

IRS Provides COVID-19 Relief for Renewable Energy Projects

Notice 2020-41 gives renewable energy developers more time to complete projects and eases technical requirements of the 3 ½ month rule.

Key Points:

- Developers who started construction in 2016 or 2017 now have five years to complete their projects and qualify for tax credits under a safe harbor.
- The new rules enhance the value of wind projects that started construction in 2016 or 2017 by giving developers and investors more time to complete them and qualify for tax credits that are now being gradually phased out.
- Developers who paid for equipment on or after September 16, 2019 and receive the equipment by October 15, 2020 will be deemed to have reasonably expected receipt within three and one-half months for the purposes of establishing the start of construction on a renewable energy project.

Extension of Continuity Requirement

Developers who started construction on renewable energy projects in 2016 or 2017 now have more time to complete those projects without suffering a reduction in the applicable production tax credit (PTC) or investment tax credit (ITC). Both PTCs and ITCs are subject to reduction if construction of the applicable project has not commenced before certain dates. Under Internal Revenue Service (IRS) guidance, a developer can establish the commencement of construction either by incurring 5% of the total eligible costs of the project (the Five Percent Test) prior to the applicable deadline, or by commencing actual physical construction of the project (the Physical Work Test) prior to the applicable deadline.

Once a developer has commenced construction, the developer is required to make “continuous efforts” (in the case of projects relying on the Five Percent Test) or maintain a “continuous program of construction” (in the case of projects relying on the Physical Work Test) to complete the project (the Continuity Requirement). If the project is placed in service within four years of the last day of the year in which construction on the project began, the Continuity Requirement will be deemed satisfied (the Continuity Requirement Safe Harbor). If the Continuity Requirement Safe Harbor does not apply, whether or not the developer has maintained a “continuous program of construction” or made “continuous efforts” to complete the project will be determined by the relevant facts and circumstances.

The COVID-19 pandemic has interrupted the development and construction of renewable energy projects that are intended to qualify for the PTC and the ITC and created delays in the manufacturing and delivery supply chains for equipment to be used in those renewable energy projects. These interruptions and delays have created uncertainty for developers whose projects can no longer be placed in service within the four-year window necessary to rely on the Continuity Requirement Safe Harbor.

Pursuant to Notice 2020-41, projects that began construction in either 2016 or 2017 will now qualify for the Continuity Requirement Safe Harbor if placed in service within five years after the final day of the year in which construction on the project began. Developers do not need to take any additional actions or establish that the delay was caused by COVID-19 to benefit from this extension.

Safe Harbor for the 3 ½ Month Rule

Developers beginning construction on projects in 2019 will now have additional time to establish compliance with the Five Percent Test. Certain developers seeking to establish the commencement of construction under the Five Percent Test may treat the costs of goods or services as “incurred” when payment is made if the goods or services are reasonably expected to be delivered within three and one-half months of payment (the 3 ½ Month Rule).

Developers who paid for services or property on or after September 16, 2019 will be deemed to have had a reasonable expectation of receiving the services or property within three and one-half months of payment therefor if the goods or services are actually delivered to the developer by October 15, 2020 (the 3 ½ Month Safe Harbor). Notice 2020-41 clarifies that developers whose goods or services are delivered after that time may still rely on the 3 ½ Month Rule if they can establish that they had a reasonable expectation of receiving the applicable services or property within three and one-half months at the time the payment was made.

As with the extension of the Continuity Requirement Safe Harbor, developers do not need to take any additional actions or establish that the delay was caused by COVID-19 to take advantage of the 3 ½ Month Safe Harbor. This change to the 3 ½ Month Rule only applies for purposes of establishing the start of construction for the PTC and ITC.

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