

IRS Extends Construction Safe Harbor For Renewable Energy Projects

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Highlights

- For renewable energy projects that began construction in 2016 or 2017, Notice 2020-41 adds another year to the 4-year “Continuity Safe Harbor” for determining beginning of construction
- Notice 2020-41 extends special 3 ½ month rule for delivery of equipment until Oct. 15, 2020 for payments made after Sept. 15, 2019

In [Notice 2020-41](#), the Internal Revenue Service (IRS) extended both the Continuity Safe Harbor and 3 ½ Month Safe Harbor for satisfying the beginning of construction requirement for renewable energy projects that qualify for production tax credits (PTCs) or investment tax credits (ITCs).

The amount of the PTCs or ITCs that a renewable energy project may claim depends on when the renewable energy facility begins construction.

In general, there are two methods for satisfying the beginning of construction requirement: i) starting physical work of a significant nature (the Physical Work Test), or ii) having paid or incurred 5 percent or more of the total cost of the energy property (5 Percent Safe Harbor).

Both methods require taxpayers to make continuous progress towards completion once construction has begun, known as the Continuity Requirement. The IRS provided that a taxpayer would automatically satisfy the Continuity Requirement if the taxpayer completes construction four calendar years after the calendar year during which construction of the energy property began.

In previous notices, the IRS issued guidances for wind, solar and other renewable energy projects for satisfying the beginning of construction requirement. Our previous firm alert on Notice 2018-59 can be found [here](#).

Extension of Continuity Requirement

In light of the disruptions from the COVID-19 crisis, the IRS Notice 2020-41 extends the Continuity Safe Harbor from four to five years for projects that began construction in either the 2016 or 2017 calendar year.

Extension of 3 ½ Month Rule

For purposes of the 5 Percent Safe Harbor, a taxpayer can count costs as being incurred either by i) taking delivery or title to the equipment for the project before the applicable construction date year-end deadline, or ii) paying a party before the deadline and taking delivery or title to the equipment within 3 ½ months after the payment date. For purposes of clause ii), Treas. Reg. Section 1.461-4(d)(6)(ii) provides that a taxpayer must reasonably expect the person to provide the equipment within 3 ½ months after the payment date. For example, if a taxpayer pays \$1 million for equipment on Dec. 31, 2019, then the taxpayer can treat the \$1 million cost as being incurred if the taxpayer reasonably expects the equipment to be delivered by April 15, 2020.

Given disruptions associated with the COVID-19 crisis and to provide certainty and assurances, Notice 2020-41 provides a safe harbor for any services or equipment paid for by the taxpayer on or after Sept. 16, 2019, where the taxpayer will be treated as having a reasonable expectation that the services or equipment would be received within 3 ½ months if the taxpayer actually receives the services or property by Oct. 15, 2020.

Although this safe harbor will not apply to any services or property received after Oct. 15, 2020, the IRS stated that the 3 ½ month rule may still be satisfied, based on reasonable expectations at the time of payment.

The IRS, through Notice 2020-41, provides welcome guidance and more certainty for taxpayers in satisfying the beginning of construction requirement with delivery and construction delays associated with the current pandemic.

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