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FINANCING ENERGY TRANSITION: THE NUTS AND BOLTS OF TAX EQUITY FINANCING IN THE U.S. RENEWABLE ENERGY LANDSCAPE AND ITS FUTURE OUTLOOK

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ABSTRACT

Financing remains one of the biggest hurdles in the United States' transition to renewable energy, especially as clean energy projects often carry higher upfront costs than fossil fuels. To close this gap, developers rely heavily on government incentives like the Investment Tax Credit (ITC) and Production Tax Credit (PTC), often through tax equity financing structures. This paper explores how the Inflation Reduction Act 2022 has reshaped the renewable energy financing landscape, expanding access to tax credits, introducing transferability, and allowing more flexible funding models. It focuses on how these changes impact common structures like the partnership flip and give rise to new tools, such as tax credit transfer. The paper also looks ahead, considering how shifts in political leadership influence the future of these incentives and what that means for investors, developers, and the broader clean energy market.

Keywords: Renewable Energy Financing, Inflation Reduction Act 2022, Tax Credits (ITC & PTC), Tax Equity Structures

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A. INTRODUCTION

One of the biggest hurdles in the transition to renewable energy is affordability. This challenge stems partly from the fact that the full costs of fossil fuel use, such as its contributions to climate change, are not fully reflected in market prices. Additionally, some renewable energy technologies are still developing, making them more expensive than traditional fossil fuel-based power generation when compared to face value.[1]

To bridge this cost gap, federal, state, and local governments, have implemented various programs to support and incentivize renewable energy adoption. However, because utility-scale renewable energy can still carry a higher "sticker price" than fossil fuels, debate continues over the appropriate level of government intervention and financial support.[2]

Even with government incentives, renewable energy developers often need creative financing mechanisms to make projects viable. One widely used strategy is tax equity financing, where investors provide funding in exchange for temporary ownership stakes and access to a project's tax benefits. This structure, however, is only useful for entities with significant tax liabilities or appetites.[3]

To address this, the Inflation Reduction Act of 2022 ("**IRA**") introduced significant expansion and modification of already existing renewable energy tax credits. First, the IRA extends the existing federal investment tax credit ("**ITC**") and production tax credit ("**PTC**").[4] The PTC is calculated by multiplying the applicable credit rate by the number of kilowatt hours (kWh) generated by a qualifying renewable energy production facility.[5] This credit available for the first ten years of a facility's operation.[6] The ITC is calculated at the time a qualifying renewable energy facility is placed in service by applying the credit rate to the total investment in the facility.[7]

[1] Joel B. Eisen, et al, *Energy, Economics and the Environment Cases and Materials*, Sixth Edition, 2024, 797.
[2] *Id*. 798.
[3] *Id.* 799.
[4] Inflation Reduction Act of 2022, Pub. L. No. 117-169, § 13101 No. 136 Stat. 1818; Roberta F. Mann, *Driving Transformation: Tax Strategies for Electrifying Light-Duty Transportation*, 53 LER 10298, 10301; James A. Ferguson, *Death, Taxes and Clean Energy*: How the Inflation Reduction Act Harnesses Tax Law to Revitalize American Clean Energy17. J. Bus. Entrepreneurship & L. 91, 98.
[5] Inflation Reduction Act of 2022, Pub. L. No. 117-169, § 45(a), No. 136 Stat. 1818.
[6] Inflation Reduction Act of 2022, Pub. L. No. 117-169, § 45(a)(2)(ii), No. 136 Stat. 1818.
[7] Inflation Reduction Act of 2022, Pub. L. No. 117-169, § 48(a), No. 136 Stat. 1818.

For years, the Internal Revenue Service ("**IRS**") has provided tax credits to taxable entities involved in clean energy projects.[8] However, these credits were subject to renewal or potential cancellation every two years,[9] creating uncertainty for investors relying on them. Additionally, only certain entities could claim the credits, limiting access primarily to large companies.[10] The IRA aimed to address these challenges by bringing stability to the tax credit framework, expanding eligibility to smaller businesses, and further incentivizing investment in clean energy.

The ITC and PTC were originally established under the Energy Policy Act of 2005. These credits, modelled after Germany's Feed-in Tariff (FiT) system, were signed into law by President George W. Bush.[11] In Germany, the FiT set renewable energy for utilities and prioritizing its use over fossil fuels.[12] This policy facilitated a rapid transition to clean energy, with renewable energy's share of Germany's electricity generation increasing from approximately 6.6% in 2000, when the FiT was introduced, to 33.3% by 2017.[13]

In contrast, the U.S. follows a different regulatory framework, wherein state-level public utility commissions, rather than the federal government, have the authority to set electricity prices. Instead of established a fixed price for specific energy resources, the U.S. adopted the ITC and PTC, respectively, to support qualifying clean energy projects.[14]

Back to the IRA, the IRA also introduces two new tax credits: the Clean Electricity Investment Credit and Clean Electricity Production Credit.[15] These new credits expand upon the traditional ITC and PTC by incorporating technology-neutral provisions. Notably, the IRA allows standalone battery storage and clean hydrogen projects to qualify for the ITC, while also enabling new clean technologies to be eligible for the PTC.

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[8] Erin Slowey, *Treasury Floats Allowing Individuals to Buy Energy Tax Credits*, Bloomberg Tax, https://news.bloombergtax.com/daily-tax-report/treasury-floats-allowing-individuals-to-buy-energy-tax-credits, (October 16, 2023).
[9] Keaton Peters, *Flush With the Promise of Tax Credits, Clean Energy Project are Booming in Texas*, Inside Climate News, https://insideclimatenews.org/news/16082023/texas-solar-inflation-reduction-act/, (August 16, 2023).
[10] Press Release, U.S. Department of the Treasury, *IRS Release Guidance on Provisions to Expand Reach of Clean Energy Tax Credit Through President Biden's Investing in America Agenda*, https://home.treasury.gov/news/press-releases/jy2157#:~:text=WASHINGTON%20%E2%80%94%20Today%2C%20as%20part%20of,and%20help%20build%20projects%20more, (March 5, 2024).
[11] Drew D'Alelio et al. *The Essence of Tax Equity*, YALE CTR. FOR BUS. AND THE ENV'T, CLEAN ENERGY FIN. F., (May 16, 2022).
[12] *Id.*
[13] *Id.*
[14] *Id.*
[15] Inflation Reduction Act of 2022, Pub. L. No. 117-169, § 48(e) No. 136 Stat. 1818.

Third, the IRA introduces a tax credit transferability mechanism, allowing investors to transfer their tax credits to other entities. Additionally, certain tax-exempt organizations can receive direct payments to offset capital expenditures associated with clean energy projects, making the financing of such projects more accessible.[16]

Fourth, the legislation incorporates critical labor protections, including prevailing wage and apprenticeship requirements. Projects that meet these requirements qualify for the full value of the ITC or PTC, reinforcing fair compensation for workers and fostering workforce development withing the clean energy sector.[17]

Finally, IRA contains bonus tax credits, which offer an additional economic incentive for projects meeting certain domestic content requirements or siting requirements.[18]

By way of an update, on January 7, 2025, the U.S. Department of the Treasury and IRS issued final regulations regarding the clean electricity production tax credit and the clean electricity investment tax credit provided by the IRA.[19] The tech neutral production tax credit and tech neutral investment tax credit are set to replace previous PTC and ITC. While PTC and ITC will still be available for projects that begin construction prior to January 1, 2025. These credits apply to clean electricity and energy storage projects with a greenhouse gas emissions rate of zero or less, regardless of technology type.[20] They are available for facilities placed in service after December 31, 2024, and will phase out based on future U.S. emissions reduction or by 2032 at the latest.

This paper, however, will focus on analysing the impact of the ITC and PTC under the IRA on emerging financing structures in renewable energy project finance. In particular, it will examine the partnership flip mechanism, a widely used strategy that allows investors to monetize tax credits while ensuring long-term project viability. The analysis will explore how the IRA's changes, such as tax credit transferability and expanded eligibility, affect this financing model. Additionally, the paper will consider implications of future policy shifts under a new administration.

[16] Inflation Reduction Act of 2022, Pub. L. No. 117-169, § 6418, No. 136 Stat. 1818.
[17] Inflation Reduction Act of 2022, Pub. L. No. 117-169, § III.D., No. 136 Stat. 1818.
[18] Inflation Reduction Act of 2022, Pub. L. No. 117-169, § III.E., No. 136 Stat. 1818.
[19] Department of the Treasury and IRS, Section 45Y Clean Electricity Production Credit and Section 48E Clean Electricity Investment Credit, 26 CFR Part 1 (TD 10024), RIN 1545-BR17.
[20] Inflation Reduction Act of 2022, Pub. L. No. 117-169, § 45Y(b)(2)(A) and 48E(b)(3)(B)(ii), No. 136 Stat. 1818.

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B. DISCUSSION

1. Typical Project Finance Structure for Renewable Energy Project

It is pivotal to first understand the structure of a typical project finance arrangement before delving into the details of tax equity financing. This broader perspective helps provide clarity on the overall transaction.

In the U.S., nearly all project companies are structured as special-purpose entity ("**SPE**").[21] These entities own all assets related to the project's development, construction, and operation. Typically, an SPE is directly owned by an SPE holding company. This widely adopted project-level ownership structure is largely driven by the requirements and expectations of financing parties.

The more dynamic activity often occurs above the SPE holding company level, where ownership and financing arrangements differ significantly based on the type of project, industry sector, and investor capital. For instance, in the renewable energy project, tax equity investors have become key sources of financing; which we will delve further in the next section. Intermediate holding companies are frequently established to separate tax credit-driven investors from sponsor equity.

[21] Robert da Silva Ashley, Esq. *United States Project Finance*, Legal 500 Country Comparative Guides.

Below is a general illustration of the typical project finance structure for a renewable energy project:[22]

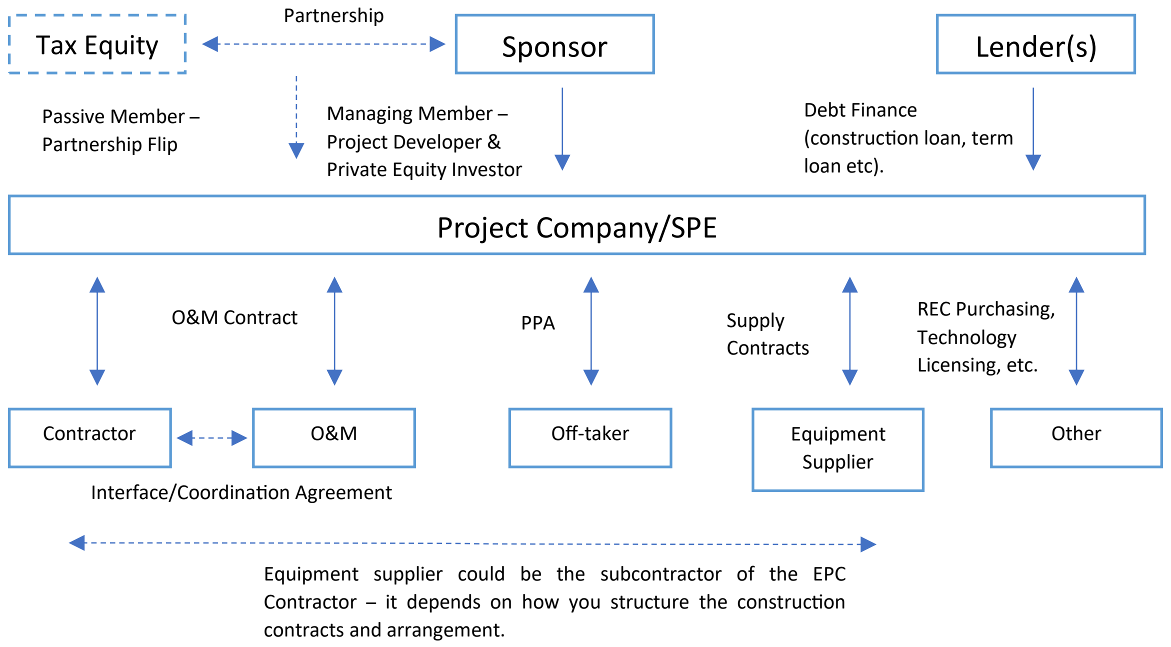

Figure 01. *Plain Vanilla U.S. Project Finance Structure*

a. **Sponsor**: the project sponsor oversees the development, construction, and operation of a renewable energy project. Project sponsors typically act as the owners of an SPE established to own and operate the project, contributing and raising capital to fund equipment purchases and project construction. Additionally, they play a central role in coordinating activities among various stakeholders to ensure the smooth progress of the project's construction and operation.[23]

b. **Financing Parties (Sponsor, Lender, and Tax Equity)**: renewable energy projects are commonly financed through cash equity, tax equity, and debt financing. Tax equity investors provide funding to leverage tax benefits and receive cash flows from the project, partnering with the project sponsor as partial owners of the project company. The project sponsor may also secure additional cash equity from other investors.[24]

[22] Akin Gump Strauss Hauer & Feld LLP, *Project Finance: Structuring for Success*, https://www.mondaq.com/unitedstates/project-financeppp-amp-pfi/684640/project-finance-structuring-for-success, (March 20, 2018).
[23] Latham & Watkins LLP, *The Book of Jargon Project Finance: A Latham & Watkins Glossary of Project Finance Slang and Terminology*, Third Edition, 117; Barry N. Machlin and Brigette A. Rummel, *The Plus and Minus of Project Finance*, Mayer Brown, November 2020.
[24] *Id.* 74.

c. **Offtakers**: renewable energy projects often depend on offtakers to enter into long-term agreements, known as Power Purchase Agreements ("**PPAs**"), to purchase the electricity generated by the project. The PPA serves as the backbone of the project, providing a reliable revenue stream and enhancing its appeal to investors and lenders.[25]

d. **Engineering, Procurement and Construction ("EPC") Contractor**: EPC contractors are responsible for the project's engineering design, managing the procurement of all required materials and equipment, and supervising construction. They also need to ensure that the power plant facility is built to the specifications required by the sponsor and, most importantly, meets the technical requirements of the PPA.[26]

e. **Equipment Supplier**: equipment suppliers manufacture and deliver the components and systems essential for the project. They also support project developers in selecting the most suitable technology and equipment to meet the project's specific needs.[27]

f. **Operations and Maintenance ("O&M") Contractors**: O&M contractors oversee the operation and maintenance of the project, ensuring the facility's optimal performance and longevity. They manage regular maintenance schedules, address technical issues, and ensure compliance with operational standards and the requirements under the PPA.[28]

2. Traditional Partnership Flip and other Emerging Structures

Partnership flips are a widely used tax equity financing structure in the renewable energy sector.[29] In this model, a renewable energy sponsor forms a partnership with a third-party tax equity investor (an entity with sufficient tax liability to utilize the tax credits generated by the project).[30] Depending on the structure, but generally, tax equity investor provides certain capital in exchange for a share of the project tax's benefits, including ITC or PTC, depreciation,

[25] *Id.* 89.
[26] *Id.* 40.
[27] Barry N. Machlin and Brigette A. Rummel, *The Plus and Minus of Project Finance*, Mayer Brown, November 2020.
[28] Latham & Watkins LLP, *supra* note 23, 90.
[29] Scott W. Cockerham, *Putting U.S. Solar Financing Structures in Perspective*, Tax Notes, July 23, 2018, 499-503; Keith Martin, *Solar Tax Equity Structures*, Project Finance NewsWire, September 2015; Andrea S. Kramer and Peter C. Fusaro, *Energy and Environmental Project Finance Law and Taxation: New Investment Techniques*; Mark O. Keightley, et al, *Tax Equity Financing: An Introducing and Policy Considerations*, Congressional Research Service, R45693, 9.
[30] Michelle D. Layser, *Improving Tax Incentives for Wind Energy Production: The Case for a Refundable Production Tax Credit*, Missouri Law Review, vol. 81 (2016), 453-517.

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interest deductions, and a portion of the operating income. This structure helps sponsors secure necessary funding while allowing investor to optimize their tax positions.[31]

This section provides a detailed examination of the full lifecycle of a tax equity project, outlining the stages at which the tax equity investor becomes involved, the operational mechanisms of the tax credit, and the structural framework of such transactions.

Traditional Partnership Flip[32]

a. Step 1:

The initial phase involves the sponsor (through a holding company) securing a suitable site for the project and arranging the necessary financing for construction. This financing is typically a combination of a construction loan and the sponsor's equity contributions. The project is owned by a SPE ("**Project Company**").

Depending on the financing structure, the construction loan may also be provided directly to the project company as a "tax equity bridge loan" or sometimes acting as the co-borrowers.

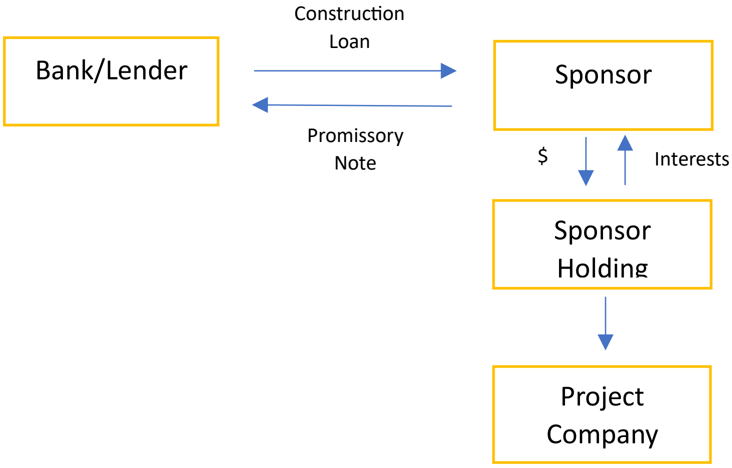

Figure 02. *Secures Site & Project Financing*

b. Step 2:

The sponsor holding establishes a separate company ("**HoldCo**"). This entity serves as the vehicle as the vehicle for tax equity investors to make their investment and is designed to ultimately acquire ownership of Project Company. Initially, HoldCo is an SPE with no assets, wholly owned by the sponsor holding.

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31 Hayden S. Baker, et al, *Clean Energy Tax Credits – Transferability and Deal Structure Alternatives*, https://www.whitecase.com/insight-our-thinking/clean-energy-tax-credits-transferability-and-deal-structure-alternatives, (May 20, 2024); Keith Martin, *Partnership flips: Structures and Issues*, Project Finance NewsWire, https://www.projectfinance.law/publications/2021/february/partnership-flips/, (February 18, 2021); Greybridge Advisors, *Renewable Energy Tax Equity*, https://www.greybridgeadvisors.com/renewable-energy-tax-equity.

32 Mark O. Keightley, *supra* note 29, 9-14; Hayden S. Baker, *supra* note 31; Keith Martin, *supra* note 31.

c. Step 3:
The sponsor holding proceeds with the project, focusing on its physical construction. This phase covers activities typically associated with construction stage.

d. Step 4:
As construction nears completion, the tax equity investors enter the process. At this stage, the transaction becomes more complex. In general, the tax equity investors make their investment in HoldCo. The HoldCo subsequently acquires Project Company, the entity that holds ownership of the project and then the tax credits generated by the project flow from Project Company to HoldCo and ultimately, to the tax equity investors.

e. Step 4a:
To facilitate HoldCo's acquisition of Project Company, two preliminary steps must be completed: (i) determining the purchase price of Project Company; and (ii) securing the necessary fund for HoldCo to execute the purchase at the agreed price.
Establishing the purchase price requires a valuation of the project to determine its fair market value ("**FMV**"). For tax equity investors, this step is critical because the amount of tax credits generated by the project is directly tied to its FMV.
Given the relationship between FMV and tax credits and the inherent subjectivity in asset valuation, there is an incentive for both sponsors and tax equity investors to overestimate the project's value. However, if the IRS later deems the valuation inflated, the relevant tax credits may be retroactively disallowed, potentially leaving the tax equity investor with an unexpected tax liability.[33]

f. The next phase involves HoldCo securing the necessary funds to acquire Project Company. For the sake of simplicity, let us assume that the tax equity investor intends to contribute USD300,000 and that the project's FMV has been determined to be USD1,000,000 (this simplifies the calculation, as a USD1,000,000 project at a federal tax credit rate of USD0,30 per dollar of FMV would generate USD300,000 in tax credits).
To facilitate the acquisition, the tax equity investor injects USD300,000 into HoldCo (usually the tax equity investor is not required to invest all USD300,000 right away). In exchange for this investment, HoldCo allocates the majority of its ownership, typically 99%, to the tax equity investor. This allocation includes 99% of the entity's income, losses,

[33] Lesley Hunter and Mason Vliet, *Report: The Risk Profile of Renewable Energy Tax Equity Investments*, American Council on Renewable Energy, December 2023, 12.

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and most importantly, tax credits. Structuring the deal this way enables the tax equity investor to fully utilize the tax credits.

The sponsor holding contributes the remaining USD700,000 retaining 1% of the ownership, including cash flows and income, while continuing to serve as the managing member of the HoldCo.

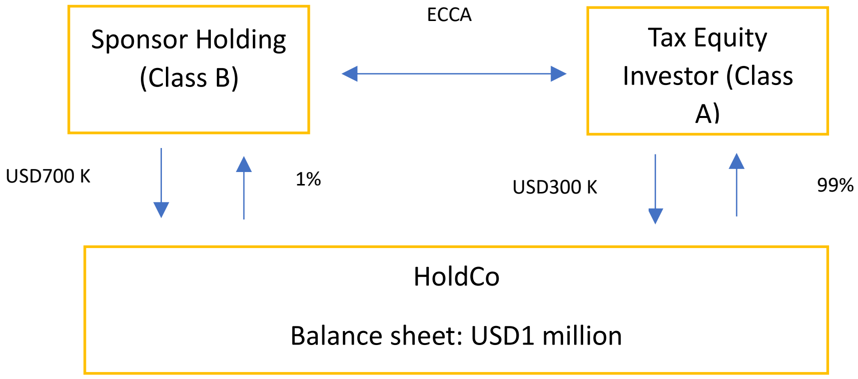

Figure 04. *Financing the Purchase*

The Equity Capital Contribution Agreement ("**ECCA**") between sponsor holding and Tax Equity Investor will create Class A and Class B membership interests in the HoldCo, allocating cash distributions, tax incentives, and other rights and obligations between sponsor holding and tax equity investor.

It is also not uncommon that the relevant lender would require tax equity partnership in this case HoldCo to enter into ECCA as well, with class B member and tax equity investor requiring HoldCo to make capital contributions.[34]

g. Step 4c:

Recall that the project is owned by the Project Company, which, up until this point, has been owned by the sponsor holding. Given that the FMV of the project has been established at USD1,000,000, the total ownership interest in Project Company is likewise valued at USD1,000,000. At this stage, HoldCo purchases the sponsor holding's 100% ownership interest in Project Company by paying USD1,000,000.

[34] Keith Martin, *Right-side, Left-side Issues in Tax Equity Deals*, Project Finance NewsWire, https://www.projectfinance.law/publications/2022/august/right-side-left-side-issues-in-tax-equity-deals/, (August 17, 2022).

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The structure of buying the Project Company by the HoldCo may also be the condition under the Membership Interest Purchase Agreement which is commonly required by the lender.[35]

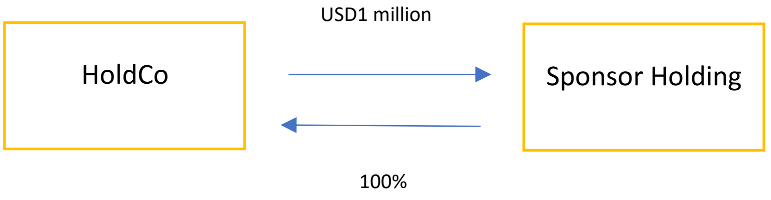

Figure 05. *Purchasing the Project Company 1*

Following this transaction, the ownership structure is as follows:

<u>Before:</u>

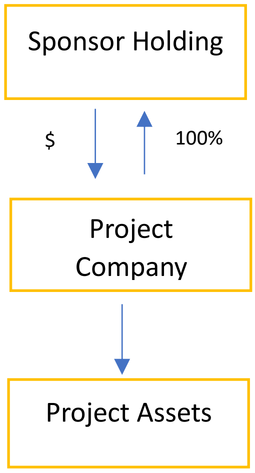

Figure 06. *Purchasing the Project Company 2*

[35] *Id.*

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After:

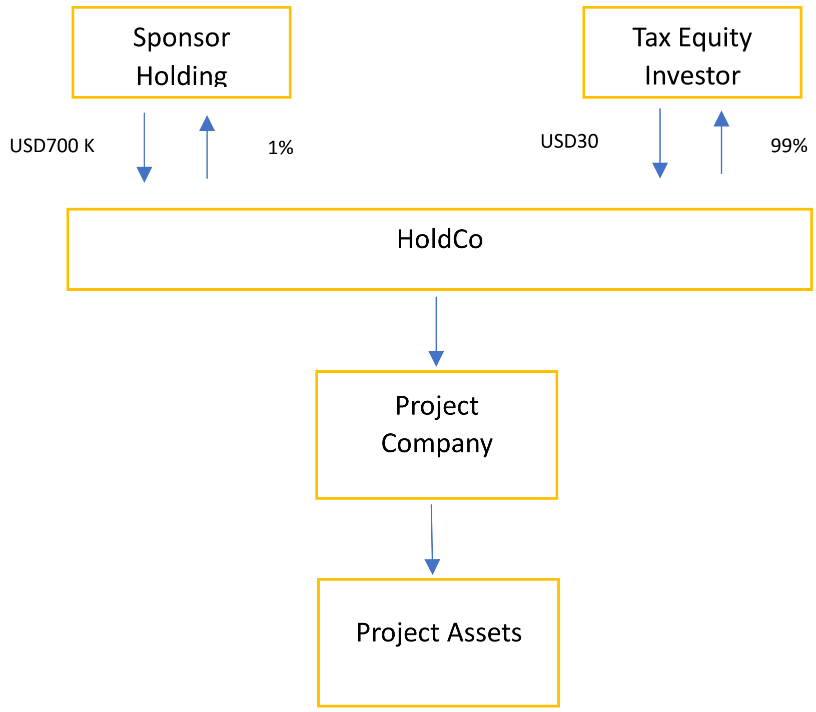

Figure 07*. Purchasing the Project Company 3*

This step marks a significant transition, as Project Company is no longer directly owned by the sponsor holding but is now fully owned by HoldCo, aligning with the investment and structural objectives of the tax equity arrangement.

h. Step 5:

After the completion of the transaction, the project is subsequently "placed in service", meaning it begins generating and selling power.[36] This sequencing is critical because the tax code specifies that the allocation of tax credits is based on the ownership structure of the project at the time it is placed in service.[37]

Once the project begins generating power and selling it to the utility company, it starts producing cashflows. At this point, the tax equity investor could start benefits from, among other things, tax credits.

[36] IRS Fact Sheet, FS-2006-27, November 2006; Keith Martin, *Calculating How Much Tax Equity Can Be Raised*, Project Finance Newswire, https://www.projectfinance.law/publications/2022/february/calculating-how-much-tax-equity-can-be-raised/, (February 28, 2022).

[37] 26 U.S. Code § 48.

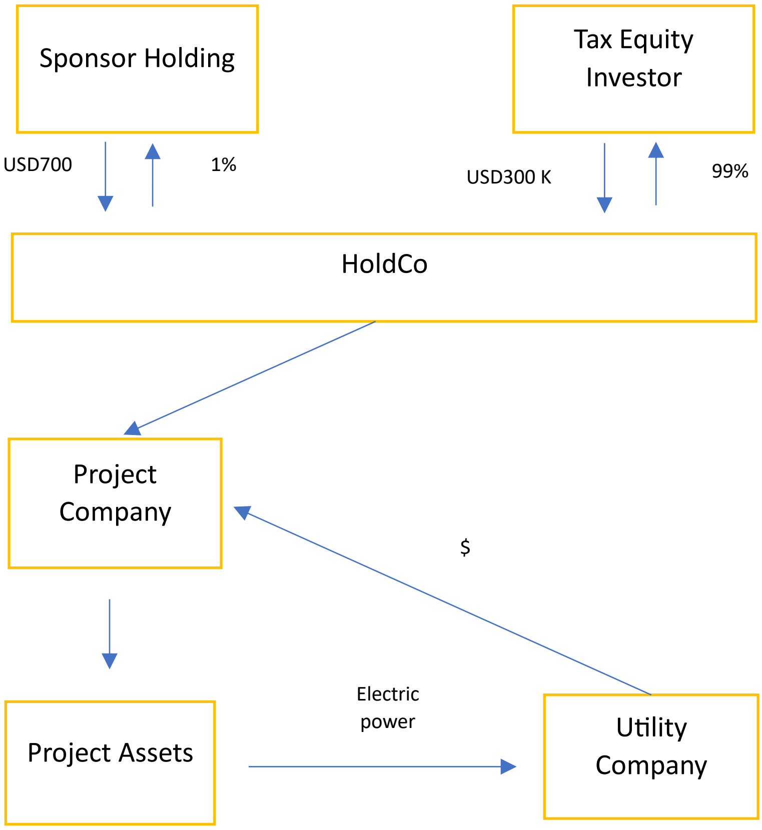

Figure 08. *Project is Placed in Service*

i. Step 6:

Benefits are initially distributed based on a predetermined arrangement until a specific milestone is achieved. In a yield-based flip, the milestone is a target Internal Rate of Return ("**IRR**"), whereas in a time-based flip, the milestone is a fixed date. For a time-based flip, the fixed date is generally at least five years after the project's placed-in-service date. PTC projects generally have flip term of 9-10 years and ITC have a flip term of 6-8 years.[38] Once the yield or time-based milestone is met, the tax allocations and cash distributions to the tax equity investor typically decrease to around 5%.[39] At this stage, the sponsor holding gains control of most of the financial and tax benefits and may have the option to purchase

[38] Lesley Hunter and Mason Vliet, *supra* note 33, 7.

[39] *Id.*; see also Brian Greene, et al, *Project Finance Law Review*, Ch. 17, Third Edition, Law Business Research Ltd., June 2021.

the investor's remaining interest at FMV. This structure is well-established and benefits from a "safe harbor" from the IRS.[40]

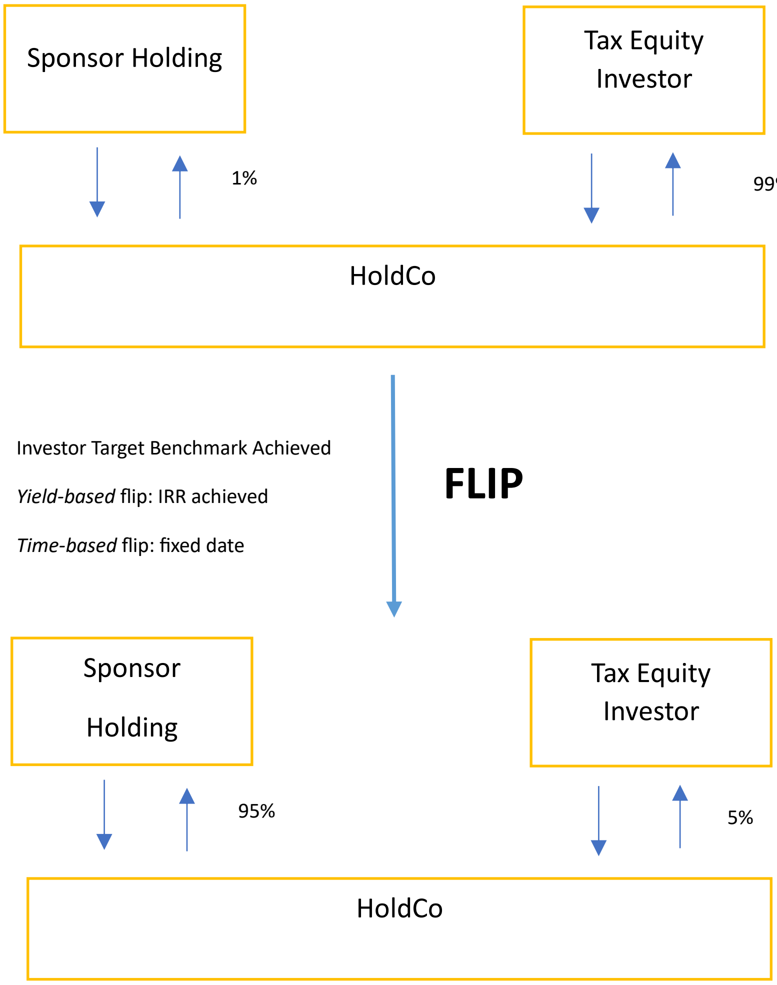

Figure 09. *Partnership Flip*

3. Emerging and Advanced Structures

a. A Game-Changer: The IRA's Tax Credit Transferability Provisions

As mentioned in the beginning, the IRA has implemented substantial reforms to support the energy transition, including extending tax credits for the next decade, offering additional incentives for projects located in fossil fuel-dependent communities, those using U.S. sourced components, and introducing new tax credits for innovative technologies such as battery storage and hydrogen energy systems.[41]

[40] IRS, 26CFR 601.105: Examination of returns and claims for refund, credit or abatement; determination of correct tax liability, Rev. Proc. 2007-65; IRS, *Wind Energy Partnership*, Announcement 2009-69; IRS, *Applicability of Rev. Proc. 2007-65 to Section 48 Energy Credit Partnership*, Office of Chief Counsel of IRS, 201524024, December 6, 2015.

[41] Inflation Reduction Act of 2022, Pub. L. No. 117-169, § 1310, § 48(e), § III.D., § III.E., No. 136 Stat. 1818.

Most notably, however, the IRA allows project owners to sell tax credits directly in the open market,[42] a major departure from the previous requirement of sharing credits solely through tax equity partnerships. This shift is reshaping the financing landscape for renewable energy projects across the U.S. This fundamentally changing how developers can monetize their tax credits.[43]

Sections 6417 and 6418 in the Internal Revenue Code open two new options: (i) tax credit transfer (Section 6418): project owners can now sell certain tax credits to third-party buyers instead of using them to offset their own tax liabilities. This allows developers to generate upfront capital without relying on complex tax equity structures; and (ii) direct pay option (Section 6417): certain tax-exempt entities, such as nonprofits, state and local governments, tribal organizations, and rural cooperatives, can elect to receive a direct cash payment in place of tax credits. Some taxable entities engaged in clean energy projects, such carbon capture, clean hydrogen, and advanced manufacturing, are also eligible for direct pay.[44]

The introduction of tax credit transferability has prompted many market participants to modify existing financing structures and develop new models to optimize the use or sale of tax credits generated by renewable energy projects.[45] The following section will delve into these emerging structures.

b. New Financing Landscape

Financing projects through tax credit sales introduces unique challenges and opportunities. Two critical considerations include structuring bridge financing to manage the gap until tax credit sales are finalized and addressing the risk of ITC recapture, which can arise during the five-year period following an ITC claim.[46]

Buyers and sellers of tax credits must adhere to two key payment rules: (i) payment must be made in cash; and (ii) payments must occur within a specific timeframe starting

[42] Inflation Reduction Act of 2022, Pub. L. No. 117-169, § 6418, No. 136 Stat. 1818.
[43] Isobel Markham, *Shift in Renewable Project Financing Could Attract More Investors*, https://deloitte.wsj.com/riskandcompliance/shift-in-renewable-project-financing-could-attract-more-investors-0722d7b5, (May 8, 2024).
[44] Practical Law Finance, *Inflation Reduction Act: Key Energy Provisions*, August 16, 2022, W-036-5087; Practical Law Corporate & Securities, *Inflation Reduction Act Introduces New Corporate Taxes and Includes New Clean Energy Tax Incentives*, August 15, 2022, W-036-5512.
[45] Hayden S. Baker, et al, *supra* note 31.
[46] Eli Katz and Kelly Cataldo, *Tax Credit Transfer Bridge Loans: Structuring Issues and Considerations*, Project Finance International, September 20, 2023; Keith Martin, *Cost Capital: 2024 Outlook*, Project Finance NewsWire, February 19, 2024; Andy Moon and Billy Lee, *Buying and Selling Clean Energy Tax Credits: Key Issues and Risk Mitigation Strategies*, Practical Law Finance, W-041-8237.

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at the beginning of the year the credit is generated and ending when the corresponding tax return is filled.[47]

Because prepayment for credits is not allowed, buyers cannot provide upfront capital to sponsors who have not yet earned their tax credit. As a result, sponsors often rely on banks or alternative funding sources to bridge the gap until a tax credit purchase commitment is secured (e.g. construction loan), as explained in the previous section. For PTC sales, these commitments may involve instalment payments over as long as ten years.

While ITCs are fully claimed upon project completion, the credits vest incrementally over five years, with 20% vesting annually.[48] If the project loses its tax credit eligibility during this period, the unvested portion must be repaid to the IRS. This rule applies to ITCs purchased on the open market. Common causes for ITC recapture include: (i) casualty events where the project is damaged or destroyed; (ii) systemic failures such as design flaws rendering the project inoperable; or (iii) transfer of ownership during the five-year vesting period.[49] These considerations highlight the need for robust strategies and risk mitigation when structuring tax credit sale arrangements.

As can be seen in the previous section, project sponsors have relied on a combination of loans from lenders and binding commitments from tax equity investors to finance construction. Tax equity investors generally avoid construction risks and only provide funding after specific project milestones are achieved. A commonly employed mechanism to address this gap is the tax equity bridge loan ("**TEBL**"), which secures capital against the future funding commitments of tax equity investors.[50]

TEBLs are drawn during the construction phase to cover project expenses. These loans are secured by the project company's assets and equity, sized based on the tax equity investor's future funding commitment, and repaid once the investor provides its funds after project completion.

Tax equity investors typically formalize their commitments through an ECCA (as explained in the previous section), which is executed alongside or shortly after the closing of loan facilities. Upon project operation, the tax equity investor fulfils its

[47] *Id.*
[48] Connie Chern, CPA, *What Tax Credit Buyers and Sellers Can Expect in a Section 48 ITC Due Diligence Package*, https://www.reunioninfra.com/insights/section-48-itc-due-diligence-guide, (January 22, 2025).
[49] IRC § 50(a)(1)(B); IRS, *Market Segment Specialization Program Guideline, Rehabilitation Tax Credit*, July 2012.
[50] Eli Katz and Kelly Cataldo, *supra* note 46.

commitment, repaying the TEBL. Any remaining construction debt is often addressed through a term loan in a process known as term conversion.

Since tax equity investors do not permit secured debt within the partnership, any liens on assets are released during term conversion. Instead, the term loan is secured by the borrower's assets and equity, and term lenders are structurally subordinated to the tax equity partnership. This financing structure, known as back-leverage loan.[51]

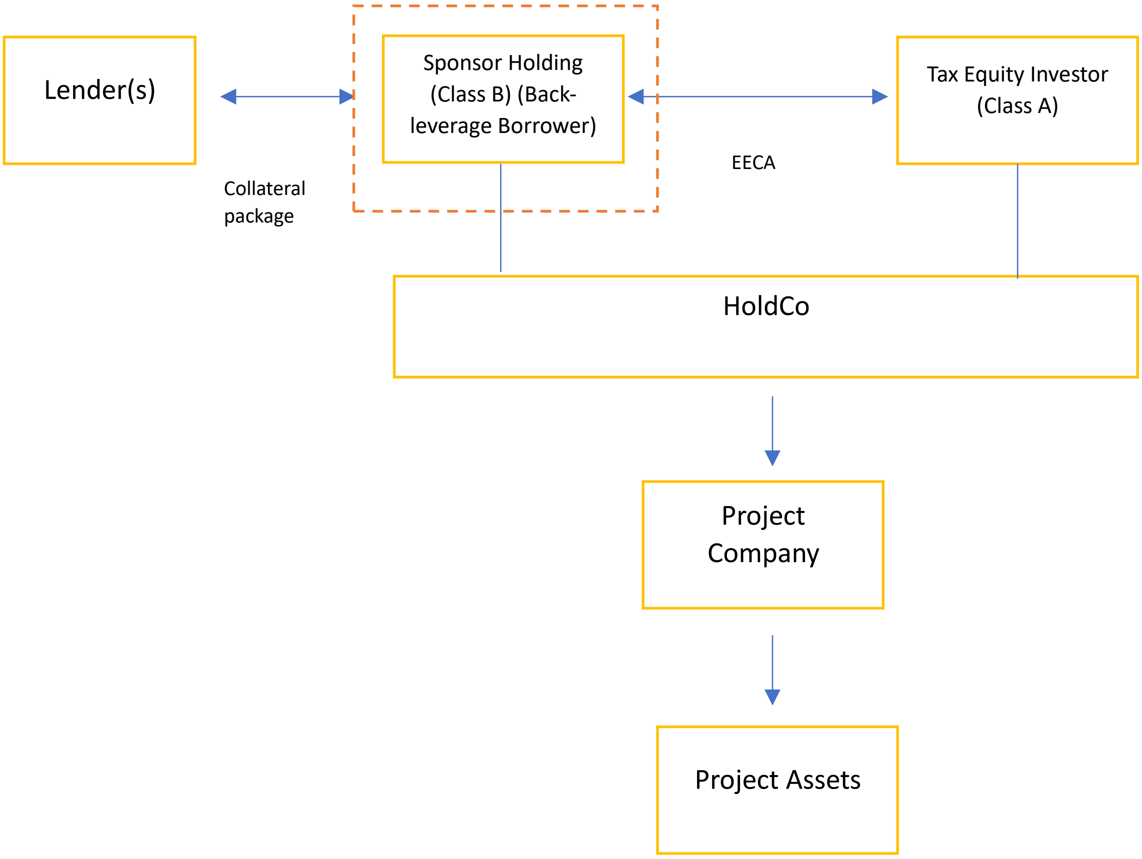

Figure 10. *Back-leverage loan structure*

The emergence of tax credit transfer mechanisms under IRA has led to the development of Tax Credit Transfer Bridge Loan ("**TRABL**") facilities, which adapt TEBL structures to align with the needs of tax credit sales. While TRABLs share similarities with TEBLs, there are distinct differences due to the unique dynamics of tax credit transactions.

For ITC transactions, TRABLs are repaid with proceeds from ITC sales. However, since repayments are tied to when credit are sold rather than construction milestones, there may be misalignment with the term conversion process.

[51] *Id.*

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For PTC transactions, repayments are structured over multiple years as PTCs are generated and sold. These loans are sized based on the projected payments from credit sales and repaid on an amortization schedule matching the instalment payments under the tax credit purchase agreement.

In term of financing structure to mitigate risk, historically there are at least two key variations on the conventional project financing structures.[52]

a. Structure to Mitigate Recapture Risk:

A major concern in tax credit transactions, particularly those involving ITCs, is the risk of recapture if a project fails to maintain eligibility requirements within the five-year recapture period. This is particularly relevant in cases where lenders foreclose on a project, which could result in the forfeiture of unvested tax credits and potential liability for the buyer.

To mitigate the risk, usually the stakeholders adopt financing structure similar to conventional tax equity partnerships, where lenders do not take a lien or security on the tax equity investor's ownership interest. This way, if foreclosure occurs, the lender only takes over the borrower's stake, not the tax equity investor's.

Alternatively, the project could be held through a joint venture between the borrower and an affiliate. The ITC is allocated to the affiliate, which is not subject to lender's lien or security. In the event of foreclosure, the lender only acquires control of the borrower's interest, leaving the affiliate's tax credit allocation untouched.[53]

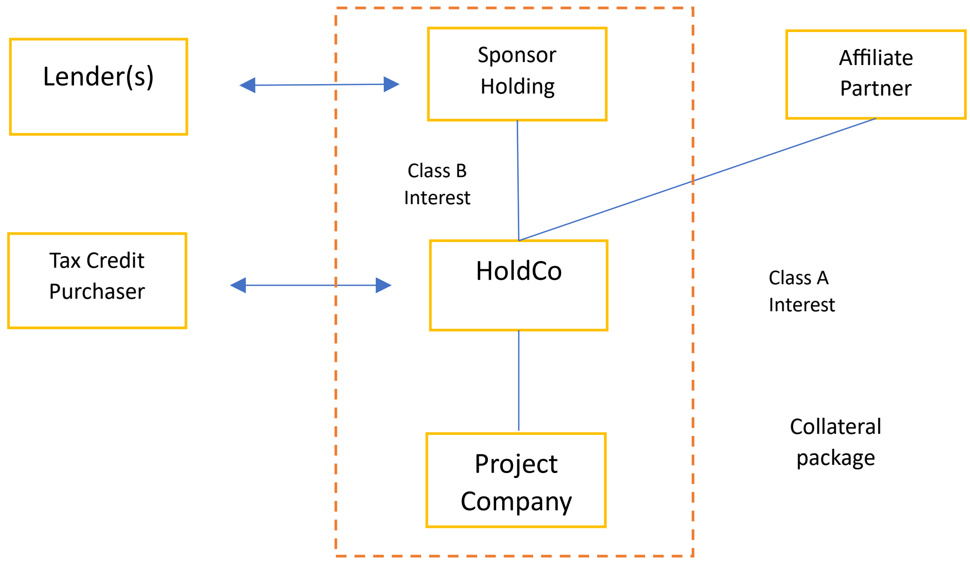

Figure 11. *Structure to Mitigate Recapture Risk*

[52] *Id.*
[53] *Id.*

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This structure provides a recapture-safe approach, making it attractive for sponsors seeking flexibility in financing, as it allows them to toggle between tax equity partnerships and tax credit sales without jeopardizing ITC.

b. Structure for PTC transactions:

In contrast to ITC financing, PTC transactions do not carry recapture risk because PTCs are earned incrementally over time as electricity is produced. Since the risk profile differs, lenders in the PTC-based financings often seek stronger collateral protection than in ITC structures.

In PTC transactions, term lenders may prefer to maintain asset-level collateral throughout the loan's duration, remain senior to tax credit obligations which ensures repayment priority over tax credit proceeds, and secure additional protections such as requiring a pledge of the tax credit transfer agreement and associated deposit accounts (particularly if they are bridging to future PTC payments).

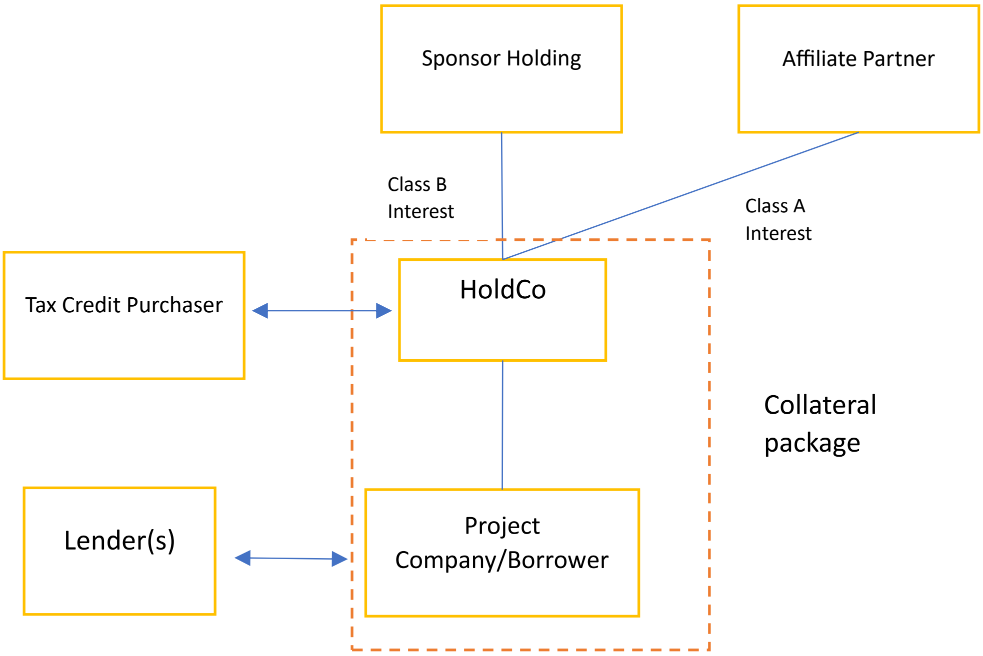

Figure 12. *PTC Variation*

4. Future Outlook

a. Repeal of the IRA

With the new administration and its executive orders there is growing concern that the IRA would be repealed, and the associated tax credits will also be frozen or cancelled. Repealing the IRA would appear unlikely. Repealing would require congressional action. Repeal would only be possible if Republicans could muster exactly 50 Senate votes and used the Vice President to break the tie.[54]

As for the House, it no longer seems as likely that all House Republicans would vote to repeal the IRA. While no House Republicans voted for the IRA originally, some have publicly expressed support for keeping it. For instance, in August 2024, 18 Republican House members sent a letter to House Speaker Mike Johnson stating that they would not support a full repeal of the IRA.[55] 14 of those Republican have been re-elected.[56]

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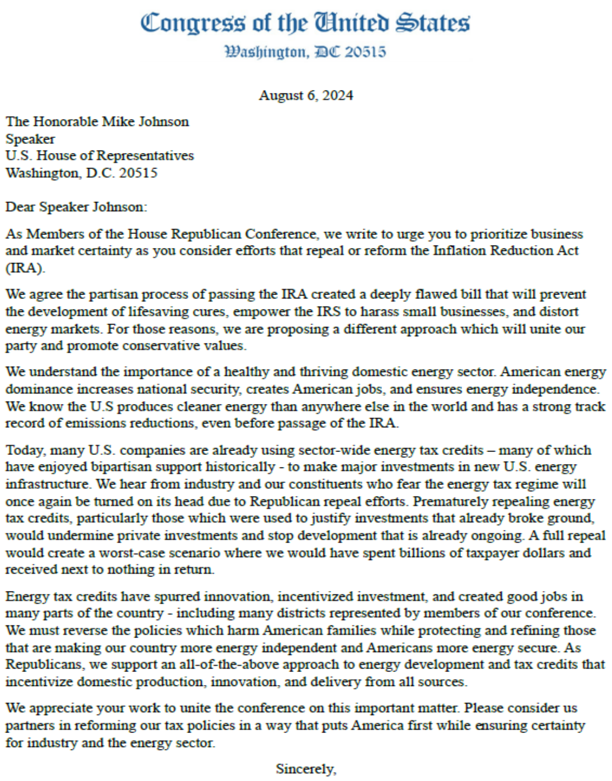
[54] David Burton, *How the Presidential Election Could Impact Renewable Energy Tax Cedits*, Tax Equity News, October 11, 2024.

[55] Zack Budryk, *18 House Republicans ask Johnson not to Target IRA Clean Energy Tax Credits*, https://thehill.com/policy/energy-environment/4815990-mike-johnson-ira-clean-energy-tax-credits/, (August 7, 2024).

[56] Jenna Zaza and J.D. Allen, *Garbarino Secures Third Term in NY's 2nd District*, https://www.wshu.org/long-island-news/2024-11-06/ny-2nd-district-andrew-garbarino-2024-election, (November 6, 2024); Michael R. Blood, *Republican David Valadao, Democrat George Whitesides win US House Races in California*, https://apnews.com/article/california-house-majority-republicans-democrats-swing-districts-e146c98a3809edaafd892caa3bcaf7bd, (November 12, 2024); The Associated Press, *AP Race Call: Republican Erin Houchin Wins Reelection to U.S. House in Indiana's 9th Congressional District*, https://apnews.com/article/race-call-houchin-wins-indiana-u-s-house-district-b632811a4ace4df1900368b2bc6cf8e0, (November 5, 2024); Nick Reisman, *Republican Mike Lawler Retains Pivotal Suburban NYC House Seat*, https://www.politico.com/live-updates/2024/11/05/2024-election-results-live-coverage-updates-analysis/mike-lawler-wins-new-york-city-house-race-00187024, (November 6, 2024); Emily Brooks, *Republican Rep. Jen Kiggans Wins Reelection in Virginia Beach District*, (November 6, 2024), https://thehill.com/homenews/4974441-jen-kiggans-virginia-house/; Nick Reisman, *Republican Rep. Nick LaLota Wins Second Term,* https://www.politico.com/live-updates/2024/11/05/2024-election-results-live-coverage-updates-analysis/nick-lalota-wins-new-york-house-race-00187262, (November 6, 2024); The Associated Press, *AP Race Call: Republican Young Kim Wins Reelection to U.S. House in California's 40th Congressional District*, https://apnews.com/article/race-call-kim-wins-california-u-s-house-district-3cc343b3b63e4dd08c19f487d651aaf3, (November 7, 2024); Hannah Schoenbaum, *Republican US Rep. John Curtis Wins Mitt Romney's Open Senate Seat in Utah*, https://apnews.com/article/utah-senate-election-romney-john-curtis-2eeeda22d91e46ef028bf7b1adbe5cab, (November 6, 2024); Jordain Carney, *Republican Don Bacon Holds on to Win Reelection in Nebraska House Seat*, https://www.politico.com/news/2024/11/08/republican-don-bacon-nebraska-00188144, (November 8 2024); David Matthau, *Republican Tom Kean Jr. is Reelected in N.J.'s 7th Congressional District, Defeating Democrat Sue Altman in Tight Race*, https://whyy.org/articles/new-jersey-election-tom-kean-jr-7th-congressional-district-race-results/, (November 6, 2024); The Associated Press, *Republican David Joyce Wins Reelection to U.S. House in Ohio's 14th Congressional District*, https://www.cleveland19.com/2024/11/06/republican-david-joyce-wins-reelection-us-house-ohios-14th-congressional-district/, (November 5, 2024); Robin Opsahl, (November 27, 2024), *Rep. Mariannette Miller-Meeks Wins Reelection After Recount, AP Projects*; The Associated Press, *Republican Rep. Juan Ciscomani Wins Reelection to Arizona US House Seat*, https://apnews.com/article/arizona-house-election-ciscomani-engel-286b0a0d7e45c555d4469b8ba264824a, (November 13, 2024); The Associated Press, *AP Race Call: Republican Buddy Carter Wins Reelection to U.S. House in Georgia's 1st Congressional District*, https://apnews.com/article/race-call-carter-wins-georgia-u-s-house-district-89eacd11a8c849b0b8f0c292d283ea2b, (November 5, 2024); The Associated Press, *AP Race Call: Republican Mark Amodei Wins Reelection to U.S. House in Nevada's 2nd Congressional District*, https://apnews.com/article/race-call-amodei-wins-nevada-u-s-house-district-0f33d7aa71f040c1ad403595c7d6d0f8, (November 6, 2024).



Congress of the United States
Washington, DC 20515

August 6, 2024

The Honorable Mike Johnson
Speaker
U.S. House of Representatives
Washington, D.C. 20515

Dear Speaker Johnson:

As Members of the House Republican Conference, we write to urge you to prioritize business and market certainty as you consider efforts that repeal or reform the Inflation Reduction Act (IRA).

We agree the partisan process of passing the IRA created a deeply flawed bill that will prevent the development of lifesaving cures, empower the IRS to harass small businesses, and distort energy markets. For those reasons, we are proposing a different approach which will unite our party and promote conservative values.

We understand the importance of a healthy and thriving domestic energy sector. American energy dominance increases national security, creates American jobs, and ensures energy independence. We know the U.S produces cleaner energy than anywhere else in the world and has a strong track record of emissions reductions, even before passage of the IRA.

Today, many U.S. companies are already using sector-wide energy tax credits – many of which have enjoyed bipartisan support historically - to make major investments in new U.S. energy infrastructure. We hear from industry and our constituents who fear the energy tax regime will once again be turned on its head due to Republican repeal efforts. Prematurely repealing energy tax credits, particularly those which were used to justify investments that already broke ground, would undermine private investments and stop development that is already ongoing. A full repeal would create a worst-case scenario where we would have spent billions of taxpayer dollars and received next to nothing in return.

Energy tax credits have spurred innovation, incentivized investment, and created good jobs in many parts of the country - including many districts represented by members of our conference. We must reverse the policies which harm American families while protecting and refining those that are making our country more energy independent and Americans more energy secure. As Republicans, we support an all-of-the-above approach to energy development and tax credits that incentivize domestic production, innovation, and delivery from all sources.

We appreciate your work to unite the conference on this important matter. Please consider us partners in reforming our tax policies in a way that puts America first while ensuring certainty for industry and the energy sector.

Sincerely,

Figure 13. *Letter of Congress*

The letter acknowledged that renewable energy tax credits have spurred innovation, attracted investment, and created jobs in their home states. This shift of position reflects one reality which is Republican-led districts have received a substantial share of IRA funding. In fact, more IRA money has flowed into Republican districts than Democratic ones.[57]

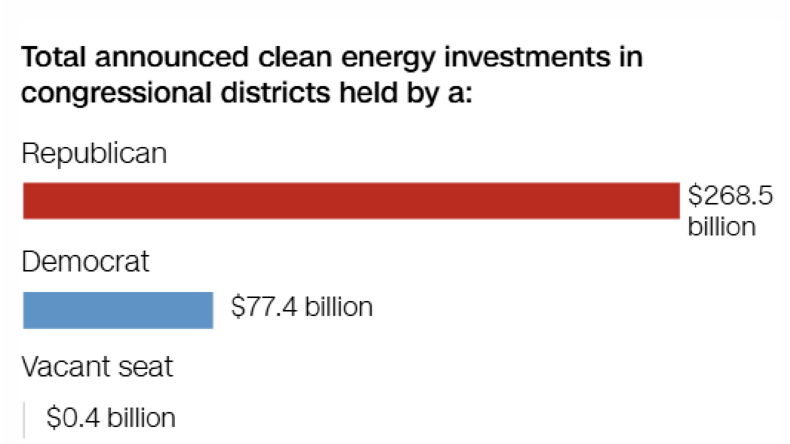


Figure 14. *Statistic*

[57] Liam Denning, et al, *Biden is Giving Red Districts an Inconvenient Gift: Green Jobs*, (June 20, 2024), https://www.bloomberg.com/graphics/2024-opinion-biden-ira-sends-green-energy-investment-republican-districts/; Ella Nilsen and Renee Rigdon, *The Biggest Winners of Biden's Green Climate Policies? Republicans*, https://www.cnn.com/2024/06/16/climate/clean-energy-investment-republicans/index.html, (June 16, 2024).

President Trump himself has shown lukewarm support for solar energy, despite his broader scepticism toward renewables. His stance may be partially influenced by personal and financial connections - his son-in-law, Jared Kushner, has made major investments in the residential solar industry through his private equity firm.[58] Given this context, President Trump may avoid targeting solar energy.

Ultimately, full repeal of the IRA would require unanimous Republican support, something that no longer seems to exist. Even efforts to amend key provisions may face opposition from within the party.

b. Executive Actions

Although legislative repeal appears unlikely, the new administration could weaken the IRA's impact through several executive actions.

One of the easiest ways for the new administration to slow renewable energy expansion would be to restrict projects on federal lands and waters.[59] The Department of the Interior could deny or delay approvals for renewable projects on federal land.

For instance, the Lava Ridge wind project, which is currently awaiting approval on federal land in Idaho, has already faced opposition from Republican state officials.[60] The new administration could simply reject the project, stalling its progress indefinitely. Developers could challenge such a decision in court, but the success of such legal action would depend on the rationale used by the government to justify the rejection.

Similarly, offshore wind projects are particularly vulnerable to executive intervention. Most offshore wind farms are located in federal waters, they require approval from the Bureau of Ocean Energy Management to utilize the area.[61]

However, it does not mean the new administration would not face any other challenges. Right before the new administration came into power, IRS and Treasury have issued

[58] Scott Waldman, *Kushner's Solar Wager vs. Trump 2.0*, https://www.politico.com/news/2024/06/05/jared-kushner-solar-investments-trump-00161598, (June 5, 2024).
[59] David Burton, *supra* note 52.
[60] Gone With the Lava Ridge Wind Project Act, Executive Department State of Idaho Boise No. 2025-01, (January 22, 2025).
[61] Energy Policy Act of 2005, § 388, P.L. 109-58; Adam Vann, *Offshore Wind Energy Development: Legal Framework*, Congressional Research Service, R40175, (February 28, 2023).

several regulations and guidance for the implementation of IRA incentives, including tax credits.[62]

Revoking final regulations would be far more difficult due to the Administrative Procedure Act, which requires a lengthy notice-and-comment process.[63] Additionally, following the Supreme Court's reversal of the Chevron doctrine, agencies now have less leeway to reinterpret statutory provisions, making it even harder for the new administration Treasury to rescind finalized tax credit regulations.[64]

As a refresher, Chevron doctrine shaped how courts reviewed federal agency decisions, requiring judges to defer to an agency's reasonable interpretation of an ambiguous statute that it administers. However, in Loper, the Supreme Court has eliminated longstanding practice of judicial deference to agencies, instead requiring the courts to exercise independent judgement when determining whether an agency's action align with statutory authority.[65]

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[62] Department of the Treasury and IRS, Section 45Y Clean Electricity Production Credit and Section 48E Clean Electricity Investment Credit, 26 CFR Part 1 (TD 10024), RIN 1545-BR17.

[63] 5 U.S.C. § 533; Kate R. Bowers and Daniel J. Sheffner, *Agency Rescissions of Legislative Rules*, R46673, (February 8, 2021).

[64] Shay Dvoretzky, et al, *Supreme Court's Overruling of Chevron Deference to Administrative Agencies' Interpretations of Statues will Invite More Challenges to Agency Decisions*, Skadden Publication, (July 9, 2024); Susan Feigin Harris, et al, *"Chevron is Overruled" Supreme Court Decision Upends the Era of Agency Rule*, https://www.nortonrosefulbright.com/en/knowledge/publications/5ef22f81/chevron-is-overruled-supreme-court-decision-upends-the-era-of-agency-rule, (July 9, 2024).

[65] Loper Bright Enterprises v. Raimondo, No. 22-451, 45 F. 4th 359 & No. 22-1219, 62 F. 4th 621.

[66] 5 U.S.C. § 533; Kate R. Bowers and Daniel J. Sheffner, *Agency Rescissions of Legislative Rules*, R46673, February 8, 2021.

[67] Shay Dvoretzky, et al, *Supreme Court's Overruling of Chevron Deference to Administrative Agencies' Interpretations of Statues will Invite More Challenges to Agency Decisions*, Skadden Publication, (July 9, 2024); Susan Feigin Harris, et al, *"Chevron is Overruled" Supreme Court Decision Upends the Era of Agency Rule*, https://www.nortonrosefulbright.com/en/knowledge/publications/5ef22f81/chevron-is-overruled-supreme-court-decision-upends-the-era-of-agency-rule, (July 9, 2024).

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exercise independent judgement when determining whether an agency's action align with statutory authority.[68]

C. CONCLUSION

The IRA has significantly reshaped the U.S. renewable energy financing landscape by expanding tax credit eligibility, introducing transferability, and providing new incentives to accelerate the energy transition. These changes have spurred innovation in financing structures, including modifications to traditional tax equity financing. By allowing sale of tax credits, the IRA has created new avenues for investment, making renewable energy projects more financially viable and accessible to a broader range of stakeholders. However, with these advancements come challenges, particularly in structuring financing to mitigate risks such as ITC recapture.

Despite its transformative impact, the IRA's future remains uncertain under the new administration. While a full repeal is unlikely due to legislative and political constraints, there is a possibility of targeted modifications that could weaken its provisions. Looking ahead, the renewable energy sector may need to navigate a complex policy environment. Whether through legislative resistance, market-driven momentum, or legal safeguards, the IRA's influence on renewable energy financing is likely to persist.

[68] Loper Bright Enterprises v. Raimondo, No. 22-451, 45 F. 4th 359 & No. 22-1219, 62 F. 4th 621.

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