In Response to COVID-19, IRS Extends Safe Harbors for Renewable Energy Tax Credit Projects

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On May 27th the Treasury Department and IRS issued **Notice 2020-41** to address the industry-wide disruptions the COVID-19 pandemic is causing on the supply chain for components needed to complete renewable energy projects eligible to claim the production tax credit ("PTC") or the investment tax credit ("ITC") under sections 45 and 48 of the Internal Revenue Code, respectively.

Background

The ITC and the PTC are tax incentives designed to promote the growth of wind, solar, and other renewable energy projects. A project owner uses the credits to offset tax liability (either currently, or through a carry forward) or partners with equity investors, who share in the benefits of the tax credits and other tax benefits (e.g., accelerated depreciation). To qualify for these credits, a project's construction must begin and proceed according to timelines designated by the IRS.

Notice 2020-41

In order for taxpayers to claim PTC or ITC, taxpayers must, among other things, demonstrate continuous progress is made towards completion of the project ("Continuity Requirement"). Pursuant to prior IRS guidance, the Continuity Requirement was deemed satisfied if the facility was placed in service no later than four years after the calendar year during which construction began ("Continuity Safe Harbor"). Notice 2020-41 extends the four year Continuity Safe Harbor to five years for projects that began construction in 2016 or 2017.

In addition to the Continuity Requirement, taxpayers must demonstrate construction on the project began prior to the statutory deadlines. The beginning of construction requirement may be satisfied through either the "Physical Works Test" or the "Five Percent Safe Harbor." Under the "Five Percent Safe Harbor," construction of a facility will be considered as having begun if: a) a taxpayer pays or incurs (within the meaning of Treas. Reg. §1.461-1(a)(1) and (2)) five percent or more of the total cost of the facility before the statutory deadline and b) thereafter, the taxpayer makes continuous efforts to advance towards completion of the facility.

In order to satisfy the Five Percent Safe Harbor before the statutory deadlines, Treasury Reg. §1.461-4(d)(6)(ii) permits taxpayers to rely on a 3½ Month Safe Harbor. Under this safe harbor, taxpayers may treat such services or property as provided to the taxpayer in the month in which such services are paid if the taxpayer reasonably expects to receive the services or property within 3 1/2 months after the date of payment. Due to COVID-19, the IRS has extended this safe harbor to provide that any services or property paid by the taxpayer on or after September 16, 2019 will be deemed to have had a reasonable expectation that the services or property would be received within 3 1/2 months after the date of payment if the services or property are actually received by October 15, 2020.

Extending these safe harbors provides flexibility during these times of uncertainty and limits the impacts COVID-19-related delays may cause on taxpayers ability to begin/complete construction on qualifying renewable energy projects in order to claim these tax credits.

If you have questions pertaining to information found in this alert, or any federal tax credits, please contact **Scott C. Frissell**, **Kendall A. Schnurpel** or your regular Krieg DeVault contact.