



FEDERAL TAX WEEKLY

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IRS Provides Guidance for Wind and Solar Facilities' "Beginning of Construction"

Notice 2025-42

The IRS has provided guidance regarding what is considered "beginning of constructions" for purposes of the termination of the Code Sec. 45Y clean electricity production credit and the Code Sec. 48E clean electricity investment credit. The One Big Beautiful Bill (OBBB) Act (P.L. 119-21) terminated the Code Secs. 45Y and 48E credits for applicable wind and solar facilities placed in service after December 31, 2027. The termination applies to facilities the construction of which begins after July 4, 2026. On July 7, 2025, the president issued Executive Order 14315, Ending Market Distorting Subsidies for Unreliable, Foreign-Controlled Energy Sources, 90 F.R. 30821, which directed the Treasury Department to take actions necessary to enforce these termination provisions within 45 days of enactment of the OBBB Act.

Physical Work Test

In order to begin construction, taxpayers must satisfy a "Physical Work Test," which requires the performance of physical work of a significant nature. This is a fact based test that focuses on the nature of the work, not the cost. The notice addresses both on-site and off-site activities. It also provides specific lists of activities that are to be considered work of a physical nature for both solar and wind facilities. Preliminary activities or work that is either in existing inventory or is normally held in inventory are not considered physical work of a significant nature.

Continuity Requirement

The Physical Work Test also requires that a taxpayer maintain a continuous program of construction on the applicable wind or solar facility, the Continuity Requirement. To satisfy the Continuity Requirement, the taxpayer must maintain a continuous program of construction, meaning continuous physical work of a significant nature. However, the notice provides a list of allowable "excusable disruptions," including delays related to permitting, weather, and acquiring equipment, among others.

The guidance also provides a safe harbor for the Continuity Requirement. Under the safe harbor, the Continuity Requirement will be met if a taxpayer places an applicable wind or solar facility in service by the end of a calendar year that is no more than four calendar years after the calendar year during which construction of the applicable wind or solar facility began. Thus, if construction begins on an applicable wind or solar facility on October 1, 2025, the applicable wind or solar facility must be placed in service before January 1, 2030, for the safe harbor to apply.

Five Percent Safe Harbor for Low Output Solar Facilities

A safe harbor is available for a low output solar facility, which is defined as an applicable solar facility that has maximum net output of not greater than 1.5 megawatt. A low output solar facility may also establish that construction has begun before July 5, 2026, by satisfying the Five Percent Safe Harbor (as described in section 2.02(2)(ii) of Notice 2022-61).

Additional Guidance

The notice provides additional guidance regarding: construction produced for the taxpayer by another party under a binding written contract; the definition of a qualified facility; the definition of property integral to the applicable wind or solar facility; the application

Fourth Security Summit Offers Tips on Multi-Factor IDs, IP PINs, and More

The Fourth IRS Security Summit offered reminders to tax professionals and companies about the IRS Identity Protection PIN (IP PIN) and IRS Online Accounts, which protect against tax-related identity theft. The IRS and the Security Summit recommend using multi-factor authentication (MFA) as a best practice and the federal requirement to safeguard taxpayers' sensitive information.

The Service is advising tax professionals and companies to implement MFA across all their services and data access points. MFA helps protect against phishing, social engineering, and other technological attacks that exploit weak or stolen passwords.

The "Protect Your Clients, Protect Yourself" summer series is part of an annual educational effort by the Security Summit, a group that includes tax professionals, industry partners, state tax agencies, and the IRS.

IR-2025-83

of the 80/20 rule to retrofitted applicable wind or solar facilities under Reg. §§1.45Y-4(d) and 1.48E-4(c); and the transfer of an applicable wind or solar facility.

Effective Date

Notice 2025-42 is effective for applicable wind and solar facilities for which the construction begins after September 1, 2025.

Tolling of Limitations Did Not Consider Location of Offenses

Gyetvay, CA-11 2025-2 USTC ¶150,215

The government's tolling order, issued during the investigatory period of the case, improperly suspended the statute of limitations. An individual taxpayer was charged with (1) preparing false tax returns under Code Sec. 7206; (2) tax evasion under Code Sec. 7201; and (3) willful failure to

file federal income tax returns under Code Sec. 7203.

The district court erred in suspending the limitations period. The government's tolling application did not indicate that evidence of the offenses was located in a foreign country. The lower court also did not find by a preponderance of evidence that the evidence of the offense was

abroad. The government's application did not identify Code Sec. 7203 as an offense. Consequently, these offenses were time-barred, and the appeals court reversed and vacated the taxpayer's sentence, and remanded for resentencing.

Affirmed in part, reversed in part, vacated and remanded in part an unreported DC Fla. decision.

Minority Shareholder and Corporation Established Good Cause To Add Disclosure Claims

Crow, DC Ida. 2025-2 USTC ¶150,213

An individual minority shareholder, employee, and director of a closely held

corporation, along with the corporation, established good cause to amend a complaint to add claims of alleged unlawful IRS disclosures in two additional Tax Court cases.

The District Court found that the new allegations arose from facts discovered during ongoing litigation and involved overlapping legal and factual issues with existing claims.

REFERENCE KEY

USTC references are to **U.S. Tax Cases**
Dec references are to **Tax Court Reports**

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The IRS filed pleadings in Tax Court that revealed the corporation's EIN, its location in the individual's residence, the individual's identity, work habits, and involvement in a promoter investigation. Some disclosure claims under Code Sec. 6103 had previously survived dismissal.

The Court denied the taxpayers' requests to expand claims tied to the original case, extend discovery deadlines, and obtain injunctive relief. It concluded that the plaintiffs failed to act diligently in raising new allegations for the original case. Further, the Court deemed the injunction request futile because the plaintiffs failed

to show a waiver of sovereign immunity. The Court bifurcated the case into liability and damages phases to address punitive damages only if liability is established. Finally, the Court ordered filing of an amended complaint, limited to the permitted claims.

West Virginia Victims of Severe Storms, Straight-line Winds, Flooding, Landslides, and Mudslides Granted Tax Relief

West Virginia Disaster Relief Notice (WV-2025-04)

The president has declared a federal disaster area in the state of West Virginia due to severe storms, straight-line winds, flooding, landslides, and mudslides that began on June 14, 2025. The disaster area includes Marion and Ohio counties.

Taxpayers who live or have a business in the disaster area may qualify for tax relief.

West Virginia Filing Deadlines Extended

The IRS extended certain deadlines falling on or after June 14, 2025, and on or before February 2, 2026, to February 2, 2026. This extension includes filing for most returns, including:

- individual, corporate, estate, and trust income tax returns;
- partnership and S corporation income tax returns;
- estate, gift, and generation-skipping transfer tax returns;

- the Form 5500 series returns;
- annual information returns of tax-exempt organizations; and
- employment and certain excise tax returns.

However, the extension does not include information returns in the Form W-2, 1094, 1095, 1097, 1098, or 1099 series or Forms 1042-S, 3921, 3922, or 8027.

West Virginia Payment Deadlines Extended

The relief includes extra time to make tax payments. This includes estimated tax payments due on June 16, September 15, 2025, and January 15, 2026. Taxpayers have until February 2, 2026, to perform other time-sensitive actions due on or after June 14, 2025, and on or before February 2, 2026.

The IRS excused late penalties for employment and excise tax deposits due on or after June 14, 2025, and before June 30, 2025. But the taxpayer must make the deposits June 30, 2025.

Casualty Losses

Affected taxpayers can claim disaster-related casualty losses on their federal income tax return. Taxpayers may obtain relief by claiming their losses on their 2024 or 2025 return. Individuals may deduct personal property losses not covered by insurance or other reimbursements.

Taxpayers claiming a disaster loss on their 2024 or 2025 return should write the assigned FEMA declaration number: **"FEMA 4884-DR"** at the top of the return. This will allow the IRS to speed refund processing.

The IRS will provide affected taxpayers with copies of prior year returns without charge. To obtain this expedited service, taxpayers should:

- add the disaster designation at the top of Form 4506, Request for a Copy of Tax Return, or Form 4506-T, Request for Transcript of Tax Return; and
- submit it to the IRS.

IRS Issues Filing Reminders for Heavy Highway Vehicle Use Tax

Tax Tip—2025-56

The IRS is reminding taxpayers about upcoming deadlines for the Heavy Highway Vehicle Use Tax, an annual excise tax on certain large vehicles operating on public highways. The current tax period

runs from early July through the end of the following June, and the due date for filing depends on when the vehicle is first used during that period. Vehicles placed in service later in the year generally have a prorated tax amount based on the months they are in use. Even when a vehicle is

expected to stay within the mileage limit for the year, a return must still be filed, though no payment is required unless the limit is exceeded.

The IRS encourages taxpayers to use electronic filing through its approved e-filing system, which provides faster

confirmation. E-filing is required for taxpayers reporting 25 or more vehicles in their name. Filers should ensure that all details are accurate to receive a stamped Schedule 1, which serves

as proof of payment when registering vehicles.

Helpful resources are available to guide truck owners and operators through the process, offering information on deadlines,

filing methods, and special rules for certain vehicles. By staying informed and filing on time, taxpayers can avoid penalties and maintain smooth compliance with their federal tax responsibilities.

Washington Round-up

More education needed for adoption credit. The Government Accountability Office, in a recent report, stated that the Internal Revenue Service “does not have an educational plan to help ensure that its outreach and communication efforts for the adoption tax credit are effective.” The government watchdog noted that the IRS has developed the materials regarding the adoption tax credit “but has not consistently provided the information to key adoption stakeholders, such as state agencies.” The report stated that the IRS agreed with the recommendation that a comprehensive outreach plan be developed, adding that “the enactment of changes to the credit, specifically making up to \$5,000 refundable, present an opportunity to expand its communication efforts.”

IRS discontinues self-assistance kiosks at TAC. The Treasury Inspector General for Tax Administration noted in an August 8, 2025, report that in April 2024, the Internal Revenue Service had 100 self-assistance kiosks located in 37 Taxpayer Assistance Centers, but only 55 were operable. The report noted that 40 were inoperable and the status of 5 was unknown. The contractor hired to service the kiosks was slow to respond to issues, TIGTA reported, adding that the IRS did not renew the

contractor’s \$500,000 annual contract in 2025 and was discontinuing the kiosk program. “While we support the IRS’s decision to discontinue the current kiosk program, we believe that offering taxpayers a self-service option could be beneficial as the IRS reduces and restructures its workforce.” TIGTA recommended the IRS study “whether a new kiosk program that uses updated technology, or deploys laptops to TACs, would provide effective and efficient self-service options to taxpayers.” The IRS agreed with this recommendation, the Treasury watchdog reported.

IRS takes meaningful step to sharing Appeals Case Memoranda with Taxpayers. The Internal Revenue Service has taken a “meaningful step toward transparency and a welcome step for taxpayer rights” when it recently issued internal guidance that appeals staff “should share ACMs [Appeals Case Memoranda] with taxpayers upon an informal request,” National Taxpayer Advocate Erin Collins wrote in an August 12, 2025, blog post. The appeals staff were reminded that “ACMs are not fully exempt from disclosure and that taxpayers may request them informally.” Collins noted that she is continuing to advocate for automatic disclosure of ACMs in every case. She

also called for a system to track ACM fulfillment and establish “clear metrics to monitor compliance, including how often taxpayers request ACMs, how often Appeals share them, and whether Appeals is applying redactions appropriately.” Collins emphasized that redaction needs to be monitored because “excessive redaction defeats the purpose of this policy.” She also called for education to ensure taxpayers know they can ask for a copy of the ACM.

AICPA seeks guidance on small business R&D expenditures. The American Institute of CPAs is requesting the Internal Revenue Service issue guidance related to domestic research and development expenditures. “We recommend that guidance provides the ability for eligible small business taxpayers ... to immediately deduct, on their 2024 originally filed income tax returns, domestic research costs paid or incurred in taxable years beginning in 2024,” the organization said in a July 31, 2025, letter to the agency. A copy of this and other 2025 AICPA tax policy and advocacy comment letters can be found at <https://www.aicpa-cima.com/advocacy/article/2025-tax-policy-and-advocacy-comment-letters>.

TAX BRIEFS

Disaster Relief

A July 9, 2025, notice granting relief to victims of severe storms, straight-line winds, and flooding that began on July 2, 2025, in parts of Texas was updated by the IRS on July 11, 2025, to include Edwards, Lampasas, Real, Reeves, Schleicher, and Sutton counties.

Texas Disaster Relief Notice (TX-2025-04)

Whistleblower

The Court of Federal Claims properly concluded it lacked jurisdiction to review a whistleblower’s Code Sec. 7623(a) claim. Code Sec. 7623(a) and its implementing regulations are not money-mandating. Therefore, there was no basis for the Court of Federal Claims to review

the whistleblower’s case under the Tucker Act.

McCrory, CA-FC, 2025-2 ustrc ¶150,211

An individual was not entitled to a whistleblower award under Code Sec. 7623(b) after the Tax Court determined that the IRS had already identified and

investigated the issues before receiving the person's information.

[*Whistleblower 20442-18W, TC, Dec. 62,703\(M\)*](#)

[*Tax-Exempt Organizations*](#)

Two organizations were denied tax-exempt status for not operating

exclusively for exempt purposes under Code Sec. 501. In the first case, the organization was operated to benefit the private interests of organizations members, promoting businesses, and acting in a commercial manner. In the second case, the organization operated to benefit private interest of members which was

contrary to exemption under Code Sec. 501(c)(3).

[*IRS Letter Ruling 202533010; IRS Letter Ruling 202533011*](#)