

## New Internal Revenue Service (IRS) Guidance on One Big Beautiful Bill Act Tightens Long-standing Rules for Determining Beginning of Construction and Limits the Safe Harbor Rules

US – August 2025

Notice 2025-42 released by the IRS on August 15, 2025 (New Guidance) provides guidance consistent with the provisions of the One Big Beautiful Bill Act (Act) and the related July 7, 2025 Executive Order (July 7 EO) with respect to applicable wind and solar facilities that did not begin construction prior to September 2, 2025. (See our previous post about the Act [here](#)).

As we know, the Act terminated the §45Y credit and the §48E credits for applicable wind and solar facilities not placed in service by December 31, 2027, providing that, to be eligible for tax credits under the Act, solar and wind facilities must be placed in service prior to January 1, 2028, or begin construction within 12 months following enactment (i.e., July 4, 2026). Additionally, the July 7 EO granted the Secretary of the Treasury broad authority to strictly enforce the termination of the clean electricity production and investment tax credits for wind and solar facilities.

In furtherance of the above, among other things, the New Guidance:

- Eliminates the previous 5% safe harbor provided under Notice 2022-61 (Previous Guidance) for the purposes of determining whether a wind or solar facility has met the beginning of construction requirements, and applies a new and limited safe harbor applicable to low output solar projects with less than 1.5MW nameplate capacity (Low Output Solar Safe Harbor)
- Other than with respect to the Low Output Solar Safe Harbor exception described above, establishes the physical work test as the sole method of satisfying the beginning of construction requirements
- Eliminates a taxpayer's ability to satisfy continuity requirements by showing "continuous efforts" in the case of construction extending beyond four years, which means that taxpayers will have to maintain a continuous program of construction to qualify for the tax credits

After September 2, 2025, except in the case of the Low Output Solar Safe Harbor, there will only be one way to prove that timely construction has begun in order to qualify for tax credits on applicable wind and solar facilities.

The physical work test requires that a taxpayer demonstrates that they have (a) begun physical work of a significant nature on tangible personal property and other tangible property used as an integral part of the activity performed by the applicable wind or solar facility, as well as (b) maintained a continuous program of construction (Continuity Requirement).

There is still no fixed minimum amount, value of work, or percentage threshold required to satisfy the physical work test, and this determination will continue to depend on the relevant facts and circumstances considering both off-site and on-site work. For wind facilities: "on-site physical work of a significant nature begins with the beginning of the excavation for the foundation, the setting of anchor bolts into the ground or the pouring of the concrete pads of the foundation." While for solar facilities: "on-site physical work of a significant nature may include the installation of racks or other structures to affix photovoltaic panels, collectors or solar cells to a site." The requirements for off-site physical work of a significant nature are the same and "may include the manufacture of components, mounting equipment, support structures such as racks and rails, inverters and transformers and other power conditioning equipment." For property that is manufactured, constructed or produced for a taxpayer by a third-party to qualify toward the physical work test, it must be performed pursuant to a binding written contract that is entered into prior to the work taking place, and that does not limit damages to an amount less than 5% of the total contract price. In addition, components held in the manufacturer's inventory continue to be excluded from the physical work test determination.

A taxpayer will meet the Continuity Requirement of the physical work test if it demonstrates a continuous program of construction involving continuous physical work of a significant nature with respect to an applicable wind or solar facility, or it otherwise meets the limited continuity safe harbor established by the New Guidelines for facilities that are placed in service by the end of a calendar year that is no more than four calendar years after the calendar year during which construction of the facility began (Continuity Safe Harbor).

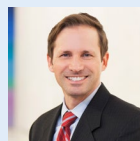
Importantly, the New Guidance preserves the non-exhaustive list of excusable disruptions to a taxpayer's ability for purposes of demonstrating the Continuity Requirement (but not for purposes of the Continuity Safe Harbor), which includes: 1) delays due to severe weather conditions; 2) delays due to natural disasters; 3) delays in obtaining permits or licenses from federal, state, local or Indian tribal governments, including, but not limited to, delays in obtaining permits or licenses from the Federal Energy Regulatory Commission, the Environmental Protection Agency, the Bureau of Land Management and the Federal Aviation Agency; 4) interconnection-related delays, such as those relating to the completion of construction on a new transmission, distribution line or necessary transmission, or distribution upgrades to resolve grid congestion issues that may be associated with an applicable wind or solar facility's planned interconnection; 5) delays in the manufacture of custom components; and 6) financing delays.

It is important to note that the New Guidance specifically applies to wind and solar facilities, not other technologies, that begin construction after September 2, 2025, but before July 4, 2026. Section 5 of the Notice 2022-61, including its safe harbor provisions, will continue to apply to wind and solar facilities that begin construction in accordance with Notice 2022-61 prior to September 2, 2025.

Lastly, the New Guidance is expected to be followed by additional guidance addressing the beginning of construction rules for the purposes of foreign entity material sourcing restrictions.

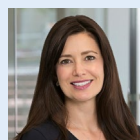
For further guidance, please contact the authors or any other members of our Energy and Natural Resources Industry Group or Tax Practice Group.

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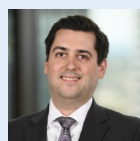
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