

Energy Investment/Production Tax Credits - Safe Harbor: Internal Revenue Service Notice Provides Extension



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The Internal Revenue Service ("IRS") issued on May 28th Notice 2020-41 titled:

Beginning of Construction for Sections 45 and 48; Extension of Continuity Safe Harbor to Address Delays Related to COVID-19 ("Notice")

The *Notice* modifies prior IRS Notices addressing the beginning of construction requirement for:

- Production tax credit for renewable energy facilities under Section 45 of the Internal Revenue Code ("Code")
- Investment tax credit for energy property under Section 48 of the Code

The IRS states that the *Notice* is in response to the Coronavirus Disease 2019 ("COVID-19") pandemic.

The United States Department of Treasury ("Treasury Department") received a number of requests from renewable energy interests and Congressmen requesting extensions of the Safe Harbor provided under current guidance for the production tax credit and energy investment tax credit.

The Treasury Department Principal Deputy Assistant Secretary had responded to several Senators request for an extension in a letter stating:

I write in reply to your April 23, 2020 letter regarding the continuity safe harbor provided under existing Department of the Treasury guidance for the production tax credit (PTC) and energy investment tax credit (ITC). The Department of the Treasury appreciates your concern and plans to modify the relevant rules in the near future.

If you have further questions, please direct your staff to contact the Office of Legislative Affairs.

As a result, an extension was expected.

The *Notice* provides that the Continuity Safe Harbor is further extended for projects that began construction in either calendar year 2016 or 2017. It also provides a 3½ Month Safe Harbor for services or property paid for by the taxpayer on or after September 16, 2019 and received by October 15, 2020. It adds an extra year to the four-year Continuity Safe Harbor provided by existing guidance.

A copy of the *Notice* can be downloaded [here](#).