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Commercial Solar Incentives – Act Now to Maximize the ROI

Payback Averaging Four-to-Six Years. According to a recent Wood Mackenzie report, companies that install solar systems can expect a payback period averaging four-to-six years, with some states averaging two-and-a-half years. It is clearly time for commercial solar and battery systems to shine. This rapid improvement in the return-on-investment (ROI) is primarily due to the increase in commercial electric rates and the stunning drop in the cost of solar and batteries, both globally and in the U.S. The drop in the cost of the equipment is well-documented (*see, e.g.* Ember; the NREL, and Bloomberg NEF) and likely to continue to drop – depending on what tariffs apply.

Wood Mackenzie did not consider additional state tax credits, Section 177 bonus depreciation, added resiliency, net metering programs, carbon credits, ability to meet net zero goals, and above average rate hikes. *See e.g.,* Arizona, California, Colorado, Illinois, New York, and Texas.

Owners of Closely Held Companies Benefit. Owners of closely held companies who can offset ordinary income at high marginal rates stand to benefit the most. First, the taxpayer can claim a 48 E tax credit worth up to 60% of the cost of the system (most systems will not qualify for the full 60%). Next, the taxpayer uses Section 179 or the bonus depreciation rules to further reduce their tax liability in the first year. Federal tax incentives can help owners recoup a significant portion (over 50%!) of the system's total cost when the system is activated.

Qualifying for Federal Tax Credits. Corporations must move fast in order to qualify for the 48 E tax credits. For solar, the One Big Beautiful Bill Act (OBBBA) requires construction to begin by July 4, 2026, or be placed in service by December 31, 2027.

Standalone battery storage systems have a significantly longer phase-out period. The definition of "begin construction" is not without controversy. IRS Notice 2025-42 defines what the IRS considers to be the beginning of construction but did not follow the normal steps called for in the Administrative Procedure Act, and a broad array of groups challenged the notice. The challenge will take time to wind its way through the courts, meaning the issue will not be settled by July 4, 2026. Thus, it is better to meet the IRS's narrow definition instead of having a potential fight with the IRS down the road (as discussed later).

FEOC Restrictions. Adding a layer of paperwork, the OBBBA expanded the Foreign Entity of Concern (FEOC) restrictions to 48E credits. Essentially, the project will not qualify if it uses cheap (and often high-quality) Chinese solar and/or batteries that currently dominate the international market. The taxpayer who claims the credit needs to have a good faith basis to believe the credits comply with the FEOC restrictions.

Tariffs Are a Wildcard. Tariffs continue to pose troublesome issues. Chinese solar panels and batteries would be extraordinarily inexpensive but for the tariffs and other trade restrictions. This gives rise to an incentive for importers to find ways to avoid tariffs (as they do with the FEOC regulations). As with FEOC issues, companies need to make sure they have documented their good faith efforts to comply.

Strategic Planning is Essential for New Construction. Developers who incorporate solar and battery technology into the new development also stand to benefit. For example, solar panels can displace certain building materials (like solar roofs for covered parking, dual use components, etc.), potentially generating tax credits to cover additional ancillary costs. Thus, strategic planning for new construction can increase the ROI of solar or battery systems.

It is unclear how this administration – coupled with an underfunded and understaffed IRS – will enforce Notice 2025-42, the FEOC rules, or tariffs. The taxpayer who claims the credit and owns the system – not just the importer or installer – takes on a certain amount of future risk.

There is no method for the IRS to validate the credits before a taxpayer self-consumes the credit. Thus, taxpayers (with a good-faith basis) will reap the benefit, unless the IRS audits the taxpayer (not the project). The IRS has three years to select

that taxpayer's return for audit (absent fraud). Currently, there is no indication that the IRS is prioritizing audits of closely held companies or taxpayers who claim credits under Section 48E.

Compliance and Due Diligence Essential. The IRS has not prioritized Sections 45 or 48 credits in the past. This administration may start prioritizing enforcement related to solar, so compliance and due diligence are important even when the likelihood of an audit is low. If the return is selected for audit, the IRS may challenge the credit and seek penalties. The taxpayer will have an opportunity to defend themselves, and the taxpayer with documented due diligence is most likely to prevail.

Thus, those seeking to maximize their credits need to work with their legal counsel to ensure that the deal is structured properly, compliance is adequate and proportional, key terms are incorporated into contracts and documented, and other requirements (like zoning) are met.

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