

June 5, 2025

MEMORANDUM

TO: Carbon Capture Coalition

FROM: Hunter Johnston
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RE: House of Representatives Tax Legislation and Foreign Entity of Concern Provisions

On May 22, the House of Representatives advanced tax and spending legislation, referred to as The One Big Beautiful Bill (the “House Tax Legislation”) intended to extend expiring provisions of the 2017 Tax Cuts and Jobs Act (“TCJA”) and to implement other priorities of President Trump and the Republican-controlled Congress.

The House Tax Legislation generally maintains the section 45Q tax credit and taxpayers can continue to claim the section 45Q credit for projects that begin construction before January 1, 2033. However, the House Tax Legislation would apply two new restrictions to section 45Q by:

- Ending the transferability of section 45Q credits for projects that begin construction two years after enactment of the legislation (likely to apply beginning January 1, 2028); and
- Imposing new foreign entity of concern (“FEOC”) restrictions on claiming the credit beginning after the date of enactment (likely to apply beginning January 1, 2026).

To raise additional revenue and offset the cost of extending the TCJA’s tax provisions, the House Tax Legislation would also phase out or terminate certain clean energy tax incentives enacted by the Inflation Reduction Act (“IRA”).

The Senate Finance Committee is expected to release its draft reconciliation tax legislation as early as next week.

I. Terminating Transferability for Section 45Q

First, the House Tax Legislation would repeal the transferability provisions that Congress enacted in the IRA for section 45Q effective beginning two years after the enactment of the legislation (likely starting January 1, 2028). Under current law, transferability allows taxpayers to monetize their tax credits by selling the tax credits to another taxpayer in exchange for cash. The House Tax Legislation similarly terminates transferability for other clean energy tax

incentives, including for the section 45X advanced manufacturing production credit and the section 45Z clean fuel production credit.

II. New FEOC Provisions for Section 45Q

The House Tax Legislation would apply new FEOC restrictions to the section 45Q credit to prevent the any entity that is deemed to be controlled or influenced by a covered nation from claiming the credit. The House Tax Legislation defines covered nations to include China, Iran, North Korea, and Russia.

Beginning taxable years after the date of enactment of the House Tax Legislation (likely to be January 1, 2026), any taxpayer that is determined to be a “specified foreign entity” would be prohibited from claiming a section 45Q credit.

Beginning in the taxable year two years after the date of enactment of the House Tax Legislation (likely to be January 1, 2028), any taxpayer that is determined to be a “foreign-influenced entity” would be prohibited from claiming a section 45Q credit.

A. Specified Foreign Entity

A specified foreign entity is:

- Designated as foreign terrorist organization, included on the OFAC lists, alleged to have been involved in espionage activities, or determined to have been engaged in conduct detrimental to U.S. national security or foreign policy;
- An entity listed on the 1260H Chinese military company list;
- An entity listed in reporting required under the Uyghur Forced Labor Prevention Act that benefits from forced labor;
- An entity owned by certain battery companies (or a successor) listed in the FY 2024 NDAA legislation (e.g., CATL, BYD, Gotion, Envision Energy, Hithium); or
- An entity organized in, or having their principal place of business in, a covered nation; or
- A foreign controlled entity of a covered nation (i.e., an entity (or subsidiary entity) controlled at least 50 percent by the government, a citizen, or resident of a covered nation or an entity or qualified business unit organized in, or having a principal place of business in, a covered nation).

B. Foreign-Influenced Entity

An entity is a foreign-influenced entity if, during the taxable year:

- A specified foreign entity has direct or indirect authority to appoint a covered officer of the entity;
- A single specified foreign entity owns at least 10 percent of the entity;
- One or more specified foreign entities own, in the aggregate, at least 25 percent of the entity;
- At least 25 percent of the debt of such entity is held in the aggregate by one or more specified foreign entities; or

- During the previous taxable year, the entity made fixed, determinable, annual, or periodic (“FDAP”) payments to specified foreign entities that are more than 10 percent (in the case of payments to a single specified foreign entity) of total expenditures related to the credit generating activity or 25 percent in aggregate (in the case of payments to more than one specified foreign entity). The types of FDAP payments that could bar claiming tax credits in a year are dividends, interest, compensation for services, rents, royalties and similar payments to a specified foreign entity.

III. Impact to Section 45Q Projects

A. Ending Transferability

If the House Tax Legislation is passed in its current form, taxpayers seeking to monetize section 45Q credits through transferability should ensure they begin construction within two years of enactment of the legislation.

Taxpayers claiming the section 45Q credits with construction that begins on a later date could still consider using direct pay which, under the House Tax Legislation, would still be available to use for five years.

B. FEOC Provisions

As proposed by the House Tax Legislation, beginning in 2026, the FEOC provisions under section 45Q would apply at the taxpayer level and focus on ownership and control of the taxpayer. Specifically, the taxpayer would be unable to claim the section 45Q credit if the taxpayer is a specified foreign entity that is formed in China, Russia, North Korea, or Iran, or more than 50-percent controlled, directly or indirectly, by such an entity.

Beginning in 2028, broader restrictions would apply that could limit a taxpayer’s eligibility for the section 45Q credit. Specifically, the control restrictions broaden significantly to 10-percent ownership by one, or 25-percent aggregate ownership by more than one, specified foreign entity. In addition, other relationships, such as significant debtors or significant payees of FDAP payments, are restricted. For example, if the taxpayer makes significant payments for services to a specified foreign entity with respect to a carbon capture facility, the credit could be disallowed.

It is unclear how these FEOC provisions would impact the transferability provisions before they are repealed. Under the transferability provisions, the transferee who purchases the tax credits steps into the shoes of the transferor who sold the credits and is considered the taxpayer. Thus, it is possible that if either the transferor or the transferee is a specified foreign entity or foreign influenced entity, the credits would be disallowed under the FEOC restrictions. The breadth of the definition of foreign influenced entity would also require greater due diligence by parties to a credit transfer deal. Guidance from Treasury and the IRS will likely be needed to fully understand the impact of the FEOC rules on the transferability market.

IV. Early Repeal and FEOC Restrictions for Other Clean Energy Credits

The House Tax Legislation would also terminate a number of IRA credits after December 31, 2025, including all of the electric vehicle credits¹ and the residential credits.² Further, the House Tax Legislation would repeal the section 45V clean hydrogen production tax credit for facilities that begin construction after December 31, 2025. In addition, the House Tax Legislation would phase out certain IRA credits early. Under current law, the section 48E investment tax credit (“ITC”) and section 45Y production tax credit (“PTC”) would begin to phase out in the later of 2032 or the year in which the greenhouse gas emissions are reduced to or below 25 percent of their levels in 2022. The House Tax Legislation would terminate the ITC and PTC at the end of 2028 and require projects to begin construction within 60 days of the legislation becoming law to qualify for the credit. Additionally, the House Tax Legislation would phase out the section 45X advanced manufacturing production credit one year early—for components sold after December 31, 2031—though it would phase out the credit for wind components even earlier—for components sold after December 31, 2027.

The House Tax Legislation also would apply additional and more onerous FEOC restrictions to the section 45Y PTC, the section 48E ITC, and the section 45X advanced manufacturing production credit that do not apply to section 45Q. First, the House Tax Legislation would deny eligibility for these credits to any facility that receives “material assistance” from a specified foreign entity or foreign-influenced entity. The House Tax Legislation defines material assistance as (1) providing any component, subcomponent, or critical mineral (as defined under section 45X(c)(6)) that is extracted, processed, recycled, manufactured, or assembled by a specified foreign entity or foreign influenced entity; or (2) any design of the property that is based on copyrights, patents, know-how, or trade secrets provided by a specified foreign entity or foreign influenced entity. There are limited exceptions from the material assistance rule that would apply to certain non-specialized materials that are considered “assembly parts” or “constituent materials.” Assembly parts and constituent materials must not be uniquely designed or formatted for a facility or a component that benefits from the credits and must not be predominately or exclusively sourced from a specified foreign entity or foreign influenced entity to qualify for the exception.

Second, the House Tax Legislation would impose a more restrictive FDAP limitation for these other credits, prohibiting FDAP payments to specified foreign entities that are more than five percent of total expenditures (in the case of payments to a single specified foreign entity) or 15 percent in the aggregate (in the case of payments to more than one specified foreign entity).

Third, the House Tax Legislation would deny eligibility for the section 45X credit for eligible components that are produced subject to a licensing agreement with a specified foreign entity or foreign-influenced entity, if the value of the agreement exceeds \$1 million.

¹ This includes the credits under sections 25E (previously owned clean vehicles), 30C (alternative fuel vehicle refueling property), 30D (clean vehicles), and 45W (commercial clean vehicles).

² This includes the credits under sections 25C (energy efficient home improvement), 25D (residential clean energy), and 45L (energy efficient home).