



IRS Concludes Tribe May Pass on to Lessee Investment Credits Associated with Renewable Energy Assets

The Internal Revenue Service's ("IRS") recent non-binding decision that a Tribe could pass on investment credits associated with renewable energy assets to the Tribe's lessee may encourage future development on tribal lands because the non-tribal developer can benefit from the Tribe's investment credits.¹ As described in the IRS' decision, a federally-recognized Tribe intends to develop a renewable energy project on its lands held in trust and lands the Tribe holds in fee. The electricity generated from the renewable energy project would be sold to third-party utilities and/or used by the Tribe. The Tribe would initially lease the renewable energy project to its lessee, who would operate the renewable energy project and would be entitled to the net revenue derived from the operation of the project. At the end of the lease term, the Tribe would assume control over the project and would operate the project directly. The IRS concluded that the Tribe was not a government unit as defined by the Internal Revenue Code, 26 U.S.C. § 50(b)(4), which states that property used by government units is not entitled to investment credits. The IRS also reasoned that the tribal government was not exempt from taxes imposed by other Code provisions. Therefore, the IRS concluded that the Tribe could pass on its investment credits to its lessee. Although this decision cannot be cited as precedent, it provides guidance on the availability of investment credits for other renewable energy developers on tribal lands.

For more information, please contact [Deana M. Bennett](mailto:deanab@modrall.com) at deanab@modrall.com.



¹ See Internal Revenue Service, [PLR-111532-11](https://www.irs.gov/irb/2013-03/irb13-0311.html) (March 8, 2013)