The Real Estate Roundtable

Clean Energy Tax Incentives and the One Big Beautiful Bill (OB3) Act – *What CRE Should Know*

Summary

On July 4, 2025, President Trump signed the OB3 Act into law. It makes significant changes to tax benefits pre-dating and modified by the Biden-era Inflation Reduction Act (IRA) for energy-related projects.[1]

This fact sheet summarizes how the OB3 Act treats solar, storage, energy efficiency, and similar projects in commercial and multifamily residential real estate. (For an overview of real estate taxation issues generally in the OB3 Act, see RER's separate fact sheet here.) Regarding energy-related building investments, projects that begin construction in 2025 and after should consider:

- **Tax credits that start to phase-out over the next one to five years** (such as the Section 48E "tech neutral" credit for solar generation; the Section 179D deduction and 45L credit for energy efficiency projects; and the 30C credit for EV charging stations);
- **Tax credits that remain available well into the 2030s** (such as Section 48E for energy storage); and
- **Permanent options for "full expensing" that accelerate tax write-offs** of energy-related building investments, regardless of Section 48E or other tax credit availability.

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Solar Tax Credits for Building-Related Energy Projects

Key Takeaways

- **"Small Solar" projects generating under one (1) MW of electricity:** Can qualify for greater tax credit amounts without needing to satisfy the IRS's Davis-Bacon wage and Registered Apprenticeship (DB/RA) standards. Further, "Small Solar" can meet relatively easy, straightforward IRS rules to determine the "beginning of construction" date, which is key to 48E tax credit eligibility.
- **"Low Output" solar projects generating between 1 MW and 1.5 MWs:** Must satisfy optional DB/RA rules for greater tax credit amounts. Easier "beginning of construction" rules apply.
- **Solar projects generating greater than 1.5 MWs:** Must satisfy optional DB/RA rules for greater tax credit amounts. More challenging "beginning of construction" rules apply.
- **Energy storage projects:** Qualify for greater tax credit amounts if storage capacity is under 1 MW, or if the project satisfies optional DB/RA rules. Easier "beginning of construction" rules apply regardless of storage capacity.

[See Table 1 on the following page]

[1] This fact sheet does not focus on "legacy" tax credits (like the Section 48 investment tax credit [ITC] as enacted by the IRA in 2022), for projects that began construction by the end of 2024 but have yet to be "placed in service." The "tech neutral" Section 48**E** credit, addressed in this fact sheet, is available for projects beginning construction in 2025 and after – subject to "phase-down" in the coming years. This fact sheet also does not address the Section 45Y "production" credit, as typical building-related clean energy projects do not generate large amounts of electricity for sale to unrelated parties.

Table 1

Project Type	"Beginning of Construction" Test	48E Tax Credit Amount
Solar Under 1 MW ("Small Solar")	• Either 5% Safe Harbor **or** • Physical Work Test	• 30% of project costs • No DB/RA requirement
Solar 1 MW to 1.5 MW ("Low Output Solar")	• Either 5% Safe Harbor **or** • Physical Work Test	• 30% with optional DB/RA compliance • 6% with no DB/RA compliance
Solar Greater Than 1.5 MW	• Physical Work Test **only**	• 30% with optional DB/RA compliance • 6% with no DB/RA compliance
Energy Storage	Regardless of capacity: • Either 5% Safe Harbor **or** • Physical Work Test	• 30% if storage capacity under 1 MW • 30% with optional DB/RA compliance • 6% with no DB/RA compliance

What is the phase-down of the current Section 48E "tech neutral" tax credit for solar and wind projects?

- **If a solar/wind project begins construction on or before July 4, 2026 (12 months after OB3 enactment):** Must be "placed in service" within 4 calendar years after start of construction.[2]
- **If a solar/wind project begins construction on or after July 5, 2026:** Must be "placed in service" by December 31, 2027.[3]

Table 2

Solar/Wind "Begins Construction"	Must be "Placed in Service" by
In 2025	12/31/2029
January 1, 2026 – July 4, 2026	12/31/2030
On or after July 5, 2026	12/31/2027

How is "beginning of construction" determined for solar and wind projects?

- Recent IRS guidance (Notice 2025-42, released Aug. 15, 2025) sets forth "beginning of construction" rules **only** for solar and wind generation projects, for purposes of Section 48E tax credit eligibility. Application of these rules depends on the solar/wind project's maximum net MW output (based on nameplate capacity), as follows:
  - **Projects 1.5 MW or less:** Can use either the "5% Safe Harbor" **or** the "Physical Work Test."
  - **Projects greater than 1.5 MW:** Must use **only** the "Physical Work Test."
- The **"5% Safe Harbor"** provides a straightforward test to determine "beginning of construction," based on whether the taxpayer incurs 5% or more of total project costs.
- The **Physical Work Test** is more subjective and depends on the circumstances of a particular project. Notice 2025-42 lists factual criteria relevant to determining when "physical work" of a "substantial nature" begins.
- Under either test, work must be "continuous" and ongoing after construction begins.

[2] IRS Notice 2025-42, §4.04 ("Continuity Safe Harbor").
[3] 26 USC § 48E(e)(4)(A).

- **NOTE:** For electricity **storage** and other technologies eligible for 48E credits (not solar and wind **generation** projects), prior IRS Notices (e.g., Notice 2022-61, Notice 2021-41) apply. These provide that "beginning of construction" can be based on **either** the 5% Safe Harbor **or** the Physical Work Test.

Until Section 48E expires, what is the amount of 48E tax credits available for a wind or solar project?

- The answer depends generally on the project's maximum net MW output (based on nameplate capacity), and whether the project meets the IRS's Davis-Bacon and Registered Apprenticeship (DB/RA) rules.[4] In this regard, the OB3 Act continues Biden-era IRA standards:
  - "Small solar" projects that generate less than one (1) MW of electricity: Eligible for tax credit that is 30% of project costs.
  - Projects that generate 1 MW of electricity or more, **and** meet DB/RA rules: Eligible for 30% tax credit.
  - Projects that generate 1 MW of electricity or more, but do **not** meet DB/RA rule: Eligible for 6% tax credit.

Table 3

Project Size	Optional Compliance with DB/RA	48E Tax Credit Amount
Less than 1 MW ("Small Solar")	N/A	30%
At least 1 MW	Yes	30%
At least 1 MW	No	6%

Can Section 48E tax credits be transferred?

- **Yes.** Section 48E credits for solar, wind, and other qualified technologies can still be transferred to parties unrelated to the taxpayer to the same extent as allowed by the IRA—for as long as the OB3 Act makes those credits available.[5]
- With one new proviso: "Foreign entities of concern" ("FEOCs") are **not** eligible to receive tax credits transferred by a U.S. taxpayer.

Do solar rooftop leasing arrangements qualify for Section 48E tax credits?

- **Yes.** A building owner may lease its rooftop to a solar contractor, and the contractor may claim 48E credits for itself. The value of the tax credits may be reflected in rents paid to the building owner lessor by the contractor lessee.
- **NOTE:** The OB3 Act states that no 48E credits are available for leased solar water heating equipment, or leased small wind facilities.[6]

Does the OB3 Act change how REITs may access Section 48E tax credits?

- The OB3 Act does not make changes affecting REITs differently from any other building owner. To the extent a REIT (or a REIT subsidiary) may find it beneficial, it can claim 48E and other tax credits, transfer them, or lease rooftops for solar installations just like other CRE owners–for as long as the OB3 Act continues the credits.

Does the OB3 Act restrict projects from using imports of solar and storage products, components, and parts?

[4] See 89 Fed. Reg. 53,185 (June 25, 2024).
[5] 26 U.S.C. § 6418.
[6] 26 U.S.C. §§ 48E(i)) (cross referencing §§ 25D(d)(1)[solar water heating], (d)(4) [small wind]).

- **Yes.** Complex new "foreign entity of concern" (FEOC) provisions apply to restrict projects from accessing Section 48E tax credits. New FEOC rules require careful review and analysis.[7]
- **Key Takeaways on FEOC Provisions**—Projects that begin construction on or after January 1, 2026:
    - Will **not** be eligible for Section 48E (and other) credits if they receive "material assistance" from a "prohibited foreign entity" (e.g., a Chinese company) that manufactures components like solar cells or batteries.
    - "Material assistance" depends on a cost formula that assesses how much of the project depends on products and components deriving from prohibited foreign entities.
    - For example, if too much of the project's supply chain depends on Chinese imports above certain cost thresholds, Section 48E credits are not available.[8]
        - Thresholds for **energy storage projects** start in 2026 with a requirement that 55% of the cost of the project's components must be manufactured in the U.S., increasing to 75% after 2029.
        - **Solar projects** start in 2026 with a requirement that 40% of the cost of the project's components must be manufactured in the U.S., increasing to 60% after 2029.
    - The Treasury Department is directed to issue (by Dec. 31, 2026) "safe harbor tables" to identify percentages of total materials costs allowed for products and components from China and other prohibited foreign entities.
    - Until then, taxpayers can use existing domestic content tables in IRS Notice 2025-08. Taxpayers can also rely on certifications from suppliers as to the country of origin and costs for project materials.

Example 1: Solar Facility

- $250,000 is the "direct cost" of all manufactured solar facility components.
- $115,000 is the "direct cost" of all components mined, produced, or manufactured in China.
- Construction begins in 2026.
- **The solar facility is eligible for 48E tax credits**
    - The cost of U.S.-manufactured components ($135K) is 54% of total project costs ($250K).
    - China does not provide "material assistance." More than 40% of costs derive from U.S. components.

Example 2: Battery Storage Facility

- $75,000 is the "direct cost" of all manufactured components in a co-located battery storage facility.
- Half the "direct costs" are from China-made products. Half the "direct costs" are from US-made products.
- Construction begins in 2026.
- **The battery storage facility is not eligible for 48E tax credits**
    - The cost of U.S.-manufactured components ($37.5K) is 50% of total project costs ($75K).
    - China provides "material assistance." Less than 55% of costs derive from U.S. components.

What about tariffs and duties on imports of solar products and components?

- A full picture of project costs–and the value of 48E tax credits–must also consider tariffs and countervailing duties on imports of solar cells, batteries, and other components manufactured overseas (particularly in China and SE Asia). These **tariffs and duties apply to certain imports–regardless of the**

[7] 26 U.S.C. §§ 48E(b)(6), (c)(3).
[8] 26 U.S.C. 7701(a)(52)(B) (setting forth "material assistance" percentage thresholds).

availability of tax credits–with goals to spur more U.S.-based manufacturing and address international trade violations.[9]

Storage and Other Tax Credits For Building Energy Projects

Is the 48E tax credit available for energy storage projects?

- **Yes.** Moreover, for energy storage projects, the OB3 Act retains the IRA's more generous 48E phase-down period based on the year construction begins, as follows:[10]
    - 100% credit through 2033
    - 75% credit through 2034
    - 50% credit through 2035
    - No credit 2036 and later
- **NOTES:**
    - A storage project with a capacity of less than 1 MW is eligible for a 30% 48E credit.[11]
    - A storage project with capacity of 1 MW or more is eligible for a 30% 48E credit if it complies with the DB/RA option. If it does not comply with DB/RA, it is eligible for a 6% tax credit.
    - As Notice 2025-42 only concerns solar and wind **generation** projects, energy **storage** projects can mark "beginning of construction" under **either** the 5% Safe Harbor **or** the Physical Work Test.
    - The IRA's extended phase-down periods also continue for commercial hydropower, geothermal, fuel cell, and nuclear tax credits.

What's the phase-down period for the EV charging station tax credit?

- The 30C tax credit for EV charging stations remains available for property **"placed in service" by June 30, 2026** (termination accelerated from the IRA's 12/31/2032 expiration date).

Tax Incentives for Building Energy Efficiency Projects

45L tax credit

- **45L tax credit for new energy-efficient homes:** Only available for homes "acquired" or rental units leased by June 30, 2026 (termination accelerated from the IRA's 12/31/2032 expiration date).

179D tax deduction

- **179D tax deduction for energy-efficient commercial and larger multifamily** new construction and retrofits: Projects must "begin construction" by June 30, 2026 (prior law made 179D permanent, but no longer under the OB3 Act).

"Full Expensing" For Building-Related Energy Projects

Key Takeaways

[9] For example, the U.S. Commerce Department recently imposed countervailing duties on SE Asian imports of solar components to address international trade law violations. See, e.g., U.S. Commerce Department press release (April 21, 2025). Specific duty rates from SE Asian solar cell exporting companies are here.
[10] 26 U.S.C. § 48E(e)(2); (4)(c) (storage exception to accelerated 48E phase-down for wind and solar facilities).
[11] 26 U.S.C. § 48E(a)(B)((ii)(I).

- "Full expensing" can provide a cash-flow benefit for building-related energy projects, by deferring tax payments and accelerating the ability to "write-off" all project costs in the year it is "placed in service."
- "Full expensing" is a tax planning strategy that real estate businesses can use with or without claiming tax credits.
- Solar property can be fully expensed.
- Energy storage property can be fully expensed.
- Energy efficiency building "retrofit" components can be fully expensed—if they are non-structural, interior improvements to existing, non-residential portions of a commercial building.
- Prevailing wage, apprenticeship, domestic content, and foreign entity restrictions—which can limit access to clean energy tax credits—do **not** apply to "full expensing."

What is "full expensing" and how does the OB3 Act deal with it?

- Full expensing—also known as "100% bonus depreciation"—allows a building owner to write-off all of the costs of certain building cap ex investments in the year they are "placed in service."
- The federal tax code generally establishes different recovery periods over which CRE owners may depreciate the costs of certain equipment, systems, and other building components.[12] In contrast, full expensing allows taxpayers to deduct **immediately** (from business income) the full costs of eligible investments in the year they are put into use–rather than spreading out the deduction over the standard "tax life" of building systems and equipment.
- **To take advantage of OB3's full expensing option, the property must:**
    - Be "qualified," meaning it has a recovery period set forth in the tax code of 20 years or less;[13]
    - Be acquired and placed in service after January 19, 2025;[14] and
    - Not be owned by an "electing real property trade or business," which refers to a real estate business that has "elected out" of strict limitations on the deductibility of its business interest expense.[15]
        - The OB3 Act gives qualifying building owners **the option** to fully expense certain investments immediately, or depreciate them over time.
        - An "electing real property trade or business" is subject to the Alternative Depreciation System (ADS)[16] and is ineligible for bonus depreciation.
        - However, the decision to "elect out" of the business interest limitations in Section 163(j) can be made at the partnership level and is not binding on a partner's other investments.
        - As a result, a taxpayer's decision to qualify for bonus depreciation can be made on a partnership-by-partnership, or property-by-property, basis.
    - **NOTE:** The bonus depreciation option in the OB3 Act is **permanent** and does not phase down in coming years.

What pros and cons should taxpayers consider regarding bonus depreciation?

- Potential **advantages** of bonus depreciation include:

[12] See, e.g., 26 U.S.C. § 168(e)(3) (identifying 3-year, 5-year, 7-year, 10-year, 15-year, and 20-year property among other depreciation classifications)).
[13] 26 U.S.C. § 168(k)(2)(A)(i)(I).
[14] 26 U.S.C. § 168(k)(10)(C).
[15] 26 U.S.C. § 163(j)(7)(A)(ii) and (7)(B); 26 C.F.R. § 1.163(j)-9.
[16] The Alternative Depreciation System (ADS) differs from "bonus depreciation" in that ADS uses longer recovery periods for building equipment and systems, under a "straight-line" method where the depreciation expense is evenly distributed (i.e., not "accelerated") each year over the asset's designated recovery period. See IRS, Publication 946, How to Depreciate Property (2024).

  - A "time value" benefit by allowing deferred tax payments and accelerating reductions in taxable income.
  - Increased cash flow and tax savings in the current operating year.
- Potential **disadvantages** of bonus depreciation include:
  - Accelerated real estate depreciation deductions (that exceed straight-line depreciation under the ADS) are subject to recapture at ordinary tax rates (up to 37%) when the property is sold.
  - In contrast, ADS straight-line depreciation deductions are treated as **unrecaptured section 1250 gain** subject to a top tax rate of 25%.

Do Davis-Bacon prevailing wage or Registered Apprenticeship rules apply for the full expensing option?

- **No.**

Do domestic content or "foreign entity of concern" rules apply for the full expensing option?

- **No.**

Can any "full expensing" benefits be transferred from taxpayers to third parties?

- **No.** Full expensing is not a tax **credit** that reduces a business's tax liability dollar for dollar. Full expensing is a **deduction** in a business's income subject to taxation. While the OB3 Act continues to allow the transfer of 48E and other tax credits to third parties, the full expensing deduction is **not** transferable.

Can solar panels be fully expensed?

- **Yes.** Solar panels have less than a 20-year class life following passage of the OB3 Act and are thus eligible for full expensing–if "placed in service" (i.e., generating power) after January 19, 2025.[17]

Can battery storage equipment be fully expensed?

- **Yes.** Energy storage equipment has a recovery period of less than 20 years and is thus eligible for full expensing–if "placed in service" (i.e., storing power) after January 19, 2025.[18]

Can EV charging stations and bi-directional "vehicle to grid" equipment be fully expensed?

- **Yes.** Alternative fuel refueling property and V2G equipment have recovery periods less than 20 years and are thus eligible for full expensing–if "placed in service" (i.e., charging EVs) after January 19, 2025.[19]

Can REITs utilize full expensing?

- **Yes.** Like other real estate companies, REITs may use full expensing. The decision about when expenses are realized may be influenced by a number of business and tax circumstances.

Can a solar, wind or other eligible 48E project claim both a tax credit and use full expensing?

- **Yes.** A project can "stack" both 48E credits and opt for bonus depreciation. An owner's tax basis in qualifying property is reduced by 50% of the credit amount, regardless of whether the taxpayer uses bonus

[17] If solar project construction began in 2024, the solar property has a 5-year class life. If solar project construction began in 2025 or later, it may be deemed property without a class life and thus categorized as 7-year property in the tax code (if the General Depreciation System is elected), or 12-year property (if the Alternative Depreciation System is elected). See OB3 Act, 70509(a) (amending 26 U.S.C. § 168(e)(3)(B)(vi)).
[18] 26 U.S.C. § 168(e)(3)(C)(v); § 168(g)(2)(A)(ii). Storage property may be deemed property without a class life and thus categorized as 7-year property in the tax code (if the General Depreciation System is elected), or 12-year property (if the Alternative Depreciation System is elected).
[19] Same analysis for alternative fuel recharging property as in fn. 18.

depreciation or regular depreciation rules.[20] If the property is later sold, the amount realized that exceeds the property's cost basis (after being reduced by the credit amount) may be treated as taxable gain.

Example 1:

Company A installs a solar project after Jan. 19, 2025, that costs $90,000. It generates under 1 MW of electricity. The project does not meet DB/RA requirements. It complies with the OB3 Act's new "foreign entity of concern" requirements.

- Company A qualifies for a Section 48E tax credit for the solar installation in the amount of $27,000 (30% of project costs) – to reduce its income tax liability dollar-for-dollar. One-half of the tax credit amount reduces Company A's basis in the solar property to $76,500 ($90,000 minus $13,500 = $76,500).
- Company A can also elect to use bonus depreciation. It can fully expense the solar project's remaining cost basis from its income in the year it is "placed in service" – in the amount of $76,500.

Example 2:

Company B installs a battery system with a solar installation, with capacity to store more than 1 MW. The storage project costs $30,000. It does not meet DB/RA requirements, but does meet "foreign entity of concern" requirements.

- Company B qualifies for a $1,800 tax credit under Section 48E for the storage system (6% of project costs) – to reduce its income tax liability dollar-for-dollar. One-half of the tax credit amount reduces Company B's basis in the storage property to $29,100 ($30,000 minus $900 = $29,100).
- Company B can also elect to use bonus depreciation. It can fully expense the storage project's remaining cost basis from its income in the year it is "placed in service" – in the amount of $29,100.

Can energy efficiency components and systems that are part of an existing building "retrofit project"—such as HVAC, lights, insulation, windows, and roofs—be fully expensed?

- It depends on whether the efficiency components meet the tax code's definition of "Qualified Improvement Property"—or "QIP." A 15-year recovery period applies to QIP.[21] **Thus, if QIP is acquired after January 19, 2025, it is eligible for full expensing.** The tax code defines QIP as **non-structural**, **interior** improvements to **existing** portions of a building that are **non-residential**.[22] Based on this definition—and for purposes of a commercial building retrofit—we believe:
    - HVAC and hot water systems installed **inside** a building **are** QIP.
        - HVAC and hot water systems installed **outside** on a rooftop or terrace are **not** QIP.
    - Interior lighting **is** QIP.
        - Exterior lighting is **not** QIP.
    - Interior ductwork and insulation **are** QIP.
    - Windows, roofs, siding, cladding, and other components of exterior building envelope systems are **not** QIP.
    - Building management systems (BMS) and associated hardware and software **are** QIP (or 5-year "qualified technological equipment").[23]
    - Elevators and escalators, by definition, are **not** QIP.
    - Improvements in **expanded** portions of a building's prior footprint, by definition, are **not** QIP (which only applies to "existing" building improvements).
    - Improvements in multifamily or other **residential** buildings, by definition, are **not** QIP.

[20] 26 U.S.C. § 50(c)(3)(A).
[21] 26 U.S.C. § 168(3)(3)(E)(v)(iii).
[22] 26 U.S.C. § 168(e)(6).
[23] 26 U.S.C. §§ (e)(3)(B)(iv); (i)(2).

- Appliances in commercial building common areas and tenant-leased spaces can be fully expensed because they are usually categorized as 5- or 7-year property (not as 15-year QIP).

Does the QIP "full expensing" benefit require that components reach a particular level of energy efficiency performance?

- **No.** Full expensing of QIP is specific to the costs for particular QIP components and does not require attainment of any energy efficiency performance level.
- In this regard, qualifying for full QIP expensing is different from qualifying for the 179D tax deduction for retrofits. 179D qualification **does** depend on reaching levels of whole-building energy efficiency performance pursuant to a retrofit plan for the asset—while full expensing of QIP does **not**.

Can energy efficiency components in new commercial construction be fully expensed?

- Not under the QIP definition, which covers "improvements" that are "placed in service **after the date such building was first placed in service."**
- Thus, to be fully expensed, building components in new construction must fall under some other classification with a recovery period of less than 20 years. They would **not** qualify as QIP.

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