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## **Foley: IRS Releases Guidance on Performance and Quality Standards for Small Wind Energy Property.**

The IRS recently released [Notice 2015-4](#) (the Notice), which provides performance and quality standards that small wind energy property (defined under section 48(c)(4) of the Code as property utilizing a “qualifying small wind turbine” with a nameplate capacity of not more than 100 kilowatts (kW)) must meet to qualify for the section 48 investment tax credit (ITC).

ITC eligible small wind energy property acquired or placed in service after January 26, 2015, must now meet the performance and quality standards set forth in either:

- (1) American Wind Energy Association Small Wind Turbine Performance and Safety Standard 9.1-2009 (AWEA); or
- (2) International Electrotechnical Commission 61400-1, 61400-12, and 61400-11 (IEC).

The Notice further explains that small wind turbines must comply with the applicable AWEA or IEC performance and quality standards in effect at the time of acquisition, defined for these purposes as the time the taxpayer that constructed, reconstructed, or erected the small wind turbine places it in service.

Manufacturers of small wind turbines may certify that the turbine meets the AWEA or IEC performance and quality standards by providing the taxpayer with a certification that satisfies the Notice’s requirements. Taxpayers can then rely on the certification to claim the ITC. In the event that the IRS later determines that a manufacturer issued an erroneous certification, the manufacturer may be subject to penalties and its right to provide a certification to future purchasers will be withdrawn. Taxpayers that purchase the small wind turbines after the IRS publishes an announcement withdrawing the manufacturer’s certification cannot rely on the certification, but taxpayers that purchased the equipment on or prior to the date on which the announcement of the withdrawal is published can still continue to rely on the certification (even if the equipment is not installed or the credit is not claimed before the announcement of the withdrawal is published).

**Takeaways:** The Notice imposes performance and quality standards on small wind energy property while providing a convenient and clear certification process that manufactures can utilize to advertise their equipment as meeting these standards and which taxpayers can then rely on to claim the ITC. Going forward we recommend that taxpayers purchase property certified pursuant to this Notice and then ensure that they maintain this certification in their records.

The content of this article is intended to provide a general guide to the subject matter. Specialist advice should be sought about your specific circumstances.

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