TAXPAYERS for COMMON SENSE

November 4, 2022

Re: Request for Comments on Elective Payment of Applicable Credits and Transfer of Certain Credits

Docket No.: IRS-2022-0050 (Oct. 11, 2022)
Notice: 2022-50

Dear Commissioner Rettig:

Taxpayers for Common Sense (TCS) provides the following comments to the Department of the Treasury and the Internal Revenue Service (IRS) related to "Elective Payment of Applicable Credits and Transfer of Certain Credits" (Notice 2022-50), particularly changes made to the credit for carbon oxide sequestration determined under § 45Q in the FY 2022 budget reconciliation bill, commonly referred to as the Inflation Reduction Act (IRA).

TCS is an independent, nonpartisan budget watchdog serving that has been working on behalf of the nation's taxpayers since 1995. TCS work to ensure that taxpayer dollars are spent responsibly, and that government operates within its means. This includes working to ensure that federal energy policy does not create short or long-term liabilities for taxpayers.

TCS has long been a critic of federal subsidies for carbon capture and sequestration (CCS). There exists mounting evidence that CCS is not economically viable nor an answer to our environmental challenges. Building, proving, and implementing CCS technology is prohibitively expensive. A September 2022 report by the Government Accountability Office (GAO) found that "lengthy time to deployment and high costs hinder widespread deployment of both types of carbon capture [capture technologies at point sources and direct air capture] in the near term."[1]

The effectiveness of CCS technology as a greenhouse gas emissions reduction strategy is largely untested and unproven. A report from the Intergovernmental Panel on Climate Change in 2022 ranks CCS as one of the highest cost, lowest potential options for reducing greenhouse gas emissions.[2] The GAO also found that many CO2-based products "lack a standardized method for ensuring they effectively reduce CO2 emissions."[3] Additionally, sequestering billions of tons of CO2 underground annually could have unintended negative consequences, such as potentially contaminating ground water, and leave taxpayers with long-term environmental liabilities.

[1] https://www.gao.gov/assets/gao-22-105274.pdf
[2] https://www.ipcc.ch/report/ar6/wg3/figures/summary-for-policymakers/figure-spm-7/
[3] https://www.gao.gov/assets/gao-22-105274.pdf

Much of current CCS technology is used for enhanced oil recovery (EOR). Of the 12 commercial carbon capture projects in the United States as of 2020, 11 are capturing and injecting CO_2 for enhanced oil recovery.[4] The Congressional Research Service noted that in the near term, most CCS projects will continue to be for EOR.[5] According to the International Energy Agency, the oil and gas industry is the largest annual consumer of externally sourced CO2.[6] Government programs to support this technology, including the 45Q tax credit, are handouts to the oil and gas industry, who itself is responsible for much of our global CO2 emissions.[7]

Our policy preference would be to reverse course on the federal support for carbon capture and sequestration, Given the expansion of the credit in the IRA, it is critical that implementation and adjustments to 45Q regulations limits waste, fraud, or abuse. The intent of 45Q and the whole suite of tax credits established to reduce greenhouse gas emissions is to mitigate the progress of climate change through carbon reductions emissions. In the absence of strong compliance and anti-fraud safeguards, the taxpayers will not be getting what they are paying for.

Section 6417 of the Code enacted by Section 13801(a) of the IRA allows certain taxpayers to elect credits as a direct payment rather than a credit against their federal income tax liabilities. This allows the taxpayer to receive a direct payment of cash from the Treasury Department, which typically leads to large taxpayer revenue losses because companies benefit from the credit regardless of tax liability. Since CCS technology is still used for enhanced oil recovery, direct pay is particularly concerning is it provides cash income support for oil and gas companies , which have historically reduced their lower federal effective tax rate. A refundable 45Q will allow them to further reduce their tax liabilities.

Section 6418 of the Code, enacted by Section 13801 of the IRA, allows the transfer of eligible credits from eligible taxpayers to an unrelated taxpayer. Allowing an investor with no formal ties to an underlying CCS project to claim all or some portion of the available 45Q credit can remove oversight incentives. The Treasure Department/IRS must implement a system to track who has the right to claim what portion of credit to prevent duplication, fraud, and improper payments, especially when credits need to be recaptured due to noncompliance or leakage into the atmosphere.

The 45Q tax credit program already has a record of improper claims. The IRS Inspector General for Tax Administration reported that between Tax Years 2010 and 2019, $1.024 billion worth of 45Q credits were claimed by taxpayers. Of this, 87 percent worth of credits were claimed by taxpayers not in compliance with the Environmental Protection Agency's (EPA's) monitoring, reporting, and verification

[4] https://www.globalccsinstitute.com/wp-content/uploads/2021/03/Global-Status-of-CCS-Report-English.pdf
[5] https://sgp.fas.org/crs/misc/IF11455.pdf
[6] Internally sourced CO2 refers to processes where CO2 is produced and captured in a chemical manufacturing process, and ultimately consumed in a later process step. Externally sourced CO2 refers to CO2 that is external to the process and needs to be captured. Source: https://iea.blob.core.windows.net/assets/50652405-26db-4c41-82dc-c23657893059/Putting_CO2_to_Use.pdf
[7] According to a report released by the GAO in 2022, "about 60 percent of total global methane emissions come from human activities, of which fossil fuel production, including natural gas, accounts for about 34 percent." Source: https://www.gao.gov/products/gao-22-104759

(MRV) requirements.[8] The Treasury Department/IRS needs to establish guidelines for filing compliance fore eligible taxpayers and transferee taxpayers to reduce risks of noncompliant claims. Similarly, the Treasure Department/IRS should also issue rules on how transferred credits will be recaptured when qualified CO_2 leaks into the atmosphere from a secure geological storage or as a tertiary injectant.

Embedding targeted subsidies in the tax code -rather than in spending programs- limits our ability to understand, review, and adjust policy choices. Refundability disregards the original intention of the tax credit program by allowing companies without enough tax liability to benefit. In this way, the program's refundable tax credits act as a spending program while being more difficult to manage. Similarly, transferability further deviates from the program's original intent by allowing companies that do not contribute to the original intention of the tax credit program to benefit from it. The administration must take all possible precautionary measures to protect taxpayer interests and prevent abuse of this program. The Joint Committee on Taxation estimated that the 45Q credit extension proposed in the Inflation Reduction Act could cost taxpayers $3.2 billion over the next decade. Actions to limit abuse of this program will protect taxpayers from unnecessary, additional costs.

We thank you for considering our comments on Elective Payment of Applicable Credits and Transfer of Certain Credits within the Inflation Reduction Act. Please let us know if you have any questions.

Sincerely,

Steve Ellis
President

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[8] https://www.menendez.senate.gov/imo/media/doc/TIGTA%20IRC%2045Q%20Response%20Letter%20FINAL%2004-15-2020.pdf