



CARBON CAPTURE COALITION

**TO: U.S. Department of Treasury
Internal Revenue Service**

CC:PA:LPD:PR (Notice 2022-50)
Room 5203
Internal Revenue Service
P.O. Box 7604
Ben Franklin Station
Washington, DC 20044

From: Carbon Capture Coalition

Contact: Jessie Stolark

jstolark@carboncapturecoalition.org

Date: November 22, 2022

Re: IRS-2022-0050

Submitted Electronically to Federal eRulemaking Portal: “Request for Comments on Elective Payment of Applicable Credits and Transfer of Certain Credits,” IRS Notice-2022-0050

EXECUTIVE SUMMARY

Members of the Carbon Capture Coalition (the Coalition) have prepared these comments in response to the Internal Revenue Service (IRS) request for information on elective payment of applicable credits and transfer of certain credits under the recently enacted Inflation Reduction Act of 2022. The Coalition appreciates IRS’ work to implement the updates to the federal Section 45Q tax credit made law in August 2022, which is essential to the economywide deployment of the full suite of carbon management tools, including carbon capture, removal, transport, utilization and storage.

Commercial-scale deployment of carbon management technologies is fundamental to meeting the Biden Administration’s 2030 emissions reduction target and net-zero by 2050 goal. In its most recent [WGIII Climate Change 2022: Mitigation of Climate Change](#) report, the Intergovernmental Panel on Climate Change (IPCC) further reaffirmed the central role that these technologies must play in capturing carbon dioxide (CO₂) from emitting sectors, as well as directly removing legacy emissions from the atmosphere to reach midcentury climate goals.

The Carbon Capture Coalition has a long history of working with policymakers across the political spectrum to advocate for the restructuring and enhancement of the foundational 45Q tax credit. Following the Coalition’s successful efforts to revamp and

reauthorize the 45Q tax credit, enacted as part of the 2018 FUTURE Act, the Coalition spent the past two years advocating for the transformational, widely supported enhancements to the 45Q tax credit that were ultimately contained in the Inflation Reduction Act.

In preparation for the IRS' issuance of final guidance for the Section 45Q tax credit in early 2021, the Coalition submitted three packages of consensus-based comments and model guidance to the U.S. Department of the Treasury and Internal Revenue Service, in [November 2018](#), [June 2019](#) and [July 2020](#), on behalf of the Coalition's membership comprised of companies, unions, and conservation and environmental organizations jointly working to build federal policy support for economywide, commercial scale deployment of carbon management technologies and infrastructure.

Now that the framework for the 45Q tax credit is in-place through final regulations established in 2021, the Coalition anticipates that project developers can rely on these rules to provide certainty for their projects moving forward. However, many aspects of the tax credit enhancements passed in the Inflation Reduction Act will have significant impact on the development of the still nascent carbon management industry. As in previous comments, the Coalition urges Treasury and the IRS to promptly issue guidance for the enhanced 45Q tax credit to ensure flexibility and financial certainty for carbon management project deployment, as intended by Congress.

The Section 45Q tax credit is unique in that claimants must demonstrate secure geologic storage of captured or utilized CO₂ through robust and transparent monitoring, reporting, and verification (MRV), or lifecycle analysis (LCA), of the utilized carbon oxide, CO₂, or its precursor, carbon monoxide (CO), through processes previously established by the IRS. These transparency measures are central to maintaining taxpayer and policymaker confidence in the 45Q tax credit and in ensuring that carbon management technologies can fulfill their full emissions reduction potential and solidify their important role in meeting midcentury climate goals. Any guidance that the IRS promulgates should maintain these measures.

The Coalition anticipates submitting comments to IRS in several priority areas related to implementing enhancements to the 45Q tax credit in the coming weeks, particularly on the recently announced "Request for Comments on the Credit for Carbon Oxide Sequestration," Notice 2022-57.

The comments below are narrowly focused on the IRS' request for comment on elective payment of eligible credits and expanded transferability of certain credits. As it relates to these topics, the Coalition's comments are divided into four parts:

1. Clarifying that the "applicable entity" under §6417 (elective payments) and "eligible taxpayer" under §6418 (transferability) are consistent with the third parties already described as eligible to claim the credits under Section 45Q.
2. Clarifying structure and timing of credit transfer and transferees under §6418.

3. Ensuring project developers can elect §6417 for the full five-year or twelve-year lifetime of the direct pay option, depending on the applicable entity.
4. The need for early identification of the liable entity for the purposes of recapture under §6418.

1. Clarifying that the “applicable entity” under §6417 (elective payments) and “eligible taxpayer” under §6418 (transferability) are consistent with the third parties already described as eligible to access the credits under Section 45Q

The Coalition asks IRS to clarify the definitions of an “applicable entity” in reference to the elective payment mechanism (§6417) and “eligible taxpayer” under transfer of certain credits (§6418). Section 45Q(f)(3) and its associated regulations already contain procedures to allow the credit to be elected either by the party that placed in service a component of carbon capture equipment and directly (or indirectly through a contract) ensured the capture and disposal or utilization of the qualified CO₂, or to pass a portion or all of the credit to the party that physically or contractually ensures the disposal, utilization, or use of CO₂ as a tertiary injectant.¹ The IRS should clarify how this existing election mechanism for 45Q relates to the new direct pay and transfer provisions. In particular:

- While the statute defines “applicable entity” in section 6417, the IRS should clarify that the taxpayer to which the credit is attributable under section 45Q(f)(3)(B) will be treated as an applicable entity under section 6417(d)(1)(C).
- The IRS should clarify that the taxpayer to which the credit is attributable under section 45Q(f)(3)(B) is eligible to make an election under section 6418(a) if that taxpayer meets the criteria of an “eligible taxpayer” under section 6418(f)(2). The IRS should additionally clarify that “eligible credit” as defined for carbon oxide sequestration under section 6418(f)(1)(A)(iii) includes section 45Q(a) credits attributed to a taxpayer described by section 45Q(f)(3)(B).

These clarifications will preserve the original rules as promulgated by IRS in 2021 and allow transferees of credits under Section 45Q(f)(3)(B) to, themselves, elect under sections 6417 and 6418.

2. Clarifying structure and timing of credit transfer and transferees under Section 6418

Proper implementation of the credit transfer mechanism established under section 6418 could be transformational in terms of enabling a wide range of investors and sources of private capital to become available to entities developing carbon management projects.

¹ See IRC § 45Q(f)(3)(B); 26 CFR § 1.45Q-1(h)(3).

The Coalition seeks clarifications from IRS on the nature and timing of the transfer and transferees established under section 6418 to ensure maximum flexibility to project developers while maintaining Congressional intent.

- First, the Coalition asks for clarification on what constitutes a “transferee taxpayer” under section 6418. Section 6418(a) refers to “a taxpayer.” The Coalition requests IRS to clarify that the transferee taxpayer is not limited to one taxpayer but may be multiple taxpayers.
- Second, IRS should clarify that an eligible taxpayer may elect to transfer all (or any portion specified in the election) of an eligible credit determined with respect to such taxpayer for any taxable year.
- Finally, the Coalition asks for confirmation that the allocation of tax credits by a partnership that is a transferee taxpayer within the meaning of 6418(a) does not constitute an additional transfer election under section 6418(e)(2). Related, IRS should provide guidance to ensure consistent treatment to transferee taxpayers that receive an allocation of transferred tax credits and transferee taxpayers that directly purchase tax credits.

3. Ensuring project developers can elect section 6417 for the full five-year or twelve-year lifetime of the direct pay option, depending on the applicable entity

Enacting a direct pay mechanism was the Coalition’s top legislative priority for nearly two years. A direct pay mechanism is critical to allow project developers to access the full value of the tax credit to deliver greater value for the American taxpayer by reducing the loss of credit through costly tax equity transactions, and to yield more deployment of carbon management technologies. The Coalition urges the IRS to ensure that guidance issued for the direct pay mechanism achieves the impact and flexibility in financing projects intended by Congress.

The Coalition has one comment related specifically to the timing of the payment for those taxpayers electing direct pay. Under section 6417, once an election is made, the taxpayer will receive direct pay in the taxable year the election is made and the subsequent four years (or 11 years for non-profit entities). However, section 6417’s reference to “taxable year” suggests that unless the carbon capture equipment is fully operational on the first day of the taxpayer’s taxable year in which it makes a direct pay election, the taxpayer will only be able to claim direct pay for a pro rata portion of the first year that the project has been placed in service. To allow taxpayers to take advantage of the direct pay period consistent with section 45Q, the Coalition requests IRS consider issuing guidance that would allow for an annualization principle to apply to direct pay so that credit claimants can receive direct pay for a full 5- or 12-year window.

4. Recapture under section 6418 – early identification of liable party

The final regulations for the section 45Q tax credit promulgated by the IRS in 2021 provide a three-year lookback period for the purposes of credit recapture in the unlikely

event of CO₂ leakage. For the purposes of those project developers looking to elect section 6418, the Coalition asks the IRS to provide guidance on who is the liable party for recapture, in the event of CO₂ leakage from the CO₂ storage facility. Specifically, the Coalition recommends such guidance for parties entering into a transfer agreement to determine the liable party for recapture in a manner keeping with the final regulations for recapture promulgated by IRS in 2021.

Conclusion

The Inflation Reduction Act of 2022 contains the most transformative enhancement to the 45Q tax credit since the program was significantly restructured in the 2018 FUTURE Act. Combined with the carbon management programs in the Bipartisan Infrastructure Law, the U.S. now stands to have the most comprehensive and far-reaching federal policy support for carbon management technologies in the world. The Coalition and its members stand ready to assist IRS as they work to swiftly promulgate any guidance needed to implement these most recent enhancements, including the hugely impactful direct pay and transferability mechanisms. We look forward to transmitting additional Coalition priorities for necessary guidance related to IRS' work to implement the reformed 45Q specifically in the coming weeks and months.

ABOUT US

The Carbon Capture Coalition is a nonpartisan collaboration of more than 100 companies, unions, and conservation and environmental organizations jointly working to build federal policy support for economywide, commercial scale deployment of carbon management technologies and infrastructure. This includes carbon capture, removal, transport, utilization, and storage from industrial facilities, power plants, and ambient air. Economywide adoption of carbon management technologies is critical to achieving net zero emissions to meet midcentury climate goals; strengthening and decarbonizing domestic energy, industrial production and manufacturing; and retaining and expanding a high-wage jobs base. Convened by the Great Plains Institute, Coalition membership includes industry, energy, and technology companies; energy and industrial labor unions; and conservation, environmental, and energy policy organizations.