Monetizing Tax Credits

Considerations and Complexities When Buying or Selling Tax Credits

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Steven LeBlanc

Stonehenge Capital

Rob Olson

The Sherwin-Williams Company

Sean Byrne

Vorys

Introductions

- Rob is the Director of Tax Credit Investing for The Sherwin-Williams Company in Cleveland, Ohio, a company engaged in the development, manufacture, distribution and sale of paints, coatings and related products. Mr. Olson is responsible for the Sherwin-Williams' equity investments in historic rehabilitation projects and affordable housing. Sherwin-Williams has been an active participant in this market for over 25 years, investing in excess of $1.5 billion dollars of equity. Mr. Olson's responsibilities also include tax controversy resolution and general tax planning. Prior to joining Sherwin-Williams in 1997, Mr. Olson was with Ernst & Young, LLP of Cleveland, Ohio. Mr. Olson holds a B.A. in Economics from Albion College and a J.D. from Cornell Law School. He is admitted to practice before the Untied States Tax Court, The United States District Court for the Northern District of Ohio, and The United States Court of Appeals for the Sixth Circuit.

- Steven is a managing director of Stonehenge Capital. He leads the origination of various federal and state tax credit programs, including historic rehabilitation, renewable energy and affordable housing, among others. He is responsible for the corresponding business development, marketing and branding necessary for the tax credit services business line. Prior to joining the tax credit services team, Steven worked with Stonehenge's direct investing business line in Columbus, Ohio, where he was responsible for the origination and underwriting of junior capital investments with an emphasis on both state and federal New Markets Tax Credit transactions.

- A little about our audience:

  - Developer
  - Government
  - Corporate
  - Professional advisor
  - Other

Negotiated Incentives (Direct Use) vs. Statutory (Transferable or Allocable Credits)

- Direct Use
- Transferred or Allocated generally used generate additional equity or proceeds to complete a project
  - Projects are broadly defined and generally track to the type of credits
    - Affordable Housing – create affordable housing
    - Renewable Energy – Wind, Solar, Storage
    - IRA "Other Credits" – made credits transferable and created a number of credits to support Advanced Manufacturing and production of additional energy sources

Types of Credits

- As of Right – sponsor controls the outcome
  - Federal and State Historic Tax Credit
    - Recapture "Claw Back" of tax credits
  - Federal Renewable and Certain IRA "Other" Credits
    - Recapture
    - Insurance Products
- Award – sponsor will prepare and submit an award that will be scored and a subsequent award will be made.
  - Federal and State Affordable Housing
  - Federal and State NMTC
  - OH HTC – OH applications and awards are made 2X per year
    - Allocated Tax Credit – monetized by a K-1
  - TMUD – Each of the 4 Rounds have been fully applied for and awarded
    - Certificated Credit – monetized upon receipt of certificate
  - IN RTC – award based credit used to support various economic development projects across the state

Timing of Credits

- Affordable, renewable and historic tax equity is seen as contributed or to be contributed equity that is necessary to complete the capital stack to complete the development
- Production tax credits are generally used as a revenue source through the life of the project, for example a 45X credit that is available to a battery plant will be transferred (sold) as production occurs and be a part of the company's revenue streams.

Utilization

- Benefits and considerations of using federal and state tax credits
- Financial benefits
- Potential downsides
- Is there political risk?

Comparison – Federal and State Tax Credits and State Differences

- Examples of variances by state
- Understanding monetizing state tax credits and risks
- Maximizing credits with enhancements

You have the tax credit, now what?

- Can you use it?
- Can you transfer it?
- To whom can you transfer it?
- What is the process?
- What are the legal and tax implications?
- What are the clawback and other risks?

IRA and IRC Section 6418

- Allows transfer of 11 different federal renewable tax credits
- Must be unrelated taxpayers
- Transfer not part of gross income for transferor or deducted by transferee
- One time (but can be partial transfers), and previously carried credits cannot transfer
- Transfer election at entity level if held by partnership or S-corp
- Transfer must be timely – prior to project related tax filing
- Credits are year of original credit earned, 3 year carry back and 22 years forward
- Ongoing- 5 year recapture risk

Understanding the Risks

- Fraud
- Compliance (prevailing wage, apprenticeship, other)
- Timing (what years credit can be used)
- Clawback
  - For ITC, for instance, during the 60 months after being place in service, recapture risk if:
    - Facility is destroyed or otherwise disposed of
    - Facility ceases to be "business use property"
    - Recapture reduced 20% each year on anniversary of placed in service date

Questions?

Thank you!