Credits and Incentives

With all the challenges facing public companies this year, it's critical to leverage every available tax benefit. Fortunately, lawmakers have packed the Code with credits and incentives designed to reward taxpayers for certain types of activities and investments. The OBBBA made significant revisions to energy credits, imposing new restrictions and phasing out many of the credits early. Despite the changes, there is still considerable runway for many projects, and the tax equity financing and credit transfer markets should both be robust over the next several years. In addition, the OBBBA enhanced existing incentives in ways that offer new opportunities for tax-efficient structuring.

Energy Provisions Following Enactment of the OBBBA

The OBBBA has reshaped the energy credit landscape. Several credits were extended or enhanced, while many others are subject to new sourcing and investment requirements or are phasing out early. The legislation does not affect the ability to transfer or claim refundable payments for specified credits.

Consumer Credits

The OBBBA repeals several energy-related tax credits directed to consumers, each with distinct effective dates:

- Section 25E – Previously Owned Clean Vehicle Credit
  Repealed for vehicles acquired after September 30, 2025.
- Section 30D – Clean Vehicle Credit
  Repealed for vehicles acquired after September 30, 2025.
- Section 45W – Commercial Clean Vehicle Credit
  Repealed for vehicles acquired after September 30, 2025.
- Section 30C – Alternative Fuel Refueling Property Credit
  Repealed for property placed in service after June 30, 2026.
- Section 25C – Energy-Efficient Home Improvement Credit
  Repealed for property placed in service after December 31, 2025.
- Section 25D – Residential Clean Energy Credit
  Repealed for expenditures made after December 31, 2025.
- Section 45L – New Energy-Efficient Home Credit
  Repealed for property acquired after June 30, 2026.

Depreciation

The bill eliminates the five-year depreciable life for qualified energy property, and the Section 179D deduction is repealed for construction beginning after June 30, 2026.

Sections 48E and 45Y – Investment and Production Tax Credits

The OBBBA accelerates the phaseout of the investment tax credit under Section 48E and the production tax credit under Section 45Y. Projects that begin construction after 2033 will generally no longer qualify for these credits, with solar and wind facilities facing even earlier deadlines. To remain eligible, solar and wind projects that begin construction after July 4, 2026, must be placed in service by the end of 2027.

The legislation also introduces new restrictions related to prohibited foreign entities. Facilities beginning construction after December 31, 2025, may not receive material assistance from such entities. Material assistance is determined based on a cost ratio tied to the sourcing of eligible components. In addition, Section 48E now includes stricter domestic sourcing requirements to obtain the 10% bonus credit, reflecting a broader policy shift toward supply chain security and energy independence.

Importantly, the IRS has tightened the rules for establishing that construction has begun for purposes of the July 4, 2026, deadline for solar and wind facilities. Under Notice 2025-42, the 5% safe harbor method is available only if taxpayers can use it to establish that construction began by September 1, 2025. Starting September 2, the physical work test is the sole method for establishing beginning of construction (BOC) for wind and solar projects for purposes of the July 4, 2026, deadline.

This change applies to the credit phaseouts under the OBBBA, but not to the foreign entity of concern (FEOC) rules. For FEOC exemption purposes, facilities may still use the 5% safe harbor to establish that construction began by December 31, 2025. Additionally, low-output solar facilities (≤1.5 MW AC) may continue to use the 5% safe harbor beyond that date. The four-year continuity safe harbor remains in place for projects that meet BOC requirements.

Historically, taxpayers could rely on either the physical work test or the 5% safe harbor. Notice 2025-42 now limits this to the physical work test, which requires significant physical work related to the energy property, either on-site or off-site, under a binding contract. Preliminary activities like design or site clearing do not qualify.

To maintain credit eligibility, taxpayers must also meet the continuity requirement, which can be satisfied if the facility is placed in service within four years of the BOC year.

Planning Considerations

Facilities must establish BOC by December 31, 2025, to avoid FEOC restrictions beginning in 2026, and facilities can continue to rely on the 5% safe harbor specifically for the purpose of meeting this deadline through the end of 2025. Solar and wind projects beginning construction more than 12 months after the OBBBA enactment must be placed in service by the end of 2027 to qualify for Section 48E or 45Y credits. Facilities that establish BOC by the deadline can rely on the four-year continuity safe harbor to place in service and preserve credit eligibility.

Section 45X – Advanced Manufacturing Credit

The advanced manufacturing credit under Section 45X has been modified significantly. While the credit is repealed for wind energy components sold after 2027, it remains available for other eligible components before a phasedown begins in 2031. Components sold in 2031 will qualify for a 75% credit, decreasing to 50% in 2032 and 25% in 2033. The credit is fully repealed for sales occurring in 2034 or later. Notably, the scope of the credit has been expanded to include metallurgical coal. As with other energy provisions, the material assistance restrictions for prohibited foreign entities apply to all qualifying components.

Section 45Z – Clean Fuel Production Credit

Under the OBBBA, the clean fuel production credit under Section 45Z has been extended through 2031. The bill also reinstates the small agri-biodiesel credit under Section 40A, which can now be stacked with the 45Z credit. A new geographic restriction has been added, disallowing the credit unless the feedstock is produced or grown in Canada, Mexico, or the U.S. Additionally, the methodology for calculating greenhouse gas emissions has been revised to exclude indirect land use changes. Prohibited foreign entity rules have also been extended to apply to clean fuel production facilities.

Other Energy Provisions

The clean hydrogen production credit under Section 45V is repealed for construction beginning after 2027 — two years later than previously proposed. Section 45Q credit rates for carbon capture used as a tertiary injectant or for productive use are increased to match those for permanent geologic storage, with new foreign entity restrictions.

Publicly traded partnership (PTP) rules now include income from carbon capture, nuclear, hydropower, and geothermal energy projects, as well as the transport or storage of sustainable aviation fuel or hydrogen. The nuclear production credit under Section 45U is also subject to foreign entity restrictions.

> **Planning Considerations**
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> Taxpayers should assess project timelines and sourcing strategies in light of phaseouts and new restrictions. For Sections 45Y and 48E, construction must begin within eligibility windows — especially for solar and wind projects facing a 2027 placed-in-service deadline.
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> Supply chain planning is critical to avoid disqualification under foreign entity rules. Manufacturers of wind property eligible for Section 45X should consider accelerating production before the phaseout in 2027. Clean fuel producers must ensure feedstock sourcing complies with geographic limits and updated emissions rules.
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> Entities pursuing carbon capture, hydrogen, or nuclear projects should factor in expanded PTP eligibility and foreign entity restrictions when structuring financing and partnerships. Early action can help preserve credit eligibility and enhance long-term benefits.

State Tax Credit Transfers

Following the enactment of the OBBBA, many states have expanded or introduced transferable tax credit programs, particularly in clean energy, affordable housing, and infrastructure. These programs allow taxpayers to sell unused credits to third parties, creating liquidity and broader access to state-level incentives. Transfer mechanisms vary by state, with some requiring pre-approval, certification, or registration, while others impose annual caps or limits on transfer volume. The trend mirrors federal credit transferability under Section 6418 and reflects growing interest in flexible credit monetization strategies.

States are also beginning to adopt market infrastructure — such as broker platforms and insurance products — to support credit transfers and mitigate buyer risk. As more jurisdictions adopt these frameworks, taxpayers with multistate operations should monitor developments closely to identify new opportunities.

Planning Considerations

Taxpayers should assess eligibility and timing for generating transferable credits, especially in states with strict certification or sourcing requirements. Early coordination with legal and tax advisors is essential to confirm compliance with documentation and reporting rules. Buyers should conduct due diligence on project qualification, transfer terms, and potential recapture risks.

Engaging with credit brokers or marketplaces may help improve pricing and identify reliable counterparties. Additionally, taxpayers should consider how state credit transfers interact with federal incentives, particularly in structuring financing and partnership arrangements. Strategic planning now can help enhance credit value and avoid missed opportunities as state programs continue to evolve.

OBBBA Makes New Markets Tax Credit Program Permanent

The New Markets Tax Credit (NMTC) program supports capital investments in low-income communities by offering tax credit-subsidized loans to eligible businesses for use toward eligible costs (e.g., real estate and furniture, fixtures, and equipment (FFE)). These loans often feature interest-only terms, below-market rates, and principal forgiveness after seven years, providing a permanent cash benefit to businesses.

Previously set to expire at the end of 2025, the NMTC program was made permanent by the OBBBA, with a continued annual allocation authority of $5 billion. Eligible businesses — both for-profit and nonprofit — can apply for NMTC financing for capital expenditure projects in qualifying census tracts. The program supports a wide range of sectors, including manufacturing, healthcare, education, renewable energy, and retail, though it excludes farming and residential rental activities.

Each year, certified Community Development Entities (CDEs) apply to the CDFI Fund for NMTC allocations. If awarded an allocation, CDEs raise equity from tax credit investors and deploy capital to eligible businesses (otherwise known as Qualified Active Low-Income Community Businesses) based on community impact and strategic priorities, which may vary by geography or industry.

Planning Considerations

The NMTC program remains highly competitive. Early engagement with CDEs and timely application are critical to securing financing. Businesses should prepare detailed project plans that demonstrate strong community impact and align with CDE priorities.

Acting early improves the likelihood of receiving funding and may unlock additional benefits.

Work Opportunity Tax Credit Set to Expire

The OBBBA did not extend the work opportunity tax credit (WOTC), which is now set to expire for any individuals who begin work after December 31, 2025. The WOTC provides a valuable incentive for employers who often hire workers from certain targeted populations, including veterans, people with disabilities, people on food assistance, certain youth employees, and ex-felons. Employers who frequently screen for qualified individuals as part of their hiring process should monitor the legislative process for a potential extension of the credit.

R&D Credit Opportunities

The research credit remains one of the most powerful incentives in the tax code, and the IRS continues to receive a high volume of claims, straining examination resources. To improve administration and reduce improper claims, the IRS recently made several changes to Form 6765, clarifying documentation requirements for claiming the credit.

The revised Form 6765 was partially finalized for tax year 2025, with the IRS making optional the mandatory reporting of qualified research expenses (QREs) by business component in Section G of the form. When Section G becomes mandatory for the 2026 tax year, taxpayers will be required to disclose the top 80% of QREs, with controlled group members required to attach detailed breakdowns by entity. Section E is currently mandatory and includes new questions related to officer wages, acquisitions, and use of the ASC 730 directive. These updates reflect the IRS's ongoing efforts to enhance transparency and strengthen audit readiness.

In response to ongoing compliance concerns, the IRS has increased scrutiny of research credit filings, including more frequent audits. However, due to temporary resource constraints, some IRS Exam functions are operating at reduced capacity, which may delay enforcement actions. Taxpayers should confirm that they are properly documenting claims and explore state credit opportunities.

State Credit Changes

Over the past year, several states have enacted or revised legislation related to research and development (R&D) tax credits. These changes reflect a growing trend to incentivize innovation and attract high-tech investment. These states include:

Arizona: Arizona now permits use of the alternative simplified credit (ASC) method for computing its credit for increased research activities. This provides greater flexibility and may result in increased benefits. Refundable credits are available for small businesses with fewer than 150 employees, subject to pre-approval from the Arizona Commerce Authority.

Arkansas: Arkansas expanded its credit options, offering up to 33% for strategic research areas and university partnerships. Credits are nonrefundable but can offset 100% of state tax liability and be carried forward for up to nine years.

Connecticut: Connecticut expanded its R&D and R&E credits under H.B. 7287. Single-member LLCs may now qualify if they meet specific criteria. Refundability increased to 90% for small biotech firms and 65% for other small businesses, capped at $1.5 million per company annually.

Iowa: Iowa enacted Senate File 657, replacing its research activities credit with a targeted R&D tax credit program effective January 1, 2026. Eligibility is limited to sectors such as advanced manufacturing, bioscience, finance, insurance, and technology. Credits are capped at $40 million annually and require CPA-verified QREs and a competitive application process through the Iowa Economic Development Authority.

Massachusetts: Massachusetts increased the maximum allowable credit for certain industries and introduced new documentation requirements for software development and AI-related R&D.

Michigan: Effective January 1, 2025, Michigan reintroduced its R&D tax credit. Large businesses may claim 3% of qualifying expenses up to a base amount and 10% above it, capped at $2 million. Small businesses may claim 15% above the base amount, capped at $250,000. An additional 5% credit is available for university collaborations, capped at $200,000. The credit is refundable and subject to a $100 million annual cap.

Minnesota: Minnesota introduced partial refundability for its R&D credit: 19.2% for 2025, increasing to 25% for 2026–2027.

Oklahoma: Oklahoma revised its R&D credit to align more closely with federal QRE definitions and introduced a new pre-approval application process.

Texas: Texas enhanced its franchise tax R&D credit via SB 2206 and repealed the R&D equipment sales tax exemption effective January 1, 2026.

Planning Considerations

Navigating the R&D credit has become more complex amid heightened review, evolving case law, and new compliance measures. Taxpayers should make sure claims are well-supported and consistent with updated guidance to reduce audit risk and avoid delays.

Taxpayers should carefully assess eligibility for both federal and state research credits, maintain contemporaneous documentation, and prepare to defend claims under examination. Strategic planning is essential to leverage available incentives, especially given the complexity and variability of state-level programs. Using a trusted tax advisor can help taxpayers maintain compliance with IRS and state regulations and effectively substantiate research credit claims.

Opportunity Zone Extension Creates Tax Planning Options

The OBBBA made the qualified opportunity zone (QOZ) program permanent, preserving one of the most generous tax incentives ever offered by Congress. The provision can offer benefits to public companies investing in specific geographies. The strategy will likely require segregating the qualified activities into a separate entity that can be designated a qualified opportunity fund (QOF)

The OBBBA changed the rules in important ways, and companies with existing or planned investments should consider the implications. The changes could affect the timing of gain transactions and capital contributions, the location of investments, and the compliance burdens for funds.

The current QOZ designations will expire at the end of 2026. New zones will be designated in rolling 10-year designation periods under new criteria that are expected to shrink the number of qualifying zones.

As under the current program, taxpayers can defer capital gains by investing in a QOF. For investments made after 2026, taxpayers will be required to recognize the deferred gain five years after making the investment but will receive a 10% increase in basis for holding the investment five years. For QOFs operating in a new category of rural opportunity zones, this basis increase is 30%. Taxpayers who make investments before the end of 2026 must still recognize the deferred gain at the end of 2026.

The more powerful tax benefit may be the tax-free appreciation on the underlying investment itself. Companies can still receive a full basis step-up to fair market value (FMV) for property held 10 years, but the OBBBA added a rule freezing the basis step-up to the FMV at 30 years after the date of the investment.

The operational rules for QOFs and qualified opportunity zone businesses (QOZBs) are generally unchanged, except for property held in a rural opportunity zone. The threshold for establishing the substantial improvement of qualifying property in a rural opportunity zone will be 50% of basis rather than 100%, effective for any determinations after July 4, 2025. QOFs and QOZBs will both be subject to increased reporting requirements.

Companies looking for new tax-efficient investing opportunities and gain deferral strategies should reassess their investment options, paying particular attention to which geographies are likely to qualify in 2027.

> **Planning Considerations**
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> The timing of capital gains transactions will be important. Taxpayers planning investments in geographic areas that are unlikely to be redesignated may need to make the investments before the end of 2026. Existing QOFs and QOZBs should consider their long-term capital needs because it is not clear whether any “grandfathering” relief will allow additional qualified investments in funds operating in QOZs that are not redesignated. The new reporting rules will apply to both new and existing QOZs and QOZBs for tax years beginning after the date of enactment, and those entities will need to collect and report substantial new information that has never before been required.

REIT Structuring and Real Estate Benefits

The real estate investment tax (REIT) structure remains an effective way to structure certain real estate activities with only one layer of tax. The OBBBA raises from 20% to 25% the portion of the gross asset value of a REIT that may be attributable to equity and debt securities of taxable REIT subsidiaries, effective for tax years beginning after 2025. The change should provide added flexibility.

In addition, the OBBBA allows the completed contract method of accounting for many residential condominium, construction, and sale projects, effective for contracts entered into after July 4, 2025. For residential developers that meet the average annual gross receipts test under Section 448 ($31 million in 2025), the maximum estimated contract length is increased from two years to three years to qualify for the exception from the UNICAP rules under Section 263A.

Planning Considerations

This provision provides much-needed tax relief to condo developers who often had to report income under the percentage of completion method, which often required the reporting of income before receiving payment. Allowing the use of the completed contract method of accounting allows better matching of reporting taxable income with the receipt of cash by the developer.

Unfortunately, the relief is provided only prospectively for contracts entered into after the July 4, 2025, enactment date. Therefore, taxpayers with contracts entered into prior to the enactment date will continue to be subject to the old rules. Moreover, reporting income for projects begun in prior years may be bound to the prior method of accounting.