



TaxNewsFlash

United States



No. 2019-357
July 12, 2019

Notice 2019-43: Beginning construction “continuity safe harbor” extended for national security concerns (sections 45 and 48)

The IRS today released an advance version of Notice 2019-43 relating to the beginning construction standard for purposes of sections 45 and 48 and specifically to provide that a “continuity safe harbor” may be tolled and extended in certain instances when there are “national security concerns” of the U.S. Department of Defense.

[Notice 2019-43](#) [PDF 33 KB] updates and clarifies guidance provided in prior IRS notices.

Background

Beginning in 2013, the IRS began to issue what eventually became a series of notices relating to the beginning construction rules under sections 45 and 48. The notices provided a safe harbor (the “continuity safe harbor”) that allows a taxpayer to be deemed to satisfy the continuous construction test or the continuous efforts test based on the date the facility is placed in service. The most recent in the series of IRS notices—Notice 2018-59—reflected two methods for taxpayers to establish the beginning of construction under section 48:

- A physical work test—a taxpayer may establish the beginning of construction by starting physical work of a significant nature.
- 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.

Notice 2018-59 also reflected the “continuity requirement” for both methods—that is, both methods require that a taxpayer make continuous progress towards completion once construction has begun. Read [TaxNewsFlash](#)

Notice 2019-43

Today's notice provides that the "continuity safe harbor" may be tolled and extended in certain limited circumstances involving significant national security concerns. As explained by the IRS in Notice 2019-43, in some situations, a project or plan may raise significant national security concerns for the Department of Defense, and that any efforts to mitigate these significant national security concerns by pursuing a modification to the plan may delay the development and construction of the facility or energy property.

Accordingly, Notice 2019-43 provides that, with respect to any plan that satisfies the requirements provided in section 3.01 of Notice 2019-43, the continuity safe harbor may be tolled and extended in certain limited circumstances involving significant national security concerns. Otherwise, the guidance provided in the prior IRS notices continues to apply.

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