



MARQUIS

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December 2, 2022

Internal Revenue Service
CC:PA: LPD:PR (Notice 2022-57 & Notice 2022-58)
Room 5203
P.O. Box 7604
Ben Franklin Station
Washington, DC 20044
Submitted Electronically

RE: Notice 2022-57, Request for Comments on Credit for Carbon Oxide Sequestration (45Q) and Notice 2022-58, Request for Comments on Credits for Clean Hydrogen (45V) and Clean Fuel Production (45Z)

To whom it may concern:

Thank you for the opportunity to provide feedback on the Department of Treasury's request for comment regarding carbon oxide sequestration (45Q) and clean fuel production (45Z) under the Inflation Reduction Act. The Marquis Energy family of companies (Marquis) has a long history of driving innovation in biofuel production with a diverse portfolio of multi-generational, family-run companies focused on continual innovation in creating a sustainable world. Marquis is located in Hennepin, Illinois, a rural community more than 120 miles southwest of Chicago. Marquis is leading by example with a goal of becoming a carbon-neutral industrial complex by 2030. Today, Marquis is the largest dry-mill ethanol facility in the world, producing 400 million gallons annually. Marquis is creating a circular carbon economy with the production of sustainable fuels and clean hydrogen and ammonia, with a goal of decarbonizing aviation, agriculture, and marine transportation. Located on the Mt. Simon geological formation, the Marquis facility has the capacity to sequester over 100 million tons of carbon dioxide using carbon capture technology.

Marquis looks forward to helping pave the way to decarbonize transportation with low and even zero-carbon biofuels. Proper implementation of the 45Q and 45Z tax incentives is critical to help realize this opportunity. Below, Marquis has offered our feedback for areas that need clarification, and we welcome an opportunity to meet with Treasury to discuss these issues further.

Notice 2022-57 – Credit for Carbon Oxide Sequestration (45Q)

02. Definitions of a “qualified facility” under §45Q(d) and related definitions under §45Q(e)

Marquis requests clarification on how a taxpayer can distinguish separate qualified facilities, or otherwise identify a single facility for purposes of §45Q. For example, if an industrial complex constructs more than one qualified facility to capture and sequester carbon oxide for purposes of §45Q, it should be allowed to obtain the §45Q credit for each facility to further incentivize and maximize the fundamental goal of §45Q – the capture and sequestration of carbon oxide. Marquis also requests clarification on the question of how to determine when “construction” starts for purposes of defining a qualified facility under §45Q(d).

03. Records and Recordkeeping

To satisfy the “original planning and design” requirements under §45Q(d)(1)(B), Marquis suggests the Treasury Department and the IRS accept original facility third-party engineering designs that include CCS equipment or an offtake agreement with a storage facility prior to construction start. Marquis further suggests that the EPA GGRP could be used by taxpayers to substantiate the required capture amounts. Another option would be documented results from a stack test with gas chromatograph.

To establish the capacity factor and baseline carbon oxide production requirements under §45Q(e)(2), Marquis recommends that the Treasury Department and the IRS consider that a facility may be designed with future growth in mind. Thus, capacity and baseline should be established based on current design use, even if the facility has more capacity than currently needed.

06. Other Topics

Marquis requests clear guidance on whether §45Q will continue to be subject to existing IRS regulation 26 CFR 1.45Q *et seq.*, and whether revisions to 26 CFR 1.45Q *et seq.* are planned. Marquis also asks for specific and clear guidance on how to determine when the 12-year credit period begins for purposes of collecting the credit under §45Q.

Notice 2022-58 – Credits for Clean Hydrogen (45V) and Clean Fuel Production (45Z)

02. Clean Fuel Production Credit (§45Z)

(3) Provisional Emissions Rate

To incentivize maximizing carbon reductions in transportation, the emissions table created by Treasury for §45Z(b)(1)(B)(i) should be granular and include reductions in carbon intensity that recognize the various methods that fuel producers use to reduce the carbon intensity of their fuel. These include, for example, carbon capture and sequestration and agricultural practices associated with fuels derived from agricultural products (as with ethanol). If the emissions table contains these reductions, it will likely reduce the need for individual taxpayers to file for a provisional emissions rate for the fuel they produce. If, however, the emissions table does not take into consideration various methods of carbon reduction, the taxpayer will have to file for a provisional emissions rate that includes the taxpayer's carbon-reduction strategies.

Because the §45Z credit is currently operational for only 3 years, Marquis requests that the process for seeking a provisional emissions rate be timely and streamlined. If the process for obtaining a provisional emissions rate is too time-consuming or burdensome, a producer may be disincentivized from producing a clean fuel product. Generally, Marquis recommends that Treasury and the IRS use GREET, which is the modeling tool required by the IRA for non-aviation fuel under 45Z, to evaluate a provisional emissions rate requested by a taxpayer.

Regarding a specific mechanism for determining a provisional emissions rate, Marquis suggests that Treasury consider adopting an approach similar to that used in California's Low Carbon Fuel Standard (LCFS), which provides a recognized pathway to determine an emissions rate. This approach also includes a third-party verification process and proven methodology around certain carbon reduction methods, such as the CCS Protocol. The benefit of LCFS is that it is sufficiently flexible to determine a provisional emission rate that considers the taxpayer's applicable carbon-reduction strategies.

(6) Other topics related to §45Z

For purposes of §45Z(d)(4)(B), a "qualified facility" does not include "any facility" that is "allowed" a credit under other specified sections of the IRA, including section 45V, specific provisions of §46 and §45Q. Marquis proposes an interpretation of the word "allowed" to mean that the taxpayer elects to receive one of those other IRA credits and the taxpayer actually receives the other IRA tax credit. This interpretation of "allowed" is consistent with IRS guidance that governs tax depreciation and tax basis. Specifically, IRS Publication 946, in the context of determining adjusted basis, provides: "Depreciation *allowed* is depreciation actually deducted when filing your taxes (from which you received a tax benefit). Depreciation *allowable*

is depreciation you're entitled to deduct, but didn't necessarily deduct for tax purposes." Marquis suggests clear guidance stating that the limitation on a "qualified facility" in §45Z(d)(4)(B), applies only to those situations when the taxpayer has both (1) elected to take one of the other IRA credits and (2) the taxpayer actually receives that other credit.

Marquis also asks for clear guidance from Treasury allowing a clean fuel producer who is also engaged in carbon capture and sequestration to have the choice each tax year whether to elect and claim a credit under §45Z or §45Q. Marquis does not believe that a clean fuel producer should be forced to permanently elect either §45Z or §45Q and forever be excluded from the other. Marquis believes clean fuel producers who also use carbon capture and sequester technology should be afforded flexibility to evaluate each tax year whether to elect §45Z or §45Q. Providing this flexibility to clean fuel producers who also engage in carbon capture and sequestration (CCS) will promote the underlying carbon-reduction goals of the IRA and development of CCS within the clean fuel production industry.

It is also vitally important to the clean fuel production industry that Treasury and IRS recognize that other non-CCS carbon reductions will be disincentivized if those reductions cannot be considered in combination with CCS for purposes of determining eligibility for §45Z. To further encourage the use of various carbon reduction strategies to produce clean fuel for §45Z, Marquis asks that the previously mentioned table of emissions rates that Treasury is required to create by January 1, 2025, include calculations for carbon reduction that includes both CCS and non-CCS carbon reductions for each transportation fuel. To that end, Marquis agrees with the position advocated by Growth Energy in their comments for Notice 2022-58 that Treasury should take into account the variety of practices that producers and corn farmers are currently using to reduce the carbon intensity of their ethanol.

Marquis is currently planning a Sustainable Aviation Fuel (SAF) facility and wants to reiterate the importance of using an accurate metric to calculate greenhouse gas emissions from liquid fuel.

With regards to emissions calculations for Sustainable Aviation Fuel in §45Z, Marquis would like to echo comments submitted by Growth Energy to the United States Department of Treasury on November 4, 2022, entitled "Implementation of Sustainable Aviation Fuel and Clean Fuel Production Tax Credits." The Argonne National Labs GREET Model is the most updated and accurate model and should be used as a "similar methodology" which "satisfies the criteria under section 211(o)(1)(H) of the Clean Air Act." Please refer to Growth Energy's comments on this matter for further detail.

Marquis looks forward to working with the Department of Treasury in its implementation of the IRA. We have provided our initial comments on the implementation of 45Q and 45Z and we welcome further discussion with the Department to expand upon our recommendations offered above.

Sincerely,

A handwritten signature in black ink, appearing to read "Dustin Marquis". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

Dustin Marquis
Director of Government Relations
Marquis Management, Inc.