

IRS Issues Beginning of Construction Guidance in Response to July Executive Order

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On August 15, the Treasury Department (Treasury) and the Internal Revenue Service (IRS) issued [Notice 2025-42](#), which provides guidance on the beginning of construction requirement as it relates to the new credit termination dates for wind and solar projects enacted by the [One Big Beautiful Bill Act](#) (OBBBA).

The OBBBA terminates the clean energy production tax credit under Section 45Y (CEPTC) and the clean energy investment tax credit under Section 48E (CEITC) for wind and solar facilities that begin construction after July 4, 2026, and are placed in service after 2027. On July 7, 2025, President Trump issued an [executive order](#) directing Treasury “to strictly enforce the termination” of the CEPTC and the CEITC for wind and solar facilities and to issue new and revised guidance “to ensure that policies concerning the ‘beginning of construction’ are not circumvented.”

Key takeaways from Notice 2025-42:

Applicability/Effective Dates. Notice 2025-42 is effective for wind and solar projects that begin construction on or after September 2, 2025.

- **Troutman Pepper Locke Insight:** This means that the pre-existing guidance (*i.e.*, Notice 2022-61) continues to apply to determine whether solar and wind facilities have begun construction on or before September 1, 2025, for purposes of the CEPTC and CEITC. [Notice 2022-61](#) applies principles from prior beginning of construction notices (specifically Notice 2013-29 and Notice 2016-31) to the CEPTC and CEITC, including the Five Percent Safe Harbor, Physical Work Test, and Continuity Safe Harbor.
- **Troutman Pepper Locke Insight:** The notice applies to wind and solar only (and not, *e.g.*, to batteries).

Five Percent Safe Harbor. Notice 2025-42 generally eliminates the Five Percent Safe Harbor, although there is an exception for facilities with a nameplate capacity of less than 1.5MW (AC), subject to an aggregation rule.

- **Troutman Pepper Locke Insight:** The aggregation rule is different from the “single project” rule from prior beginning of construction guidance, but it is generally consistent with the aggregation rule for the less than 1 MW exception to the prevailing wage and apprenticeship requirements in the CEPTC and CEITC regulations.

Physical Work Test. Notice 2025-42 preserves the Physical Work Test.

- **Troutman Pepper Locke Insight:** The initial draft of the notice issued by the IRS included a parenthetical referencing transformers that “step up the voltage to less than 69 kV,” which was removed in an update later in the day.

Continuity. Notice 2025-42 preserves the four-year Continuity Safe Harbor and the “continuous program of construction” facts-and-circumstances test, but removes the “continuous efforts” test.

- **Troutman Pepper Locke Insight:** Preservation of the four-year Continuity Safe Harbor is a welcome development. Elimination of the “continuous efforts” test, which had initially been applied only to the Five Percent Safe Harbor under early beginning of construction guidance and was later extended to the Physical Work Test in [Notice 2021-41](#), will make satisfying the continuity requirement under the facts-and-circumstances test more difficult.

Notice 2025-42 is better than many feared and worse than many hoped for. Preservation of the Physical Work Test, including for off-site work, and the four-year Continuity Safe Harbor is a relief. Elimination of the Five Percent Safe Harbor for most projects, rather than a mere increase in the percentage, is disappointing. The September 2, 2025, effective date provides taxpayers a very narrow window for adjusting their beginning of construction strategies.

Please contact any of the authors of this advisory if you have further questions or need help implementing beginning of construction strategies.

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