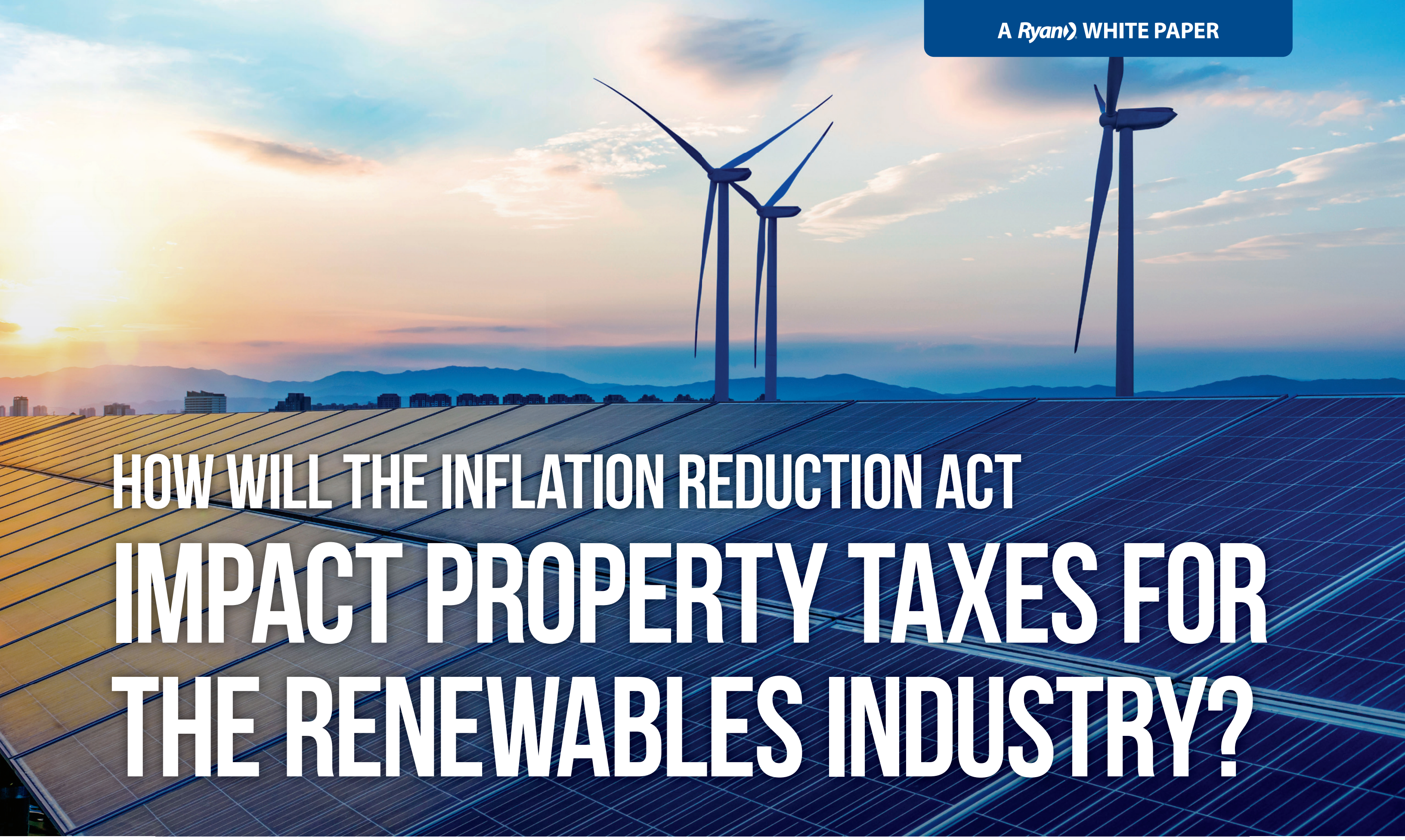
A Ryan WHITE PAPER



HOW WILL THE INFLATION REDUCTION ACT IMPACT PROPERTY TAXES FOR THE RENEWABLES INDUSTRY?

The Inflation Reduction Act of 2022 (the "Act") contains $369 billion in climate and energy provisions, including nearly $280 billion in clean energy tax incentives. This represents the largest investment in climate action by the United States, with the intent to promote the accelerated buildout of renewable energy infrastructure, quicken the adoption of electric vehicles (EVs), and incentivize the deployment of renewables infrastructure through a multitude of federal production tax credits (PTCs) and investment tax credits (ITCs).

The solar and wind industries have been key in the nation's transition towards a clean energy mix. With tax credits beginning to phase out, the Act renews and resets these tax incentives in hopes of increasing investment, resulting in significant revenue for state and local property tax bases as a byproduct. One notable change includes the ITC for standalone battery storage—key to smoothing out the intermittent generation created by wind and solar.

Renewables and Property Taxes

Many jurisdictions have incentivized development by offering incentives such as abatements, value limitations, or payment in lieu of tax (PILOT) arrangements. However, in the absence of any statutory assessment methods, incentives or favorable assessment structures, jurisdictions are charged with valuing and assessing these facilities under a traditional ad valorem (in proportion to its value) assessments. This is accomplished primarily using a cost, income, or market approach to value. The high cost of "going green" for an asset-intensive facility often makes property taxes the single-largest expense for renewable facilities.

The Act reignites the opportunity for property tax reductions, as past assessment methods have not kept pace with changes in technology that have made renewables more affordable as a result of a declining cost trend and government subsidies such as tax credits and grants. Central to the argument of fair market value in the Uniform Standards of Professional Appraisal Practice is that it reflects the following:

The most probable price which a property should bring in a competitive and open market under all conditions requisite to a fair sale, the buyer and seller each acting prudently and knowledgeably, and assuming the price is not affected by undue stimulus.

Most practitioners will agree that the Renewable Portfolio Standards, tax credits, and other incentives create a stimulus.

Some jurisdictions directly allow for the deduction of the ITC from the cost basis when calculating the cost approach to value. In addition, most practitioners will agree that the goal of the PTC was to serve as a subsidy for the construction (through tax equity financing) to make wind farms economically feasible. Based on state statutes, the PTC income stream may be an intangible. The PTC was already being phased down, and similarly, the ITC, which allows for a tax credit to subsidize allowable costs for installing solar farms, was also being phased out. The Act essentially resets both tax credits and expands the ITC to include standalone battery storage. The ITC is once again extended to 30% for 10 years subject to certain construction or in-service dates for solar and other incentive-based requirements. Solar facilities are now eligible for the PTC, whereas before they were only eligible for the ITC.

It begs the question if the Act's efforts will further incentivize jurisdictions to modify or reflect their assessment methodologies to provide property tax certainty or offer favorable taxation schemes for wind, solar, stand-alone batteries, and even for the underlying manufacturers of these components that recognize the tax credits and grants available.

Furthermore, the Act includes less restrictive funding mechanisms such as direct pay or transferability of tax credits that previously were implemented by a complex tax equity investment structure. This opens the investment into renewables for both tax exempt municipalities as well as nonprofit electric cooperatives. Another property tax implication is whether this "subsidy" should be considered a form of economic obsolescence and, thus, be deducted if warranted.

The Act may have well been called the Incentives for Renewables Act. It appears to have reset the PTC for wind (until 2024) and the ITC for solar and makes the PTC an option for solar. For the first time, stand-alone batteries are also eligible for the ITC.

What the Act hath provided, let not the "taxman" taketh away.