April 10, 2025

Re: Comments to the Department of the Treasury and the Internal Revenue Service (IRS) on Section 45Z Clean Fuel Production Credit, Request for Public Comments (Notice 2025-10), and Emissions Rates, Request for Comments (Notice 2025-11); Docket Number IRS-2025-0002

Dear Secretary Bessent:

Taxpayers for Common Sense (TCS) appreciates the opportunity to submit comments to the Department of the Treasury and the Internal Revenue Service (IRS) in response to "Section 45Z Clean Fuel Production Credit, Request for Public Comments (Notice 2025-10), and Emissions Rates, Request for Comments (Notice 2025-11); Docket Number IRS-2025-0002," published on January 10, 2025. We write to address the implementation of the Clean Fuel Production Credit (Section 45Z), established in the Inflation Reduction Act of 2022 (IRA).

The Clean Fuel Production Credit was created as a technology-neutral incentive to support the production of transportation fuels with low or zero greenhouse gas (GHG) emissions. Designed as a sliding scale, the credit increases in value as a fuel's carbon intensity decreases. As the IRS notes, Section 45Z was intended to replace a set of expiring tax incentives for biodiesel, renewable diesel, and several alternative fuels—including compressed natural gas and second-generation biofuel—that sunset at the end of 2024.

After the IRA's passage, the Joint Committee on Taxation (JCT) estimated the Clean Fuel Production Credit would cost taxpayers $2.946 billion over the credit's lifetime.[1] The U.S. Department of Treasury estimated even higher costs—$16.57 billion.[2]

The draft text of the forthcoming proposed regulations—contained in the appendix of the IRS's Request for Public Comments—would greatly increase the scope and cost of the 45Z tax credit. The draft text would expand the eligibility for transportation fuels by weakening carbon intensity

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[1] Joint Committee on Taxation (JCT), "Estimated Budget Effects of the Revenue Provisions of Title I - Committee on Finance of an Amendment in the Nature of a Substitute to H.R. 5376," July 28, 2022. https://www.finance.senate.gov/imo/media/doc/7.29.22%20Estimate%20of%20Manchin%20Schumer%20agreement.pdf.

[2] U.S. Department of Treasury, "Tax Expenditures Fiscal Year 2026," November 27, 2024. https://home.treasury.gov/system/files/131/Tax-Expenditures-FY2026.pdf

reduction requirements and introducing additional pathways for eligibility, including using certain climate smart agriculture (CSA) practices. The broadened eligibility would also allow more biofuels to be eligible for the credit, carrying significant costs for consumers as biofuel production has been documented to increase food and feed prices.

Our nation is facing a fiscal crisis. The national debt has surged past $36 trillion, greater than 120 percent of the country's annual economic output and the highest it has been since the end of World War II. [3] This year alone, American taxpayers will shoulder a $1 trillion burden just to service this debt—a cost that will continue to grow. The draft text would expand the 45Z tax credit beyond what is required by law, leaving taxpayers to shoulder increasingly higher costs. We urge the IRS to take all actions necessary to limit the cost of the 45Z credit and ensure strict implementation to avoid waste, fraud, and abuse.

Expansion of Sustainable Aviation Fuel Sub-Credit Eligibility

Taxpayers for Common Sense believes the IRS should not allow use of the GREET model in determining sustainable aviation fuel carbon intensity, as it will expand eligibility of the 45Z tax credit beyond what is required by statute, further increasing taxpayer costs and liabilities.

The GREET model is not mandated by law. Under statute, the IRS may only consider alternative lifecycle GHG emission methodology for calculating sustainable aviation fuel carbon intensity for the 45Z tax credit that is "similar" to the Carbon Offsetting and Reduction Scheme for International Aviation (CORSIA) model. Specifically, current law stipulates that GHG emissions of sustainable aviation fuel must be determined in accordance with the most recent CORSIA model that has been adopted by the International Civil Aviation Organization (ICAO), or "any similar methodology which satisfies the criteria under section 211(o)(1)(H) of the Clean Air Act," which governs the Renewable Fuel Standard (RFS) GHG emission factors. However, seemingly contrary to this directive, the IRS is proposing in its draft text to allow use of another emissions calculation model that will increase the scope and cost of the 45Z tax credit by expanding eligibility to fuels with higher emissions.

While use of the GREET model is mandated by Congress for non-aviation fuels, the latest guidance also allows its use in determining the emissions rate for sustainable aviation fuel. We urge the IRS to determine that the GREET model is not similar to the CORSIA model, as it relies on different underlying methodology and assumptions. If the use of the GREET model is allowed, more fuels will qualify for the 45Z tax credit. For example, ICAO documentation shows that corn grain-based fuels fail to reduce emissions by required amounts within IRA, whereas the GREET model will likely allow

[3] "Federal Debt: Total Public Debt as Percent of Gross Domestic Product (GFDEGDQ188S)," Federal Reserve Bank of St. Louis, accessed April 7, 2025. https://fred.stlouisfed.org/series/GFDEGDQ188S

such feedstock sources.[4] The IRS can minimize taxpayer costs and liabilities by not creating a new loophole and instead requiring use of the CORSIA model.

Taxpayers for Common Sense also believes the IRS should not allow RFS biofuel GHG emission factors to replace the CORSIA model in determining sustainable aviation fuel carbon intensity, as it would similarly expand eligibility of the 45Z tax credit and increase the overall costs and liabilities to taxpayers.

In the draft text, the IRS has left open the possibility that RFS biofuel GHG emission factors in the Clean Air Act could replace Congress's directive that the carbon intensity scores of eligible biofuels be at least as strict as the CORSIA model. GHG emission calculations for the RFS are not substantially similar to CORSIA model. For example, the RFS final rule utilized the Forest and Agricultural Sector Optimization Model (FASOM) and Food and Agricultural Policy Research Institute-Center for Agricultural and Rural Development (FAPRI-CARD) models to calculate indirect land use change and biofuels' resulting GHG emissions factors,[5] which are different from models utilized by ICAO. Additionally, the RFS biofuel lifecycle GHG emission values were calculated prior to the 2010 final rulemaking—more than 15 years ago—and should not be considered similar to more recent data utilized in the most recent CORSIA model. If the use of RFS calculations is allowed, more fuels will likely qualify for the 45Z tax credit, increasing costs and liabilities for taxpayers.

Expansion of Eligibility Through Climate Smart Agriculture (CSA) Practices

Taxpayers for Common Sense urges the IRS to be cautious in considering the use of climate smart agricultural (CSA) production practices in calculating eligibility for the 45Z tax credit. Any CSA guidelines must be rigorous, transparent, and well-documented to ensure practices result in tangible benefits for taxpayers, consumers, and communities.

The draft text proposed by the IRS would open the door to future adjustments to GHG emissions calculations models, allowing for significant carbon intensity credits to be added when so-called climate smart agricultural (CSA) production practices are utilized on farmland producing biofuel feedstocks. This would risk further distorting markets, potentially increasing emissions, and picking winners and losers in agriculture. Additionally, the system would be difficult to implement and monitor, with tens of millions of acres of corn and soybeans grown each year in the U.S.

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[4] International Civil Aviation Organization (ICAO), "CORSIA Supporting Document: CORSIA Eligible Fuels – Life Cycle Assessment Methodology," June 2022, https://www.icao.int/environmental-protection/CORSIA/Documents/CORSIA_Eligible_Fuels/CORSIA_Supporting_Document_CORSIA%20Eligible%20Fuels_LCA_Methodology_V5.pdf.

[5] Environmental Protection Agency (EPA), "Regulation of Fuels and Fuel Additives: Changes to Renewable Fuel Standard Program," March 26, 2010, page 14781, https://www.govinfo.gov/content/pkg/FR-2010-03-26/pdf/2010-3851.pdf.

Attempting to quantify carbon intensity reductions by farmers—including by reducing nitrogen fertilizer applications, planting cover crops, and tilling land less often—is a laudable goal, but making one-size-fits-all calculations without stringent monitoring and verification will not benefit taxpayers nor farmers in the long run. For instance, in the goal of reducing nitrogen fertilizer applications, simply assuming online calculations will result in real-world nitrogen fertilizer runoff reductions—resulting in better soil quality and less water pollution—is not a recipe for success. Effective projects coupled with monitoring, verification, and documented results of water and soil conservation can be a win-win-win for the environment, taxpayers, and farmers. On the other hand, faith-based conservation, where there is no verification that conservation practices are properly implemented, maintained, and effective, have historically wasted taxpayer dollars.

Taxpayers for Common Sense urges the IRS to help the U.S. avoid mistakes made with past biofuel tax credits. In its final guidance, the IRS should adhere strictly to the law and avoid creating wasteful loopholes that simply line special interests' bottom lines and subsidize mature industries such as corn ethanol at taxpayers' expense.

Wasteful Spending on Duplicative Subsidies

Taxpayers for Common Sense urges the IRS to be judicious in the implementation of the 45Z tax credit to avoid duplication with numerous other federal supports for 45Z eligible transportation fuels that already cost taxpayers millions of dollars every year.

The 45Z tax credit overlaps significantly with other federal programs and tax incentives that subsidize the production of transportation fuels, particularly biofuels. The Renewable Fuel Standard (RFS) is a federal mandate requires specific volumes of biofuel to be blended into U.S. transportation fuels, such as gasoline and diesel, each year. U.S. Department of Agriculture programs like the Bioenergy Program for Advanced Biofuels (BPAB) offer annual payments for biofuel production, and trade initiatives like the Market Access Program support agricultural exports, including corn ethanol.

Infrastructure subsidies for biofuel are also substantial. Programs such as the Biofuel Infrastructure Partnership (BIP) and the Higher Blends Infrastructure Incentive Program (HBIIP) have awarded over $800 million in grants to install or upgrade fuel dispensers, storage tanks, and other related equipment. From 2011 to 2022, the USDA also distributed $3.24 million in grants through the Rural Energy for America Program (REAP) for biofuel infrastructure projects, including ethanol blender pumps.[6] Additionally, the Alternative Fuel Vehicle Refueling Property Credit (Sec. 30C) offers a 30% tax break for purchasing "clean fuel" refueling or electric vehicle charging equipment. This tax credit is estimated to cost taxpayers $11.3 billion from FY2024-2033.[7]

[6] Taxpayers for Common Sense (TCS), "Biofuel Infrastructure Subsidies," August 2022. https://www.taxpayer.net/agriculture/biofuel-infrastructure-subsidies/

[7] TCS, "TCS Comments on Alternative Fuel Vehicle Refueling Property Credit," November 2024. https://www.taxpayer.net/energy-natural-resources/tcs-comments-on-alternative-fuel-vehicle-refueling-property-credit/

Duplicative subsidies are costly to taxpayers and may not yield the intended results, as existing subsidies may already be sufficient to promote the production of 45Z eligible transportation fuels. The IRS should carefully assess the impact of the 45Z tax credit to ensure taxpayer resources are allocated effectively and eliminate unnecessary, duplicative spending.

Minimizing Fraud and Abuse of 45Z

Taxpayers for Common Sense urges the IRS to implement strong safeguards to protect taxpayer interests and prevent abuse of the 45Z tax credit. The allowance of elective payment and transferability under the IRA pose unique risks for taxpayers. Refundability undermines the tax credit program's original intent by allowing companies with insufficient tax liability to benefit, turning the credit into a spending program that is more difficult to oversee.[8] Similarly, transferability allows companies outside the original intention of the tax credit program to profit. [9] The IRS should establish a stringent system to track credit ownership, preventing fraud and improper payments, especially when credits may need to be recaptured.

Long-term Costs for Taxpayers and Consumers

Taxpayers for Common Sense urges the IRS to avoid the subsidization of transportation fuels that would increase costs for taxpayers and consumers.

Past U.S. tax credits for biofuels, particularly for soy biodiesel and corn ethanol, have resulted in higher corn and soybean prices, which have led to food price hikes and higher feed prices for livestock producers.[10] As demand for renewable diesel, biodiesel, and other biofuel grows—furthered by federal incentives such as the 45Z tax credit—the diversion of soybean oil and other vegetable oils from food production to fuel production will exert additional upward pressure on food prices. Biofuels production also results in greater GHG emissions,[11] including through the conversion of carbon rich grasslands and wetlands to soybean and corn row crop production,[12] which carry long-term costs for taxpayers in the form of climate change and decrease agriculture producers' resilience to extreme weather events.

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[8] TCS, "TCS Comments to the IRS on Elective Payment," August 2023. https://www.taxpayer.net/budget-appropriations-tax/tcs-comments-to-irs-on-elective-payment/

[9] TCS, "TCS Comments to the IRS on Transfer of Certain Credits," August 2023. https://www.taxpayer.net/budget-appropriations-tax/tcs-comments-to-the-irs-on-transfer-of-certain-credits/

[10] International Food Policy Research Institute (IFPRI), "Food versus Fuel v2.0: Biofuel policies and the current food crisis," April 11, 2023, https://www.ifpri.org/blog/food-versus-fuel-v20-biofuel-policies-and-current-food-crisis/.

[11] EPA, "Biofuels and the Environment." January 17, 2025, https://www.epa.gov/risk/biofuels-and-environment.

[12] Wright, Christopher, *et al*, "Recent Grassland Losses are Concentrated Around U.S. Ethanol Refineries," *Environmental Research Letters*, March 21, 2017, https://iopscience.iop.org/article/10.1088/1748-9326/aa6446.

Under current law, nearly any form of biomass feedstock can qualify for the 45Z tax credit, other than palm oil. The IRS added restrictions on imported cooking oil and other similar feedstocks from qualifying for 45Z due to the food and feed market impacts associated with subsidizing production of biofuels derived from cooking oil. However, additional commonsense measures must be adopted to ensure high carbon feedstocks—such as woody biomass and wood pellets[13]—do not become eligible for 45Z.

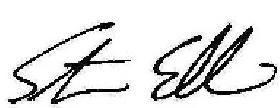
Additionally, the draft text incorporates the use of carbon capture and storage (CCS) technologies in calculating the fuel's final emissions rate. CCS is a suite of technologies that capture carbon emitted during industrial processes, including the production of transportation fuels. Currently, commercially captured carbon in the U.S. is primarily used to boost oil and gas production through a process called enhanced oil recovery (EOR) but can also be sequestered underground or used to make products. The IRS proposal to only considers CCS to lower a fuel's emissions rate if the captured carbon is sequestrated underground for long-term storage and not used for increasing oil and gas production is an important first step. However, the long-term sequestration of carbon still comes with costly public health and environmental liabilities if leakage happens, including the contamination of groundwater. The IRS should consider adding further safeguards to the use of CCS in calculating 45Z eligibility to protect taxpayers from inadvertently subsidizing activities that leave us with costly, long-term liabilities.

Conclusion

Given the current fiscal crisis, the IRS must avoid increasing the cost of the 45Z tax credit for federal taxpayers. Expanding the availability of 45Z through new loopholes and less rigorous eligibility requirements would create higher costs without providing additional benefits to taxpayers.

Thank you for the opportunity to submit comments and for your consideration. We look forward to continued engagement on this important issue.

Sincerely,



President, Taxpayers for Common Sense

[13] Tran, *et al.*, "Emissions of Wood Pelletization and Bioenergy Use in the United States," *Renewable Energy*, December 2023, https://www.sciencedirect.com/science/article/pii/S0960148123014519.