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INSIGHTS

After Tax Bill Two-Step, Orphan Hopes Rest on Extenders

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While the Tax Cuts and Jobs Act (TCJA) made the most significant changes to the tax code in a generation, with sweeping implications for all industries, the Act was conspicuously lacking in energy-specific provisions. Indeed, despite a number of proposed changes to existing credits, both friendly and hostile to renewables, the TCJA ultimately did not contain an energy tax title at all. This default preference for the status quo was cheered by the wind and solar industries, whose future prospects had been previously secured in the 2015 PATH Act, but it once again left other so-called "orphaned technologies" out in the cold. Having expired at the end of 2016, these credits for geothermal heat pumps, fuel cell, small wind, and combined heat and power required an affirmative extension—and, ideally, harmonization with the PATH Act phase-down schedule for wind and solar.

Such language was included, rather unexpectedly, in a House tax bill that was otherwise hostile to renewable energy. While the bill would have nominally maintained the terms of the PATH Act, it also would have repealed the inflation adjustment for the wind PTC, retroactively modified the terms of eligibility for claiming PTC or ITC, and repealed the permanent 10% ITC for commercial solar. Having been blessed by the House, the orphans might have expected a warm reception in the upper chamber, a body known to be far more friendly to clean technologies. But when the Senate took up its version, parochial divisions over the extension and modification of certain unrelated energy credits threatened to jeopardize the bill's momentum at a fragile time. In the end, the energy-agnostic Senate language served as the base bill for what would become law—good news for wind and solar, but leaving the expired and expiring provisions to be addressed on their own. In an effort to resolve the loose ends as swiftly as possible—and perhaps to give stakeholders some comfort—Senate Finance Committee Chairman Orrin Hatch (R-UT) introduced an extenders package on the same day the TCJA cleared the Senate floor. The bill, The Tax Extender Act of 2017, incorporates the previous House language to restore the orphan credits to the PATH Act schedule.

While the introduction of the Hatch package was intended to secure a ride on the next government funding vehicle, the picture remains no clearer more than a month later. If anything, a brief January shutdown has made eliding the immigration issue more difficult, and the two sides seem as far apart as ever. Nor are tax extenders the only policy matter stuck in the queue—also at the mercy of this standoff are health extenders, disaster relief funds, and other issues ranging from opioid treatment grants to pension reform. As time ticks by without a deal on DACA (or DREAMers), which Democrats have made a prerequisite for an agreement on spending, it becomes more likely that the passage of extenders slips beyond filing season, perhaps into the summer. One potential forcing mechanism for a bigger deal is the debt ceiling, which is likely to kick back in sometime in March, but an influx of cash from repatriation and other TCJA-related changes could carry “extraordinary measures” through the summer. As Senator John Thune (R-SD) said of the extenders bill recently, “the question is not if, but when.” And at this point when remains very much up in the air.