As another note, Tax Attorney's provide tax opinions that cover the rules below (approximately $30,000 is the cost and the project/customer pays) and the AON insurance product also insures that the tax opinion will be honored for the full 5 years of the recapture period (this costs around 2-3% of the ITC amount, and also paid for by project/customer)

At Risk Rules:

1. For renewable tax credits
    a. The amount of credit that you can get for a project is limited to the amount the investor is "at risk", with 2 exceptions
        i. Certain, nonqualified nonrecourse financing
        ii. Certain "level payment loans" can be included
2. For Losses
    a. Exception #1
        i. Individual or closely held corp can only take losses to the amount he has at risk
        ii. Generally includes investors tax investment, the FMV of property pledged as security, and amounts for which the investor is personally liable
        iii. Borrowing from people in the business of lending money doesn't help (that's a real estate provision)
        iv. NOTE: losses are worth more to an individual (if they can qualify for the ITC) with the new corp rate = 21% and top personal tax rate = 35%
    b. Exception #2
        i. Delays an individual investors ability to use the losses generated from activity until he increases the at risk amount or
        ii. The transaction generates income that can be offset with losses
        iii. NOTE: this is in addition to the passive loss rules below.
            1. Being actively involved in the transaction, or
            2. having passive income from other sources will not overcome the at risk provisions

Passive Loss Rules:

1. Rule #1:
    a. An individual generally can only use credits or losses arising from most businesses in which the taxpayer does not "materially participate"
        i. As well as many rental activities, against passive income
        ii. Specific tests in upcoming rules
    b. Losses and credits cannot be used against compensation, or a broad range of investment income (called "portfolio income")
        i. Such as interest, dividends and royalties
2. Rule #2:
    a. An individual investor who is a limited partner (or non-managing member) in an entity that undertakes a renewable transaction should have income from being a similar investor in other business ventures or rental activities.
            1. Exceptions:
                a. Use on disposition from this activity
                b. Use against later income from same investment
3. Rule #3:
    a. The individual participates in the activity for more than 500 hours during the year

    b. The individuals participation in the activity for the tax year is substantially all of the participations in it by all individuals (including non-owner individuals) for the year.
    c. The individual participates in the activity for more than 100 hours during the tax year and that isn't less than that of any other individual (including non-owners) for that year
4. Rule #4:
    a. The activity is a "significant participation activity" for the tax year, and
    b. the individual's aggregate participation in all significant participation activities that year exceeds 500 hours
    c. A significant participation activity is a trade or business in which the individual significantly participates (for more than 100 hours), but
    d. In which he doesn't otherwise participate
5. Rule #5:
    a. The individual materially participated in the activity for any fixe tax years (consecutive or not) during the 10 immediately preceding tax years.
    b. The activity is a personal service activity and
        i. The individual materially participated in the activit7y for any three tax years (consecutive or not) before the tax year.
    c. The individual meets a facts and circumstances test.