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Bipartisan Budget Breakthrough Gives Orphans New Life

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Congress last week reached a sweeping two-year budget deal, breaking a months-long legislative logjam and providing a vehicle for a laundry list of non-controversial items that had been captive to the broader standoff over immigration. In addition to establishing higher spending caps for 2018 and 2019 and funding the government for six weeks while a long-term omnibus bill is written, the package included everything from a year-long debt ceiling increase to $89 billion in disaster aid. But it was the tax title that provided the most suspense, as the fate of the so called “orphaned” renewable technologies remained up in the air until the release of the legislative text. In the end, Congress passed, and the President signed into law, a multi-year extension and phase-out of the investment tax credit (ITC) for geothermal heat pumps, fuel cells, small wind, hybrid solar and combined heat and power systems, while providing a one-year retroactive reprieve for more than 30 other lapsed “extender” provisions.

Enactment of the Bipartisan Budget Act of 2018 concludes a saga that had recently slipped into year three for the energy orphans, restoring these technologies to the favorable 2015 PATH Act deal on ITC and harmonizing the credit’s schedule with that of wind and solar. Going forward, the value of the ITC for most qualified energy property will depend on the year – property constructed or placed into service through 2019 will be eligible for the full 30%, falling to 26% in 2020, and again to 22% in 2021, before phasing out altogether in subsequent years. Commercial installations of geothermal heat pumps, microturbines, and combined heat and power systems would continue to receive a steady 10% credit over the same period.

The Act also revives dozens of other lapsed credits for 2017 just in time for tax filing season, albeit retroactively. Of note in the energy space: the production tax credit (PTC) for newly constructed facilities producing electricity from renewable technologies other than wind or solar (e.g. biomass, hydroelectric, municipal solid waste, landfill gas, tidal); credits for fuel cell and 2-wheeled electric plug-in vehicles, respectively; the credit for energy-efficient new homes; and the deduction for energy-efficient commercial buildings. While the fate of these provisions is uncertain beyond the 2017 tax year, House Ways and Means Committee Chairman Kevin Brady (R-TX), a fierce critic of the “extenders” process, has indicated that he intends to hold hearings in the near future. While the tax package fell short of the two-year extension sought by Senate Finance Committee Chairman Orrin Hatch (R-UT), leaving many stakeholders to sweat out yet another year of uncertainty, the erstwhile orphans can finally rest easy knowing that their future is secure.