

# United States Senate

WASHINGTON, DC

April 23, 2020

The Honorable Steven T. Mnuchin  
Secretary of the Treasury  
U.S. Department of the Treasury  
1500 Pennsylvania Avenue NW  
Washington, DC 20220

Secretary Mnuchin,

As the ongoing COVID-19 crisis continues to claim lives and cause economic disruption and uncertainty, it is vital that the government take whatever reasonable steps possible to allay unforeseen burdens on American families and businesses. In that spirit, we urge you to extend the continuity safe harbor, provided under existing Treasury Department guidance, for both the production tax credit (PTC) and energy investment tax credit (ITC), from four years to five years for projects that started construction in 2016 or 2017. This modest adjustment to the PTC and ITC guidance would help preserve tens of thousands of jobs and billions of dollars in investments and provide some certainty in these challenging times.

Under current law, taxpayers seeking to claim a PTC for electricity produced from qualifying facilities or an ITC for qualifying energy property must generally begin construction of the qualifying facility or property by specified dates.<sup>1</sup> Under current Internal Revenue Service (IRS) guidance, a taxpayer is treated as having begun construction by starting physical work of a significant nature or, alternatively, by satisfying safe harbor requirements by incurring 5 percent or more of the total cost of the facility or property.<sup>2</sup> The taxpayer must then demonstrate continuous efforts to complete construction and can be deemed to satisfy this requirement if the facility or property is placed in service within four years (“continuity safe harbor”).<sup>3</sup> These safe harbors provide certainty and flexibility to taxpayers, and prevent costly and unnecessary disputes over the various facts and circumstances related to the financing, permitting, and construction of energy facilities.

In addition to its severe toll on human lives, the COVID-19 crisis has disrupted supply chains, construction operations, and permitting timelines, delaying projects otherwise on track to be in operation by the end of 2020. While existing IRS guidance provides certain exceptions for specified setbacks in construction, these exceptions do not anticipate nor fully capture the wide-ranging interruptions now faced by developers. Providing a temporary extension of the continuity safe harbor of five years, in lieu of the current four, would address the unforeseen interruptions developers are experiencing due to COVID-19 and provide the certainty businesses need to move forward with existing projects.

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<sup>1</sup> See, e.g., IRC § 45(b)(5), § 45(d), § 48(a)(2)-(7), and § 48(c).

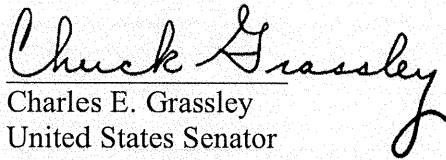
<sup>2</sup> IRS Notice 2013-29, 2018-59.


<sup>3</sup> IRS Notice 2016-31, 2018-59.

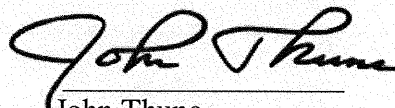
As Congress and the Administration continue to work to provide relief and assistance to Americans grappling with fallout of COVID-19, this simple modification would provide significant benefits to an important and growing sector of the American economy.

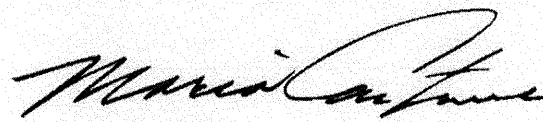
We appreciate your time and attention to this important matter and look forward to your prompt response.

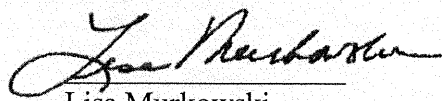
Sincerely,

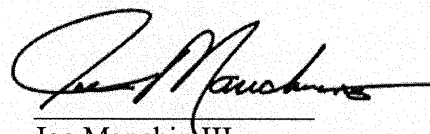
  
Charles E. Grassley  
United States Senator

  
Ron Wyden  
United States Senator

  
John Thune  
United States Senator

  
Maria Cantwell  
United States Senator

  
Lisa Murkowski  
United States Senator

  
Joe Manchin III  
United States Senator



DEPARTMENT OF THE TREASURY  
WASHINGTON, D.C. 20220

May 7, 2020

The Honorable Charles E. Grassley  
Chairman  
Committee on Finance  
United States Senate  
Washington, DC 20510

Dear Chairman Grassley:

I write in reply to your April 23, 2020 letter regarding the continuity safe harbor provided under existing Department of the Treasury guidance for the production tax credit (PTC) and energy investment tax credit (ITC). The Department of the Treasury appreciates your concern and plans to modify the relevant rules in the near future.

If you have further questions, please direct your staff to contact the Office of Legislative Affairs.

Sincerely,

Frederick W. Vaughan  
Principal Deputy Assistant Secretary  
Office of Legislative Affairs

cc: The Honorable Ron Wyden  
The Honorable John Thune  
The Honorable Maria Cantwell  
The Honorable Lisa Murkowski  
The Honorable Joe Manchin III