

**University of Texas
16th Biennial Parker C. Fielder
2023 Oil, Gas & Energy Tax Conference**

**An Energy Transaction Smorgasbord:
Updates on Transaction Structures for Oil and Gas, Renewable
and Clean Energy, and Battery Storage**

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**What's Happened
Since the Last Parker Fielder Tax Conference?**

- In 2019, changes brought about by the Tax Cuts and Jobs Act of 2017 were in full swing
 - Depreciation
 - Limitations on the use of NOLs and interest deductions
 - Tax rate changes for corporations and individuals
- Oil and gas transactions were still the talk of the day, although renewable energy transactions were beginning to look more attractive as technology advances lowered production costs for wind and solar
- Hot transaction structures included Cash and Carry, DrillCo and other structured joint ventures
- Covid 19 then got in the way, and there was no 2021 conference
- In 2023, tax professionals are still working through the significant changes to renewable energy taxation made in the Inflation Reduction Act of 2022
 - Transactions dealing with wind, solar, carbon capture, hydrogen, battery storage and other renewable energy projects all got a major boost in the IRA
- Higher oil prices narrowed the bid/ask spread between sellers and buyers, favorably impacting purchase and sale transactions, but debt and equity capital has become more scarce

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The Tax World Responds to the Market

- Investors flock to renewable energy transactions fueled by significant production and investment tax credits
 - Demand increases for tax professionals well versed in the IRA tax credits and how those credits can drive investment transactions
 - Oil and gas tax professionals remain in demand, but fewer transactions to go around
- The Parker C. Fielder Oil & Gas Tax Conference becomes the Parker C. Fielder Oil, Gas & Energy Tax Conference
- So our transactions presentation today is a real smorgasbord of energy transactions
 - An update on consolidation in the oil and gas industry, and its impact on company taxation
 - A review of Cash and Carry and DrillCo transactions still in use today
 - Hydrogen transaction case study – the how and why
 - Standalone storage transactions, with a discussion of relevant tax credits
 - For the first time, direct transferability of federal income tax credits to the federal government and to tax credit purchasers

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Oil and Gas Transactions

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Energy Transaction Trends

Consolidations

- Continued trend towards consolidation transactions as companies optimize their portfolios to achieve scalability and greater operational efficiencies
 - Consideration mix may be equity weighted in response to valuation risk
 - Upstream industry players often have material tax attributes as a result of significant capital expenditures incurred in acquiring and developing the property
- Certain key tax considerations include:
 - Application of tax-free reorganization provisions to the transaction
 - Application of Section 382 to potentially limit the utilization of attributes for one or both of the parties following an “ownership change:”
 - An “ownership change” occurs if, immediately after any owner shift or an equity structure shift, the percentage of stock of the loss corporation owned by one or more “5-percent shareholders” has *increased by more than 50 percentage points* over the lowest percentage of stock of the loss corporation owned by such shareholders at any time during the three year “testing period”
 - Material attributes of one or both companies, potentially coupled with existing restrictions after emergence from bankruptcy, may require extra precaution and careful navigation of Section 382 rules
 - Consider the application of Section 382(l)(5)(D) to the extent a potential ownership change is occurring within two years of a company emerging from bankruptcy

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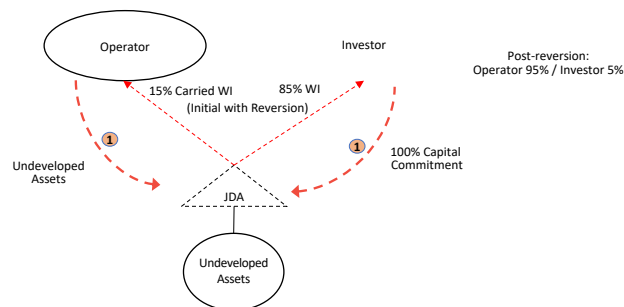
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Energy Transaction Trends

DrillCo

- Operator enters into an agreement with Investor, whereby Investor acquires a working interest from Operator in exchange for cash and a commitment to “carry” all or a portion of the development costs associated with Operator’s working interest for either a set period of time or up to a set amount. Once a specified IRR is achieved (often on a well-by-well basis), the working interest received by Investor is subject to a full or partial reversion.



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