



TaxNewsFlash

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Notice 2019-32: Request for comments, carbon oxide sequestration credit (section 45Q and future regulations)

The IRS today released an advance version of Notice 2019-32 that includes a request for comments concerning the carbon oxide sequestration credit under section 45Q.

Notice 2019-32 [PDF 44 KB] reports that the Treasury Department and IRS anticipate issuing regulations and other guidance to implement certain provisions of section 45Q (as amended by the Bipartisan Budget Act of 2018 (BBA), Pub. L. No. 115-123 (February 9, 2018)). This notice is a request for comments concerning this future guidance.

Comments are due by a date that is 45 days after this notice is published in the Internal Revenue Bulletin.

The IRS issued **Announcement 2019-06** [PDF 8 KB] to clarify that the comment due-date is July 4, 2019.

Comments requested

In anticipation of the future regulations, Notice 2019-32 specifically requests comments on certain issues arising under section 45Q—including comments concerning the secure geological storage and measurement of qualified carbon oxide and the recapture of the benefit of the credit for carbon oxide sequestration.

Comments are specifically requested concerning the following questions or issues:

- Are there technical criteria different from or in addition to those provided in the EPA's Greenhouse Gas Reporting Program (GHGRP) to be used to demonstrate secure geological storage?

- Are there existing guidelines, standards, or regulations that could be used to demonstrate secure geological storage such as those developed by the International Organization for Standardization (ISO)?
- Are the EPA's GHGRP rules to continue to be the reporting requirements for purposes of section 45Q, and would an approved monitoring, reporting, and verification (MRV) plan from the EPA be received before any section 45Q credit can be claimed?
- Are there any viable alternatives to the subpart RR reporting requirements, such as third party, Department of Energy, or State certification?
- Concerning the required recapture of the benefit of any credit allowable under section 45Q(a) with respect to any qualified carbon oxide that ceases to be captured, disposed of, or used as a tertiary injectant in a manner consistent with the requirements of section 45Q, (1) what would be the standard for triggering and measuring recapture? (2) how would the recapture of the benefit of the credits relate to the requirements of section 45Q and the issues contemplated in this request for comments, in particular the rules for secure geological storage involving the disposal or use of carbon oxide as a tertiary injectant?
- Is guidance needed to further clarify terms and definitions appearing in section 45Q, such as carbon capture equipment, qualified carbon oxide, direct air capture facility, qualified facility, tertiary injectant utilization, or lifecycle greenhouse gas emissions?
- Is guidance required in defining what types of utilization qualify as "fixation of qualified carbon oxide through photosynthesis or chemosynthesis, such as through the growing of algae or bacteria" as described in section 45Q(f)(5)(A)?
- Is guidance required to establish the boundaries for lifecycle emissions for carbon oxide utilization to determine the amount of qualified carbon oxide that is "displaced from being emitted into the atmosphere" as described in in section 45Q(f)(5)(B)?

Notice 2019-32 explains that under section 45Q(f)(3)(A), the credit is attributable to the person that captures and physically or contractually provides for the disposal, utilization, or use of the qualified carbon oxide as a tertiary injectant. The IRS and Treasury are seeking comments on the types of contractual arrangements that investors anticipate with parties who capture or dispose or utilize qualified carbon oxide (CO).

- What are common terms of contracts ensuring the disposal, utilization, or use of qualified CO as a tertiary injectant?
- What should result if such terms are determined to be insufficient?

Other questions for consideration and presented in the notice include:

- What factors should be considered in determining the time and manner of the election under section 45Q(f)(3)(B) to transfer the section 45Q credit to a person that disposes of the qualified carbon oxide, utilizes the qualified carbon oxide, or uses the qualified carbon oxide as a tertiary injectant?

- If such an election is made, what issues need to be considered regarding the transfer of the section 45Q credit?
- What constitutes the beginning of construction for purposes of section 45Q(d)?
- Is guidance needed concerning structures in which project developers and participating investors would be respected as partners in a partnership generating a section 45Q credit? Further, is guidance needed on allocating the credit and recapture of the credit among the partners in a partnership?
- What issues may arise when determining the amount of metric tons of qualified carbon oxide utilized by the taxpayer under section 45Q(a)(2)(B)(ii) or section 45Q(a)(4)(B)(ii), based upon an analysis of lifecycle greenhouse emissions and subject to such requirements as the Treasury Secretary, in consultation with the Secretary of Energy and the Administrator of the EPA, determines appropriate, were (1) captured and permanently isolated from the atmosphere, or (2) displaced from being emitted into the atmosphere, through use of a process described in section 45Q(f)(5)(A)?

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