

ML Strategies Energy and Environment Update: Week of 8/25/2014

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This week, ML Strategies' Director of Government Relations, Bryan Stockton, provides an update on the clean energy provisions in the Senate's tax-extendors package and details scenarios for their extension as the midterm elections approach.

Now that summer is drawing to a close, let's check in on one important bill that lost momentum just as the summer was beginning. Remember the Senate Finance Committee's tax extendors package (S. 2260), which the committee marked up on a bipartisan basis in mid-May? The one that was poised to pass the Senate but that surprisingly failed to reach cloture after Senate leadership blocked Republican amendments on the bill? At the time, congressional staff and lobbyists—and even Majority Leader Harry Reid (D-NV)—suggested that the extendors package would come up again in the lame duck session after the November election. The House was not expected to vote on an extendors package before then anyway, so the Senate delay would not really impact the timing of final passage of this two-year extension of more than 50 tax provisions.

Well, that was then. Today, almost two months before the mid-term elections, the future of the clean energy provisions in an extendors package—particularly the production tax credit (PTC) and investment tax credit in lieu of the PTC—depends a great deal on which party wins control of the Senate. Republicans are more confident that they can win the necessary six seats to take back the top chamber; and if they do, they will have more leverage in the lame duck about what the contents of an extendors package would be. The \$84 billion EXPIRE Act of 2014 not only extends the PTC by two years but also extends key clean energy depreciation benefits and tax credits, including a \$1-per-gallon credit for biodiesel and a 50-cent-per-gallon credit for alternative fuels. Senate Democrats strongly support the clean energy provisions. Certain Republicans, such as Chuck Grassley (R-IA), remain staunch supporters of the PTC and biodiesel credits, but many other Republicans are eager to eliminate or scale back the PTC and other clean energy provisions. If Senator Orrin Hatch (R-UT) learns he will be chairman of the Finance Committee next year in a Republican chamber, he has less of an incentive to work with current Chairman Ron Wyden (D-OR) and Democrats during the lame duck session. He can simply hold out and put forward his own extendors bill next year with popular provisions like the research and experimentation (R&D) credit and without clean energy incentives.

The extension of a handful of relatively popular and less controversial business and individual extendors such as the R&D credit and bonus depreciation are more assured. House Republicans, as part of a "tax-reform-lite" effort, have passed several bills making select provisions such as these permanent. For clean energy advocates, they have to cling to the more popular parts of the overall package and make sure their provisions are not trimmed away when Congress eventually takes it up. The business community, which wants many of the non-energy provisions in the EXPIRE Act extended, also must be much more vocal if the bill is to rise to the front of the agenda.

If Democrats do manage to hold onto control of the upper chamber, they very likely will be dealing with a reduced majority, and that too will give Republicans more leverage. With all the competing priorities in a very short legislative period, it will be difficult for the package to be enacted before the end of the year. Another retroactive extension in early 2015 could be possible. Congress has let the PTC lapse several times since 1992 before renewing it again. While it's hard to avoid feeling a feeling of *déjà vu* when faced with another "will-they-or-won't-they" end-of-year extension, this time also seems different. Many legislators thought the previous PTC extension would be the last one, so the stakes are high. Anti-PTC campaigns financed by conservative groups and utilities ratchets up the pressure on lawmakers. One possible way to blunt some Republican opposition would be to modify the PTC and either reduce the amount of the credit or include a deadline by which projects must complete construction—or both.

Several scenarios exist where even a change of control in the Senate would not preclude the passage of a tax extendors package. A short-term extension would give lawmakers some breathing room to debate tax reform. Some Republicans from wind-friendly states might prefer the clean energy provisions to pass under a Democratic watch rather than under Republican leadership in the new Congress. In this optimistic scenario, the lame duck session could mirror the productive session of 1980.

Ironically, election results in any one of three bio-energy and wind states--Colorado, South Dakota, and Iowa—could help decide the balance in the Senate and the fate of clean energy tax credits.

The weekly *Energy & Environment Update* from ML Strategies provides an overview of what's happening on and off Capitol Hill and around the world that may impact energy and environmental policies and industry players. [Read the update here.](#)

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