



## Alternative & Renewable Energy Tax Newsalert

### IRS Private Guidance Provides Insight on Placed-in-Service Requirements for Wind Projects

February 7, 2012

On February 3, 2012, the Internal Revenue Service released a private letter ruling regarding circumstances affecting the placed-in-service date of a wind turbine generator project, for both depreciation under IRC sections 167 and 168 and the production tax credit under IRC section 45. As developers work towards the December 31st deadline to complete wind energy projects under current law, the guidance may provide comfort to renewable energy project developers concerned about potential delays in grid interconnection that are outside their control.

In PLR 201205005, originally issued on November 3, 2011, a wind project developer requested a ruling from the IRS that it would be able to consider wind turbine generators ("WTGs") as placed in service despite limitations on electricity production caused by conditions imposed by the utility transmitting the power.

The ruling describes a fairly typical wind farm project in which the developer will erect WTGs, towers, and tower foundations, as well as a common electrical collection system and a substation to step up the voltage for transmission to the utility grid. The grid interconnection point will be adjacent to the developer's substation and consist of an existing utility-owned switching station and transmission line.

According to the ruling, the anticipated generating capacity and wind conditions at the

wind farm will require the utility to upgrade to its switching station and transmission line. Without the upgrades, the WTGs will have to operate at reduced capacity. Furthermore, even after the utility upgrades are completed, during periods of high wind, the utility would be unable to accept all of the power generated, due to transmission congestion.

#### Factors of Revenue Ruling 76-256 Apply

The IRS analyzed these facts and applied the principles of Treas. Reg. §§ 1.46-3(d)(1) and 1.167(a)-11(e)(1). In doing so, the IRS looked to case law and its own published guidance, ultimately highlighting five common factors most relevant to determining placed in service dates, as found in a prior ruling on power plants, Revenue Ruling 76-256:

- (1) Approval of required licenses and permits
- (2) Passage of control of the facility to the owner
- (3) Completion of critical tests
- (4) Commencement of daily or regular operations; and
- (5) Synchronization into a power grid for generating electricity to produce income

The IRS further stated that full electrical output is not required to meet placed in service requirements. Instead, it will evaluate the specific facts and circumstances occurring both



before and after the claimed placed in service date to determine when the facility began supplying power in a routine manner consistent with the equipment design.

In the ruling, the IRS determined that the five factors of Rev. Rul. 76-256 would be met as of the developer's anticipated placed in service date. In the event that the utility could not accept power above a certain threshold, the developer planned on operating a reduced number of WTGs at any given time, rotating the units to equalize operational hours. Based on this, the IRS concluded that, as long as the facility is ready and available for use and producing commercial electricity output regularly, the developer could treat the WTGs as being placed in service despite the operation below full capacity.

### ***PwC observations***

Under current law, wind facilities must be placed in service by December 31, 2012 to be eligible for federal tax incentives or the section 1603 Treasury grant. (There is a deadline at the end of 2013 for facilities using biomass, landfill gas, municipal solid waste, hydropower, or geothermal energy.) Thus, determining the placed in service date is vital for project developers.

In PLR 201205005, the IRS has taken a flexible, fact-specific approach to the placed in service question. Here, a critical fact for the IRS appeared to be that the facility would be complete and available for full electricity production on a regular basis by the proposed placed in service date, but would be prevented from operation at that level by external factors,

primarily deficiencies in the external grid infrastructure. Thus it appears that, at least in certain instances, the IRS will not require full production, but merely *some* level of production as long as it is done on a consistent, but not necessarily continuous, basis. It remains to be seen how the IRS will square this approach with prior guidance and case law appearing to require operation at full capacity for a facility to be treated as placed in service.

This ruling, while only specifically binding on the taxpayer to which it was issued, nevertheless may be useful to developers and owners of other renewable projects seeking to meet the placed in service deadline for the particular type of facility.

### **For more information**

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