

Part III - Administrative, Procedural, and Miscellaneous

Credit for Carbon Dioxide Sequestration under Section 45Q

Notice [XXXX-XX]

SECTION 1. PURPOSE

This notice sets forth interim guidance, pending the issuance of regulations, relating to the credit for carbon dioxide sequestration (CO₂ sequestration credit) under § 45Q of the Internal Revenue Code. The Internal Revenue Service (Service) and the Treasury Department (Treasury) expect that the regulations will incorporate the rules set forth in this notice.

SECTION 2. BACKGROUND

.01 Section 45Q was enacted by § 115 of the Energy Improvement and Extension Act of 2008, Pub. L. No. 110-343, 122 Stat. 3829 (October 3, 2008). Section 45Q(a) provides that the CO₂ sequestration credit is available for qualified carbon dioxide (CO₂) that has been captured, disposed of by a taxpayer in secure geological storage within the U.S. and not used by the taxpayer as a tertiary injectant in a qualified enhanced oil or natural gas recovery project (EOR project), or used by a taxpayer as a

tertiary injectant in an EOR project, and disposed of by a taxpayer in secure geological storage within the U.S. Taxpayers who capture not less than 500,000 metric tons of CO₂ in a taxable year beginning after October 3, 2008, and meet all of the other requirements of § 45Q are eligible to claim the credit.

.02 Credit Amount. Section 45Q(b) provides that a taxpayer may claim a credit for any taxable year in an amount equal to the sum of:

(a) \$20 per metric ton of qualified CO₂ that is captured by the taxpayer at a qualified facility and disposed of by the taxpayer in secure geological storage and not used by the taxpayer as a tertiary injectant in an EOR project; and

(b) \$10 per metric ton of qualified CO₂ that is captured by the taxpayer at a qualified facility, used by the taxpayer as a tertiary injectant in an EOR project, and disposed of by the taxpayer in secure geological storage.

.03 Credit Amount Adjusted for Inflation. Section 45Q(d)(7) provides that for taxable year beginning in a calendar year after 2009, there shall be substituted for each dollar amount contained in § 45Q(a) an amount equal to the product of:

(a) such dollar amount, multiplied by

(b) the inflation adjustment factor for such calendar year determined under § 43(b)(3)(B) for such calendar year, determined by substituting “2008” for “1990”.

.04 Credit Recapture. Section 45Q(d)(6) provides for a recapture of the benefit of any credit allowable under §45Q(a) with respect to any qualified CO₂ that ceases to be captured, disposed of, or used as a tertiary injectant in a manner consistent with the requirements of §45Q.

SECTION 3. DEFINITIONS

.01 Qualified Carbon Dioxide. The term “qualified carbon dioxide” refers to CO₂ captured from an industrial source that would otherwise be released into the atmosphere as industrial emission of greenhouse gas, and is measured at the source of capture and verified at the point of disposal or injection.

.02 Qualified Enhanced Oil or Natural Gas Recovery Project. The term “qualified enhanced oil or natural gas recovery project” or EOR project means any project –

(a) which involves the application (in accordance with sound engineering principles) of 1 or more tertiary recovery methods (as defined in section 193(b)(3) of the Internal Revenue Code) which can reasonably be expected to result in more than an insignificant increase in the amount of crude oil or natural gas which will ultimately be recovered;

(b) which is located within the United States (within the meaning of section 638(1) of the Internal Revenue Code); and

(c) with respect to which the first injection of liquids, gases, or other matter commences after December 31, 1990.

.03 Qualified Facility. The term “qualified facility” refers to an industrial facility that is owned by the taxpayer, at which carbon capture equipment is placed in service, and captures not less than 500,000 metric tons of qualified CO₂ during the taxable year.

.04 Industrial Facility. Industrial facility refers to a facility that emits anthropogenic CO₂ as a by-product of its industrial activities such as manufacturing, construction and mining.

SECTION 4. CO₂ SEQUESTRATION CREDIT

.01 Credit Attributable to Taxpayer. (i) CO₂ sequestration credit is attributable to a person that owns an industrial facility at which carbon capture equipment is placed in service, and captures not less than 500,000 metric tons of CO₂ during the taxable year. The person eligible to claim the credit must physically or contractually ensure that CO₂ is permanently stored in a geologic formation including where such CO₂ is captured and transported for use in an EOR project. A person that buys the captured CO₂ at the point of transit or disposal is not eligible under § 45Q because that person does not own the industrial facility.

(ii) Examples. (a) X owns an industrial facility and releases into the atmosphere CO₂ as a byproduct of its operation. Y, oil company, installs carbon capture equipment at the facility. Y purchases the captured CO₂ from X and transports it in a pipeline to Y's oil fields. Y contractually agrees to use the CO₂ as a tertiary injectant in an EOR project, and thereafter dispose of the CO₂ in a secure geological storage within the meaning of section 5 of this notice. Y measures the CO₂ at the source of capture and verifies at the point of injection. During the taxable year beginning on January 1, 2009, more than 500,000 metric tons of CO₂ is captured at X's facility, and used as a tertiary injectant in Y's oil fields.

(b) CO₂ captured from X's facility is qualified CO₂ for purposes of § 45Q(a) because the CO₂ would otherwise be released into the atmosphere as industrial emission of greenhouse gas, and is measured at the source of capture and verified at the point of disposal or injection. Therefore, the credit under § 45Q is attributable to X

because it owns the industrial facility at which carbon capture equipment is placed in service, and it contractually ensures the use of the qualified CO₂ as a tertiary injectant in an EOR project, and the disposal of the qualified CO₂ in a secure geological storage.

.02 Carbon Dioxide Measured by Volume. For the purpose of calculating the CO₂ sequestration credit, a metric ton of CO₂ includes only the contained weight of the CO₂. The weight or volume of any other substances, such as water or impurities, is not included in the calculation. To illustrate, if a metric ton of a substance that is bought and sold as “CO₂” is 95 percent pure CO₂, then for purposes of the CO₂ sequestration credit, 1.0526 tons of the 95 percent pure substance is considered one metric ton of CO₂.

.03 Credit Allocation Among Qualified Facility Owners. Eligibility for the § 45Q credit is based on the total amount of CO₂ captured, disposed of, and not used by the taxpayer in an EOR project, or captured and used by a taxpayer in an EOR project during a taxable year subject to the following:

(a) If the qualified facility is owned by a partnership that has not made a valid election under § 761(a), the partnership will be considered the taxpayer for the purposes of this notice. In such cases, the credit under § 45Q must be allocated in accordance with § 1.704-1(b)(4)(ii).

(b) If the qualified facility is owned by a partnership that has made a valid § 761(a) election, then each partner in the partnership will be considered the taxpayer for purposes of this notice. In such case, the taxpayer may claim the credit under § 45Q in accordance with its portion of the total amount of qualified CO₂ that is commensurate

with its undivided ownership of the qualified facility.

.04 Denial of Credit for Projects under 48A& B. Qualified CO₂ for purposes of § 45Q does not include CO₂ that are captured and sequestered in a project pursuant to a closing agreement executed with the Service under the qualifying advanced coal project program of § 48A or the qualifying gasification project program of § 48B.

.05 Credit Termination. Pursuant to § 45Q(e), at such time as the Service determines that 75,000,000 metric tons of qualified CO₂ have been taken into account for purposes of the § 45Q credit, the Service will publicly announce that the § 45Q credit will cease to be available for the calendar year following such announcement.

SECTION 5. SECURE GEOLOGICAL STORAGE

.01 In General. In order to qualify for the § 45Q credit, a taxpayer must either physically or contractually dispose of the captured CO₂ in secure geological storage. Section 45Q(d)(2) provides that the Secretary in consultation with the Administrator of the Environmental Protection Agency, the Secretary of Energy, and the Secretary of the Interior shall establish regulations for determining adequate security measures for the geological storage of CO₂ such that the captured CO₂ does not escape into the atmosphere. The term “secure geological storage” includes storage at deep saline formations, oil and gas reservoirs, and unminable coal seams.

.02 Compliance with Federal Requirements for Secure Geological Storage. In 2008, EPA issued proposed rules regarding CO₂ geological storage wells under its Underground Injection Control (UIC) program. The UIC program was established under the authority of Part C of the Safe Drinking Water Act (SDWA)(42 U.S.C. 300h et seq.)

which regulates underground injection wells. The SDWA is designed to protect the quality of drinking water sources in the United States. The SDWA gives the EPA authority to issue regulations for state programs that contain “minimum requirements for effective programs to prevent underground injection which endangers drinking water sources.” Under the UIC program, the EPA promulgated a series of regulations (40 CFR parts 144 through 148) to employ a multiple barrier approach that includes requirements for the proper geologic siting, construction, operation and testing, and closure of injection wells to ensure that injected fluids remain isolated from USDWs and the environment.

On July 25, 2008, the EPA proposed rules relating to federal requirements under the UIC Program for CO₂ Geologic Sequestration (GS) Wells (73 Fed. Register No. 144, 40 C.F.R. Parts 144-146). The EPA proposes to create a new category of injection well (Class VI) under its existing UIC Program with new federal requirements to permit the injection of CO₂ for the purpose of GS (*i.e.*, the long-term containment of a gaseous, liquid or supercritical CO₂ stream in subsurface geologic formations). The EPA proposes to tailor existing UIC program components to create standards appropriate for injecting large volumes of CO₂ into a variety of geological formations to ensure that USDWs are not endangered.

Until further guidance is provided by the Service, taxpayers must follow the requirements of the EPA’s UIC program (proposed or final rules, if applicable) regarding the adequate security measures for geological storage of CO₂.

.03 Compliance with Other Regulatory Requirements. In addition to the

compliance requirement under sections 5.01 and 5.02 of this Notice, taxpayers must ensure that the underground injection of qualified CO₂ in secure geological storage meet the requirements of any existing or future guidance from government bodies, including EPA's regional or State UIC program that are applicable to the taxpayer's disposal of CO₂. All aspects of GS, including well construction, operation, well plugging, and post-injection site closure must also meet any additional Federal or State requirements.

SECTION 6. REPORTING REQUIREMENTS

.01 Annual Reports. A taxpayer that has claimed the § 45Q credit on a tax return must submit to the Service a report containing the following information:

- (a) The name, address, and taxpayer identification number of the reporting taxpayer;
 - (b) The name and location of the qualified facility at which the CO₂ was captured;
 - (c) The amount (in metric tons) of qualified CO₂ that was taken into account for purposes of § 45Q credit;
 - (d) The amount of § 45Q credit claimed on the most recent tax return;
 - (e) Any change in the information contained in previous reports submitted under section 6 of this notice, including the amount (in metric tons) of qualified CO₂;
 - (f) If applicable, a copy of the most recent Form 8933 that was filed with the IRS;
- and
- (g) A declaration, applicable to the report and any accompanying documents, signed by a person currently authorized to bind the taxpayer in these matters, in the

following form:

“Under penalties of perjury, I declare that I have examined this report, including accompanying documents, and to the best of my knowledge and belief, the facts presented in support of this report are true, correct, and complete.”

.02 Time for Filing Reports. A report of the amount of qualified CO₂ that was taken into account by the taxpayer for purposes of claiming the § 45Q credit must be filed with the Service at the address specified in section 7.03 of this notice not later than the last day of the second calendar month following the month the § 45Q credit was claimed in a tax return.

.03 Address for Filing. The report required under section 7.01 of this Notice must be submitted to:

Internal Revenue Service
Industry Director, Natural Resources and Construction
Attn: Executive Assistant
1919 Smith Street
Stop HOU 1000
Houston, TX 77002

SECTION 7. RECORDKEEPING REQUIREMENT

.01 In General. A taxpayer is not required to attach documentation to the return on which the credit is claimed. However, § 6001 of the Internal Revenue Code provides that every person liable for any tax imposed by the Code, or for the collection thereof, must keep such records, render such statements, make such returns, and comply with such rules and regulations as the Secretary may from time to time prescribe. The books and records required by § 6001 must be kept at all times available for inspection

by authorized internal revenue officers or employees, and must be retained so long as the contents thereof may become material in the administration of any internal revenue law. Section 1.6001-1(e) of the Procedure and Administration Regulations.

.02 Information Must Be Available for Inspection. The taxpayer must retain in its records documentation establishing that the taxpayer qualifies for the credit under § 45Q. The taxpayer must, upon request, make such documentation available for inspection by the Service. Such necessary documentations include, but are not limited to, the following:

- (i) Amount of CO₂ measured at the source of capture;
- (ii) Amount of CO₂ measured at the point of disposal or injection (regardless of whether the taxpayer physically or contractually ensures the disposal); and
- (iii) Evidence of disposal of captured CO₂ in secure geological storage such that the CO₂ does not escape into the atmosphere. Such evidence may include any certificate or determinations by a government of the state or federal that the geological storage meets the necessary requirements applicable to the storage. A taxpayer must show evidence in the form of determinations or permits from applicable government bodies to demonstrate that the GS is functioning and continues to operate with adequate security measures such that the CO₂ does not escape into the atmosphere.

SECTION 8. PAPERWORK REDUCTION ACT

The collection of information contained in this notice has been reviewed and approved by the Office of Management and Budget in accordance with the Paperwork Reduction Act (44 U.S.C. § 3507) under control number 2009-XXXX.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number.

The collections of information in this notice are in section 7 of this notice. This information is required to determine the amount of qualified CO₂ that has been taken into account for purposes of the § 45Q credit. This information will be used by the Service to verify that the taxpayer claiming the credit has met the requirements under § 45Q. This collection of information is required to obtain a benefit. The likely respondents are businesses or other for-profit institutions.

The estimated total annual reporting burden is 180 hours.

The estimated annual burden per respondent varies from 2 to 10 hours, depending on individual circumstances, with an estimated average of 6 hours. The estimated number of respondents is 30.

The estimated annual frequency of responses is semi-annually.

Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. § 6103.

SECTION 9. DRAFTING INFORMATION

The principal author of this notice is Jennifer C. Bernardini of the Office of Associate Chief Counsel (Passthroughs & Special Industries). For further information regarding this notice contact Jennifer C. Bernardini on (202) 622-3110 (not a toll-free

call).