Transferability of Clean Energy Tax Credits in the Inflation Reduction Act

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The Inflation Reduction Act of 2022 permits the transfer of renewable energy tax credits to an unrelated third party in exchange for cash. This provision will have a significant impact across the energy industry by expanding project financing for renewable energy.

Beginning on January 1, 2023, an eligible taxpayer can elect to make an irrevocable transfer of an eligible energy tax credit, or any portion of such a credit, to an unrelated third party in exchange for cash. The following tax credits area eligible to be transferred:

- Alternative Fuel Vehicle Refueling Property Credit (IRC Section 30C)
- Renewable Energy Production Tax Credit (IRC Section 45)
- Carbon Oxide Sequestration Credit (IRC Section 45Q)
- Zero-Emission Nuclear Power Production Tax Credit (IRC Section 45U)
- Clean Hydrogen Production Tax Credit (IRC Section 45V)
- Qualified Commercial Vehicles (IRC Section 45W)
- Advanced Manufacturing Production Tax Credit (IRC Section 45X)
- Clean Electricity Production Tax Credit (IRC Section 45Y)
- Clean Fuel Production Tax Credit (IRC Section 45Z)
- Energy Investment Tax Credit (IRC Section 48)
- Qualifying Advanced Energy Investment Tax Credit (IRC Section 48C)
- Clean Electricity Investment Tax Credit (IRC Section 48E)

The compensation for the credit is not taxable to the credit seller and the amount paid is not deductible by the credit buyer. In addition, transfers of these tax credits are limited to a one transfer per credit.

An election to transfer the credit must be made by the due date (including extensions of the tax return on which the election is made. Credits may be claimed in the first tax year of the credit buyer ending with, or after, the tax year of the credit seller. The election is made for each year the credit is available, and credit buyers can carry the credits back for three years and forward for 20 years.

This new transferability of clean energy tax credits provides another method for renewable energy developers to monetize tax credits and will hopefully result in the expansion of renewable energy projects by increasing available funding for such projects. In the past, renewable energy project developers were forced to monetize any tax credits they had through a tax equity transaction in which the tax credits were exchanged for project capital. Under these new rules a company with minimal or no tax liability can received capital for a project and allows an investor to reduce their tax liability.

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