

BLOG POST

Recent IRS Guidance Provides Clarity for PTC Eligible Wind Facilities

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By: [Elizabeth L. McGinley](#)

The IRS recently issued anticipated guidance regarding the placed in service requirement for the production tax credit (“PTC”). An eligible facility must have commenced construction prior to 2015 and be placed in service before January 1, 2017 to qualify for the PTC.

Pursuant to the Tax Increase Prevention Act of 2014, Congress extended the deadline by one-year for when construction of a PTC eligible renewable energy facility had to begin. The legislation stated construction on such facilities had to begin prior to January 1, 2015 for the project to be eligible for the PTC. The IRS did not immediately issue guidance reflecting the application of such one-year extension.

The previously issued IRS guidance¹ contains two safe harbors that taxpayers can satisfy to establish the beginning of construction, the “continuous construction test” and the “continuous efforts test.” Such guidance also provides that if a facility is placed in service prior to January 1, 2016, the taxpayer is deemed to meet the requirements of both tests. IRS Notice 2015-25 clarifies that renewable projects on which construction began in or prior to 2014 can rely on such previously issued IRS guidance and extends the placed in service deadline to be treated as satisfying both safe harbor tests by one-year.

Notice 2015-25 states that if a facility on which construction began in 2014 or a prior year is placed into service by December 31, 2016, such facility is eligible for PTC benefits. Thus, if a taxpayer begins construction on a facility prior to January 1, 2015, and places the facility in service before January 1, 2017, the facility will be considered to satisfy the safe harbors contained in the previously issued IRS guidance regardless of whether the continuous construction or continuous efforts tests are met.

Tax equity investors had been reluctant to fully invest in facilities on which construction began in 2014 because of the uncertainty surrounding the extension of the PTC and the application of the IRS guidance release safe harbors to such facilities. The released guidance provides wind power participants with clarity that their projects can obtain the benefits of the PTC if the PTC eligible project is placed into service before the end of 2016. Pursuant to Notice 2015-25, wind power participations now have additional time to evaluate investments, obtain wind turbines, and negotiate power purchase agreements and related hedges.

¹ Notice 2013-29, Notice 201-60 and Notice 2014-46.