

## **PERMANENT EXTENSION OF THE PRODUCTION TAX CREDIT**

### Current Law

Current law provides production tax credits (PTCs) for renewable energy facilities constructed before the end of 2013. Section 45 of the IRC provides PTCs for wind, biomass, geothermal, landfill gas, trash, qualified hydropower, and marine and hydrokinetic projects that generate electricity. Current law also provides an investment tax credit for energy property, which includes (1) property that is part of a facility that, but for the election to claim an investment tax credit, would qualify for a production tax credit; and (2) certain other listed property (including solar energy property). In addition, current law also provides grants for certain energy property on which construction began in 2009, 2010, or 2011.

### Reason for Change

As with other tax credits, uncertainty related to the renewal of the PTC has led to uncertainty and a year-end rush to take advantage of the credits prior to their expiration. In prior years where the PTC was allowed to expire, industries reliant on the credits, particularly the wind industry, experienced precipitous downturns. With high unemployment nationwide and extremely high unemployment in Indian country, a permanent extension of the PTC would provide certainty to these projects and help create new jobs.

### Proposal

Consistent with the Administration's FY 2014 budget request, the proposal would permanently extend the PTC for renewable energy property and make it refundable.

# **TRANSFER OF TAX CREDITS BY INDIAN TRIBES FOR PRODUCTION FROM RENEWABLE RESOURCES**

## Current Law

The federal production tax credit (PTC) in Section 45 of the IRC is a critical tool for encouraging the investment of private capital into renewable energy facilities and projects. The PTC is of little use to Indian tribal governments, however, because tribal governments are not taxable entities for income tax purposes under the IRC. The PTC cannot be utilized for renewable energy projects on tribal lands unless Indian tribes do not share an ownership interest in the projects for the duration of the tax credit.

## Reason for Change

Current law creates an economic disincentive for Indian tribes to acquire or retain ownership interests in renewable energy facilities. The proposal would allow for full utilization of the PTC for projects on Indian lands while allowing Indian tribes to maintain ownership interests throughout the life of the projects. This would allow Indian tribes to own infrastructure on their own lands and would simplify financing by eliminating the need for reversionary ownership arrangements. Most importantly, the proposal would promote the infusion of private investment in Indian country by ensuring that the PTC is a reliable component of any renewable energy project in which an Indian tribe is a partner or owner. An incentive is needed since there is often additional leasing and administrative hurdles that tribal governments must navigate that otherwise serve to discourage private investment.

## Proposal – Suggested Language

The proposal would amend paragraph (3) of section 45(e) of the IRC to read as follows:

“(3) PRODUCTION ATTRIBUTABLE TO THE TAXPAYER-

“(A) IN GENERAL- In the case of a facility in which more than 1 person has an ownership interest, except to the extent provided in regulations prescribed by the Secretary, production from the facility shall be allocated among such persons in proportion to their respective ownership interests in the gross sales from such facility.

“(B) SPECIAL RULE FOR INDIAN TRIBES-

(i) IN GENERAL- In the case of a facility described in subparagraph (A) in which an Indian tribe has an ownership interest in the gross sales from such facility, such Indian tribe may assign to any other person who has such an ownership interest in such facility any portion of the production from the facility that would (but for this subparagraph) be allocated to such Indian tribe. Any such assignment may be revoked only with the consent of the Secretary and shall be made at such time and in such manner as the Secretary may provide.

(ii) INDIAN TRIBE- For purposes of clause (i), the term `Indian tribe' means any Indian tribe, band, nation, pueblo, or other organized group or community, including any Alaska Native village or regional or village corporation, as defined in, or established pursuant to, the Alaska Native Claims Settlement Act (43 U.S.C. 1601 et seq.) which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians.'