Due Diligence FAQ

Commercial Solar Flip Partnerships

Tax Purpose:

Not Recommended for retail individual clients. The structure is an institutional product by design: it depends on a large, predictable tax appetite to use the ITC and depreciation currently, on balance-sheet capacity to absorb multi-year illiquidity, and on sophisticated counterparty leverage to negotiate genuine (rather than guaranteed/capped) economic risk terms — none of which a typical retail client possesses.

Mechanics & Key Considerations:

- The federal investment tax credit ("ITC") for solar property has historically been claimed under §48 of the Internal Revenue Code; for property placed in service after December 31, 2024, the technology-neutral clean electricity investment credit under new §48E generally supersedes §48 for most solar and wind facilities
- Because most solar developers ("sponsors") do not themselves have enough federal tax liability to use a large ITC and the associated accelerated (MACRS) depreciation, they bring in a "tax equity investor" — historically a bank, insurance company, or other large financial institution — to monetize those benefits inside a partnership
- This structure is, by design and by market practice, an institutional product
- A critical asymmetry between wind and solar deals is the availability of formal IRS safe-harbor guidance
- Even where the deal is structured competently, an individual limited partner faces the passive activity rules of §469

Key Risks:

- Partner-in-name-only recharacterization risk
- Recapture risk — §50(a)
- Illiquidity
- Promoter and retail-syndication fraud risk
- Complexity and audit burden

Structure:

Commercial solar partnership-flip transactions are the dominant financing structure for utility-scale and commercial solar in the United States, but they were designed by and for sophisticated financial institutions — money-center banks, regional banks, and insurance companies — with large, predictable federal tax liabilities and multi-decade risk appetite. A retail individual investor evaluating participation in a solar flip (whether as a direct tax-equity partner or through a syndicated fund vehicle marketing fractional interests) confronts a structure that was not built to accommodate them: no IRS safe harbor exists for solar flips analogous to the one available for wind, the partnership-allocation mechanics require the "tax equity" partner to bear genuine entrepreneurial risk that syndicators are commercially motivated to minimize, and the passive activity rules of §469 will strand most individual investors' credits and losses because they cannot satisfy material participation as limited partners. The Third Circuit's decision in Historic Boardwalk Hall v.

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Dimension	Score	Why
Legal Risk	**2/10**	No solar-specific IRS safe harbor exists (CCA 201524024), and Historic Boardwalk Hall demonstrates courts will fully disregard a tax-equity partner's allocation where the individual investor is economically insulated in the way retail-friendly deal terms typically require.
Economic Substance	**3/10**	Retail-friendly guarantees and buyback terms designed to protect individual investors from risk are the same features that undermine genuine partner status under the Culbertson/§704(b) framework; a bona fide equity position and a sellable retail product are largely in tension.
Realistic ROI	**4/10**	Headline yields assume immediate, full use of the ITC and depreciation; most individual investors will have the credit and losses trapped as passive under §469, and fee layers from retail syndication further erode the effective, time-value-adjusted return.
Liquidity	**1/10**	Multi-year lock-up with no established secondary market, compounded by §50(a) recapture exposure on any disposition within five years of the property being placed in service.
Client Fit	**2/10**	A high-W2-income salaried individual with no passive income and no operational role in the project is close to the worst-fit profile for this structure, which requires either material participation (nearly impossible as a limited partner) or existing passive income to use the benefits.

Recommendation:

Not Recommended for retail individual clients. The structure is an institutional product by design: it depends on a large, predictable tax appetite to use the ITC and depreciation currently, on balance-sheet capacity to absorb multi-year illiquidity, and on sophisticated counterparty leverage to negotiate genuine (rather than guaranteed/capped) economic risk terms — none of which a typical retail client possesses. The absence of a solar-specific IRS safe harbor, confirmed in CCA 201524024, leaves these deals exposed to facts-and-circumstances challenge under the bona fide partner standard the Third Circuit applied to strip an economically similar structure's credit entirely in Historic Boardwalk Hall.