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Cashing In on Energy Credits with the Inflation Reduction Act

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Inflation Reduction Act of 2022

- ● Approximately \$370 billion for **clean energy credits** and other tax incentives
 - Largest investment ever by United States to fight climate change
 - Aims to reduce carbon emissions by roughly 40% by 2030
- ● IRA modifies, expands, and extends some existing tax credits, and introduces new credits
- ● Approach of IRA is more “carrot” to encourage investment in, and use of, clean energy, as opposed to the “stick” of taxing traditional fossil fuels
- ● Policy goals
 - First: clean energy
 - Second: economic investment in the United States
- ● Key changes from prior tax credit regime
 - Direct pay
 - Transferability
- ● Timeline & process



Transferability vs. Tax Equity

- ● **Tax Equity Structures**
 - **Partnership flip**
 - **Sale-leaseback**
 - **Inverted Lease**
- ● **Transferability Structures**
 - **Much simpler**
 - **Can be used by C-corporations, real estate investment trusts, partnerships**



Transferability Mechanics

- ● Registration of credits
- ● Transfer elections
- ● No tax on discount
- ● Flexibility in rules
 - Multiple buyers
 - “Bonuses” available (but can’t be transferred separately)
 - Carryforward/carryback
 - Partnerships as transferors (or transferees)
 - Flexibility on partial transfers



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Areas for Caution

- ● Reliance on expected credits for estimated tax purposes
- ● Amount of credit available for transfer/receipt: limitations apply in the case of
 - Nonqualified nonrecourse financing
 - Tax-exempt ownership
 - Application of passive activity loss rules
- ● Recapture events
 - For transferee
 - For transferor
- ● Excess credit penalties
- ● Syndication partnerships and timing considerations



Key Deal Terms

- ● Deal documentation – Allocation of risk
- ● Availability of credit/access to due diligence information
- ● Timing nuances
- ● Single credit purchase vs “bulk buy”
- ● Ongoing cooperation & recapture information sharing

State of the Market

- Tax credit marketplaces
- Discount



Q&A

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