining value of their investment without regard to actual decline in value of their investment.
  - Section 168(e)(3)(C)(iii): Eliminates the depreciation provision that allows a 7-year depreciation period for Alaskan natural gas pipelines instead of the standard 15-year period.
  - Section 468: Eliminates the tax deduction for certain costs related to mining and waste site reclamation and closure.
  - Section 48A and Section 48B: Eliminates tax credits for construction of advanced coal plants.

Senate Finance Committee

- No specific proposals, although in the past Comm. Chair Sen. Wyden has indicated preference for replacing fossil fuel incentives with clean energy incentives (former S. 2657)
Questions?

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