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Transferability of Energy Tax Credits under Section 6418 of the Code

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Agenda

- General Overview of Tax Credit Transferability
- Eligible Credits
- Eligible Taxpayers
- Tax Credit Purchasers
- Payment Amounts and Applicable Requirements of Transferable Credit
- Treatment of Credit Post-Transfer
- Risk of Recapture and the Excessive Transfer Penalty
- Practical Considerations in Tax Credit Transfer Transactions

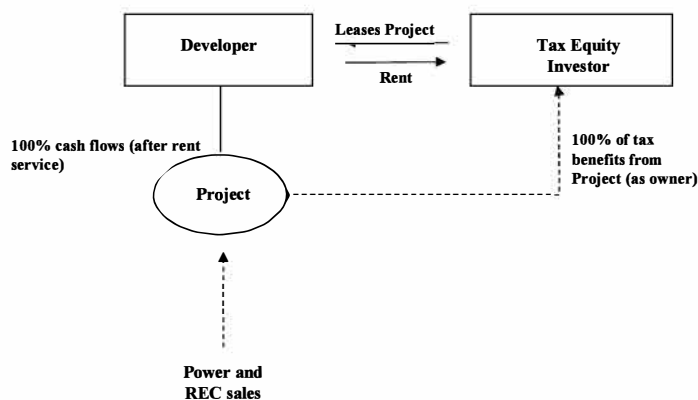
General Overview

- 26 USC Section 6418.
 - We'll refer to Section 6418 of the Code.
 - Enacted with the Inflation Reduction Act, which was signed into law in August 2022.
 - Generally applies beginning January 1, 2023.
- Proposed Treasury Regulations Sections 1.6418-0 through -5, and 1.6418-4T
 - Published June 2023, 88 FR 40496
 - Comment period closed August 2023, but may be relied upon until final regulations are issued

General Overview

- Why tax credit sales?
 - Developers who develop projects often can't use tax credits
 - Brought in partners to help monetize tax credits
- Historic monetization techniques
 - Partnership flips
 - Sale leasebacks
 - Inverted leases
- Advantages and inefficiencies

Tax Equity Structures Sale-Leaseback



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First appeared as part of the conference materials for the
19th Annual Renewable Energy Law Institute session
"Tax Credit Transfer (sale) Transactions"