



Florida Agriculture Financial
Management Conference
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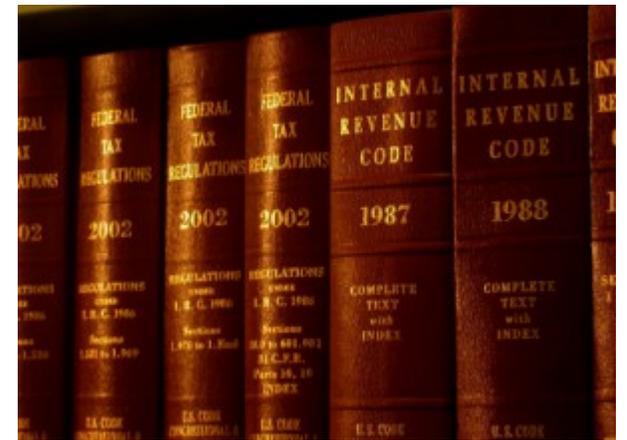
Florida's Current Climate is Ripe for Solar Energy

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“We gotta get off oil, America has got to change its habits. It should be obvious to all, demand has outstripped supply, which makes prices go up.”

- George W. Bush, speaking to the Washington International Renewable Energy Conference, March 5, 2008

Tax Policy



To frame the issue historically, it is important to understand that the federal government uses the Internal Revenue Code (the “Code”) to enact non-tax policy in two ways: through the imposition of taxes which act as disincentives to discourage undesirable behavior and through the creation of tax subsidies (such as deductions or credits to reduce taxes) which act as incentives to encourage desirable behavior.

Early Tax Policy – Fossil Fuels



Early tax energy policy focused on tax incentives to increase domestic fossil fuel production, such as the expensing of otherwise capitalized intangible drilling costs and the percentage depletion allowance, which served to reduce the effective marginal tax rates on the oil industry. Many of these tax incentives are still in effect in the Code.

Renewable Energy – Tax Incentives

HURRY!
HURRY!
HURRY!

On the other hand, the handful of tax provisions related to renewable energy sources often have a limited time of applicability (limited shelf life).



Renewable Energy Sources of Interest to Florida Companies

- Bio-Fuel
- Bio-Gas
- Wind
- Tidal Action
- Solar





Since the defeat of Amendment 1 in 2016, the enactment of state tax incentives and the closing window of federal tax incentives, Florida's major power supply companies (FPL, Duke, TECO, etc.) have greatly accelerated their development of solar production sites.

Demand for Solar Has Gotten Hot!

FPL commits to building eight solar plants
by 2018 – Palm Beach Post

FPL's construction of solar power
plants is heating up – Palm Beach
Post

Solar industry group reports big jump in
installations – Politicopro.com

Unprecedented solar push means
the Sunshine State may live up to its
name – Tampa Bay Times

Orlando's new solar
plant takes shape as
Florida's solar
energy erupts –
Orlando Sentinel

New solar amendment offers 'huge incentive for businesses'
– Florida Trend

Dean Mead Assembles Solar Team - 2016

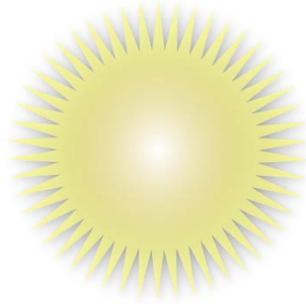
Drawing on areas of expertise such as:

- Tax – Federal, State, & Local
- Real Estate
- Environmental/Water
- Land Use/Zoning
- Construction
- Government Relations
- Administrative Law
- Finance/Lending





SOLAR
POWER



Dean Mead's Solar Energy Team advises landowners, developers and investors on how they can realize value from the land through solar photovoltaic systems – sites consisting of hundreds of acres of solar panel arrays aimed to harness the sun's energy.

Our 37-year history of representing businesses, multigenerational families and individuals engaged in agribusiness operations enables us to recognize valuable locations for new solar energy projects. Utility companies seek us out to identify suitable sites where they may develop large scale solar facilities and we serve as a catalyst for development.

LOCATION, LOCATION, LOCATION!

Most of our clients that have found they own property in desirable locations for solar power development prefer to sell or lease the site rather than develop themselves. Desirable sites for the larger power companies are:

- 300-500 Acres
- No obstructions from the sun
- Near transmission lines that have capacity with adjacent substation preferable
- With little to no wetlands or endangered species
- Located away from neighbors (NIMBY)
- Accessible by public road

Window of Opportunity?



- Tax incentives have a limited shelf life



- Price of solar panels may go up

China just built a 250-acre solar farm shaped like a giant panda – Business Insider



Little-Known Lender's Stand Threatens a \$29
Billion Solar Market - Bloomberg

Imports seen as threat to US
solar industry – The Tribune

Speakers Today

- Dana M. Apfelbaum, Esq. – Tax Incentives
- Anna H. Long, Esq. – Real Estate Leasing
- Michael D. Minton, Esq. – Structuring Sale

Investment Tax Credit - Code Section 48(a)

- Energy credit for a percentage of cost basis of qualifying energy property placed in service in a taxable year IF:
 - Construction begins before January 1, 2022
 - Property is depreciable with an estimated useful life of at least 3 years
- “Energy Property” means equipment using solar energy to generate electricity, to heat or cool (or provide for hot water for use in) a structure, or to provide solar process heat, but not pool heaters.
- Percentage – Phaseout and Limits
 - 30% if construction begins before December 31, 2019
 - After December 31, 2019, a phaseout begins
 - If not placed in service before January 1, 2024, limited to 10% credit



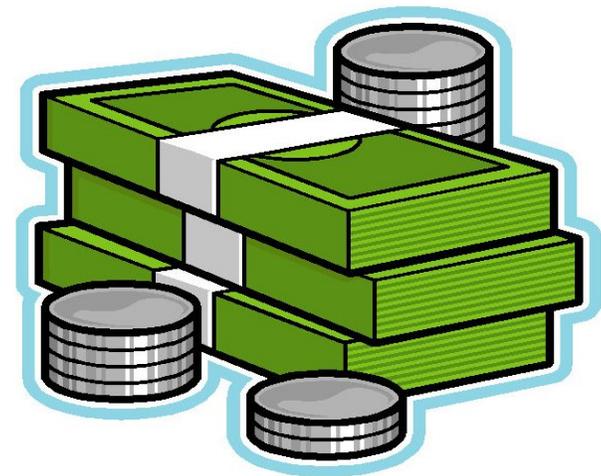
Production Tax Credit – Code Section 45

- In the alternate, but NOT IN ADDITION to the Investment Tax Credit.
- In 2017, 2.4 cents (adjusted annually for inflation) per kilowatt hour of electricity produced from eligible solar systems.
- To qualify, the energy must be sold to an unrelated person during the 10 year period beginning on the date the facility is place in service.



Accelerated and Bonus Depreciation – Code Section 168

- Most solar energy property is 5-year property, which qualifies for “bonus depreciation”
 - 50% of the cost of qualified energy property deductible in year placed in service
 - Remainder depreciated over useful life
- Phase Out
 - 40% if placed in service in 2018
 - 30% if placed in service in 2019
 - Then expiration!



State Incentives



- Property Tax Exemption
 - For solar energy systems and other renewable energy source devices, including wind energy and geothermal energy.
 - Applies to systems installed on or after January 1, 2018 for nonresidential properties to exempt 80% of the assessed value.
 - Scheduled to expire at the end of 2037.
- Also note – New regulations governing the terms of contracts for sale or lease of solar energy systems, including numerous required disclosures, became effective July 1, 2017.

To Lease or Not to Lease, That is the Question



The Sunshine State

- Florida ranks 9th in the nation for solar resources.¹
- Florida ranks 13th in the nation for solar installed.²
- Per the U.S. Energy Information Administration as of March of this year, electricity generation from wind and solar, including utility-scale solar and small-scale systems,³ exceeded 10 percent of total electricity generation in the U.S.
 - As of 2016, wind and solar made up 7 percent of total U.S. electric generation.⁴

¹ Salisbury, S. (2017, June 14). Construction underway on FPL's next eight solar power plants | Protecting Your Pocket. Retrieved October 30, 2017, from <http://protectingyourpocket.blog.mypalmbeachpost.com/2017/06/14/construction-is-underway-on-fpls-next-eight-solar-power-plants/>; ² Id.; ³ Id.; ⁴ Id.

Florida Power & Light

- 2016 Universal Solar Centers
 - FPL Manatee Solar Energy Center, Manatee County
 - 762 acres, >338,000 panels
 - FPL Citrus Solar Energy Center, DeSoto County
 - 841 acres
 - FPL Babcock Ranch Solar Energy Center, Charlotte County
 - 440 acres



- 2017 Universal Solar Energy Centers

- FPL Coral Farms Solar Energy Center, Putnam County
 - 587 acres
- Horizon Solar Energy Center, Alachua & Putnam Counties
 - 1,315 acres
- Wildflower Solar Energy Center, DeSoto County
 - 721 acres
- Indian River Solar Energy Center, Indian River County
 - 695 acres



- Universal Solar Centers to be completed by March 2018
 - Blue Cypress Solar Energy Center, Indian River County
 - 432 acres
 - Hammock Solar Energy Center, Hendry County
 - 957 acres
 - Barefoot Bay Solar Energy Center, Brevard County
 - 462 acres
 - Loggerhead Solar Energy Center, St. Lucie County
 - 565 acres



Duke Energy



- Osceola Solar Facility
 - 17 acres
- Perry Solar Facility
 - 22 acres
- Suwannee Solar Facility
 - 70 acres



Tampa Electric an Emera Company (TECO)

- Big Bend Power Station
- 106 acres



Solar Leases

The Devil is in the Details

- Listing/Option Agreements
 - Reputable/Experienced Developer or Real Estate Consultant
 - Have you completed like projects in Florida before?
 - References?



- Know What You Have to Offer
 - Due Diligence
 - Preliminary Engineering
 - Proximity to transmission lines (capacity/demand)



- How much of the land will be subject to the lease agreement?
 - The landowner and the developer need to agree specifically as to the area to be included under the lease.
- What effects can be expected on the non-leased land?
 - No shade on the solar panels.



- Don't give away the farm!
 - Leasing property does NOT mean everything and anything.
 - Water, minerals and other natural resources.





- Solar leases are NOT a short term endeavor
 - 15-20 years, options to renew.
 - Entering into a solar lease requires long term planning.



- What about the money?
 - How is the rent going to be calculated?
 - What about taxes and other expenses?
 - Increased assessments
 - Roll back taxes
 - Zoning and permitting approvals



- Speaking of money...
 - Is the land subject to a mortgage?
 - Flexibility for the Landowner to sell the property.
 - Developer's right to assign.



- Location, location, location...Installation AND removal
 - Infrastructure
 - Easements
 - Improvements
 - Intentional/preventable shading
 - Limiting landowner's adjacent property?





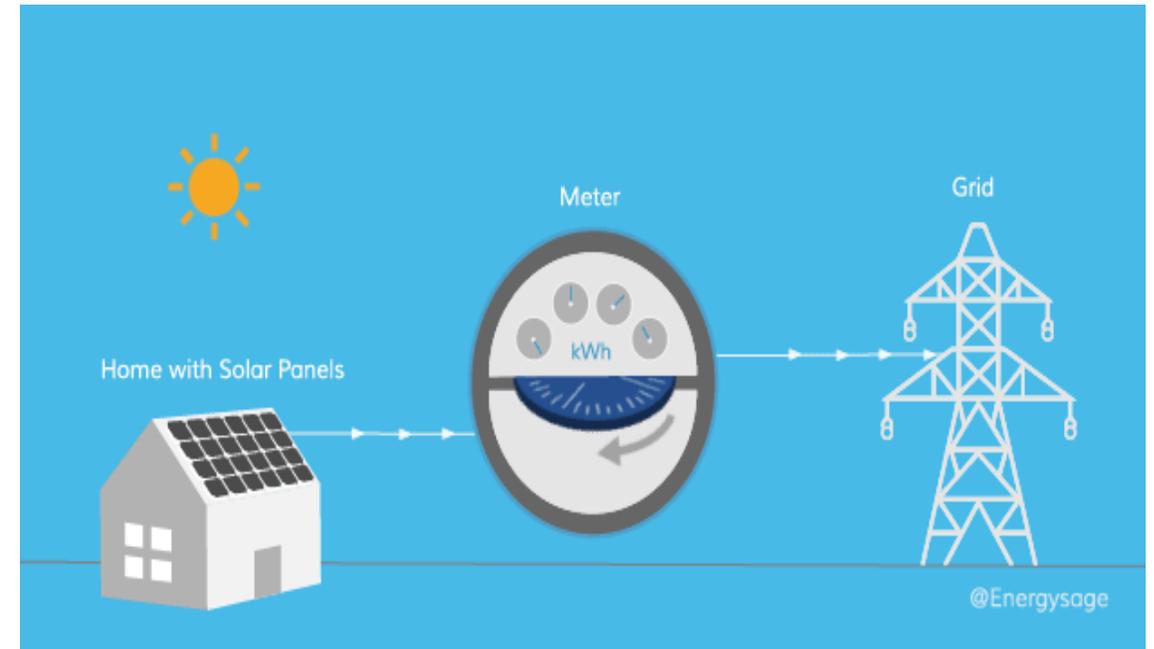
- While the Developer may want a provision to assign the lease, the Landowner needs to insist on a provision to assign liability.
 - Third party claims
 - Federal, State and Local rules and regulations (including environmental)

Solar Farming – Isn't it Just Another Crop?

Yes and No

- Producing solar energy for your own consumption
- Producing solar energy for a profit
 - Net Metering
 - Compensation for solar energy produced

- Excess power from facility/operations
- Application/Net metering agreement with the utility provider
 - Compensation varies from utility provider to utility provider.





- An increase in net metering participants may result in less compensation for excess energy produced.
- Currently no offset for costs associated with transmission, distribution and maintenance of the system.

To Lease or Not to Lease, That is the Question

The Devil really is in the Details!



If Sale is Preferred to Lease

- Incorporate language that allows for deferred like kind exchange under Section 1031 of the Code
- Use Purchase Price Allocation to avoid adverse income tax consequences (i.e. recapture)
- Consider buffers around the project to minimize adverse impacts on the remaining property



Questions

www.deanmead.com

<http://www.deanmead.com/2017/08/preserving-power-10-tips-negotiating-solar-farm-lease/>

<http://www.deanmead.com/2017/10/nothing-but-net/>

<http://www.deanmead.com/2017/10/floridas-current-climate-ripe-solar-energy-tax-incentives/>

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