



Tax Insights  
from Washington National  
Tax Services



# Court restores Five Percent Safe Harbor for wind and solar project developers

June 8, 2026

## In brief

### What happened?

In an unusual Saturday decision, a federal court invalidated [Notice 2025-42](#), restoring the ability of wind and solar project developers to qualify for Sections 45Y and 48E clean electricity credits (clean electricity credits) using the “Five Percent Safe Harbor” to establish beginning of construction. The termination of clean electricity credits for wind and solar projects, accelerated by the “One Big Beautiful Bill Act” (OBBBA), requires facilities to be placed in service before January 1, 2028. However, if construction begins before July 5, 2026, then these facilities qualify for an extended placed in service safe harbor. In Notice 2025-42, the IRS restricted availability of the Five Percent Safe Harbor, which measures the beginning of construction based on total project costs, leaving only the subjective Physical Work Test that evaluates when work of a significant nature has begun for wind or solar projects that exceed 1.5MW. The decision by the US District Court for the District of Columbia, in *Oregon Environmental Council, et al. v. Internal Revenue Service, et al.* (Civil Action No. 25-4400), found Notice 2025-42 arbitrary and capricious under the Administrative Procedure Act.

## Why is it relevant?

The court's decision means that wind and solar project developers now have more options to qualify for clean electricity credits—both the Physical Work Test and the Five Percent Safe Harbor are once again available to establish beginning of construction before the July 5, 2026, deadline. The restoration of the Five Percent Safe Harbor is particularly significant, because it allows developers to establish credit eligibility through early-stage expenditures without needing to demonstrate that physical construction activity has commenced. Under either method, a Continuity Requirement continues to apply, which generally requires demonstrating continuous construction or continuous efforts after construction begins, or by placing the facility in service within four calendar years of the year construction began. For additional information about these requirements, please see PwC's Tax Insight [IRS Notice sheds light on construction rules for wind and solar credits](#).

## Actions to consider

Companies should immediately review all current and planned wind and solar projects to assess whether the restored Five Percent Safe Harbor provides a viable path to establish beginning of construction before the deadline of July 5, 2026. Projects that establish beginning of construction before July 5, 2026, gain significantly more time to place these projects into service, making the deadline a critical inflection point for project viability.

**Observation:** On remand, Treasury and the IRS will be required to address the deficiencies the court identified and could decide to issue new substantive guidance on the meaning of “beginning of construction.” The government also could seek appellate review. According to the court, there is “almost zero chance” that the parties’ appellate rights will not extend beyond the July 4 beginning-of-construction deadline, and “[i]t is likely that market participants will need to await the outcome of an appeal before they will have certainty about the legal effect of the Notice.”

PwC will provide a separate, detailed insight on this case in the coming days.

# Let's talk

For a deeper discussion of how this development might affect your business, please contact us.

## Washington National Tax Services

Topher Call  
(949) 910-1518  
[christopher.call@pwc.com](mailto:christopher.call@pwc.com)

Sara Logan  
(202) 834-4831  
[sara.l.logan@pwc.com](mailto:sara.l.logan@pwc.com)

Jennifer Bernardini  
(202) 449-2723  
[jennifer.bernardini@pwc.com](mailto:jennifer.bernardini@pwc.com)

## Specialized Tax Services

Nicole Brigati  
267-280-3536  
[Nicole.brigati@pwc.com](mailto:Nicole.brigati@pwc.com)

Randa Barsoum  
(914) 656-6811  
[randa.barsoum@pwc.com](mailto:randa.barsoum@pwc.com)

Wendy Punches  
(408) 981-0570  
[wendy.punches@pwc.com](mailto:wendy.punches@pwc.com)

Scan the QR code to access  
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