With nearly $50 billion in annual investment, the renewable energy sector is one of America’s most important economic drivers. The lion’s share of recent renewable growth has been in the wind and solar power industries, and the country’s two fastest growing job categories are wind turbine technician and solar power installer. While all other sources of electricity generation have permanent law tax incentives, many of which have been on the books for over a century, the wind and solar sectors endorsed a bipartisan legislative compromise in December 2015 that phases out their tax credits over the next several years. Credits for other forms of renewable energy generation, including biomass, geothermal, hydro, marine hydrokinetic energy and fuel cells lapsed in 2016. Included below is a brief overview of key provisions with important repercussions for renewable energy in the U.S., and recommended approaches to ensure continuation of the renewable energy investment and growth that has powered job creation in communities across the country.

New Base Erosion Anti-Abuse Tax in Senate Bill

The Senate Bill: The Senate bill includes a new Base Erosion Anti-Abuse Tax (BEAT) intended to penalize multi-national companies that make use of foreign investments to avoid U.S. taxes. Unfortunately, the formula for computing the tax amount would claw back 100 percent of the value of renewable tax credits for affected companies. Companies are only able to determine if they are covered by the BEAT provision when they have completed their year-end tax calculations. Major financial institutions have indicated that, under such a regime, they may no longer participate in tax equity financing, the principle mechanism for monetizing credits and financing renewable energy growth. There is broad concern that, as drafted, the BEAT will undermine the tax equity marketplace, leading to a dramatic reduction in wind and solar energy investment and development.

The Renewable Path: ACORE urges conferees to ensure that renewable tax credits, which are only generated through U.S. investment, not be clawed back as part of any approach intended to address concerns of offshoring. Ironically, the BEAT program is rooted in a desire to promote U.S. investment but its treatment of renewable tax credits would have the exact opposite impact. If the Senate approach is included in the final bill, ACORE urges that renewable tax credits (PTCs and ITCs) be removed from the calculation of the BEAT, just as the bill already exempts the research and development credit. In the event it is not possible to exempt renewable credits, ACORE urges conferees to adopt a two-year transition rule that would provide market certainty by exempting credits produced by renewable projects that ’start construction before 2020 from the BEAT.
The House Bill: The House bill does not include a similar tax. It seeks to address the concerns about shielding income through a shift to a territorial system of taxation.

The Alternative Minimum Tax

Senate Bill: The McConnell substitute amendment adopted on the Senate floor the evening of the bill's passage restores the 20 percent corporate alternative minimum tax (AMT), matching exactly the new 20 percent corporate tax rate. It is unprecedented to have an AMT at a rate identical to the tax rate, and there is broad concern about the repercussions of such a structure, since many tax credits cannot be applied against AMT. The PTC for wind power, for example, can only be used against the AMT for the first four years after each turbine is placed in service (IRS code Section 38(c)(4)), resulting in a substantial reduction in the value of the PTC benefit for existing and new wind facilities. New facilities do have the ability to opt for the investment tax credit (ITC). However, the ITC typically provides far less value given the efficiency of today's wind turbines.

House Bill: The House bill does not include the corporate AMT.

The Renewable Path: ACORE urges conferees to reject the House language on the wind and solar tax credits. ACORE also urges prompt extension of the lapsed credits for all other renewable energy technologies.

Direct Changes to Renewable Tax Credits

House Bill: Rather than rewarding the wind and solar sectors for their leadership in becoming the nation's first industries to agree to the phasedown of their own tax incentives, the House version of H.R. 1 substantially reduces the value of the wind production tax credit (PTC), phases out the permanent 10 percent solar credit, and retroactively changes the rules governing how wind and solar projects qualify for tax credits. The House bill eliminates 25 years of accumulated PTC inflation adjustments, decreasing the PTC value from $24 per megawatt hour to $15 per megawatt hour, and eliminating future inflation adjustments for projects starting construction after the date of enactment. It also includes language that appears to retroactively change the criteria that govern qualification for tax credits, overturning the Treasury Department's “safe harbor” guidance. The implications of this language are uncertain as the Committee Report on the bill, its official legislative history, asserts that the language is intended to embrace prior guidance.

The House bill includes provisions extending credits to some of the so-called “orphan” renewable technologies that were not included in the 2015 tax package, but not others. Important technologies not addressed include biomass power, geothermal power and hydropower.

Senate Bill: The Senate bill includes no changes to energy tax credits.

The Renewable Path: ACORE joins many business interests in urging conferees to embrace the House position, and include no corporate AMT in the final bill. If an AMT is included, ACORE urges changes to allow all PTCs to be used against the AMT.