

Webinar powered by

Clean Energy Associates

23 September 2020

5 PM – 6 PM | CEST, Berlin

10 AM – 11 AM | CDT, Mexico City

11 AM – 12 PM | EDT, New York



Tim Sylvia

Editor | pv magazine USA



Is your company capturing the 2020 safe harbor?



Paul Wormser

Vice President, Technology | CEA



Elias Hinckley

Partner | K&L Gates

The logo for K&L GATES, featuring the text in white on an orange rectangular background. The background of the slide is a colorful, abstract pattern of diagonal lines in shades of red, orange, yellow, green, blue, and purple.

K&L GATES

September 23, 2020

ITC Safe Harbor Strategies

Elias Hinckley

How does construction begin?

- Two tests
 - 5% safe harbor
 - Significant physical work
- Key point: Taxpayers must have a plan, some materials, and some skin in the game in 2020

Basic 5% Safe Harbor (Type A)

- How does it work?
 - Key measurement: (at least) 5% of total cost of qualified equipment must be spent in Beginning Year
 - Buyer pays Supplier 5% of total cost of ITC-qualified equipment in Beginning Year
 - 3.5 months rule
 - Transfer of title (risk of loss?)
 - Delivery vs storage?
 - Tracking
 - Liquidated Damages

Significant Physical Work

- How does it work?
 - Key measurement: material amount of physical work unique to specific project is completed in Beginning Year
 - Physical work required: design, raw material procurement, permitting, site preparation, and similar preliminary work is not enough
 - Property must be an integral component of an ITC-qualified facility; only a portion of component must be complete by year end
- Focus is on activity; no monetary threshold

Significant Physical Work

- Work can be onsite or offsite
- Onsite
 - Installation of components
 - Preparation unique for installation (not site prep)
- Offsite
 - Property must be custom for the facility--not inventory or property typically held in inventory
 - Some of the property should be manufactured from raw materials before end of Beginning Year

Significant Physical Work

- Work can be done by supplier (or supplier's vendor)
- Binding written contract
 - Clearly describe components ordered
 - Intent to qualify for beginning of construction
 - 5% of contract price must be unconditional
 - Preferable to have 5% paid in Beginning Year
 - Transfer provisions are okay
- Documentary proof
 - Photos
 - Receipts

Hybrid: Type B 5% Safe Harbor

- How does it work?
 - Taxpayer and Vendor enter into a binding written contract (as described above)
 - Then Vendor pays or incurs 5% of taxpayer's total cost of ITC-qualified equipment in Beginning Year under the contract
- Work done by Vendor or subcontractor
- Cost of Vendor's preliminary activities, e.g., design and materials procurement, qualifies

Transfers and Continuity Requirement

- Generally ok if selling project
- Selling only equipment required ongoing role by seller
- Continuous efforts/construction

Questions?

Elias Hinckley

202-778-9091

Elias.Hinckley@klgates.com