

The 45Q Carbon Capture and Storage Tax Credit: Calling on the IRS for Increased Transparency and Accountability

The Internal Revenue Service (IRS) is currently deliberating guidance for the expanded 45Q Carbon Oxide Sequestration tax credit, which has recently increased in both credit amount and availability as stipulated in the Inflation Reduction Act.

Taxpayers are concerned that despite billions of taxpayer dollars in subsidies, carbon capture has failed to deliver tangible climate impacts and has instead further incentivized the production of oil and gas. The captured carbon is predominantly used to extract additional oil and gas from well sites, thereby increasing our reliance on fossil fuel systems and raising concerns within communities nationwide. Taxpayers and communities find themselves forced to subsidize carbon capture and storage initiatives without any clear, transparent, or accountable results.

In response to the 45Q expansion, more than 10,000 Concerned Citizens signed a petition demanding taxpayer protections be included in the new 45Q rule.

History of Non-Compliance with the 45Q

The 45Q tax credit has a documented history rife with instances of fraud and abuse. A substantial portion of the 45Q tax credits claimed between 2010 and 2019 were based on inadequate reporting. Merely 10 taxpayers accounted for over \$1 billion in 45Q credits, constituting approximately 99% of the total credits claimed during that period. Alarming, \$894 million—nearly 90% of the credits claimed—failed to comply with EPA reporting requirements.

Strengthening Taxpayer Protections

The IRS must implement robust compliance and anti-fraud measures to safeguard taxpayer funds. The petition calls on the IRS to, at minimum:

- ✓ ***Require an independent third party to verify the amount of carbon companies are claiming credits for capturing and storing.***

Under current rules, the IRS predominantly relies on carbon tonnage reported to the EPA by facility operators, which means that the IRS itself does not perform any physical verification of the captured, sequestered, or utilized carbon. Enhanced Oil Recovery (EOR) sites compliant with EPA subpart RR regulations are permitted to self-certify their reported volumes, wherein a company official attests to the veracity of the volume figures reported to the IRS. Alternatively, an EOR operator could adhere to a different international carbon reporting standard and then attach a similar statement by an independent engineer or geologist, asserting that the carbon figures are correct. Given the absence of on-site verification by either the IRS or the EPA, the accuracy of the data reported to the IRS warrants scrutiny. Independent third-party validation engenders a higher

degree of confidence in data reliability—a practice successfully implemented in other contexts such as the California Air Resources Board’s (CARB) mandate for third-party verification of greenhouse gas emissions data reports.

- ✓ ***Audit the data companies submit and make a summary of that data available to the public in a timely manner.***

Following the noncompliance inquiry into the 45Q tax credit, the Treasury Inspector General of Tax Administration recommended that the IRS contemplate a campaign or special initiative to scrutinize every taxpayer that claimed the credit to preclude future instances of waste, fraud, and abuse. The IRS should set clear guidance for audits of reported data on carbon volumes, MRV reports, and related documents to maintain public trust in the program’s administration.

Moreover, the IRS should ensure public access to data concerning aggregate sequestered amounts and credits claimed in a timely manner. This disclosure ought to safeguard confidential business information while enabling stakeholders to evaluate the credibility of purported carbon sequestration activities, increasing transparency and accountability of the 45Q program.

- ✓ ***Require companies to keep these records as long as they're claiming the tax credits so the IRS can claw back credits in case any stored carbon gets leaked.***

Presently, qualified facilities claiming the 45Q credit are obligated to retain data on stored or injected carbon for a mere three years, during which the IRS is authorized to recapture 45Q credit benefits if stored or injected carbon leaks. Considering that facilities are eligible to claim the credit for a span of 12 years, a three-year recapture period may be insufficient to hold facilities accountable for secure storage while they reap financial benefits from the tax credit. Moreover, a recapture period of merely three years may fail to account for the long-term liabilities associated with carbon storage.

Increasing Transparency and Accountability

With an absence of robust compliance and anti-fraud measures, the IRS will be unable to shield taxpayers and communities nationwide from heightened pollution, hazardous infrastructure, and financial mismanagement. Consequently, taxpayers and communities will have no choice but to keep supporting the fossil fuel industry without any clear, transparent, and accountable outcomes.