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# Taxpayers Get Answers on 45Q Questions With IRS Guidance

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The Internal Revenue Service released helpful guidance in Revenue Ruling 2021-13, regarding the scope of carbon capture equipment and the requirement that a taxpayer own the carbon capture equipment to qualify for carbon sequestration credits under Internal Revenue Code Section 45Q .

Specifically, the revenue ruling provides guidance on three important topics:

- whether dual use property is properly treated as carbon capture equipment for purposes of Section 45Q;
- the degree of ownership of carbon capture equipment necessary to claim the credit provided by Section 45Q; and
- the determination of the placed-in-service date for purposes of determining the eligibility for credits under Section 45Q.

The guidance generally has been viewed as favorable to taxpayers.

**Overview of Section 45Q** Section 45Q, enacted in 2008 and expanded in 2018, provides a tax credit based on the metric tons of carbon oxide captured by a taxpayer using carbon capture equipment placed in service at a qualified facility and disposed of, injected, or utilized (the Section 45Q credit). Section 45Q credits generally are available at a higher rate for carbon oxide captured using carbon capture equipment placed in service on or after Feb. 9, 2018, than if it were placed in service prior to such date.

In the case of carbon oxide captured using carbon capture equipment that was originally placed in service on or after Feb. 9, 2018, the Section 45Q credit is attributable to the person that owns the carbon capture equipment and physically or contractually ensures the capture and disposal, injection, or utilization of such qualified carbon oxide. In this regard, applicable Treasury Regulations under Section 45Q provide that for each single process train of carbon capture equipment, only one taxpayer will be considered the person to whom the credit is attributable. That person is the taxpayer who either physically or contractually ensures the capture and disposal, injection, or utilization of such qualified carbon oxide.

The Treasury Regulations also provide a definition of carbon capture equipment that broadly includes all components of property that are used to capture or process carbon oxide until the carbon oxide is transported for disposal, injection, or utilization. Further, carbon capture equipment is equipment used for the purpose of:

- separating, purifying, drying, and/or capturing carbon oxide that would otherwise be released into the atmosphere from an industrial facility;
- removing carbon oxide from the atmosphere via direct air capture; or
- compressing or otherwise increasing the pressure of carbon oxide.

All components that make up an independently functioning process train capable of capturing, processing, and preparing carbon oxide for transport will be treated as a single unit of carbon capture equipment (a single process train).

**Taxpayer Comments on the Scope of Carbon Capture Equipment** Prior to the finalization of the Treasury Regulations, commenters had requested that the Treasury Department clarify whether property that has more than one purpose or use, such as equipment incorporated into an industrial facility that separates car-

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bon dioxide as part of the manufacture of another product, is properly included within carbon capture equipment. Some commenters suggested such property be characterized as carbon capture equipment only if carbon capture, separation, or compression was its primary purpose, or that dual use property be excluded from the scope of carbon capture equipment.

There was a concern that carbon capture equipment would be defined to include property with more than one purpose or use, and a taxpayer would be required to own all of the carbon capture equipment associated with a project to qualify for the Section 45Q credit. Such a definition may make it burdensome for such a taxpayer to acquire property already in use at an industrial facility that may be owned by another taxpayer, or be subject to transfer restrictions under existing financing arrangements.

In the preamble to the final Treasury Regulations, however, the Treasury Department declined to adopt either the primary purpose test or exclude dual purpose property from the definition of carbon capture equipment. Instead, the final Treasury Regulations adopted the function based test, described above.

**The Revenue Ruling** Following on the finalization of the Treasury Regulations, the revenue ruling addresses some unanswered questions regarding the availability of the Section 45Q credit, as it relates to carbon oxide captured using carbon capture equipment added to a methanol plant by an investor in 2021. The plant produces methanol from petroleum coke gasified with high temperature steam to create raw syngas. The syngas is purified in an acid gas removal (AGR) unit, which removes unwanted carbon dioxide and releases it into the atmosphere, and the purified gas is converted into methanol.

The AGR unit at the methanol plant was placed in service on Jan. 1, 2017. In 2021, an investor purchased and installed new components of carbon capture equipment necessary to create a single process train. The investor did not acquire an ownership interest in the AGR unit.

In the revenue ruling, the IRS concluded that the AGR unit is carbon capture equipment as defined in the Treasury Regulations, regardless of whether it had any other purpose, because *at least one* of the functions of the AGR unit is to separate carbon dioxide. Accordingly, the revenue ruling confirmed that dual purpose or use property is properly treated as carbon capture equipment for purposes of Section 45Q.

The revenue ruling further stated that, although the investor did not own the AGR unit, the investor nevertheless could claim the Section 45Q credits, because it only is necessary to own *at least one* component of carbon capture equipment in a single process train of carbon capture equipment to claim the Section 45Q credits. As a result, the revenue ruling relieved taxpayers seeking Section 45Q credits from the requirement that they own dual purpose or use property at an existing facility, so long as they owned a single component of the carbon capture equipment.

Finally, the IRS concluded that, for purposes of determining eligibility for Section 45Q credits, a unit of carbon capture equipment will be considered originally placed in service for purposes of Section 45Q on the date that any person first places it in a condition or state of readiness and availability for the specifically designed function of capturing, processing, and preparing carbon oxide for transport. In the case of the methanol facility, that occurred in 2021 when the new components of carbon capture equipment were placed in service at the facility.

The revenue ruling also clarified that the placed-in-service date for carbon capture equipment for purposes of Section 45Q had no impact on the placed-in-service date of property for purposes of claiming depreciation deductions under Internal Revenue Code Sections 167 and 168.

Having addressed, mostly favorably, a number of issues of concern, the revenue ruling should provide clarity for owners of carbon capture equipment recently installed, or yet to be installed, at gas processing facilities with gas separation equipment placed in service prior to Feb. 9, 2018, with respect to their ability to claim the increased Section 45Q credits.

*This column does not necessarily reflect the opinion of The Bureau of National Affairs, Inc. or its owners.*

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