

OBBBA and the Transferable Tax Credit Market: Corporate Tax Must-Knows

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Reprinted from *Tax Notes Federal*, September 29, 2025, p. 2121

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In this article, Sklar examines the shifting landscape of clean energy credits and how the ways that transactions are structured and insured and undergo due diligence are changing.

When Congress passed the One Big Beautiful Bill Act (P.L. 119-21) in 2025, it introduced a range of energy-related measures that directly affect the transferable tax credit market. While the core mechanics of section 6418 transferability remain intact, still allowing clean energy developers to sell unused tax credits to buyers with sufficient tax liability to absorb the credits (that is, sufficient tax capacity), the surrounding legal and regulatory framework has evolved significantly.

Key supply-side changes include accelerated expiration dates, phasedowns for certain credits, and the expansion of the foreign entity of concern (FEOC) rules that impose disallowance risks and penalties if critical materials or components are sourced from or if relevant parties are owned or controlled by FEOCs (primarily entities from China and Russia). In addition, new IRS guidance under the OBBBA tightens the criteria for establishing begin-construction status, limiting the availability and flexibility of safe harbors and continuity rules. Accordingly, developers seeking to grandfather projects face a higher bar than under prior law.

On the demand side, the restoration of immediate research and development expensing under section 174, the return of 100 percent bonus depreciation, and the liberalization of the section 163(j) interest deduction limitation has reduced many corporations' taxable income in the second half of 2025. As a result, some buyers may have less tax capacity available in the near term, which could lead to more selective credit purchases and greater pricing differentiation. Together, these changes are shifting the landscape of clean energy credits and raising the bar for how transactions are structured, diligenced, and insured.

For corporate tax departments and potential credit buyers, these developments matter in several ways, including: the supply of credits coming to market, the risk and diligence required to purchase them, and the corporate tax capacity that determines whether buying makes sense in the first place.

I. Transferability Survives

The OBBBA preserves the core mechanics of section 6418 transferability, the system first introduced under the Inflation Reduction Act of 2022. Effective July 2023, this regime allowed, for the first time, clean energy developers and other eligible taxpayers to transfer certain general business credits, including investment tax credits and production tax credits, to unrelated parties for cash.

This was a transformative shift in tax credit policy. Previously, corporations could only benefit from tax credits generated by their own activities or via structured tax equity investments. Section 6418 created a simpler, more flexible alternative, enabling companies to purchase credits in the open market, whether directly from developers or through upstream parties in tax equity

partnerships. It also introduced enhanced credit usability by extending the carryback period to three years and the carryforward period to 22 years, providing additional tax planning flexibility for both buyers and sellers.

Under the OBBBA, this framework remains intact: Developers continue to register projects through the IRS portal and transfer credits for cash consideration, and buyers continue to receive a dollar-for-dollar offset against tax, subject to the section 38(c) general business credit limitation¹ and other applicable rules. The final regulations issued in 2024, along with the IRS's operational portal, continue to serve as the procedural backbone for registration, substantiation, and compliance.

While the mechanics have not changed post-OBBBA, the market context has evolved. New risks around eligibility, timing, FEOC compliance, and schedule sensitivity now drive pricing, diligence, and contract structure in the transfer market.

II. Supply-Side Factors: Accelerated Sunsets, Begin-Construction Tightening, and FEOC

A. Accelerated Phaseout of Wind and Solar Credits

Under the OBBBA, the flagship clean energy tax credits for wind (the production tax credit under section 45Y) and solar (ITC under section 48E) now face an accelerated phaseout schedule:

1. *Accelerated deadlines.* Under prior law as enacted by the IRA, wind and solar facilities generally had until the end of 2032 to begin construction and still qualify for the full credit amount, with gradual phasedowns thereafter. The OBBBA substantially shortens that runway: Only projects that begin construction by July 4, 2026 (one year after the OBBBA's enactment), remain eligible for the pre-OBBBA expiration dates. Facilities that miss the July 4, 2026, deadline can still qualify, but only if they are placed in

service by December 31, 2027, effectively converting the eligibility standard into a hard placed-in-service cutoff. Projects that fail to meet either milestone — begin construction by mid-2026 or place in service by the end of 2027 — lose access to the credit entirely, with no phasedown or reduced-rate alternative available. This shift creates new urgency for developers and investors to lock in project timelines, document begin-construction actions, and mitigate schedule-related risk through contracts, diligence, and, where available, tax insurance.

2. *Third-party owned residential solar.* Earlier versions of the OBBBA would have eliminated ITC eligibility for third-party ownership structures, such as leases and power purchase agreements, but this restriction was ultimately removed in the final legislation. Still, residential rooftop solar remains one of the most vulnerable segments under the new 2027 placed-in-service cutoff. Unlike utility-scale developers that can rely on begin-construction strategies such as long-lead procurement or early-stage sitework to lock in pre-OBBBA treatment, residential solar portfolios typically follow short, 90-120 day build cycles, making those safe harbor strategies far less practical. As a result, third-party owned residential systems will likely not qualify for the ITC after 2027. While a handful of well-capitalized residential solar providers may attempt to pre-stage beginning of construction-compliant portfolios, the broader market is likely to see a material decline in eligible ITCs post-2027.
3. *Safe harbor extension now narrowed.* Wind and solar projects that begin construction before July 4, 2026, are exempt from the accelerated credit termination provisions added to section 45Y and 48E by the OBBBA. But IRS Notice 2025-42, 2025-36 IRB 351, released this past August, significantly tightened the begin-construction requirements for purposes of determining exemption eligibility by eliminating the 5 percent safe harbor for

¹ Under the section 38(c) limitation, general business credits, including those acquired through section 6418 transferability, can typically offset no more than 75 percent of a corporation's regular tax liability, after accounting for other allowable credits.

those purposes for projects larger than 1.5 megawatts. Previously, under the 5 percent safe harbor, developers of wind and solar projects were able to satisfy the begin-construction test for other purposes (for example, determining whether the prevailing wage and apprenticeship rules apply) with relatively modest early expenditures (for example, on non-custom equipment that was not project-specific). Now, to be exempt from OBBBA's accelerated termination provisions, developers of most utility-scale wind and solar projects must show that "physical work of a significant nature" was completed by July 3, 2026. This generally requires either on-site construction (for example, foundation pours, access roads, racking, or turbine erection) or off-site commissioning of customized, project-specific equipment, such as main power transformers, switchgear, tracking equipment, or specially fabricated turbine components. These more stringent rules substantially limit flexibility and narrow the window for pre-OBBBA treatment.

4. *More favorable treatment for other technologies.* Clean energy technologies other than solar and wind remain on the original, more generous phaseout track established under the IRA. These include energy storage, nuclear, hydropower, marine, and hydrokinetic facilities; geothermal heat pumps; and qualified fuel cell property. All these technologies retain eligibility for the section 45Y production tax credit and section 48E ITC based on the later of 2032 or when emissions fall below 25 percent of 2022 levels, followed by a gradual phasedown. In effect, they were carved out of the accelerated expiration regime and continue to benefit from the full credit structure well into the 2030s.
5. *The section 45Z clean fuel production credit.* The OBBBA extended the section 45Z clean fuel production credit, effective beginning in 2025, through December 31, 2029 (originally set to expire in 2027). The extension comes with additional guardrails, such as domestic feedstock

restrictions, while also liberalizing certain aspects, most notably by clarifying the use of the greenhouse gases, regulated emissions, and energy use in technologies model in determining the carbon intensity factor used to calculate the credit's value.

6. *Section 45X advanced manufacturing — adjusted phasedown schedule.* Under the IRA, most section 45X-eligible components were scheduled to receive a full 100 percent credit through 2029, followed by a phasedown: 75 percent in 2030, 50 percent in 2031, 25 percent in 2032, and sunset thereafter. Critical minerals, however, were not subject to any statutory phasedown and were expected to continue indefinitely. The OBBBA retains the general schedule for most components but introduces two key modifications:
 - A. wind energy components now cease to qualify after 2027, rather than phasing down through 2032; and
 - B. applicable critical minerals are now placed on a delayed phasedown path: 75 percent in 2031, 50 percent in 2032, 25 percent in 2033, and 0 percent thereafter.

These adjustments narrow the long-term applicability of section 45X for certain sectors, particularly wind and critical mineral refining, and will likely accelerate procurement and production timelines for manufacturers seeking to capture the full credit.

In essence, wind and solar developers, which are responsible for a substantial majority of the transferable tax credits, face a hard deadline: begin construction by mid-2026 or risk losing eligibility unless placed in service by late 2027. This sharply condenses the window for planning, financing, and executing renewable projects intended to use the clean energy tax credit regime.

B. Expanded FEOC Rules: A New Hurdle for Credit Eligibility

The OBBBA expands FEOC restrictions across major clean energy credits — including section 45X (advanced manufacturing), section 45Y/section 48E (clean electricity), and section 45Z

(clean fuels). Credits can be disallowed if more than a minimum share of direct material costs (with the percentage varying by year and component type) come from prohibited foreign entities, generally entities with control tied to China or Russia or if relevant parties are owned or controlled by those entities. The rules now reach beyond tier 1 suppliers and require traceability into upstream materials. While these provisions aren't materially constraining most current transactions yet, they're expected to begin shaping diligence and deal structures over the next 12-24 months (see the effective date discussion below).

What this means for credit buyers:

- When FEOC rules apply, treat them as a gatekeeping eligibility test, not just a pricing factor. As these rules become relevant, deals will increasingly require FEOC-specific representations and warranties, substitution or price-down mechanics, and access to supplier attestations.
- Tax insurance may exclude certain FEOC exposures, at least in the short term, so risk control might shift to front-end diligence.
- FEOC-clean credits might price higher; uncertain chains face discounts or may be unmarketable.

Effective timing differs by credit:

- *Clean electricity (section 45Y/section 48E)*. Most FEOC restrictions generally only attach to property that begins construction on or after January 1, 2026.² Projects that begin construction before that date and maintain continuity can generally be grandfathered.
- *Advanced manufacturing (section 45X)*. The trigger is components produced and sold after the January 1, 2026, effective date. Additional rules effective January 1, 2027, apply regarding manufacturers that assemble integrated products such as modules and battery packs. Pre-effective

²Under the OBBBA, the FEOC ownership rules apply sooner: If the taxpayer/project owner is a prohibited foreign entity (e.g., a specified foreign entity or foreign-influenced entity, such as one greater than or equal to 25 percent owned or controlled by a specified foreign entity), it's disqualified starting with tax years beginning after July 4, 2025. By contrast, the supply-chain/material-assistance restrictions generally apply only to facilities that begin construction after December 31, 2025.

date inventory can be usable if the manufacture date is documented (for example, lot/serial evidence); buyers should require traceability back to the production run.

- *Clean fuels (section 45Z)*. FEOC-type sourcing constraints apply to fuel sold after January 1, 2026; compliance is demonstrated through feedstock origin and lifecycle records on a periodic (for example, monthly or quarterly) basis.

III. Demand-Side Factors: The Mid-2025 'Tax-Cut' Effect and Corporate Capacity

The enactment of the OBBBA in mid-2025 not only reshaped the credit supply landscape, but it also produced an immediate contraction in corporate tax credit demand, particularly for 2025 vintages. This demand-side effect is largely driven by the OBBBA's midyear tax changes, which are lowering the 2025 taxable income projections for many large corporate taxpayers, especially those with significant R&D and capital expenditures.

A. Key Drivers of the 2025 Tax Capacity Drop

Three core provisions of the OBBBA are reshaping corporate tax forecasts:

1. Restoration of full expensing for section 174 research and experimentation expenses, including a one-time catch-up deduction for prior-year costs that were previously amortized under the Tax Cuts and Jobs Act. This single change has produced a sizable deduction spike for tech, pharmaceutical, and advanced manufacturing companies.
2. Reinstatement of 100 percent bonus depreciation, allowing companies to immediately expense capital expenditures placed in service in 2025, further reducing taxable income for capex-heavy businesses.
3. Liberalization of section 163(j) interest deduction limitations, enabling more interest expense to be deducted currently, particularly benefiting highly leveraged companies.

Together, these provisions reduce pre-credit regular tax and limit how much credit can be used

in 2025. For multinationals subject to the base erosion and antiabuse tax, the deductions also narrow the buffer between the regular tax and BEAT thresholds, further restricting credit usability. The result is lower and less predictable 2025 credit demand, requiring more dynamic capacity forecasting and tighter estimated tax planning.

B. Market Impact: 2025 Credit Purchases Contract, Pricing Softens

As a result of these developments, many previously active credit buyers have scaled back or delayed their 2025 purchases. Internal models built just months earlier under assumptions of higher regular tax are now being revised downward, with some buyers pausing entirely to reassess capacity.

This retrenchment has already begun to ripple through the market:

- *Pricing pressure:* Credit values for 2025 vintages have declined in some bilateral and brokered transactions.
- *Reduced demand for short-term supply:* Buyers are becoming more selective, particularly with delivery tranches scheduled for Q3-Q4 2025.
- *Buyer profile shifts:* Companies less affected by R&D and capex deductions — such as retailers, financial services firms, and other low-intangible, low-capex industries — are emerging as opportunistic purchasers, stepping in where capacity remains.

IV. 2026 Credit Demand Less Affected — For Now

To date, the demand-side softening triggered by the OBBBA appears concentrated in the 2025 tax year. The section 174 catch-up deduction is a one-time event, and the effects of 100 percent bonus depreciation and section 163(j) liberalization are expected to normalize by 2026, restoring taxable income to pre-OBBBA baselines for many companies. As a result, advance demand for 2026 credits remains relatively stable, with many buyers continuing to underwrite 2026 tax capacity with greater certainty.

That said, broader market conditions are pushing more 2026 supply into circulation earlier in the cycle than in prior years. In particular, stand-alone developers and sponsors with limited

balance sheet flexibility are increasingly accelerating their 2026 sales timelines, often seeking forward commitments in 2025 to de-risk execution and lock in counterparties.

This dynamic has introduced wider discounts on 2026 credits than would typically be seen this early, even though demand fundamentals remain intact. For tax buyers with constrained 2025 headroom but clearer 2026 capacity, this dislocation presents a strategic opportunity: lock in attractive pricing on forward-delivered credits now, before the usual year-end squeeze or repricing later in the cycle.

Implications for market participants are as follows:

- Credit sellers may face more extended sales cycles and greater pricing variability for 2025 delivery tranches.
- Buyers with excess capacity in unaffected sectors may find pricing opportunities in a softer market.
- Buyers facing 2025 capacity constraints, but with more headroom projected for 2026, may find compelling value by locking in 2026 credit purchases now, while discounts remain wider and competition is limited.
- Tax planning coordination across treasury, tax, and financial planning and analysis is more critical than ever, particularly for companies forecasting large midyear adjustments to their tax base.

V. Insurance Market Adjustments

The tax credit insurance market is evolving rapidly in response to the OBBBA's accelerated timelines and expanded FEOC restrictions. Insurers are increasingly focused on project life cycle timing risks, specifically whether a project has validly commenced construction by July 4, 2026; is placed in service by December 31, 2027; and maintains compliance with continuity requirements thereafter. While there is some current uncertainty, we expect carriers to offer coverage for these timing-related risks as the market coalesces around existing guidance (for example, Notice 2025-42) and forthcoming clarification on how begin-construction standards apply under the new FEOC rules.

In contrast, insurers remain notably cautious about FEOC-related exposures, largely because of

the complexity of upstream supply chain diligence and the absence of standardized attestation frameworks. While coverage remains limited today, we anticipate that, with clearer regulatory guidance and more robust diligence protocols, insurers will adapt and develop pathways to underwrite this risk over time.

VI. Looking Ahead

A. Short-Term Outlook: Discounts, Repricing, and Strategic Entry Points

In the near term, expect modest discount widening on both 2025 and 2026 credits. Buyers are actively reforecasting their tax capacity in light of midyear tax cuts, particularly the catch-up section 174 deduction and reinstated bonus depreciation, while sellers, especially those with tighter balance sheets, are bringing credits to market earlier to reduce refinancing and execution risk. This combination creates pricing dislocations that present attractive opportunities for buyers with either 2025 or 2026 capacity.

B. Midterm Outlook: Stability and Grandfathering Dynamics

By 2026 and 2027, if tax credit supply normalizes and corporate tax capacity stabilizes, discounts could tighten especially for 2026 and 2027 vintages. The looming 2027 placed-in-service cutoff for wind and solar projects is unlikely to create market disruption for most sponsors. That's because most developers, with the possible exception of residential solar developers, are expected to grandfather their eligibility by

beginning construction before July 6, 2026, which under the current continuity rules allows projects to be placed in service as late as December 31, 2030.

C. FEOC-Driven Diligence Complexity Ahead

However, growing complexity from FEOC compliance may introduce new transactional friction. Projects that fail to begin construction before year-end 2025 will be subject to the expanded FEOC rules, which require deeper supply chain diligence and may make certain credits harder to underwrite, transfer, or insure.

In this environment, buyers will expect enhanced diligence packages, including supplier attestations, manufacturing documentation, and chain-of-custody proofs. The ability to demonstrate FEOC compliance or valid grandfathering will increasingly influence both pricing and marketability.

D. Contractual and Insurance Innovation Required

Looking forward, the need to satisfy FEOC requirements, whether through begin-construction grandfathering or compliance certification, is expected to drive the development of more nuanced contractual structures and targeted insurance solutions to maintain liquidity in the credit market. Sponsors and intermediaries that can deliver fully diligenced, FEOC-clean credits, complete with documentation and flexible risk allocation, will be best positioned as the market matures into 2026 and beyond. ■