Taxwriters debate clean energy, fossil fuel incentives at Finance Committee hearing

Democrats and Republicans on the Senate Finance Committee found some common ground during an April 27 hearing on the perceived need to streamline energy-related tax incentives, but diverged sharply on the relative merits of particular provisions some members said benefit the renewable energy and fossil fuel industries.

The Finance Committee has explored this topic numerous times in prior years, but this week's discussion was particularly topical as many congressional Democrats hope that climate-related policies can be incorporated into any forthcoming jobs-and-infrastructure package. (President Biden's American Jobs Plan and its related financing component, the Made in America Tax Plan, which were unveiled late last month, generally propose to eliminate tax provisions that the White House says favor the fossil fuel industry as part of the administration's larger goals of addressing climate change and achieving net-zero emissions in the US by 2050.)

Alongside the bills and concepts discussed at the hearing, 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 legislative debate unfolds this year.
URL: https://mikethompson.house.gov/newsroom/press-releases/chairman-thompson-ways-and-means-democrats-introduce-green-act

Clean Energy for America Act

Finance Committee Chairman Ron Wyden, D-Ore., opened the hearing by plugging the Clean Energy for America Act, a bill he and 24 of his Senate Democratic colleagues rolled out on April 21 that would consolidate roughly 40 current-law energy-related tax provisions into just a handful of so-called "technology-neutral" incentives for clean electricity, clean transportation, and conservation and efficiency, while repealing a number of tax provisions he says benefit fossil fuel producers. (For prior coverage of Wyden's legislation, see *Tax News & Views*, Vol. 22, No. 21, Apr. 23, 2021.)
URL: https://www.finance.senate.gov/imo/media/doc/Clean%20Energy%20for%20America%20Act.pdf
URL: https://dhub.blob.core.windows.net/dhub/Newsletters/Tax/2021/TNV/210423_2.html

"The energy tax code in America is a cluttered, old heap of more than 40 different tax breaks for a variety of energy sources and technologies…," Wyden said. "Most of these incentives are temporary. That keeps clean energy businesses…in an uncertain state of limbo. On the other hand, at the base of this system are century-old, permanent tax breaks for oil and gas companies."

Wyden came back to this theme several times during the hearing, expressing the view that his bill could help the US achieve the Biden administration's goal of cutting carbon emissions in half relative to 2005 levels by the end of this decade.

"In terms of tax certainty and predictability, [the Clean Energy for America Act] would level the playing field for everybody," he said. "It would be a job-creating, free market competition to get to net-zero carbon emissions."

Crapo pushes alternative approach: The committee's ranking Republican, Mike Crapo of Idaho, meanwhile, acknowledged the merits of a technology-neutral approach, but questioned whether certain renewable energy projects and investments still require taxpayer support.

"While I support Congress taking a neutral approach to energy tax credits, we must consider whether some of these technologies continue to require assistance and ensure we are designing the tax code to be fair and effective," Crapo said.

As an alternative approach, Crapo backed a bipartisan discussion draft he released April 26 with Finance Committee Democrat Sheldon Whitehouse of Rhode Island that would grant an "Energy Sector Innovation Credit" (ESIC) – available as either a 40 percent investment tax credit (ITC) or 60 percent production tax credit (PTC) to "low market penetration" technologies across a wide range of energy sources. As a technology matures in the marketplace, the ESIC would phase out for that particular energy source.
URL: https://www.finance.senate.gov/ranking-members-news/crapo-whitehouse-release-energy-innovation-tax-credit-proposal

"Our tax code should incentivize technology-wide clean energy innovation, helping to bring breakthrough power generation to deployment until they can compete independently in the market," Crapo said.

Chairman Wyden's legislation similarly relies on alternative PTCs and ITCs for clean electricity, along with phase-downs in the value of the credits when certain emissions targets are achieved (rather than as technologies gain market share, as in Crapo's discussion draft).

One key difference, however, is that Crapo's discussion draft is silent on the fate of existing temporary tax incentives for renewable energy and energy efficiency, whereas Wyden's bill would generally extend those provisions through 2022 as a way to transition into his proposed new system.

Democrats push specific breaks for 'clean' power, EVs

At the same time that many Democrats on the taxwriting panel expressed support for Wyden's technology-neutral approach to energy tax policy, a number of them also spoke in favor of extending, and even expanding, certain current-law provisions benefiting the clean energy sector.

Refundability, 'direct pay': One concept discussed on the Democratic side of the aisle related to making certain renewable energy incentives refundable, such that the benefit would be available to companies that may not yet be generating taxable income or that are having difficulty obtaining private financing.

To that end, Sen. Tom Carper, D-Del., discussed the Save America's Clean Energy Jobs Act – legislation he introduced with Sen. Whitehouse and Sen. Martin Heinrich, D-N.M. that would grant temporary refundability

to certain tax credits encouraging the development and operation of certain renewable energy projects, including those related to wind, solar, fuel cells, and carbon capture and sequestration.
URL: https://www.epw.senate.gov/public/_cache/files/2/c/2c333d59-e75c-4252-a3d6-311a2e3a97f5/7FA6B59CCBE45EECA68410F7ECBCADEA.americas-clean-energy-jobs-act---introduced.pdf

"Clean energy developers are currently unable to access tax equity financing as a result of the pandemic, leaving clean energy projects frozen and unable to break ground," Carper said. "Refundability of these credits will provide efficient access to capital that will immediately help facilitate job creation in the clean energy sector…."

In a similar vein, Chairman Wyden's proposal would create a tax credit bond – or so-called "clean energy bond" – designed to incentivize the production of clean electricity and fuel, which entities could elect to offer as a tax credit bond or as a direct pay bond. (In the latter case, the Treasury Department would reimburse the bond issuer at a rate of up to 70 percent of the interest cost.)

Advanced energy manufacturing: For her part, Sen. Debbie Stabenow, D-Mich., touted a bill she recently introduced with Republican taxwriter Steve Daines of Montana – the American Jobs in Energy Manufacturing Act of 2021 – that would expand the section 48C credit for advanced energy manufacturing and focus a portion of its benefits on communities that have suffered the closure of coal mines or coal power plants.
URL: https://www.manchin.senate.gov/imo/media/doc/AJEM%20Bill%20Text.pdf

EVs and clean transportation: Stabenow also highlighted bipartisan legislation she introduced during the previous Congress with Sen. Susan Collins, R-Maine, and former Sen. Lamar Alexander, R-Tenn., that would expand the tax credit under section 30D for purchasers of certain electric vehicles (EVs) by, in part, increasing the number of qualifying vehicles a manufacturer can sell before the credit begins to phase out. This concept has wide appeal among congressional Democrats and seems likely to be discussed as part of any infrastructure and climate legislation developed with the Biden administration.

Chairman Wyden's Clean Energy for America Act also contains EV policy – proposing to remove the per-manufacturer cap, make the credit refundable for individuals, and create a 30 percent nonrefundable credit for commercial operators purchasing EVs. Wyden's legislation would also create a technology-neutral "clean fuel production credit that would be 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.

In many ways going hand-in-hand with the section 30D electric vehicle credit is the credit under section 30C for alternative fuel vehicle refueling property. Sens. Stabenow and Carper expressed their support for extending and expanding the section 30C credit as in bipartisan legislation – the Securing America's Clean Fuels Infrastructure Act – they introduced earlier this year with fellow Senate taxwriters Richard Burr, R-N.C., and Catherine Cortez Masto, D-Nev.
URL: https://www.epw.senate.gov/public/_cache/files/9/4/9464cf3c-028c-412e-9935-d4033f3c4a3b/1D7C185FED2A5CFA72A244CD2B83D082.securing-america-s-clean-fuels-infrastructure-act-3-23-2021.pdf

"This [alternative refueling] infrastructure is necessary for the success of our American automakers and for the widespread adoption of cleaner vehicles," Carper said.

For her part, Sen. Maria Cantwell, D-Wash., who introduced the original EV tax credit in 2007 with former Finance Committee Chairman Orrin Hatch, R-Utah, noted that so-called "heavy duty trucks" comprise only 5 percent of vehicles on the road, but account for 23 percent of emissions.

"What we found with the tax credit for automobiles is that it really accelerated [the market], in just a short period of time – look at where we are," Cantwell said, as part of a broader argument for establishing a 30 percent ITC to incentivize the purchase of efficient heavy duty trucks.

GOP defends fossil fuel incentives, criticizes corporate rate hike

Demonstrating the partisan divide on energy tax issues that has persisted for years, several of the panel's Republican members argued that many tax incentives for renewable energy and energy efficiency have run their course, and are no longer necessary to help developers compete in the energy marketplace.

Some GOP members also spoke forcefully against proposals by Chairman Wyden and others to repeal tax incentives that Wyden says unfairly benefit the fossil fuel industry.

Republican taxwriter John Barrasso of Wyoming, who also serves as ranking member of the Senate Energy and Natural Resources Committee, said he was "baffled by the efforts of President Biden and his supporters in Congress to destroy entire industries in America, and to force tens of thousands of fossil fuel energy workers into the ranks of the unemployed."

Several panel Republicans homed in on two incentives in particular – the deductions for intangible drilling costs (IDCs) and so-called "percentage depletion" that apply to independent producers – as worth keeping on the books.

Sen. Bill Cassidy, R-La., contended that "all these folks who are providing great paying jobs for Americans…are dependent upon [the IDC deduction] which doesn't go to [major integrated oil companies] but does go to these very small companies in some cases and they are the ones providing this employment."

Meanwhile, other Republicans took aim at the Biden administration's proposed business tax increases (that would offset the cost of the American Jobs Plan) as policies that could have a deleterious effect on US energy production and energy independence.

"Considering offsetting the cost of energy provisions with a corporate tax rate increase or increasing international taxes, especially during a pandemic, is counterproductive and a non-starter on my side of the aisle," said Sen. Crapo.

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