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IRS Extends Continuity Safe Harbor for Renewable Energy Tax Credit Projects

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In response to continuing delays caused by the Covid-19 pandemic, the IRS issued Notice 2021-41 (the “Notice”) on June 29, 2021. The Notice provides relief for renewable energy projects that began construction between 2016 and 2020 and are seeking to meet the continuity safe harbor. Specifically, the Notice provides that:

- For any qualified facility or energy property that began construction in 2016 or 2017, the continuity safe harbor is extended from five calendar years to six calendar years;
- For any qualified facility or energy property that began construction in 2018 or 2019, the continuity safe harbor is extended from four calendar years to six calendar years; and
- For any qualified facility or energy property that began construction in 2020, the continuity safe harbor is extended from four calendar years to five calendar years.

Additionally and significantly, the Notice provides that for any qualified facility or energy property that does not meet the continuity safe harbor, the continuity requirement will be met if the taxpayer demonstrates satisfaction of either the continuous construction test or the continuous efforts test, regardless of whether the taxpayer began construction using the physical work test or the five-percent safe harbor. This is a departure from the continuity arrangement required since the initial Notice 2013-29, but will still require taxpayers to prove the facts and circumstances support finding that the continuity requirement has been met.

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