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Navigating Tax Credit Transferability After the OBBBA

August 28, 2025

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Session CPE Requirements

You need to attend 50 minutes to receive the full 1 CPE credit.

There will be 4 polling questions throughout the presentation. You must respond to a minimum of 3 to receive the full 1 CPE credit.

****Both requirements must be met to receive CPE credit****

Learning Objectives

Recall a comprehensive overview of the changes to clean energy credits under the OBBBA, including recent Beginning of Construction and Foreign Entity of Concern guidance

Recognize eligibility requirements for transferring energy tax credits, including the types of credits that can be transferred and the entities that qualify

Identify strategies to take advantage of the financial benefits of transferring energy tax credits, including timing considerations and potential pitfalls

Recall the compliance and reporting requirements associated with transferring energy tax credits

Speakers

Michael DePrima
Principal, CLA

Brandon Hill
Principal, CLA

Iñigo Regifo
Co-founder & CEO, Concentro

Agenda

IRA and Section 6418 background

Credit market trends and pricing

OBBBA changes

New ‘beginning of construction’ guidance

FEOC rules

Tax Credit Transferability

Credit Transferability at a Glance

- IRA permits tax credit transfers of several different types of energy credits
  - Proceeds to seller are tax-free
  - Tax savings (i.e., discount) to buyer are tax-free
- Purchasers can time the transactions around estimated tax payments, extensions, or tax return due dates to enhance IRR
- Consider potential carryback opportunities (enhanced 3-year carryback period)
- Robust transfer market has developed since IRA was enacted

Illustrative Credit Computation

Tax credit benefit illustration	$5M Tax credit purchase
Estimated tax liability	$ 5,000,000
Amount of tax liability for general business credit offset	$ 3,756,250
Tax credit purchase at $0.90	$ 3,380,625
Estimated cash tax savings (tax-free)	**$ 375,625**

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Polling Question

- How optimistic are you on the current economic conditions and the impact to your organization?
    - 5 = Very confident
    - 4 = Confident
    - 3 = Neutral
    - 2 = Somewhat confident
    - 1 = Not at all confident

Transfer Marketplace: A Practical View

Types of Transferrable Tax Credits

Main Credits

- 30C – Alt. Fuel Vehicle Refueling
- 45Z – Clean Fuel Production
- **45X – Advanced Manufacturing**
- 45Q – Carbon Sequestration
- 45V – Clean Hydrogen
- **45 – Energy Production Tax Credit (PTC)**
- 45U – Nuclear Power Zero-Emissions
- **45Y – Clean Electricity Production Tax Credit (PTC)**
- **48 – Energy Investment Tax Credit (ITC)**
- 48C – Advanced Energy Credit
- **48E – Advanced Energy Investment Tax Credit (ITC)**
  - **Solar**
  - Geothermal
  - Fuel cells
  - Combined heat and power
  - Ground / H2O source heat
  - Waste energy recovery
  - **Energy storage**
  - Qualified biogas
  - **Wind**
  - Microgrids

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Typical Deal Progression (High Level)

Qualifying project

Developer (seller) builds qualifying project that will generate credit. Credit is marketed to potential buyers.

Term sheet

Seller and buyer execute term sheet. Terms vary (tax insurance, exclusivity, etc.)

Tax credit transfer agreement

Purchase/sale document setting forth deal terms, CPs, consideration, etc.

Due diligence

Buyer performs due diligence. Goal is to verify credit is valid and minimize recapture/ audit risk. IRS registration completed.

Transaction closing

TCTA is executed. Funds are transferred.

Tax reporting

Buyer and seller report transaction on respective tax returns with transfer election statements.

Market Trends

Pricing – Key drivers

Technology, size, timing and sponsor.

Pricing – Where we see it

>$15M: 92-94 cents
$2-15M: 90-93 cents
<$2M: 87-91 cents (lower <$500K)

OBBBA impact

Buyers: reduced tax liabilities and slower 2025.
Sellers: rushing to safe harbor.

Market seasonality

Slower early in the year and slow after OBBA -> **opportunities for buyers.**

Protections and insurance

Full indemnities in TCTAs and a **large share** with **insurance.**

Market maturity

Market has **grown from $0 to $30B+** in two years. More diverse and experienced buyers.

Key Risks To Consider

	Description
Qualification	Project qualifies for the full tax credit + adders
Basis	Basis used to calculate the amount is correct
Structure/ Taxpayer**	Project and entities' structure are correct. ***Important when step-ups*
Recapture	Tax credits will not be recaptured in first 5 years

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Polling Question

- How likely is your organization to buy or sell a clean energy tax credit?
  - Very likely
  - Somewhat likely
  - Not likely
  - We've already bought or sold credits

One Big Beautiful Bill Act (OBBBA)

OBBBA: Tax Credit Market Remains Alive and Well

- OBBBA passed with **no** direct repeal of Section 6418 transferability
- Section 45Z clean fuel production credits anticipated to be widely available in the market
- Section 45X advanced manufacturing credits becoming favorite among buyers

Polling Question

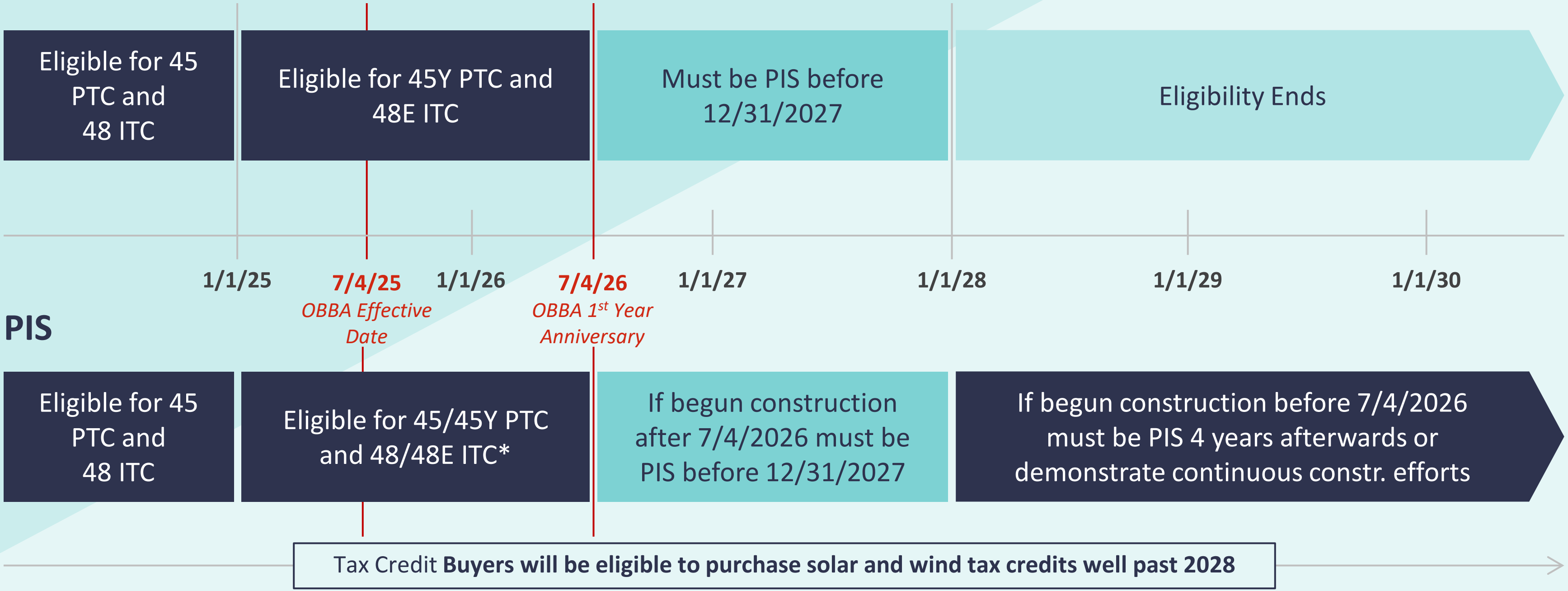
- Which OBBBA changes will impact your organization most?
    - Early termination of wind and solar credits
    - EV-related credits
    - Foreign entity of concern rules
    - Beginning of construction guidance for wind and solar
    - None

OBBBA Changes Impacting Transferable Credits

Wind and solar ITC (48E) and PTC (45Y)	Section 30C EV infrastructure credit	Section 45V clean hydrogen credit	Section 45X manufacturing credit	Section 45Z Manufacturing credit
PIS by 12/31/2027 if construction starts after 7/4/2026; new BOC guidance issued.	Repealed for property PIS after 6/30/2026.	Accelerates expiration; construction must begin prior to 1/1/2028.	Added metallurgical coal to list of critical minerals. Terminates credit for wind components as of 12/31/2027.	Extends credit to 12/31/2029. Some restrictions in connection with biofuel sold after 12/31/2025.

Eligibility Timeline for Solar and Wind ITC/PTC

Begin Construction



Notice 2025-42 BOC Guidance

- Issued 8/15/2025
- Applies ***only*** to wind and solar projects
- Key takeaways:
  - Physical Work Test is now the sole method for establishing BOC
  - Five Percent Safe Harbor is available only for low-output solar projects (≤1.5 MW AC)
  - Outlines qualifying and non-qualifying activities
  - Covers third-party work
  - Taxpayers must maintain a continuous program of construction
  - Covers retrofits, property transfers, project aggregation

Foreign Entities of Concern (FEOCs)

- Generally applicable to tax years beginning after 7/4/2025
- Could negate entire credit claim
- Will require additional/extensive analysis before claiming or transacting credits
- FEOC provisions apply at project and taxpayer/ ownership levels
- FEOCs include:
  - Foreign-influenced entities
  - Specified foreign entities

Polling Question

- I'd like someone from CLA to contact me to discuss the following services:
  - Tax credit transferability
  - Claiming clean energy credits
  - Changes to energy credits under the OBBBA
  - Other services
  - Nothing at this time

Thank you!

Michael De Prima
Principal – CLA
michael.deprima@CLAconnect.com

Brandon Hill
Principal – CLA
brandon.m.hill@CLAconnect.com

Inigo Rengifo Melia
Co-founder and CEO – Concentro
inigo@concentro.io

CLAconnect.com

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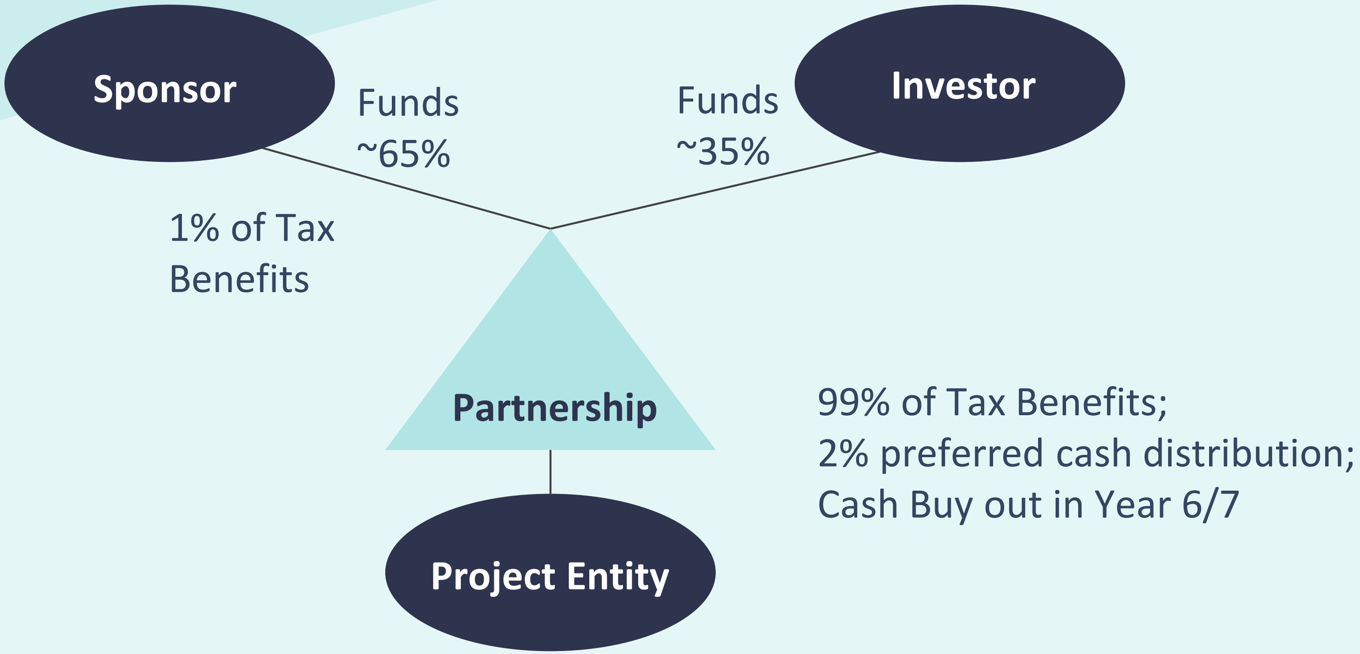
Appendix

Historical Tax Equity in a Nutshell

- **Sponsor**: Developer who lacks sufficient tax base to monetize tax credit and depreciation benefits.
- **Investor**: Cash taxpayer who utilizes available cash to generate strong ROI
  - **Cash Outflows**: Initial cash (tax equity) investment
  - **Cash Inflows**: (1) Reduced cash tax liability via receipt of tax credits and tax depreciation, (2) quarterly or annual preferred cash distributions, (3) end of deal cash buy-out
- **Flip Structure**: In the typical partnership flip transaction, the partnership allocates 99% of income, loss and tax credits to the tax equity investor until it reaches a target yield. Cash is shared in a different ratio. After the yield is reached, the investor's share of benefits typically drops to 5% and the developer has an option to buy the investor's remaining interest.

Typical Partnership Flip Structure

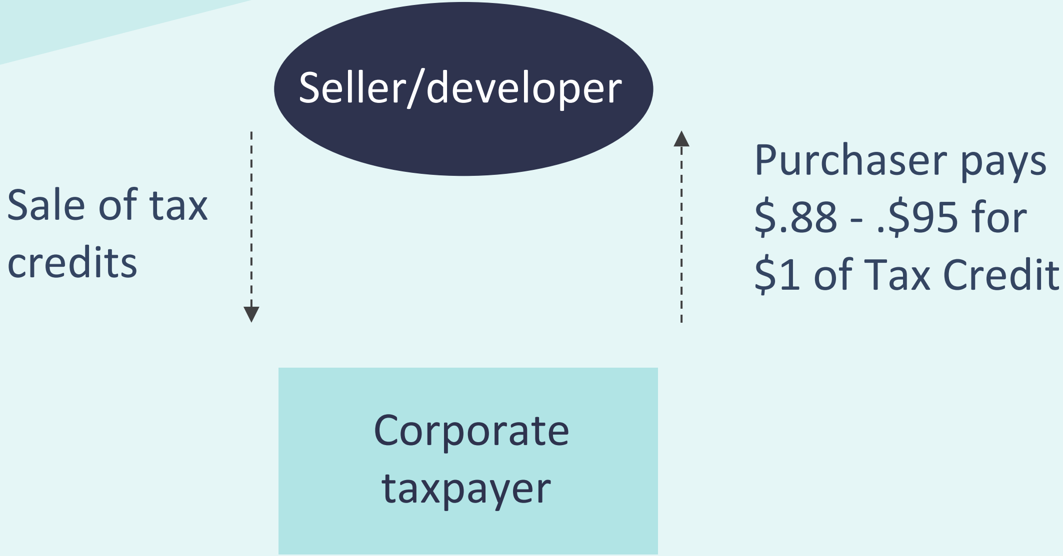


Transferability

Summary

- Credits transferred by means of a purchase and sale agreement
- Relatively straightforward legal and accounting
- Purchase must be in cash from an unrelated party
- Due diligence and insurance still recommended to mitigate risks related to 5-year credit recapture period

Tax Credit Purchase and Sale Transaction



Transferability Process

How to buy and sell credits

- Taxpayers must be unrelated parties
- Must be purchased solely for cash (i.e., U.S. dollars only, no foreign currency or cash equivalents are permitted)
- Credit can only be sold once
- Taxpayers must complete pre-filing registration with the IRS if they intend to transfer some or all of an eligible credit
- Typical transactions are within the .88 to .95 credit range with pricing dependent upon creditworthiness of seller, project/credit size, credit type, and the existence of indemnification/tax insurance
- Consider general business credit rules when sizing purchase amount (i.e., only reduce tax liability by 75% under IRC 38(c)(1)).

Transfer election statement

- Some flexibility in terms of the exact form of the transfer election statement, but must generally include:
  - Name, address, and taxpayer identification number for both the buyer and seller
  - A description of the type and amount of the eligible tax credit being transferred
  - Amount of cash paid for the credit
  - Registration number related to the credit property
  - Attestation seller is not related to the buyer and a representation acknowledging the notification of recapture requirements

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Notice 2025-42: Qualifying Activities

- **Qualifying on-site activities for wind facilities**
  - Excavation for turbine foundations
  - Setting anchor bolts
  - Pouring concrete pads
- **Qualifying on-site activities for solar facilities**
  - Installing racks or mounting structures for photovoltaic panels
- **Qualifying activities for off-site work (conditional)**
  - Manufacturing components (e.g., inverters, transformers <69 kV, support structures)
    - Must be under a binding written contract
    - Must begin before production
    - Cannot be drawn from inventory

Notice 2025-42: Non-Qualifying Activities

- Planning and permitting
- Environmental studies
- Site clearing
- Test drilling
- Production of inventory
  (even if later used in the project)

Notice 2025-42: Continuous Construction

- Taxpayers must maintain a continuous program of construction
- Safe harbor allows up to 4 years from the start of construction to place the facility in service
  - Excusable disruptions (e.g., severe weather, permitting delays, supply chain issues) do not extend the four-year window
  - May be considered under a facts-and-circumstances test if safe harbor is missed, but burden of proof shifts squarely to the taxpayer

Notice 2025-42: Third-Party Work

- Contracts must be enforceable under local law and not limit damages below 5% of the total price
- Master contracts may be used, but original agreements must meet binding standards

Notice 2025-42: Other Provisions

- Multiple facilities may be treated as a single project if they share ownership, location, and permits
- Only work on integral property (used directly in electricity generation) qualifies
- Retrofitted facilities must meet the 80/20 Rule
- Facilities may be transferred without losing eligibility, unless transferred between unrelated parties

Foreign Entities of Concern

- FEOC applies to:
  - Section 45U zero-emission nuclear production credit
  - Section 45Y clean electricity production credit
  - Section 48E clean electricity investment credit
  - Section 45X advanced manufacturing production credit
  - Section 45Q credit for carbon oxide sequestration
  - Section 45Z clean fuel production credit
- Multiple FEOC categories
  - Foreign entities of concern
  - Prohibited foreign entities
    - Foreign-influenced entities
    - Specified foreign entities

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Foreign Entities of Concern (FEOC) – Key Points

	Taxpayer level	Project level
Description	Assesses whether the **owner/parent company** is directly or indirectly controlled by a FEOC.	Assesses whether the **project entity or assets** are linked to a FEOC through supply chain, financing, or ownership.
Requirements	Must certify no ownership/control by prohibited FEOCs (foreign-influenced or specified foreign entities).	Project must avoid FEOC involvement in development, supply chain, or operational contracts (including key equipment sourcing).
Implications	If taxpayer is a FEOC -> **entire credit claim is denied**, regardless of project compliance.	If project involves a FEOC → **credits cannot be claimed or transferred**, increasing diligence requirements.
Timings	Applies to tax years **beginning after July 4, 2025.**	Effective for all qualifying projects **starting July 4, 2025**, with heightened IRS scrutiny at transaction stage.

FEOC compliance is now a gating issue - failure at taxpayer, project, or equipment sourcing level can wipe out eligibility for 45Y/48E credits.

Key Diligence Items

Main diligence "checks" (solar, no adders)

- Project basics and developer/owner
- Cost basis
- Placed in service
- Site control (lease)
- Property (& casualty) insurance
- Sponsor financial position
- (If >1 MW-AC) PW&A or safe harbor
- (If step up) structure and FMV calculations

Key documents & reports

1. Project teaser + developer credentials
2. Cost seg study
3. PTO letter (+ proof of energization)
4. Lease agreement
5. COI
6. Sponsor financials
7. (If >1 MW-AC) PW&A documentation
8. (If step-up) appraisal
9. (If step-up) structure opinion letter
10. PPA/revenue agreements

Typical Diligence Process (Deeper Dive)

Raw documentation

Project Details

Full information on developer, project and associated partners

Eligible Costs

Breakdown of all related costs and their eligibility for tax credits

Financing

Sources of financing, uses of capital and proof of good financial standing

Interconnection

Evidence of facility meeting placed in service requirements

Site Control

Proof that the project has control of the site during the project lifecycle

Seller Qualification

Ensuring that the seller is in good financial standing and a qualified taxpayer

Project Structure

Vetting of project ownership structure and associated parties

PW&A

Compliance with prevailing wage and apprenticeship demands

Bonus Adders

Eligibility and compliance with bonus adder programs *(if any)*

Diligence memo

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Key Risks To Consider

	Description	Key Items	Mitigations
Qualification	Project qualifies for the full tax credit + adders	Technology, adders, PW&A, placed in service	Diligence
Basis	Basis used to calculate the amount is correct	Cost segregation, appraisal	Tax insurance and/or guarantee
Structure/ Taxpayer**	Project and entities' structure are correct. ***Important when step-ups*	Taxpayer, structure, tax opinions	TCTA indemnities
Recapture	Tax credits will not be recaptured in first 5 years	Financing terms, P&C insurance, financials	Legal opinions
			3rd party reports