

Beginning of Construction for Sections 45 and 48

Notice 2015-25

SECTION 1. PURPOSE

On December 19, 2014, the Tax Increase Prevention Act of 2014, Pub. L. No. 113-295, 128 Stat. 4010 (TIPA), extended by one year the date by which construction of a qualified facility (as described in section 45(d) of the Internal Revenue Code) must begin. Accordingly, a taxpayer will be eligible for the renewable electricity production tax credit under section 45 (PTC), or the energy investment tax credit under section 48 (ITC) in lieu of the PTC, with respect to such a facility if construction of such facility began before January 1, 2015.

This notice updates the guidance provided in Notice 2013-29, 2013-1 C.B. 1085, Notice 2013-60, 2013-2 C.B. 431, and Notice 2014-46, 2014-36 I.R.B. 520 (collectively "the prior IRS notices") consistent with this statutory extension. The Internal Revenue Service (Service) will not issue private letter rulings to taxpayers regarding the application of this notice or the application of the beginning of construction requirement under sections 45(d) and 48(a)(5).

SECTION 2. EXTENSION OF BEGINNING OF CONSTRUCTION DATE

Prior to TIPA, sections 45(d) and 48(a)(5) required that construction of a qualified facility begin before January 1, 2014 for the facility to be eligible for the PTC or ITC.

Based on sections 45 and 48 as in effect before the enactment of TIPA, the prior IRS notices provide guidance to determine whether construction has begun on a qualified facility prior to January 1, 2014. Because TIPA extended the date by which construction of a qualified facility must begin to January 1, 2015, this notice updates all references to "January 1, 2014" in the prior IRS notices as they relate to the date by which construction must begin on a facility by replacing "January 1, 2014" with "January 1, 2015." Except as otherwise specified in this notice, the guidance provided in the prior IRS notices continues to apply.

SECTION 3. CONTINUOUS CONSTRUCTION/CONTINUOUS EFFORTS TESTS

The prior IRS notices provide that a taxpayer may establish the beginning of construction by either (1) starting physical work of a significant nature (Physical Work Test) or (2) paying or incurring five percent or more of the total cost of facility (Safe Harbor). Both methods require that a taxpayer make continuous progress towards completion once construction has begun (as set forth in section 4.06 (Continuous Construction Test) and section 5.02 (Continuous Efforts Test) of Notice 2013-29, respectively). Section 3.02 of Notice 2013-60 further provides that if a facility is placed in service before January 1, 2016, the facility will be considered to satisfy the Continuous Construction Test (for purposes of satisfying the Physical Work Test) or the Continuous Efforts Test (for purposes of satisfying the Safe Harbor).

Consistent with the one-year extension of the beginning of construction date, this notice extends the placed in service date provided in section 3.02 of Notice 2013-60 to

January 1, 2017. 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 Continuous Construction Test (for purposes of satisfying the Physical Work Test) or the Continuous Efforts Test (for purposes of satisfying the Safe Harbor), regardless of the amount of physical work performed or the amount of costs paid or incurred with respect to the facility after December 31, 2014 and before January 1, 2017.

SECTION 4. DRAFTING INFORMATION

The principal author of this notice is Jennifer C. Bernardini of the Office of Associate Chief Counsel (Passthroughs & Special Industries). For further information regarding this notice contact Ms. Bernardini on (202) 317-6853 (not a toll-free call).