

PUBLICATION

The IRS Sets New "Beginning Construction" Guidance for Wind and Solar Projects Seeking Tax Credits

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In a decision that could make it challenging for wind and solar projects to qualify for the federal Investment Tax Credit (ITC) and Production Tax Credit (PTC), the Internal Revenue Service (IRS) released Notice 2025-42 on August 15, 2025, which eliminates the "Five Percent Safe Harbor" option to establish "beginning of construction" for certain renewable energy projects.

Under the updated guidance, these projects can only use the Physical Work Test to establish a "beginning construction" date under Sections 45Y and 48E of the Internal Revenue Code of 1986, as amended (the Code). Additionally, taxpayers who wish to claim a wind or solar ITC or PTC that avoids the new December 31, 2027, placed-in-service date requirement must begin construction by performing on-site or off-site physical work before July 4, 2026.

The New Rules

Notice 2025-42 is effective for wind and solar projects that begin construction after September 2, 2025, and before July 4, 2026. Developers will have four calendar years to place the facility into service after construction officially commences. Any developers needing an extension for construction lasting beyond four years will have to demonstrate "continuous construction" as opposed to merely demonstrating continuous efforts. Projects that start after July 4, 2026, must be completed by the end of 2027.

Under the One Big Beautiful Bill Act, tax credits for wind and solar projects are subject to earlier phaseouts compared to other renewable energy technologies. For those wind and solar projects seeking to qualify for the "technology-neutral credits" under Code Sections 45Y and 48E (i.e., projects with a begin of construction date after December 31, 2024, but before July 4, 2026), the new guidance under Notice 2025-42 now controls the requirements for what constitutes a project's beginning of construction. However, projects that have begun construction by September 2, 2025, may still rely on guidance contained in numerous notices previously issued by the Department of the Treasury.

The most significant change is the elimination of the Five Percent Safe Harbor for all wind and solar projects more than 1.5 megawatts. Previously, developers were permitted to expend five percent or more of a project's total cost to establish that construction had begun on a facility. Under the new guidance, there must be specifically documented on-site or off-site physical work being conducted to establish the beginning of construction, rather than mere economic investment. This requirement for the "performance" of physical work is a departure from the prior guidance, where physical work only needed to have "begun." Distributed solar developers, with projects whose nameplate capacities do not exceed 1.5 megawatts, will still be permitted to rely on the Five Percent Test.

Meeting New Regulations

Unless subject to the Five Percent Test, it is critical that wind and solar project developers demonstrate compliance with the Physical Work Test by documenting progress through pictures, emails, invoices, government permits, and similar records. We expect compliance with the Physical Work Test to be the subject of increased diligence by tax equity investors and lenders, as well as the subject of IRS audits.

If you have any questions about the impact of Notice 2025-42, please contact [Elizabeth J. Atkinson](#), [Peyton H. Lacoste](#), [Brock M. Lavelly](#), or [Stephen E. Luttrell](#).