
Airport Electrification/Inflation Reduction Act of 2022

Legal Alert

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We are about 90-120 days before Regulations are likely to be promulgated under the 2022 Inflation Reduction Act, including regulations pertaining to the renewable energy provisions. These Regulations should include guidance on the implementation of the Investment Tax Credit (ITC) and Production Tax Credit (PTC) for renewable energy, as well as the Direct Payment Option for tax-exempt entities (which are the bulk of sponsors of our commercial airports).

The Direct Payment Option would allow tax-exempt entities to receive a check from the IRS for the amount of the tax credit that would have been applicable had the party claiming the credit actually been subject to tax. This will make it more economically feasible for Airport Sponsors to act as their own developer with regard to solar and other renewable energy projects. However, just because airport sponsors **CAN** act as their own developer doesn't necessarily mean that they should. As with any development projects, there will remain risks, both obvious and potentially hidden, that will need to be evaluated. Among those risks will be determining what amount the system owner can claim as its tax basis for the purpose of claiming the Direct Payment Option tax credit. Should an airport sponsor pursue its own development, there will be numerous questions about which costs, and allocation of costs, can be included in the tax basis. One of the changes in the Inflation Reduction Act was to allow interconnection costs to be included, but numerous other potential pitfalls exist.

As an alternative, an airport sponsor may be able to negotiate an agreement with a solar developer in which, for a development fee, the developer will develop the project, apply for and obtain the interconnect and turn the finished project over to the sponsor. The negotiated, arms-length fee to the developer could then be applied for as the tax basis for the project.

There are numerous other difficult issues that must be examined when deciding on energy projects at airports, both renewable and traditional. Airport sponsors should make sure they take the time and the care needed to ensure that each project is successful, both from a financial perspective and from an energy perspective.

ATTORNEYS MENTIONED

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