BRACEWELL

PRG Pulse 2024 Post-Election Analysis: Energy Tax Policy

Update

November 07, 2024 | 5 minute read

Baseline

The future of the Inflation Reduction Act (IRA), signed in 2022 to boost US clean energy with new tax incentives, hangs in the balance. President-elect Trump and some Republicans in Congress have threatened to repeal all or part of it because they don’t agree with the policy, and they need the revenue savings to offset their 2017 Tax Cuts and Jobs Act (TCJA) extensions. The processing of a tax bill next year provides a rare opening for taxpayers who are dissatisfied with the IRA or with the Biden administration tax regulations which implement the IRA.

Pulse Check

Much depends on whether Republicans gain control of both chambers of Congress, enabling them to tap into the vaunted congressional budget reconciliation process and easing their path to legislative change.

What to Monitor

Expect IRA supporters to spend time educating administration officials and congressional offices about the valuable economic and other benefits provided by these tax provisions, particularly in GOP-represented congressional districts and states. Meanwhile, industries from biofuels to hydropower are lobbying for new tax credits in the 2025 tax bill, aiming to secure a place in the complex tax landscape that lies ahead.

Related People

Timothy J. Urban
Senior Principal
WASHINGTON, DC
+1.202.828.7625
timothy.urban@bracewell.com

When President Biden signed the IRA into law in August of 2022, clean energy advocates hoped that the United States was embarking on a new direction for federal energy policy, with rationalized, durable tax incentives that would unleash a flood of new investment and make the United States a world leader in clean energy production. Now, after two years of debate over IRA implementation, a national election which may lead to a dramatic change in federal policy and the specter of a massive 2025 tax bill, taxpayers and investors are looking for clues on how to navigate this complex situation.

Notwithstanding President Biden's energetic efforts to staff up the executive agencies and organize interdisciplinary teams to guide the formulation of IRA tax regulations, it's undeniable that the process has been laborious, that only some of the rules have been completed and that not all of the guidance has been well received by all taxpayers. While we have received final rules for credits described in Internal Revenue Code of 1986, as amended (the Code) Sections 25E, 30D, 45X and 48(e), the guidance for Code Sections 30C, 45V, 45Y, 48 and 48E hasn't evolved beyond draft status yet, and to date, we have even less definitive rules for Code Sections 45Q, 45U, 45W and 45Z.

Between now and the end of the calendar year, taxpayers are urgently petitioning the administration to complete as many of those regulations as possible. Concurrently, there is an open question as to whether the Congress will find time to process an end-of-year tax bill (i.e., a so-called "lame duck" or "tax extender" package) to enact an assortment of technical corrections and other IRA do-overs. While anything can happen, our expectation at the moment is that the Treasury Department may yet publish final guidance pertaining to Code Sections 45V, 45Y, 48 and 48E during the waning moments of the administration, and we may see some additional safe harbor type guidance issued on Code Section 45Z (the clean fuel production credit). But, according to key staffers, Congress is not likely to enact another energy tax law in 2024.

To understand where things will go from here, one must reflect back to 2017, with the enactment during the first Trump administration of the TCJA, an iconic bill that created a host of popular, yet pricey, temporary tax cuts for businesses and individuals that were scheduled to expire in 2025. While the Republicans' calculation at the time was that making the tax cuts temporary lowered the revenue cost of the bill, they created a ticking time bomb for the 119th Congress upon whom they dumped the tab for an extension. The significance today of the upcoming 2025 tax debate is twofold: First, President Trump and congressional Republicans have threatened to repeal all or part of the IRA because they don't agree with the policy (and need the revenue savings to offset their 2017 TCJA extensions), and secondly, the processing of a tax bill next year provides a rare opening for taxpayers who are dissatisfied with the IRA or with the Biden administration tax regulations which implement the IRA.

Will the IRA be repealed in the next Congress? Until all the votes are counted, we don't know for sure if the GOP will indeed have control of the White House, the Senate and the House of Representatives. If they pull off that trifecta, they will be able to tap into the vaunted congressional budget reconciliation process, which strips the minority party in the Senate of their ability to kill legislation through dilatory tactics. What we do know is that President-elect Trump and many Republicans in Congress are skeptical of different portions of the IRA and eager to have a new debate on the bill where their votes will count. This would stand in contrast to the 2022 enactment of the IRA which was achieved through budget reconciliation with all Democratic votes.

IRA supporters like to point out that many of the economic benefits flowing from IRA-related projects have accrued to the benefit of GOP-represented congressional districts and states, complicating the perspective of Members and Senators whose votes may be required for any repeal in part or in whole. But, on the other hand, Republican staffers are quick to point out that certain provisions may be more vulnerable than others to a targeted attack, and that preliminary GOP expressions of support for this or that provision may not stick next year in the chaos of horse trading surrounding a multitrillion-dollar tax bill. All things being equal, taxpayers benefitting from the IRA would be well advised to work both individually and as parts of coalitions to educate administration officials and congressional offices about the valuable economic and other benefits provided by these tax provisions.

Lastly, about that group of taxpayers looking for changes to the Code pertaining to energy credits — it's growing! Looking to make hay while the sun shines, we have seen representatives of the industries making biofuels, biogas, fuel cells, microgrid controllers, electrochromic glass, electricity from hydropower and alternative fuels all queueing up to see if their champions can wedge them into an energy tax title within the 2025 tax bill. As the weeks go by, we will see whether Members will make room for an energy tax package, whether these provisions would need to be offset with commensurate tax increases and how much revenue could be allocated for such a project. In our view, there is likely to be more private sector appetite for energy tax changes than room in the package, which is why we are encouraging our clients to get in the game and not be the last people to the party.

Clearly, we are at a very initial point in a very complicated situation, and there will be many twists and turns as the Trump administration staffs up the Treasury and White House economic teams and as the Members and Senators on Capitol Hill start to lay out their vision and strategy for 2025. Once taxpayers have a chance to see the remaining IRA guidance from Treasury, and once the President and his Treasury Secretary lay out their tax legislative blueprint for the FY 2026 budget (i.e., the Treasury Green Book), we will know more.