

PROPERTY & CASUALTY

Navigating Tax Credit Uncertainties via Tax Insurance

§§48 and 48E

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Due to the recent passing of the One Big Beautiful Bill Act (OBBBA) by Congress on July 3, 2025, many uncertainties remain with respect to Investment Tax Credits (ITC). The Inflation Reduction Act (IRA), which was passed by Congress in 2022, provided an extension of solar and wind tax credits to the end of calendar year 2031 and further enabled renewable energy projects using batteries to distribute energy to qualify for the ITC. The passing of the OBBBA has altered the IRA.

Brown & Brown's specialists understand the tax uncertainties developers, tax equity investors and tax credit purchasers face when contemplating a transaction regarding the ITC and are dedicated to providing strategic solutions.

Certain Changes to §§48 and 48E Under the OBBBA

Below is a non-exhaustive list of changes to the ITC under the OBBBA:

- **ITC availability:** Projects are eligible for the ITC if they are Placed In Service (PIS) on or before December 31, 2027, unless they satisfy the start-of-construction test incorporated into the OBBBA and outlined in IRS Notice 2025-42. This was a change from the IRA, which provided ITC credits through December 31, 2031.
- **ITC rates:** Generally, the base ITC rate remains 6%, but if the project satisfies the Prevailing Wage and Apprenticeship (PWA) requirement, its ITC rate is stepped up from 6% to 30%. To date, the OBBBA has remained unchanged on this issue.

ITC Rate Enhancers

- **Energy Community (EC):** The base ITC rate of 6% or 30% may be increased by 10% if the project satisfies the EC requirements. This has not changed under the OBBBA.
- **Domestic Content:** The base ITC rate of 6% or 30% may be increased by an additional 10% if the project procures and constructs using domestically produced equipment of not less than the following:
 - » 40% for projects starting construction before 2025
 - » 45% for projects starting construction in 2025
 - » 50% for projects starting construction in 2026
 - » 55% for projects starting construction in 2027

The IRS has not clarified whether the begun construction rules before the OBBBAs' enactment apply or if the start of construction rules under IRS Notice 2025-42 regarding Domestic Content, creating uncertainty that could result in millions of dollars of losses for many projects.

Also, starting in 2024, some direct pay claimants will receive reduced payments if the Domestic Content Rules are unmet. This has not changed under the OBBA. Finally, there may



be some applicability of the Foreign Entity of Concern that will likely be further explained by an IRS Notice to be issued according to the OBBBA.

- **Start of construction:** With certain exceptions, under the IRA, a developer could satisfy “Begun Construction” by placing a 5% deposit on critical equipment such as a General Service Unit (e.g., a transformer). However, under the OBBBA, as further detailed by IRS Notice 2025-42, with certain limited exceptions, the Physical Work Test will be used to determine if Start of Construction has been satisfied.

Notice 2025-42 provided certain ambiguities regarding what satisfies Physical Work once a purchase order is placed, or when a contractor is hired, which is likely determined on a case-by-case basis via an IRS Private Letter Ruling (PLR). While Private Letter Rulings provide an excellent source of guidance to a taxpayer, they are technically issued to an individual taxpayer, and only the taxpayer who is the subject of the PLR may rely on it.

Tax Insurance Solutions Addressing Uncertainty

Tax Liability Insurance provides certainty through the following coverage for all parties involved in the investment and/or sale of ITCs:

- **Appraisals:** Under current market conditions, Tax Liability Insurance generally provides protection for the stepped-up value of coverage to 125% of cost or income incurred by a developer.
- **Costs:** Provides protection that costs will be respected by the IRS
- **Start of Construction:** Provides protection that the project meets the start of construction under the OBBBA and IRS Notice 2025-42
- **PWA:** Provides protection that all PWA requirements have been satisfied, protecting the base rate increase to 30% from 6% will be respected by the IRS
- **Energy Community:** Provides protection that the EC increase of an additional 10% in rate will be respected by the IRS
- **Domestic Content:** Provides protection that the DC increase of an additional 10% in rate will be respected by the IRS

Some additional coverage may include protection with regards to: (i) the depreciable base of assets; (ii) transferability of credits; (iii) the applicability of the low-income housing credit bonus; (iv) the structure of partnership will be respected; (v) the transfer credit buyer will be respected as a partner of the partnership; (vi) the tax equity partner being an eligible partner of the partnership; and/or (vii) the PIS date will be respected by the IRS.

Optimize Your ITC with Certainty

Brown & Brown's renewable energy specialists are well-versed in the tax uncertainties that developers, tax equity investors and tax credit buyers encounter when navigating ITC transactions. Our team has deep partnerships with carriers who understand this risk and can facilitate the most favorable terms available.



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How Brown & Brown Can Help

Connect with our Brown & Brown team to learn about our knowledge in your industry, how we build our risk mitigation strategies and how we can aid your business in building a cost-saving program.



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