L4GG Guidance Brief:

IRA Credits, Direct Pay, and the 2024 Elections

The results of the 2024 election have led to some uncertainty over the long-term availability of the clean energy tax credits and the use of Direct Pay for tax-exempt entities as implemented by the Inflation Reduction Act of 2022 (IRA). In this document, we take a look at how the IRA credits are structured and what that means for potential changes to the IRA credits by an incoming administration.

The Credits are Popular and Part of the Code

The tax credits incorporated into the IRA are part of the US Code and cannot be unilaterally rescinded through agency or executive action. Any changes to the credits will require the passage of legislation though the House and Senate. Although both houses of Congress will be nominally controlled by the same party as the incoming administration, the margins of control are thin and passing legislation to change the IRA credits would require coordination of the controlling party.

Complicating any effort to repeal the IRA credits is the broad, bipartisan popularity of the clean energy tax credits. While the IRA credits are new, they represent a continuation of credits that had existed for many years prior to the passage of the IRA. These credits have proven popular with industry (e.g. US-based manufacturers of solar panels, wind turbines, and hydropower turbines) as well as with the blue collar workers who have benefitted from the job growth associated with credit-eligible projects. Additionally, approximately 80% of IRA credits have gone to projects located in areas controlled by Republicans who might otherwise be in favor of revising these credits. The more aware these elected representatives are about the benefits coming into their districts, the safer the tax credits will be.

Although there may be efforts to alter the credits (such as weakening the zero-GHG emissions requirements through less restrictive definitions of lifecycle emissions) we anticipate that the incoming administration will face sufficient pressure from its constituencies that it will prefer to take a scalpel to the IRA rather than a sledgehammer.

Grants, not Direct Pay, are Receiving the Most Attention

When discussing potential repeals of IRA provisions, the incoming administration has generally focused on grants and provisions of the IRA involving discretionary funding rather than on provisions offering tax credits. Neither the IRA clean energy credits themselves nor the direct pay provisions appear to be high priority targets for the incoming administration.

Additionally, the direct pay provision does not appear in Congressional Budget Office (CBO) reporting because it merely provides a mechanism through which credits can be claimed and does not create new credits itself. Therefore, CBO reporting only identifies the underlying credits (such as the Section 45/45Y PTC or the Section 48/48E ITC) in its cost analysis. This means that direct pay will not show up as a line item cost in CBO reporting and it will likely not register as an important target.

Projects Completed in 2024 will not be Affected

Any changes to the IRA Credits will not be made until the new administration is sworn in during inauguration in January of 2025. Because changes in tax law cannot be made retroactive to tax years that have already closed, projects that have been placed in service during taxable years ending prior to the change in law will not lose eligibility for tax credits that were available as of the close of the applicable tax year. This fact should be amplified to as many applicable entities as possible to increase uptake in 2024, making these provisions harder to repeal.

Projects Completed in 2025 are Likely Okay

Longstanding practice for changes to the tax code is that the repeal of tax provisions will not take effect until January 1 of the year following the year in which the repeal legislation has passed. Although it is not possible to guarantee that historic norms will always be followed, we anticipate that, with respect to changes to the tax code at least, these norms will continue to be followed because it is politically damaging to change rules during the middle of a tax year and making such changes effective immediately would not be well received by businesses, the renewable energy industry (i.e., the US companies manufacturing products like solar panels), or the blue collar workers who have come to rely on the jobs created by the boom in clean energy projects created by the IRA Credits.

For this reason, we anticipate that projects placed in service prior to the end of 2025 will likely also remain eligible for these credits even if legislation is passed to repeal the credits.

Predictions Beyond 2025 are Difficult

Longer term predictions after 2025 are currently too speculative to be helpful. However, we anticipate that the first several months of 2025 will provide a more solid basis for understanding the administration's priorities as they apply to the IRA. While we anticipate that some portions of the IRA will be repealed, there is reason to be cautiously optimistic regarding the long-term survival of at least some of the credits given their popularity with both industry and labor and we hope to see these credits remain in a form substantially similar to their current form. It will be critical to both increase uptake across the country of tax credits and share success stories with local electeds to ensure that representatives on both sides of the aisle understand the value of - and what is at stake with - the tax credits.