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BREAKING NEWS: Congress Sends Tax Cuts and Jobs Act to President Trump’s Desk for Signing

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The Tax Cuts and Jobs Act (TCJA) has been passed by both houses of Congress and is now set to be signed into law by President Trump. The vote was 224-201 in the House with all the Democrats joined by twelve Republicans voting “no” and 51-48 in the Senate along party lines. Although the TCJA isn’t exactly great news for the renewable energy industry, it is far better than what was originally proposed in the House and Senate bills. Here are the main takeaways:

- **PTC Inflation Adjustment –** The TCJA preserves the current 2.4¢/kWh PTC amount for wind with an annual inflation adjustment. The House bill would have reduced the PTC to 1.5¢/kWh with no annual inflation adjustment.
- **ITC Phase-out Schedule –** The TCJA does not eliminate the permanent 10% solar ITC beginning 2023.
- **Continuous Construction Requirement –** The TCJA does not include the statutory continuous construction requirement that was included in the House bill. Despite clarification from the House there was some concern as to whether the House bill would eliminate the four-year safe harbor that wind developers rely on under IRS guidance.
- **Orphaned Technologies –** The TCJA does not include the ITC extension for orphaned technologies (*e.g.*, fuel cell, small wind, micro turbine, CHP, and thermal energy) that were left out of the 2015 PATH Act. However, the Senate Finance Committee is proposing to include an extension for these technologies in its tax extenders package.
- **100% Bonus Depreciation –** The TCJA provides 100% bonus depreciation through 2022 for both new and used property. 100% bonus applies to property acquired and placed in service after September 27, 2017 with a transition rule permitting taxpayers to elect 50% bonus instead during the taxpayer’s first taxable year ending after September 27, 2017. This provides a big incentive to place projects in service this year in order to take advantage of depreciation deductions at the current 35% corporate tax rate.
- **BEAT Provision –** The TCJA provides a Base Erosion Anti-Abuse Tax (BEAT) whereby a bank that makes 2% (or 3% for companies) of its deductible payments to a foreign affiliate is subject to the BEAT when those payments reduce its U.S. tax liability to less than 10% (12.5% beginning in 2025). The good news is that the TCJA provides that tax equity investors can use the PTC and ITC to off-set up to 80% of their tax liability under the BEAT. The bad news is that the 80% offset expires in 2025, so tax-equity investors in wind projects that generate PTCs over a 10-year time horizon could potentially have all of their credits clawed-back in the future.
- **Interest Deductibility –** The TCJA generally limits the amount of interest that can be deducted to 30% of the business’s adjusted taxable income. In the case of partnerships, this limitation would apply at the entity level. Deductions that are disallowed are carried forward and used as a deduction in subsequent years. As we discussed in our blog post here on the House bill, this limitation could have an adverse impact on back leveraged transactions, which developers utilize to reduce their cost of capital and free up cash to invest in new projects.

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- **Corporate Tax Rate/AMT –** The TCJA slashes the corporate tax rate from 35% to 21%, effective for tax years beginning after 2017, with no sunset. The TCJA does not include the corporate AMT that was in the Senate bill and which would have had a negative impact on projects generating PTCs after four years in operation. It remains to be seen whether the lower corporate rate will reduce demand for renewable energy credits among tax-equity investors in the market, which now have less tax liability to offset with credits.