



# TaxNewsFlash

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## Notice 2021-41: Continuity safe harbor is extended, renewable energy projects

The IRS today released an advance version of Notice 2021-41 to clarify and modify prior guidance concerning the “beginning of construction” requirement for the production tax credit for qualified facilities under section 45 and the investment tax credit for energy property under section 48.

This notice is intended to offer relief in response to the coronavirus (COVID-19) pandemic.

**Notice 2021-41** [PDF 115 KB] extends the “Continuity Safe Harbor” for property the construction of which began in 2016 through 2020. Today’s notice also provides a clarification of the methods that taxpayers may use to satisfy the “continuity requirement” to satisfy the beginning of construction requirement under sections 45 and 48

In a related release—**IR-2021-138** (June 29, 2021)—the IRS explained the Continuity Safe Harbor allows an eligible renewable energy project to be deemed to satisfy the continuity requirement for claiming the production tax credit and the investment tax credit if the taxpayer places the project in service within a certain period that starts in the tax year in which construction of the project began.

The guidance issued today as Notice 2021-41 provides that the period of the Continuity Safe Harbor provided and extended by prior IRS notices is further extended for projects for which construction began in 2016 through 2020:

- For projects for which construction began under the Physical Work Test or the Five Percent Safe Harbor in 2016, 2017, 2018 or 2019, the Continuity Safe Harbor is satisfied if the project is placed in service by the end of a calendar year that is no more than six calendar years after the calendar year during which construction began.
- For projects for which construction began under the Physical Work Test or the Five Percent Safe Harbor in calendar year 2020, the Continuity Safe Harbor is satisfied if the project is placed in service by the end of the calendar year that is no more than five calendar years after the calendar year during which construction began.

Notice 2021-41 also clarifies that if the Continuity Safe Harbor does not apply, the continuity requirement is satisfied if the taxpayer demonstrates satisfaction of either the Continuous Construction or the Continuous Efforts Tests, regardless of the method that the taxpayer used to begin construction.

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