



February 7, 2020

The Honorable Charles P. Rettig
Commissioner
Internal Revenue Service
CC:PA:LPD:PR (Notice 2019-32)
Room 5203, Internal Revenue Service
1111 Constitution Avenue, N.W.
Washington, D.C. 20224

Re: IRS Notice 2019-32 and Implementation of IRC §45Q;
Docket No. IRS-2019-0026-0001

Dear Mr. Rettig

The Energy Advance Center (“EAC”) is an association of energy-related organizations dedicated to advancing the development and deployment of carbon capture, utilization, and storage (“CCUS”) to achieve a cleaner energy profile and improve U.S. economic and energy security. The EAC includes companies from across the entire CCUS value chain. Collectively, EAC members represent over 50% of existing CO₂ pipeline transportation infrastructure in the United States and have a working interest in more than one-fifth of the world’s carbon capture capacity, capturing about 7 million tonnes of CO₂ per year. EAC members are the largest users of anthropogenic CO₂ in enhanced oil recovery operations.

Lack of certainty on what is required to demonstrate “secure geologic storage” (“SGS”) in order to claim the Section 45Q¹ tax credit (“45Q Credit” or “Credit”) is inhibiting investment and delaying projects. The Section 45Q Credit, if appropriately clarified and applied, has the potential to unleash private sector investment needed to promote widespread commercial deployment of CCUS projects and encourage advanced technology development.

As stated in our comment letter dated July 3, 2019, the EAC submits that each of the following represents a workable method of demonstrating SGS. These methods make use of the U.S.

¹ Unless otherwise provided, all references to the sections are to the Internal Revenue Code of 1986 as amended and in effect (the “Code”); all references to regulations are to Treasury regulations promulgated under the Code.

Environmental Protection Agency's (i) Underground Injection Control ("UIC") regulations, which differentiate and establish discrete well classes based on type of well, and (ii) Greenhouse Gas Reporting Program ("GHGRP"), which provides for two source categories of reporting for those who inject CO₂ into the subsurface:

- UIC Class II permitted wells for Enhanced Oil Recovery ("EOR"), with reporting under Subparts UU, PP, W, and C, as required;
- Class II permitted wells for EOR that opt in to reporting under Subpart RR; or
- Class VI permitted wells for saline storage with reporting under Subpart RR;

In June of 2019, ISO Standard 27916:2019, "Carbon dioxide capture, transportation and geological storage — Carbon dioxide storage using enhanced oil recovery (CO₂-EOR)," was adopted by a committee of international/national technical experts, governmental experts and NGOs. The EAC believes this ISO Standard also should be adopted as an acceptable path demonstrating SGS for UIC Class II permitted wells that comply with required EPA GHGRP reporting. The ISO Standard should be applied only to post-BBA credits. Prior claims to the Section 45Q Credit should not be prejudiced due to any future rulemaking by Treasury. ISO 27916:2019 was recently adopted in the US as ANSI 27916:2019 and will be referred to as the ANSI Standard hereafter.

Once an ANSI Standard is developed, there is some flexibility in how a company implements the Standard. Some companies may choose to have their ANSI standard implementation undergo an attestation process by a third-party for a variety of reasons. However, there is no situation today where a mandatory audit of ANSI standard implementation is required.

To enhance transparency, the EAC supports voluntarily publishing an EOR operator's ANSI 27916:2019 operational CO₂ containment assurance performance documentation at the field level on a company website. The information posted on the website will follow the ANSI 27916:2019 structure, specifically sections 5-8, and will include emission control efficiency calculations prepared in accordance with protocols accepted by the EPA, regulatory requirements of the UIC Class II program, and generally accepted industry practices for reservoir management and containment assurance. The site also will include a calculation of the net utilization volume that merges supply, injection, and emissions on a site-specific basis annually.

Addressing Certification and Verification of Safe, Long-Term Containment of CO₂ in EOR Operations under ISO 27916:2019 (as adopted in the US ANSI 27916:2019)

Some have suggested that third party verification of the above approaches is needed to validate a taxpayer's claim that the CO₂ has been securely stored. The EAC supports voluntary third party verification of an operator's ANSI Plan or any other credible means of determining containment assurance. The EAC does not support mandatory third party verification.

We believe requiring third party verification is:

- Inconsistent with existing tax policy
- Inconsistent with how ISO/ANSI Standards are implemented
- Establishes administrative barriers that will add complexity and discourage investment
- Not practically implementable due to multi-owner complexity of the EOR supply chain, terms of CO₂ offtake agreements, and potentially costly, which would erode the value of tax credit

For comparison, the Section 43 EOR credit mandates additional substantiation prior to filing of the return, but this requirement is required by the statutory language itself, and does not require an independent third party. Congress did not contemplate a pre-filing certification requirement for SGS under Section 45Q. Demonstrating SGS for purposes of Section 45Q is a tax reporting issue where there is both well-established procedure for attesting to the filing, and governmental review of the information.

Section 45Q permits taxpayers to offset their annual U.S. federal tax liability by providing a credit for the capture and disposal of carbon oxides. Under the established self-reporting system, a taxpayer, by signing a return, attests that the return is true and correct. Generally, taxpayers are required to keep books and records sufficient to substantiate the “amount of gross income, deductions, [or] credits” reported on their federal tax filings.³ Taxpayers report their tax obligation on their annual returns and the IRS assesses such reporting.⁴

Demonstrating SGS for purposes of Section 45Q is a tax reporting issue where there are well-established procedures for attesting to the filing, and governmental review and authority to conduct audits of the information.

Thank you for your consideration of these comments concerning allowable pathways for demonstrating secure geologic storage under Section 45Q. Please contact me if you have any questions or need clarification.



Fred Eames, Hunton Andrews Kurth LLP
for the Energy Advance Center

Cc:

Mr. David Selig, via email

Ms. Hannah Hawkins, via email

Mr. David Kautter, via email

³ Treas. Reg. §1.6001-1(a).

⁴ Section 6201(a)(1).