

# Tax Equity Structures and Solutions for Today's Renewable Projects

June 9 - 10, 2020 | 9:00 AM - 3:25 PM (PDT) | Digital Access

## June 9, 2020

9:00 – 9:10 AM	Welcome & Introduction to the Master Class
9:10 - 9:45 AM	<p><b>Session 1: Understanding Federal Tax Incentives and the Situation Now</b> Structuring the tax equity portion of renewable project financings to attract investors and optimize the economic benefits to the project has always been a difficult task, but that has been compounded in 2020. This session will review:</p> <ul style="list-style-type: none"> <li>• Who can be a tax equity investor?</li> <li>• What tax incentives are available for renewables projects?</li> <li>• How the step-downs of the ITC and PTC, as well as the ongoing COVID-19 crisis, are affecting the rules of the road.</li> </ul> <p><b>Shariff Barakat</b>, <i>Partner, Project Finance</i>, NIXON PEABODY LLP <b>James Duffy</b>, <i>Partner</i>, NIXON PEABODY LLP</p>
9:45 - 10:00 AM	<i>Live Q&amp;A/Transition</i>
10:00 – 11:05 AM	<p><b>Session 2: Partnership Rules and a Focus on Capital Accounts</b> This session will take a deep dive into partnership and LLC tax issues, and how they are incorporated into legal structures for renewable projects.</p> <p>Issues addressed include:</p> <ul style="list-style-type: none"> <li>• What do you need to know about capital accounts?</li> <li>• Inventory Account of Electricity, Allocation of Tax Credits and Capital Account Profiles of Wind, Solar Yield and Solar Time flip structures</li> <li>• Leases, loans and service contracts: how do you determine ownership for tax purposes?</li> <li>• How can you better understand more complex partnership issues?</li> <li>• What do you need to know to assess economic substance and its implications for tax equity structures?</li> <li>• How debt fits into the equation</li> </ul> <p><b>Shariff Barakat</b>, <i>Partner, Project Finance</i>, NIXON PEABODY LLP <b>Bill Fisher</b>, <i>Managing Director</i>, DELOITTE TAX LLP</p>
11:05 - 11:20 AM	<i>Live Q&amp;A/Transition</i>

11:20 AM – 12:05 PM **Session 3: Understanding and Implementing Capital Structures for Renewables Partnership Flip**

Partnership flip structures and transactions are both widely used and among the most difficult to craft in the project finance world. This session will discuss the three main types of partnership flip structures, how to tailor these structures to meet the needs of investors while optimizing the economic benefits to projects. Practical implementation of key concepts will be illustrated through walk throughs for both wind and solar projects.

- Typical flip structures: what are they and what do they look like for wind and solar projects?
- Walk Through of example structures and economics
- Exit strategies: how do you form them and what do they look like?

**Shariff Barakat**, *Partner, Project Finance*, NIXON PEABODY LLP

**Bill Fisher**, *Managing Director*, DELOITTE TAX LLP

12:05 – 12:20 PM *Live Q&A/Transition*

12:20 - 12:50 PM *Meal Break*

12:50 - 1:25 PM **Session 4: Walkthrough of Partnership Flip Models**

This session will walk through some partnership flip models to illustrate how the concepts in the sessions above are applied in financial projections.

**Shariff Barakat**, *Partner, Project Finance*, NIXON PEABODY LLP

**Bill Fisher**, *Managing Director*, DELOITTE TAX LLP

1:25 - 1:40 PM *Live Q&A/Transition*

1:40 – 2:10 PM **Session 5: Understanding and Implementing Capital Structures for Renewables Inverted Lease**

The inverted lease or lease pass-through is a unique structure that is being increasingly used in solar and other project financings. This session will explore its usage, and work through developing these structures through detailed walk throughs.

Issues addressed include:

- What are the advantages and disadvantages of inverted lease structures?
- Walk Through Rev. Proc. 2014-12
- What are the risks in inverted lease structures?

**James Duffy**, *Partner*, NIXON PEABODY LLP

**Michael J. Goldman**, *Partner, Project Finance, Infrastructure & Real Estate Department Head*, NIXON PEABODY LLP

2:10 – 2:25 PM *Live Q&A/Transition*

2:25 – 3:10 PM

**Session 6: How Do Lenders and Tax Equity Investors Intersect?**

This session will discuss the interaction between debt and tax equity financing sources. Attendees will learn the common tension points between financing parties and the structures that have developed in response, including:

- How can a lender cause a loss of tax credits and depreciation?
- What is “back leverage” and what issues does it solve?
- What are common interparty arrangements between lenders and tax equity investors?

**James Duffy**, *Partner*, NIXON PEABODY LLP

**Ellen Friedman**, *Partner and Co-Leader, Energy and Infrastructure Projects Team*, NIXON PEABODY LLP

3:10 – 3:25 PM

*Live Q&A*

3:25 PM

*End of Day One*

June 10, 2020

9:00 – 9:50 AM

**Session 7: Tax Insurance and the Impacts of Recent Developments on Developer Fees**

This session will help attendees understand how tax insurance can be used to enhance the bankability of a project, attract tax equity and firm up balance sheets, and this session will also provide a deep dive into appraisal and tax basis risk, including:

- Understanding the process, pricing and other basic terms and process of obtaining and making a claim under tax insurance
- What are the tax risks that are most conducive to being insured?
- What are the common exclusions in tax insurance policies?
- Why do appraisals matter for tax equity? What is “tax basis” risk?
- What do the recent court cases mean for deal structures today and in the future?

**Shariff Barakat**, *Partner, Project Finance*, NIXON PEABODY LLP

**Jordan Tamchin**, *Senior Vice President, Tax Insurance Practice Leader, CAC SPECIALTY*

9:50 – 10:05 AM

*Live Q&A/Transition*

10:05 - 10:40 AM

**Session 8: Understanding “Begun Construction” and an Update on Safe Harbor Rules and Strategies in the Year of COVID-19**

Given the stakes involved, getting one’s safe harbor strategy right and making sure it is executed well is critical. This session will look at what safe harbor

strategies are being adopted and how they are being operationalized. It will address such questions as:

- Understanding the 5 percent safe harbor standard
- What are the leading strategies?
- On-site and off-site physical work including transformer strategies
- What are the risks associated with these strategies?
- What are the long-term risks?
- What are the constraints in execution?
- What are the trends in Treasury/IRS regulation?
- Update on Covid-19

**Shariff Barakat**, *Partner, Project Finance*, NIXON PEABODY LLP

**Jordan Tamchin**, *Senior Vice President, Tax Insurance Practice Leader*, CAC SPECIALTY

10:40 - 10:55 AM

*Live Q&A/Transition*

10:55 - 11:25 AM

*Meal Break*

11:25 AM – 12:00 PM

**Session 9: Discussion on the Future of Tax Equity**

In this session, we will identify and explore certain of the current challenges facing, and new opportunities available to, tax equity investors in the renewable sector:

- How will tax equity transactions, allocations or structures change given Recent amendments to the tax code such as the 5yr NOL carryback, 100% expensing, increased interest deductability and expansion of the CRA criteria to cover solar
- Address recent legislative initiatives seeking to broaden the universe of tax Equity investors and the contours and impacts of a possible refundable tax credit, including expand refundability to public power/municipalities.
- Possible expansion of tax investor universe to support sustainability and additionality goals beyond execution of virtual power purchase agreements
- Focus upon challenges posed by erosion of offtaker credit, uncertain electric load and regional impacts due to financial hits taken by the oil and gas industry
  - Will there be an increase in hedge transactions?
  - Can these hedges be provided by affiliates of the tax equity investors?
  - Discussion of tax and accounting implications of a physical vs. financial hedge?
  - How are hedges obligations structurally incorporated into the tax equity structure?

- Explore longer term prospects for tax investors given the current sunset dates for wind and solar

**Ellen Friedman**, *Partner and Co-Leader, Energy and Infrastructure Projects Team*, NIXON PEABODY LLP

**Jatin Gupta**, *Managing Director*, RUBICON CAPITAL ADVISORS

**Matthew Shanahan**, *Managing Director*, MARATHON CAPITAL LLC

12:00 – 12:15 PM

*Live Q&A/Transition*

12:15 - 12:50 PM

**Session 10: Hybrid Projects: Handling Tax and Structuring Issues with Solar + Storage Projects**

Adding storage to solar or other renewable energy projects significantly increases the complexity of incorporating tax equity investment in financing structures. This session will explore some of the factors that should be considered, including:

- How does storage with solar qualify for the ITC?
- How will the charging source affect capture of ITC benefits?
- What are the advantages of DC-coupled vs. AC-coupled inverter technologies?
- What is the potential for tapping different sources of tax equity for solar vs. storage project components?

**Shariff Barakat**, *Partner, Project Finance*, NIXON PEABODY LLP

**Joshua Rogol**, *Senior Vice President, Energy Storage*, STRATA SOLAR, LLC

12:50 – 1:05 PM

*Live Q&A/Transition*

1:05 – 1:20 PM

*Networking Break*

1:20 – 1:50 PM

**Session 11: Discussion of Tax Equity Syndication**

This session will discuss PTC/ITC investments within a broader market context, including the effects of the current economy on the investment landscape, and the growing role of the syndication approach to tax equity investment.

- Initial considerations
- Key underwriting and risk mitigant considerations
- Tax equity syndications process
- Relationships between sponsors, co-investors and syndicators

**James Duffy**, *Partner*, NIXON PEABODY LLP

**Chris Roetheli**, *Senior Vice President - Tax Credit Syndications*, US BANCORP COMMUNITY DEVELOPMENT CORPORATION

1:50 – 2:05 PM

*Live Q&A*

2:05 – 2:15 PM

*Closing Remarks & Introduction of Independent Study Project*

2:15 PM

*End of Day Two*