

Biden Administration Releases Budget and Green Book, Providing Details on Clean Energy Tax Proposals

02 June 2021

On May 28, 2021, the Biden administration released its fiscal year 2022 budget proposal, which includes two major legislative plans previously released by the administration, the American Jobs Plan and the American Families Plan. On the same day, the Treasury Department released its highly anticipated “Green Book,” which provides additional detail around the administration’s tax proposals.

President Biden pitched his \$2-trillion-plus infrastructure-focused American Jobs Plan as a “once-in-a-generation investment in America.” The plan is a bold proposal designed to transform the future of infrastructure in the United States.

As part of the plan, the administration is focused on incentivizing certain infrastructure investments through the tax code, with tax credits benefiting renewable energy (including energy storage), carbon sequestration, hydrogen and electric transmission. The Green Book provides additional details regarding these tax proposals.

We highlight below those proposals most relevant to our infrastructure clients.

For the full Kirkland *Alert* covering all aspects of the Green Book, please click [here](#).

1. Extend and Enhance Solar and Wind Tax Credits (PTCs and ITCs):

- Allow taxpayers to make an election to receive a cash payment in lieu of the production tax credit (“PTC”) or investment tax credit (“ITC”).
- Under current law, wind facilities must begin construction before the end of 2021

to be eligible for the PTC and wind facilities that begin construction in 2021 are eligible for a 60% PTC. The PTC amount is indexed for inflation and is currently 2.5 cents per kWh. The proposal would extend the full 100% PTC for wind and certain other qualified facilities that begin construction after 2021 and before 2027, with the following revised phasedown schedule:

Year Construction Began	New PTC
2022-2026	100%
2027	80%
2028	60%
2029	40%
2030	20%
2031	0%

- Under current law, solar energy facilities that begin construction before the end of 2022 are eligible for a 26% ITC. The credit is 22% for projects that begin construction in 2023 and 10% for years thereafter. The proposal would extend the full 30% ITC for solar and geothermal electric energy property and other qualified facilities that begin construction after 2021 and before 2027, with a phase-down of 20% each year starting in 2027 (see chart below). It also expands the ITC to include stand-alone energy storage facilities with a capacity of at least 5 kWh.
- The table below summarizes the applicable new ITC percentages under the proposal and the currently applicable ITC percentages for solar projects under existing law:

Year Construction Began	New ITC	Current ITC for Solar
2022	30%	26%
2023	30%	22%

2024–2026	30%	10%
2027	24%	10%
2028	18%	10%
2029	12%	10%
2030	6%	10%
2031	0%	10%

- Extend the Residential Energy Efficiency Credit available for certain residential energy efficiency property, including solar electric property, by restoring the full 30% credit for property placed in service after 2021 and before 2027, with a 20% phasedown each year starting in 2027.

2. Expand and Enhance Carbon Oxide Sequestration Credit:

- Allow taxpayers to make an election to receive a cash payment in lieu of the carbon sequestration credit.
- The amount of the credit depends on when and how the carbon oxide is sequestered. Under current law, in 2020 and 2021, qualified carbon oxide disposed of in secure geological storage and not used as a tertiary injectant in a qualified enhanced oil or natural gas recovery project could receive a credit of \$31.77 and \$34.81/ metric ton, respectively. The credit is increased to \$50/metric ton by 2026 and is adjusted for inflation in later years. Similarly, under current law, in 2020 and 2021, qualified carbon oxide that is used as a tertiary injectant in an enhanced oil or natural gas recovery project could receive a credit of \$20.22 and \$22.68/ metric ton, respectively. The credit is increased to \$35/metric ton by 2026 and is adjusted for inflation in later years.
- The proposal would extend the beginning of construction deadline to be eligible for the credit to January 1, 2031 and provides an enhanced credit of an additional \$35/metric ton for carbon oxide captured from certain hard-to-abate industrial carbon oxide capture sectors (i.e., total credit of \$85/metric ton) and provides an enhanced credit of an additional \$70/metric ton for carbon oxide captured from certain direct air capture objects (i.e., total credit of \$120/metric ton), in each case, only if disposed in secure geological storage.

3. Create, Extend and/or Enhance Electric Vehicle and Related Credits:

- Create a business tax credit for new medium and heavy-duty zero-emission vehicles, including battery EVs and fuel cell EVs. Initial credit amount would range from \$25,000 to \$120,000, depending on the type of vehicle, with a scheduled phasedown depending on the vehicle purchase date. A direct pay option would also be available.
- Allow taxpayers to claim EV charging station credits on a per-charging device basis and increase the limit on individual devices to \$200,000. Extend the credit through 2026, with a direct pay option available. Also extend the \$1,000 tax credit for refueling property installed at a taxpayer's residence through 2026.

4. Create, Extend and/or Enhance Other Renewable Tax Incentives:

- Create, extend and/or enhance various types of tax credits to encourage investment in clean energy, including the following:
 - *Qualifying Transmission Property* – Create a 30% investment tax credit for certain qualifying electric transmission property (e.g., overhead, submarine and underground transmission facilities, as well as any ancillary facilities and equipment necessary for transmission facility operation) with a minimum voltage of 275kv and a minimum transmission capacity of 500 MWs that is placed in service after 2021 and before 2032. Taxpayers would have the option to elect a cash payment in lieu of the tax credits.
 - *Nuclear Power Facilities* – Create an allocated production credit for electricity generation from eligible existing nuclear power facilities that submit a bid. Up to \$1 billion in credits would be available annually through the end of 2031, with an option to elect a cash payment in lieu of the tax credits.
 - *Qualifying Advanced Energy Manufacturing* – Expand eligibility for the current 30% advanced energy manufacturing tax credit to include industrial facilities, recycling and energy storage and components, among others. The amount of allocable tax credits would also be increased by an additional \$10 billion, with \$5 billion of the credits specifically allocated to projects in coal communities. Taxpayers would have the option to elect a cash payment in lieu of the tax credits.
 - *Sustainable Aviation Fuel* – Create a \$1.50/gallon production tax credit for sustainable aviation fuel produced after 2021 and before 2028 that achieves at least a 50% reduction in emissions relative to conventional jet

fuel, with a supplementary credit of up to \$0.25/gallon available on a sliding scale based on the relative emission reduction amount.

- *Low-Carbon Hydrogen* – Create a low-carbon hydrogen production tax credit, at the rate of \$3/kg of hydrogen between 2022 and 2024, and \$2/kg between 2025 and 2027, subject to an annual inflation adjustment. Construction of a qualified facility must begin by the end of 2026 to be eligible for the credit. Taxpayers would have the option to elect a cash payment in lieu of the tax credits.
 - *Energy Efficiency* – Enhance various existing tax credits and deductions for nonbusiness energy property, the construction of new energy efficient homes and energy efficient commercial buildings and provide a new tax credit for certain mechanical insulation labor costs.
-

Authors

Stephen Butler, P.C.

Partner / Austin / Houston

Sophia Han

Partner / New York

Michael J. Masri, P.C.

Partner / New York

Related Services

Practices

- Transactional
- Energy Regulatory
- Tax

This publication is distributed with the understanding that the author, publisher and distributor of this publication and/or any linked publication are not rendering legal, accounting, or other professional advice or opinions on specific facts or matters and, accordingly, assume no liability whatsoever in connection with its use. Pursuant to applicable rules of professional conduct, portions of this publication may constitute Attorney Advertising.

This publication may cite to published materials from third parties that have already been placed on the public record. The citation to such previously published material, including by use of "hyperlinks," is not, in any way, an endorsement or adoption of these third-party statements by Kirkland & Ellis LLP.

© 2021 Kirkland & Ellis LLP.