

Part III

Credit for Carbon Oxide Sequestration 2022 Section 45Q Inflation Adjustment Factor

Notice 2022-38

SECTION 1. PURPOSE

This notice publishes the inflation adjustment factor for the credit for carbon oxide sequestration under § 45Q of the Internal Revenue Code (§ 45Q credit) for calendar year 2022. The inflation adjustment factor is used to determine the amount of the credit allowable under § 45Q.

This notice also confirms that 2022 will be the final calendar year for which a taxpayer may claim a § 45Q credit under § 45Q(a)(1) and (2) for qualified carbon oxide that is captured by carbon capture equipment originally placed in service at a qualified facility before the date of enactment of the Bipartisan Budget Act of 2018.

SECTION 2. BACKGROUND

Section 45Q was added to the Code by § 115 of the Energy Improvement and Extension Act of 2008, enacted as Division B of Pub. L. 110-343, 122 Stat. 3765, 3829 (October 3, 2008), to provide a credit for the sequestration of carbon dioxide. Section 45Q was amended by § 1131 of the American Recovery and Reinvestment Tax Act of 2009, enacted as Division B of Pub. L. 111-5, 123 Stat 115 (February 17, 2009), § 41119 of the Bipartisan Budget Act of 2018 (BBA), Pub. L. No. 115-123 (February 9, 2018), § 121 of the Taxpayer Certainty and Disaster Tax Relief Act of 2020, enacted as Division EE of the Consolidated Appropriations Act, 2021, Pub. L. 116-260, 134 Stat. 3051 (December 27, 2020), and § 13104 of Pub. L. 117-169, 136 Stat. 1818 (August 16, 2022), commonly known as the Inflation Reduction Act (IRA). As a result of the modifications

made by the BBA amendment, the credit under § 45Q now applies to the sequestration of “qualified carbon oxide,” a broader term than qualified carbon dioxide. The amount of the credit is also increased for carbon oxide captured with equipment originally placed in service on or after the date of enactment of BBA.

Section 45Q(a)(1) allows a credit of \$20 per metric ton of qualified carbon oxide (i) captured by the taxpayer using carbon capture equipment which is originally placed in service at a qualified facility before the date of the enactment of BBA, (ii) disposed of by the taxpayer in secure geological storage, and (iii) not used by the taxpayer as a tertiary injectant in a qualified enhanced oil or natural gas recovery project.

Section 45Q(a)(2) allows a credit of \$10 per metric ton of qualified carbon oxide (i) captured by the taxpayer using carbon capture equipment which is originally placed in service at a qualified facility before the date of the enactment of BBA, and (ii) either (I) used by the taxpayer as a tertiary injectant in a qualified enhanced oil or natural gas recovery project and disposed of by the taxpayer in secure geological storage or (II) utilized by the taxpayer in a manner described in § 45Q(f)(5).

Under § 45Q(f)(7), for taxable years beginning in a calendar year after 2009, the dollar amounts contained in § 45Q(a)(1) and (2) must be adjusted for inflation by multiplying such dollar amount by the inflation adjustment factor for such calendar year determined under § 43(b)(3)(B), determined by substituting “2008” for “1990.”

Section 43(b)(3)(B) defines the term “inflation adjustment factor” as, with respect to any calendar year, a fraction the numerator of which is the GNP implicit price deflator for the preceding calendar year and the denominator of which is the GNP implicit price deflator for 1990. For purposes of § 45Q(f)(7), for the 2022 calendar year, the inflation adjustment factor is a fraction the numerator of which is the GNP implicit price deflator for 2021

(118.349) and the denominator of which is the GNP implicit price deflator for 2008 (94.421).

Section 45Q(g), as amended by § 13104(f) of the IRA, provides that in the case of any carbon capture equipment placed in service before the date of the enactment of BBA, the credit under § 45Q shall apply with respect to qualified carbon oxide captured using such equipment before the earlier of January 1, 2023, and the end of the calendar year in which the Secretary of the Treasury or her delegate, in consultation with the Administrator of the Environmental Protection Agency, certifies that, during the period beginning after October 3, 2008, a total of 75,000,000 metric tons of qualified carbon oxide have been taken into account in accordance with (i) § 45Q(a), as in effect on the day before the date of the enactment of BBA, and (ii) § 45Q(a)(1) and (2).

SECTION 3. INFLATION ADJUSTMENT FACTOR

The inflation adjustment factor for calendar year 2022 is 1.2534. The § 45Q credit for calendar year 2022 is \$25.07 per metric ton of qualified carbon oxide under § 45Q(a)(1) and \$12.53 per metric ton of qualified carbon oxide under § 45Q(a)(2).

SECTION 4. TAX CREDIT UTILIZATION

Section 6 of Notice 2009-83, 2009-44 I.R.B. 588, requires taxpayers to file annual reports that provide (among other information) the amount (in metric tons) of qualified carbon oxide for the taxable year that has been taken into account for purposes of claiming the § 45Q credit under § 45Q(a)(1) and (2). The annual reports must be filed with the Internal Revenue Service (IRS) not later than the last day of the second calendar month following the month during which the tax return on which the § 45Q credit under § 45Q(a)(1) and (2) is claimed was due (including extensions).

Pursuant to § 45Q(g), as amended on August 16, 2022, by § 13104(f) of the IRA, 2022 will be the final calendar year for which a taxpayer may claim a § 45Q credit under § 45Q(a)(1) and (2) for qualified carbon oxide that is captured by carbon capture equipment originally placed in service at a qualified facility before the date of enactment of the BBA.

Accordingly, 2022 will be the final calendar year for which a taxpayer must file a report under section 6 of Notice 2009-83.

SECTION 5. DRAFTING INFORMATION

The principal author of this notice is Maggie Stehn of the Office of Associate

Chief Counsel (Passthroughs & Special Industries). For further information regarding this notice contact Maggie Stehn at (202) 317-6853 (not a toll-free number).