



# TaxNewsFlash

## United States

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### **Notice 2017-04: Clarifying “beginning construction” provision, renewable electricity tax credits**

The IRS today released an advance version of Notice 2017-04 concerning the safe harbor rules for satisfying requirements for “beginning construction” of a qualified facility eligible for the renewable electricity production tax credit (PTC), or the election to claim the investment tax credit (ITC) in lieu of the PTC under sections 45 and 48.

Read [Notice 2017-04](#) [PDF 22 KB]

#### **Continuity safe harbor**

Guidance issued in 2013 provided a “continuity safe harbor” that allowed a facility to be deemed to satisfy the “continuous construction test” or the “continues efforts test” based on the date when a facility is placed in service. If a facility does not satisfy the “continuity safe harbor,” the determination as to whether the facility satisfies the “continuous construction test” or the “continuous efforts test” is based on the facts and circumstances.

IRS guidance—[Notice 2016-31](#) [PDF 43 KB]—issued earlier this year concerned the safe harbor rules for satisfying the requirements for “beginning construction” of a qualified facility eligible for the renewable electricity PTC or the election to claim the ITC in lieu of the PTC under sections 45 and 48. Specifically, a provision of Notice 2016-31 modified and extended the “continuity safe harbor” by providing that if a taxpayer places a facility in service by the later of (1) a calendar year that is no more than four calendar years after the calendar year during which construction of the facility began, or (2) December 31, 2016, the facility will be considered to satisfy the “continuity safe harbor.”

Today’s notice modifies the “continuity safe harbor” by providing that if a taxpayer places a facility in service by the later of (1) a calendar year that is no more than four calendar years after the calendar year during which construction began, or (2)

December 31, 2018, the facility will be considered to satisfy the “continuity safe harbor.”

Notice 2017-04 provides examples

- *If construction begins on a facility on January 15, 2013, and the facility is placed in service by December 31, 2018, the facility will be considered to satisfy the “continuity safe harbor.”*
- *If constructions begins on a facility on January 15, 2016, and the facility is placed in service by December 31, 2020, the facility will be considered to satisfy the “continuity safe harbor.”*

Notice 2017-04 also clarifies the “80/20 rule” to provide that the cost of new property includes all costs properly included in the depreciable basis of the new property.

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