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Beginning of Construction Rules for PTC (and ITC in Lieu of PTC)

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Agenda

- Background of PTC/ITC in Lieu of PTC
- Development of Begun Construction Requirement
- Notice 2013-29
- Notice 2013-60
- Notice 2014-46
- Current Issues in Transactions
- Future of Begun Construction

Background of PTC/ITC in Lieu of PTC

- PTC under Section 45 provides a production tax credit for electricity sold to an unrelated party
- ITC in lieu of PTC under Section 48(a)(5) allows taxpayers to elect an ITC for certain qualified facilities under Section 45(d)

Development of Begun Construction

- American Taxpayer Relief Act of 2012
 - Change from Placed in Service to Begun Construction
 - Based on ARRA Section 1603 Program

Notice 2013-29

- Issued April 15, 2013
 - Physical work of a significant nature
 - 5% safe-harbor
 - Look-through rule for work performed under a binding written contract
 - Aggregation rule
 - Continuous efforts / program of continuous construction
 - No successor in interest rule

Notice 2013-60

- Issued September 20, 2013
 - 24-month safe-harbor for continuous efforts and program of continuous construction (before January 1, 2016)
 - Master contract can be replaced by project contract for 5% safe-harbor
 - Successor in interest rule

Notice 2014-46

- Issued August 8, 2014
 - Clarification of physical work test
 - Clarification of transfers
 - 3% safe harbor

Current Issues in Transactions

- Physical Work
- Transfers
- 3% Safe Harbor
- Continuous efforts/continuous construction
- FAQs

Future of Begun Construction

- Extenders bill passed by Senate Finance on April 3
 - Extends PTC for 2 years
 - Held-up for procedural reasons
 - Likely shelved until after the election
 - Includes other extenders: New Markets Credit, Low Income Housing Credit, Alternative Fuels Credit
- Extenders bill in House Ways & Means Committee
 - Did not address PTC extension (limited to R&D and other permanent proposals)
 - Has not closed the door on future extenders
- Application to solar



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