

IRS Shake-Ups Mean Uncertainty for the Renewable Industry

by Shirley Chin

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In this article, Chin examines the operational and strategic changes the IRS made after the passage of the Inflation Reduction Act, the uncertainties caused by the current Trump administration, and the implications for tax risks in the renewable industry.

Last year, the IRS was flush with funding from the Inflation Reduction Act. Today, the IRS will be lucky to maintain even a small portion of its pre-IRA budget. Below, I examine the changes the IRS made after the passage of the IRA in 2022, the abrupt uncertainties caused by the Trump administration, and the implications for tax risks in the renewable industry.

Post-IRA Plans Affecting the Renewable Industry

The IRA, signed into law in August 2022, gave the IRS \$79.4 billion in funding to transform tax administration and to improve enforcement. In response to the funding, Treasury and the IRS announced in September 2023 a strategic operating plan¹ for fiscal 2023 through fiscal 2031 that shifted the focus of compliance coverage to areas with complex issues where the IRS previously lacked the resources to fully assess risks, including those relating to complex partnership structures, large corporations, and high-income and high-wealth individuals. Under the plan, of the \$79.4 billion provided to the IRS under the IRA, the IRS allocated \$45.6 billion (over 57 percent) to enforcement over the 2023-2031 period.

To implement this plan, the IRS made two significant announcements relevant to the renewable industry:

- First, it announced the opening of more than 3,700 positions nationwide to help with expanded enforcement, focusing on complex partnerships and large corporations. These positions were intended to attract more seasoned professionals and were listed at a hiring level usually reserved for those with specialized technical skills. This announcement is relevant to the renewable industry because of the use of partnerships and other financial entities to structure the relationship between developers and investors.
- Second, the IRS announced a change to its organizational structure.² The new structure consolidates two deputy commissioner positions, the deputy commissioner for services and enforcement and the deputy commissioner for operations support, into a single deputy commissioner. Four chiefs would then report to the new consolidated deputy commissioner, including a new chief taxpayer compliance officer. Furthermore, the IRS created a new passthrough field operations unit³ within its Large Business and International Division to focus on partnerships and S corporations. These passthrough audits were previously spread out in the Small Business/Self-Employed Division and LB&I. The combined structure was designed to support a partnership audit strategy using an enterprise approach, meaning that the entire partnership

¹ IRS, "Internal Revenue Service Inflation Reduction Act Strategic Operation Plan, FY2023-2031" (Apr. 5, 2023).

² IRS, "Department of the Treasury Internal Revenue Service Organization and Top Officials" (last updated May 8, 2025).

³ IR-2023-176.

structure, including related nonpartnerships, could be included in an audit.

To support the IRS, the IRS Office of Chief Counsel also announced an organizational change in October 2024. The Office of Chief Counsel is tasked with four main functions:

1. advising the IRS and its commissioner, Treasury, and, indirectly, taxpayers by issuing guidance, rulings, and other publications to help taxpayers understand and comply with tax laws;
2. providing legal interpretation and guidance to ensure the correct and impartial interpretation of the Internal Revenue Code passed by Congress;
3. representing the IRS in Tax Court litigation or coordinating with the Justice Department in refund litigation in district courts; and
4. providing general legal support.

In short, the Office of Chief Counsel serves as the chief legal adviser to the IRS and its commissioner, providing legal guidance and representation in all matters related to the interpretation, administration, and enforcement of the Internal Revenue Code.

In October 2024, in response to the IRS's structural changes, the Office of the Associate Chief Counsel (Passthroughs and Special Industries), which is a branch of the Office of Chief Counsel, announced that it will be split into two offices — one with jurisdiction over partnership, S corporation, trust, and gift and estate tax issues; and another with jurisdiction over credits and incentives and excise taxes.

With these structural and staffing changes at both the IRS and the Office of Chief Counsel, practitioners were advising clients to expect increased audits of passthrough entities, better-trained auditors on partnership issues, improved IRS identification of potential noncompliance, and better deployment of audit reserves. By the end of 2024, the IRS looked poised to do some serious enforcement.

Since January 2025: What Has Changed

Since January 2025, there has been continued turnover at the top of the IRS and Office of Chief

Counsel leadership. Acting IRS Commissioner Michael Faulkender is the fifth person in that position, while Billy Long is awaiting confirmation by the Senate. In March the acting IRS chief counsel, William Paul, a long-serving Office of Chief Counsel civil servant, was removed and replaced by an ally of President Trump. Donald Korb, a partner at Sullivan & Cromwell LLP and a former IRS chief counsel, was nominated to serve again in that capacity on April 29.

There is similar turbulence at the senior executive leadership level at the IRS. Since January, the chief financial officer, acting chief financial officer, deputy chief operating officer, chief tax compliance officer, chief human capital officer, chief of staff, chief transformation officer, chief implementation officer, chief risk officer, chief privacy officer, chief procurement officer, chief data and analytics officer, chief information officer, and director of the Office of Professional Responsibility have all departed.

On the audit side, the IRS, which had about 100,000 employees at the end of fiscal 2024, is on track to lose⁴ nearly a third of its workforce this year after about 20,000 employees accepted a second deferred resignation offer — an opportunity to resign and be placed on paid administrative leave through the end of September. About 5,000 employees opted to accept in the first round. A May 2 report⁵ from the Treasury Inspector General for Tax Administration said that as of March, more than 11,000 IRS employees had been approved⁶ for the deferred resignation program or were fired during their probationary period.

Losing all of those employees, along with natural attrition from retirements, would bring the agency's total staff to about 70,000, effectively undoing the hiring blitz of technical experts funded by the IRA. The IRS hasn't had fewer than 80,000 employees since fiscal 2019, when it had 74,369.

⁴ Benjamin Valdez, "Nearly 20 Percent of IRS Staff Accept Second Resignation Offer," *Tax Notes Federal*, Apr. 21, 2025, p. 592.

⁵ 2025-IE-R017.

⁶ Valdez, "IRS Firings, Resignations Hit Revenue Agents Hardest," *Tax Notes Federal*, May 12, 2025, p. 1104.

According to a recent *Tax Notes* article,⁷ more than 300 attorneys in the Office of Chief Counsel have also submitted requests for the second deferred resignation program.

In an April 28 email to employees, acting IRS Chief Counsel Andrew De Mello said that if there is a reduction in force, he doesn't "expect any reduction in the number of attorney positions handling Tax Court litigation." However, he indicated that the RIF may affect attorneys in the associate chief counsel's office, the part of the Office of Chief Counsel focused on Office of Chief Counsel, legal interpretation and guidance.

This planned reduction is happening in the midst of a planned promulgation of a new tax bill, which is expected to modify provisions relating to the IRA, with new restrictions, new definitions, and new analysis in need of interpretation (that is, the sort of activities the Office of Chief Counsel associate chief counsel's office handles).

Taking all of the above into consideration, it is difficult not to conclude that our nation's tax administration function will change in the years ahead. There will likely be fewer audits and less regulatory guidance — and therefore greater uncertainties.

What Has Stayed the Same

Despite these dizzying personnel changes, some things have stayed constant. The Office of Chief Counsel leadership and legal expertise at the newly restructured Office of the Associate Chief Counsel (Passthroughs and Special Industries) have stayed the same, and the broader IRS organizational restructuring has remained the same.

Similarly, the statute of limitations — the period established by law during which the IRS can review, analyze, and resolve a taxpayer's tax-related issues — has not changed. Under section 6501, the deadline for the IRS to challenge a taxpayer's tax return position or assess and collect tax, and for the taxpayer to claim a refund, is the later of three years after the return due date, including extensions, or — if filed late — three years after the return was received by the IRS.

⁷ Lauren Loricchio, "Reduction in Force Could Target IRS Chief Counsel Offices," *Tax Notes Federal*, May 19, 2025, p. 1282.

This three-year deadline, called the assessment statute expiration date, is the general rule.

This being tax law, there are exceptions. By law, the IRS can extend the time to assess tax if the taxpayer (1) did not file a tax return, (2) agreed to extend the time limit, (3) filed a false or fraudulent return with intent to avoid tax, or (4) reported 25 percent or less of their gross income on a tax return (what the IRS refers to as "substantial omission of income"). In those cases, the statute of limitations is extended to six years under section 6501(e)(1). While it will be an article for another day regarding what constitutes a substantial omission of income and whether section 6501(e)(1) can apply in the tax credit context, this six-year statute of limitations is conceptually available to the IRS — if and when it can recover from the current resource drain.

What the Emerging Data May Predict for Tax Administration Going Forward

On April 18, in the midst of the staff reduction and leadership changes, the IRS released its first ever multiyear operating plan, outlining principles, strategic priorities, recent achievements, and current initiatives to advance the IRS Whistleblower Program. That the Whistleblower Office announced its operating plan, boasting of the hiring of 36 additional employees (reflecting a 75 percent increase) during fiscal 2024, enhanced efficiency in processing whistleblower claims, and a commitment to paying whistleblower awards faster, when the rest of the IRS was suffering from budget and personnel reduction, is a telling data point. It signals a strategy to enhance coordination with the Whistleblower Office to potentially make up for a drastic reduction in its workforce.

That government agencies would want to encourage whistleblowing as a part of their enforcement effort is nothing new. But the Office of Personnel Management issued a memo on May 29 that directs federal agencies to recruit "patriotic Americans for federal service." Specifically, the memo requires every person applying for a position at a level of GS-5 or above to submit essays on four topics, two of which are:

- How would you help advance the president's executive orders and policy

priorities in this role? Identify one or two relevant executive orders or policy initiatives that are significant to you and explain how you would help implement them if hired.

- How has your commitment to the Constitution and the founding principles of the United States inspired you to pursue this role within the federal government? Provide a concrete example from professional, academic, or personal experience.⁸

Politicization of tax administration is a frightening thought. The renewable sector should think hard about its tax leadership and how it will weather not just the uncertainties but a potentially politicized audit environment ahead.

What This Means for Tax Risks in the Renewable Industry

The implication of these abrupt resignations and RIFs is that, at least for the short term, the IRS will need to narrow its audit focus and increase its case selection threshold. Tax credits, given their prominence in the IRS and Office of Chief Counsel organizational structure, will likely stay an audit focus, but most audits will likely target the large developers and banks claiming the tax credits and the large corporate taxpayers purchasing them.

Despite potentially lower audit risks, the renewable sector should still expect uncertainty and turbulence ahead. The new tax bill making its way through Congress (H.R. 1) would introduce new restrictions (such as the prohibited foreign entity restriction) and concepts (such as a 10-year recapture period) to the IRA. Regulatory guidance from the IRS and Treasury will be necessary to interpret the scope of these requirements. The IRA was enacted in August 2022. Proposed regulations (REG-132569-17) under section 48 were issued in November 2023, and the final section 48 regulations (T.D. 10015) were released on December 4, 2024. This timeline

was faster than anything any tax practitioner has seen and reflects the Biden administration's prioritization of the IRA and the resources available to Treasury and the IRS. Recall that the original Notice 2015-70, 2015-43 IRB 604, to update section 48 was published on October 2, 2015, and languished there for eight years until the political support and resources for its completion emerged after the IRA's passage. Under the current administration, there will be neither political priority nor resources available for the IRS and Treasury to provide regulatory guidance to the renewable industry.

The time it takes for regulatory guidance, coupled with various repeals, sunset, and phaseout dates coming soon after the tax bill's enactment date, will create a great deal of uncertainty for the renewable industry. Uncertainty is anathema to financing. The renewable industry is all about the need for financing. Without a doubt, tax insurance will have a part in continuing to facilitate tax credit claims monetization and transfers in this period of uncertainty.

While tax insurance can smooth the turbulence to enable transactions to move forward, developers in the renewable space should consider bringing tax expertise in house to interpret the coming onslaught of new tax laws and strategize through uncertain tax terrain.

Outside counsel requires a certain level of legal certainty before they can provide a legal opinion. Having in-house tax expertise to shape the legal questions and the understanding of the business to provide facts to support tax analysis will make the legal opinion easier (and likely cheaper) to provide.

Not every tax issue requires a legal opinion (or can justify the expenses of obtaining one). Sometimes you just need to take a legal position to move the business forward. To do so deliberately and thoughtfully requires not only tax expertise but also an understanding of the business, the follow-through of obtaining internal buy-in to ensure operational alignment, tax reporting consistency, and strategies to defend the position when later challenged. It is impossible to inoculate against a potentially politicized tax audit, but it is possible to strengthen a company's

⁸ See OPM memorandum to heads and acting heads of departments and agencies, "Merit Hiring Plan" (May 29, 2025). See also Erwin Chemerinsky and Catherine Fisk, "Why on Earth Should Air Traffic Controllers Be Pro-Trump?" *The New York Times*, June 6, 2025 (describing the "grave implications for how the government functions and creates an unconstitutional political test for federal hiring"); and Eileen Sullivan, "In Trump's 'Patriotic' Hiring Plan, Experts See a Politicized Federal Work Force," *The New York Times*, June 10, 2025.

tax compliance function by building strong tax leadership.

In these uncertain times, it is not enough to just buy tax insurance. There is a long journey from placement to payout during which a company's tax risks need to be managed by someone who understands the tax risk, the business, the requirements of the tax insurance policy, and tax controversy strategies. Large developers, especially, should ensure that they are prepared to mount coordinated accounting, tax, and legal responses to any information document requests from the IRS, especially in the early stage of an audit when the audit team has the authority to withdraw an audit request letter without further questions. In a bureaucracy, the longer an audit drags on, the harder it is to close. With the deluge of tax talent coming onto the market because of the staff reductions at the IRS and Office of Chief Counsel, developers have a great opportunity to hire tax professionals as part of an overall tax strategy to brace for the uncertainties ahead. ■

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