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Will Congress Recast the Economics of Renewable Energy Project Development and Investment?

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As the 117th Congress works to enact legislation implementing President Biden's "Build Back Better Recovery Plan," extending and expanding current renewable energy tax incentives will be an integral part of the discussion. President Biden has supported use of tax credits to increase renewable energy generation which is crucial to meeting his goal of a decarbonized electric grid by 2035 and carbon neutrality by 2050.

Because of this support, it is likely that infrastructure legislation will extend the Production Tax Credit (PTC), the Investment Tax Credit (ITC), and the 45Q credit for carbon capture projects and very well could expand the ITC to include energy storage and other clean energy technologies. There has also been increasing chatter in Washington DC that Congress may allow taxpayers to elect to treat these renewable energy credits as refundable. That is, the taxpayer would be "treated as making a payment against the tax imposed" for all or a portion of the credit, which would make the taxpayer eligible for a refund — even if the taxpayer did not have sufficient taxable income to offset the credits.

In February, all Democratic members of the House Ways and Means Committee (the powerful committee with jurisdiction over the Tax Code) sponsored H.R. 848, the Growing Renewable Energy and Efficiency Now (GREEN) Act of 2021. In addition to an extension and expansion of the PTC and ITC, the GREEN Act includes a provision allowing taxpayers to elect to have 85% of the value of the PTC, ITC, and 45Q credit for carbon capture projects treated as a tax payment and request a refund of any overpayment.

On March 24, Senator Carper (Chair of the Senate Environment and Public Works Committee and a senior member of the Finance Committee—the Senate tax writing committee) introduced S. 985, Save America's Clean Energy Jobs Act. Senator Whitehouse, Chair of the Taxation Subcommittee, and Senator Heinrich, a member of the Senate Energy & Natural Resources Committee, are original cosponsors. S. 985, like the GREEN Act, authorizes direct payment of renewable energy credits. There are some differences between the House and Senate bills including, significantly, that S. 985 imposes time constraints on the refundability of the renewable energy tax credits (e.g., construction must begin before 2023) and provides for the taxpayer to claim 100% of the renewable energy tax credit as payment, which would likely price tax

equity out of the market and put the program on par with the Section 1603 grants from the 2009 recovery act.

The introduction of the Carper bill is important because it reflects support on both sides of Capitol Hill from the Democratic members of the Congressional tax writing committees, to allow direct payments for renewable energy projects in lieu of tax payments.

By allowing direct payments, Congress could fundamentally recast the economics of renewable energy project development and investment. Renewable energy developers, and companies interested in installing carbon capture equipment, would directly interface with the Internal Revenue Service and no longer be reliant on the constrained tax equity market for the equity capital necessary to construct commercial-scale facilities. Importantly, even if these companies have little taxable income, they could claim the direct payment and receive a refund. This should be expected to lead to additional renewable energy projects, both increasing clean energy supply and clean energy jobs.

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