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IRS Extends Continuity Safe Harbor For ITC And PTC Projects.

Renewable energy developers breathed a sigh of relief Tuesday when the Internal Revenue Service and Department of the Treasury issued guidance extending the safe harbor for wind and solar projects to qualify for the investment tax credit (ITC) and production tax credit (PTC).

Citing delays related to the COVID-19 pandemic, the extension provides relief to developers struggling with the interconnection delays, supplier backlogs, and contractor constraints that have been plaguing the industry. [Notice 2021-41](#) extends the Continuity Safe Harbor for projects that began construction in 2016 through 2020 and clarifies the methods that taxpayers can use to satisfy the Continuity Requirement.

Under prior IRS guidance, taxpayers have two options to demonstrate that a project has begun construction under Section 45 or Section 48(a)(5) of the Internal Revenue Code – the Physical Work Test or the Five Percent Safe Harbor. Both methods require continuous progress toward completion of the facility once construction has begun (Continuity Requirement). The Continuity Requirement can be satisfied in two ways, either by (1) satisfying the test applicable to the method used to establish start of construction, or (2) satisfying the Continuity Safe Harbor.

Continuity Safe Harbor Extension

The Continuity Safe Harbor allows a facility to be deemed to have satisfied the Continuity Requirement if the facility is placed in service within a certain amount of time after start of construction is established.

Notice 2021-41 provides that for any qualified energy project that began construction under either the Physical Work Test or the Five Percent Safe Harbor, the timeline to achieve placed in service and still satisfy the Continuity Safe Harbor is extended, as follows:

- Projects that began construction in 2016, 2017, 2018, or 2019, the Continuity Safe Harbor is satisfied if the project is placed in service by the end of the calendar year that is six years after the year construction began.
- Projects that began construction in 2020, the Continuity Safe Harbor is satisfied if the project is placed in service by December 31, 2025.

Satisfaction of Continuity Requirement

Projects that fail to be placed in service within the timeline allowed to satisfy the Continuity Safe Harbor can nevertheless still satisfy the Continuity Requirement.

Prior IRS guidance allowed a taxpayer to satisfy the Continuity Requirement by establishing facts sufficient to demonstrate compliance with the test associated with the method that was used to establish start of construction. The Continuous Construction Test had to be satisfied if start of construction was established under the Physical Work Test, or, if start of construction was

established under the Five Percent Safe Harbor, the taxpayer had to satisfy the Continuous Efforts Test. Notice 2021-41 revises prior guidance by clarifying that regardless of the method used to establish start of construction, if the taxpayer satisfies either the Continuous Construction Test or the Continuous Efforts Test, the Continuity Requirement has been satisfied.

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