Wyden unveils legislation to reform energy tax incentives

Building on previous iterations of similarly themed proposals, Senate Finance Committee Chairman Ron Wyden, D-Ore., along with 24 of his Senate Democratic colleagues, rolled out legislation on April 21 that would consolidate roughly 40 current-law energy-related tax provisions into just a handful of so-called "technology-neutral" incentives, while repealing a number of tax provisions he says benefit fossil fuel producers.

Clean Energy for America Act

In introducing the legislation – dubbed the Clean Energy for America Act – Wyden expressed his hope that the proposals could be incorporated into the jobs-and-infrastructure package recently unveiled by the Biden administration. (See related coverage in this issue for the current state of play with respect to President Biden's infrastructure-based American Jobs Plan and its funding component, known as the Made in America Tax Plan.)
URL: https://www.finance.senate.gov/imo/media/doc/Clean%20Energy%20for%20America%20Act.pdf

"The Clean Energy for America Act tosses those 40 temporary credits aside, replacing them with emissions-based, technology-neutral credits to turbocharge investment in clean electricity, clean transportation, and energy conservation," Wyden said in a statement. "It would both put us on the path to achieving our emissions reductions goals and create good-paying jobs, and should be the linchpin of our clean energy efforts as we consider President Biden's jobs package."

Wyden's proposal – along with the Growing Renewable Energy and Efficiency Now (GREEN) Act introduced earlier this year by House Ways and Means Select Revenue Measures Subcommittee Chairman Mike Thompson, D-Calif., and supported by all Democrats on the panel – will be key proposals to watch as the jobs and infrastructure debate unfolds this year.
URL: https://mikethompson.house.gov/newsroom/press-releases/chairman-thompson-ways-and-means-democrats-introduce-green-act

Clean electricity: According to a section-by-section summary of Wyden's proposal, the bill would establish "an emissions-based incentive that would be neutral and flexible between clean electricity technologies," with taxpayers able to choose either:
URL: https://www.finance.senate.gov/imo/media/doc/Clean%20Energy%20for%20America%20Act%20-%20Section%20by%20Section.pdf

- A production tax credit (PTC) equal to 2.5 cents per kilowatt hour of electricity produced and sold in the 10-year period after a qualifying facility is placed in service or
- An investment tax credit (ITC) equal to 30 percent of the investment in the year the facility is placed in service.

The new credits would phase out over five years once emissions targets are achieved. They generally would apply to qualifying facilities placed in service after December 31, 2022.

In a change from previous versions of Wyden's energy tax legislation, other conditions would apply for a taxpayer to claim the credits, such as a requirement to pay wages of at least the local prevailing rates and to utilize registered apprenticeship programs (so-called "Davis-Bacon Act" requirements).

Additionally, taxpayers could elect to receive the tax credits as direct refunds – but to do so, they must inform the Treasury Department prior to the date on which the facility begins construction.

In order to transition to the new system, a slate of current temporary clean energy tax incentives would be extended until December 31, 2022, with special rules for the section 45Q credit.

Clean transportation: With respect to transportation-related tax incentives, Wyden's proposal would create a technology-neutral "clean fuel production credit" – applicable to qualifying fuel produced after December 31, 2022 – that is designed to incentivize the production of transportation-grade fuels that are at least 25 percent cleaner in terms of their lifecycle emissions (that is, from production through use in a vehicle) than the current US nationwide average. Qualifying fuels would have to become increasingly cleaner between now and 2030 in order to be eligible for the credit, which would begin to phase out when certain emissions targets – as certified by the Environmental Protection Agency and the Department of Energy – are achieved. Taxpayers wishing to receive credits must pay wages at not less than local prevailing rates and utilize registered apprenticeship programs.

Additionally, Wyden's proposal would remove the per-manufacturer cap on the plug-in electric vehicle (EV) tax credit, make the credit refundable for individuals, and create a 30 percent nonrefundable credit for commercial operators purchasing EVs.

Energy efficiency and conservation: According to the summary, the plan would reform the current tax incentive under section 45L for energy-efficient new homes – setting the credit's value at either $2,500 for homes meeting the latest requirements of the Energy Star program, or $5,000 for homes meeting the Department of Energy's Zero Energy Ready program. As with the clean electricity and clean transportation incentives discussed above, contractors would have to comply with prevailing wage requirements and utilize registered apprenticeship programs.

Additionally, the proposal would reform the section 25C credit for nonbusiness energy property, replacing it with an "energy-efficient home improvement credit" of up to $500 per improvement, subject to an annual cap of $1,500 for all improvements. For commercial buildings, Wyden's plan would expand the deduction under section 179D as well as increase the credit for geothermal heat pump systems to 30 percent and make it permanent.

Clean energy bonds: Wyden's proposal would create a tax credit bond, or so-called "clean energy bond" – available to state, local, and tribal governments, along with public power providers and electric cooperatives – designed to incentivize the production of clean electricity and clean fuel. The maximum credit would equal 70 percent of the bond's interest (for zero-emission electricity or fuel). Entities would have the option of offering the bond as a tax credit bond, or of electing a direct pay bond, where the Treasury Department reimburses the bond issuer at a rate of up to 70 percent of the interest cost.

Fossil fuel provisions repealed: According to the summary, the plan would repeal a number of current-law tax incentives Wyden claims benefit fossil fuel producers, including expensing of intangible drilling costs, rules allowing for so-called "percentage depletion," the deduction for tertiary injectants, and credits for marginal oil wells and advanced coal projects, among others.

It also would repeal the publicly traded partnership rules for fossil fuels, reinstate "the current taxation of multinational oil companies' non-extraction income," and ensure "that multinational oil companies are not specially exempted from the 2017 tax law's global minimum tax."

Hearing planned

Wyden's proposal likely will come up for discussion at a Finance Committee hearing on "the tax code's role in creating American Jobs, achieving energy independence, and providing consumers with affordable, clean energy" scheduled for April 27.

The witness list as of press time includes Jason Walsh of the BlueGreen Alliance, Maria M. Pope of Portland General Electric, Alex Brill of the American Enterprise Institute, and Kevin Sunday of the Pennsylvania Chamber of Business and Industry.

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