

# TaxNewsFlash

## United States

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### **Notice 2018-59: Construction “begin date” for section 48 credit, energy property**

The IRS today released an advance version of Notice 2018-59 as guidance for determining when construction has begun on solar and other energy property that is eligible for the credit under section 48.

[Notice 2018-59](#) [PDF 94 KB] provides two methods for taxpayers to establish the beginning of construction:

- A physical work test—a taxpayer may establish the beginning of construction by starting physical work of a significant nature as set forth in section 4 of Notice 2018-59.
- A “five percent (5%) safe harbor”—a taxpayer may establish the beginning of construction by meeting a safe harbor based on having paid or incurred 5% or more of the total cost of the energy property as set forth in section 5 of Notice 2018-59.

The IRS notice also provides a “continuity requirement” for both methods—that is, both methods require that a taxpayer make continuous progress towards completion once construction has begun. Section 6 of Notice 2018-59 discusses the continuity requirement and provides a safe harbor for satisfying this requirement.

The notice also includes rules for transferring energy property as well as additional rules applicable to the beginning of construction requirement of section 48.

Notice 2018-59 states that although a taxpayer may satisfy both methods of establishing the beginning of construction, construction will be deemed to have begun on the date the taxpayer first satisfies one of the two methods. The IRS provided as an example, if a taxpayer performs physical work of a significant nature on energy property in 2018, and then pays or incurs 5% or more of the total cost of the energy

property in 2019, construction will be deemed to begin in 2018 under the physical work test, not in 2019 under the “five percent safe harbor.” Thus, the continuity safe harbor will be applied beginning in 2018, not in 2019.

The measures apply to energy property the construction of which begins, as determined under the earlier of either the physical work test or the “five percent safe harbor,” after December 31, 2018.

The IRS advised that with this notice, it will not issue private letter rulings or determination letters to taxpayers regarding the application of this notice or the beginning of construction requirement of section 48.

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