I thought you might find it useful to have a brief overview of the tax side of financing renewables in one place. The grant rules are included for comparison. **Remember:** a project can only claim one of the ITC, PTC or grant.

**Kinds of Renewables**

**Solar**
Solar facilities that generate electricity, or heat, cool, provide hot water for a structure, or illuminate the inside of a structure using fiber optics, and which are placed in service by December 31, 2016 qualify for a 30 percent investment tax credit (ITC). The credit reverts to 10 percent for facilities placed in service after 2016. The same deadlines apply to receive a 30 percent grant under the Section 1603 grant program, provided the project “commenced construction” in 2009, 2010 or 2011 and it is placed in service before 2017.

**Geothermal**
Geothermal facilities that generate any energy are eligible for a 10 percent ITC regardless of when they are placed in service. The ITC rate is temporarily bumped to 30 percent for facilities that generate electricity if placed in service before 2014. These facilities are eligible for a 10 percent or 30 percent grant (as applicable, based on the rules just described) through 2014, provided construction commenced in 2009, 2010 or 2011 and it is placed in service before 2014. Geothermal that produces electricity that is sold to third parties is eligible for the (currently) 2.2 cents per kilowatt hour (kwh) production tax credit (PTC) (adjusted annually for inflation) if placed in service before 2014.

**Wind**
Wind facilities that generate electricity are eligible for a 30 percent ITC if they generate electricity and are placed in service before 2013. They are eligible for a 30 percent grant on the same timetable provided the project commenced construction in 2009, 2010 or 2011 and it is placed in service before 2013. They are also eligible for the adjustable 2.2 cents per kwh PTC for electricity that is sold to third parties if placed in service before 2013.
Finally, small wind facilities (not more than 100 kw) are eligible for a 10 percent ITC if placed in service before 2017.

**Fuel Cells**
Fuel cells that generate electricity are eligible for a 30 percent ITC, provided the facility is placed in service before 2017. Fuel cells are eligible for a 30 percent grant, but only if the project commenced construction in 2009, 2010 or 2011, and it is placed in service before 2017. ITCs and grants are capped at not more than $1500 per half-kw of capacity.

**Combined Heat and Power and Qualified Microturbines**
Each is eligible for a 10 percent ITC, if placed in service before 2017, or a 10 percent grant if the project commenced construction in 2009, 2010 or 2011 and it is placed in service before 2017. ITCs and grants for microturbines are capped at $200 per kw of capacity.

**Closed-Loop Biomass**
If placed in service before 2014, closed-loop biomass projects are eligible for a 2.2 cents per kwh (adjustable) PTC for electricity sold to third parties or a 30 percent ITC for producing electricity, whether or not sold. They are eligible for a 30 percent grant, provided the construction commenced in 2009, 2010, or 2011, and the facility is placed in service before 2014. Certain plant expansions can also qualify for the closed-loop PTC. Special rules apply to facilities that have been modified to co-fire with coal or other biomass, provided the facility is approved as provided in Section 45(d)(2)(A)(ii) of the Internal Revenue Code. If the owner of a modified facility is not the producer of the electricity, then the operator or lessee may qualify for the PTC.

**Open-Loop Biomass.**
If placed in service before 2014, open-loop biomass projects qualify for a PTC equal to 1.1 cents per kwh (adjustable) for electricity sold to third parties; they are eligible for a 30 percent ITC for electricity, whether or not sold. They also qualify for a 30 percent grant, provided the construction commenced in 2009, 2010, or 2011, and the facility is placed in service before 2014. Certain plant expansions can also qualify for the open-loop PTC. If the owner of an open-loop facility is not the producer of the electricity, then the operator or lessee may qualify for the PTC.
Trash Facilities
If placed in service before 2014, trash facilities can qualify for a PTC of 1.1 cents per kwh (adjustable) for electricity sold to third parties or a 30 percent ITC for electricity, whether or not sold. They also qualify for a 30 percent grant, provided the construction commenced in 2009, 2010, or 2011, and the facility is placed in service before 2014. Certain plant expansions can also qualify for the PTC.

Municipal Solid Waste, Landfill Gas, Qualified Hydropower or Marine and Hydrokinetic
If placed in service before 2014, these projects can be eligible for a PTC equal to 1.1 cents per kwh (adjustable) for electricity sold to third parties or a 30 percent ITC for electricity, whether or not sold. The projects are eligible for the 30 percent grant, provided the construction commenced in 2009, 2010 or 2011 and the facility is placed in service before 2014.

General Rules
Of course, that was only a generalized summary of the various credits and grants. Here are a few other general rules that should be remembered:

Only One of the ITC, PTC or Grant, and When Grants or Credits are Claimed
It’s worth repeating: a facility can qualify for only one of the credits or the grant. The grant must be applied for after the facility is placed in service, while the ITC is claimed on a tax return for the year the facility is placed in service, and the PTC is claimed on tax returns for 10 years starting with the year the facility is placed in service. In general, the credits can be carried back one year and forward twenty, but a 2010 change in the law permits certain smaller companies to carry back the credits as much as five years.

Placement in Service and Timing the Investment
The general rule is that the ITC is available only to the person who owns the facility at the time it is placed in service. There are exceptions: a sale lease-back rule allows the ITC to be claimed by a person who acquires the facility within three months of its being placed in service and leases it back to the person who first physically placed it in service; and a "lease-pass-through" (sometimes called an "inverted lease") rule allows the ITC to be claimed by a person who is the lessee of the facility.
Similar rules apply to the Section 1603 grant. The PTC runs for 10 years, and is generally available to the person who owns it (which can change) over the 10-year period. The PTC is generally *not* available to a lessee, except as described above.

**Subsidized Financing**
Only the PTC is reduced on account of bond or subsidized financing, and then by not more than 50 percent. Similar rules that used to apply to the ITC have been repealed.

**Alternative Minimum Tax**
The alternative minimum tax (AMT) no longer applies to the ITC, but it still applies to years five through 10 of the PTC.

**Size of the Facility**
Several kinds of renewables are eligible for credits or grants only if the facility is of a certain size, so it is important to check the technical rules to make sure that they apply to the particular project.

**“Commenced Construction”**
**Grants** are generally available only for projects placed in service in 2009, 2010, or 2011. However, a special rule allows a project to qualify for a grant if construction “commences” in 2009, 2010, or 2011, and the facility is placed in service by the deadlines described above, which depend on the kind of renewable energy involved. The most used test for commencing construction is accruing 5% of project costs in 2009, 2010, or 2011, but there are other ways as well. These tests are very technical, and failing to meet their requirements can result in the project being ineligible for a grant. Accordingly, if a project is intending to qualify for a grant, but it will not be placed in service until after 2011, these tests should be carefully reviewed.

**Tax-Exempt Use**
Projects that are owned by tax-exempt or government entities or in partnerships or LLCs with such entities, may lose some or all of their credits depending on how the ownership is structured. The grant rules are similar, but definitely different – a grant is simply not available for a project owned by a pass-through entity (i.e., a partnership or LLC) that has any tax-exempt or government entities as members or partner, no matter how small their interest. A corporate subsidiary of a tax-exempt entity (called a “blocker” corporation) may enable a project to qualify for a grant despite the presence of the tax-exempt. Projects
that are leased to tax-exempt or governmental entities are generally ineligible for credits, while they are eligible for grants if leased to such entities, provided the lease is “respected” for tax purposes.

**Depreciation**
There are a lot of complex rules here, making it hard to meet our 10 minute objective!

In general, renewable facilities are eligible for five-year MACRS depreciation. However, subject to the caveat noted below, a special "bonus depreciation" rule allows (i) 50% to be recovered in the first year (with MACRS for the balance) for facilities placed in service in the period January 1, 2008 through September 8, 2010 or January 1, 2012 through December 31, 2012, and (ii) the entire cost to be deducted for facilities placed in service from September 9, 2010 through December 31, 2011. Special provisions may apply to limit the application of bonus depreciation where construction commenced, or a contract was entered into, prior to the particular period that would otherwise apply. Despite the above rules, straight-line depreciation is required for bond-financed projects, and leases to tax-exempts and governments (which can work with grants, but not credits), are also subject to straight-line depreciation, but over 125 percent of the lease term. *Note:* In general, the depreciable basis is reduced by half the amount of the ITC or grant. However, with “lease pass-throughs”, the tenant instead includes half the ITC or grant *in income* over the depreciable life and there is no basis reduction for the owner. No basis adjustment is made for the PTC.

**Recapture**
The ITC is subject to recapture if the facility is disposed of, or ceases to comply with the applicable rules, within five years. A grant is subject to repayment if the facility ceases to comply with the applicable rules, but *not* on account of disposition. PTCs are not subject to recapture.

**Individual Owners**
The credits and depreciation are subject to the passive loss and at risk rules that limit their utility for individuals (and some other taxpayers) while the grant is not.
Structures

And finally, we have the basic structures –

**Simple Ownership**
A taxpayer can simply own the facility and claim the applicable credit and depreciation deductions on its tax return.

**Partnership/LLC Investment with Flip**
A pass-through entity can own the facility and allocate the credits and depreciation among its partners, including investors. At some later date, the partnership interests of the investors can be modified to give the developer a far larger interest, typically as much as 95 percent. The income from grants can also be allocated in this way, which may make it possible to distribute the proceeds to the investors without tax consequence, and/or give them a higher basis to facilitate taking depreciation deductions.

**Sale-Leaseback**
As described above (see Timing), the person who developed the facility can sell the facility to another person and lease it back, allowing the new owner to claim ITCs and depreciation, while the lessee operates it and collects revenue from the sale of energy. Grants work the same as ITCs. In general (but not always), PTCs are claimed by the owner-operator of the facility, but see the exceptions noted above.

**Lease Pass-Through**
Also described above, the ITC (but not depreciation) can be passed through to the lessee of the facility. This method can also be used to pass through the Section 1603 grant to the lessee. It cannot be used with the PTC, but some PTCs can be claimed by the lessee if the owner is not the producer of the electricity, as described above.

**Conclusion**

Certainly, this is a lot to digest!

Note that my descriptions of these rules are very abbreviated; exceptions abound, and no deal should be structured without being completely informed on which rules apply and
precisely how. Moreover, only the rules going forward are described – in prior years, there were some additional credits, five-year terms for some PTCs, and other rules that do not apply to facilities placed in service after the date of this article.

Please feel free to contact me with any further thoughts and questions you may have.

To ensure compliance with IRS requirements, we inform you that any federal tax advice contained herein is not intended or written to be used, and cannot be used, for the purpose of (i) avoiding penalties under the Internal Revenue Code or (ii) promoting, marketing or recommending to another party any transaction or matter addressed in this communication (including any attachment).