

# Part III

## Credit for Carbon Oxide Sequestration 2021 Section 45Q Inflation Adjustment Factor

### Notice 2021-35

#### 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 2021. The inflation adjustment factor is used to determine the amount of the credit allowable under § 45Q. This notice also provides that the IRS, in consultation with the EPA, does not certify that the aggregate amount of qualified carbon oxide taken into account for purposes of § 45Q has reached 75,000,000 metric tons.

#### SECTION 2. BACKGROUND

Section 45Q was enacted by § 115 of the Energy Improvement and Extension Act of 2008, Division B of Pub. L. No. 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, Division B of Pub. L. 111-5, 123 Stat 115 (February 17, 2009) and more recently by section 41119 of the Bipartisan Budget Act of 2018 (BBA), Pub. L. No. 115-123 (February 9, 2018) and 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. 1182, 3051 (December 27, 2020). 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).

Section 45Q(a)(3) allows a credit of the applicable dollar amount (as determined under § 45Q(b)(1)) 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 on or after the date of the enactment of BBA during the 12-year period beginning on the date the equipment was originally placed in service, (ii) disposed of by the taxpayer in secure geological storage, and (iii) neither used as a tertiary injectant in a qualified enhanced oil or natural gas recovery project nor utilized in a manner described in § 45Q(f)(5).

Section 45Q(a)(4) allows credit of the applicable dollar amount (as determined under § 45Q(b)(1)) 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 on or after the date of the enactment of BBA, during the 12-year period beginning on the date the equipment was originally placed in service, 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 geo-

logical storage or (II) utilized in a manner described in § 45Q(f)(5).

For purposes of determining the carbon oxide sequestration credit under § 45Q, a taxpayer may elect under § 45Q(b)(3) to have the dollar amounts applicable under § 45Q(a)(1) or (2) apply in lieu of the dollar amounts applicable under § 45Q(a)(3) or (4) for each metric ton of qualified carbon oxide which is captured by the taxpayer using carbon capture equipment which is originally placed in service at a qualified facility on or after the date of the enactment of BBA.

Section 45Q(c) defines the term “qualified carbon oxide” as (i) any carbon dioxide which (I) is captured from an industrial source by carbon capture equipment which is originally placed in service before the date of the enactment of BBA, (II) would otherwise be released into the atmosphere as industrial emission of greenhouse gas or lead to such release, and (III) is measured at the source of capture and verified at the point of disposal, injection, or utilization; (ii) any carbon dioxide or other carbon oxide which (I) is captured from an industrial source by carbon capture equipment which is originally placed in service on or after the date of the enactment of BBA, (II) would otherwise be released into the atmosphere as industrial emission of greenhouse gas or lead to such release, and (III) is measured at the source of capture and verified at the point of disposal, injection, or utilization; or (iii) in the case of a direct air capture facility, any carbon dioxide which (I) is captured directly from the ambient air, and (II) is measured at the source of capture and verified at the point of disposal, injection, or utilization.

Section 45Q(d) defines the term “qualified facility” as any industrial facility or direct air capture facility (i) the construction of which begins before January 1, 2026, and (I) construction of carbon capture equipment begins before such date, or (II) the original planning and design for such facility includes installation of carbon capture equipment; and (ii) which captures (I) in the case of a facility which emits not more than 500,000 metric tons of carbon oxide into the atmosphere during the taxable year,

not less than 25,000 metric tons of qualified carbon oxide during the taxable year which is utilized in a manner described in § 45Q(f)(5), (II) in the case of an electricity generating facility which is not described in § 45Q(d)(2)(A), not less than 500,000 metric tons of qualified carbon oxide during the taxable year, or (III) in the case of a direct air capture facility or any facility not described in § 45Q(d)(2)(A) or (B), not less than 100,000 metric tons of qualified carbon oxide during the taxable year.

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 2021 calendar year, the inflation adjustment factor is a fraction the numerator of which is

the GNP implicit price deflator for 2020 (113.586) and the denominator of which is the GNP implicit price deflator for 2008 (94.268).

Section 45Q(g) 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 end of the calendar year in which the Secretary, 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 2021 is 1.2049. The § 45Q credit for calendar year 2021 is \$24.10 per metric ton of qualified carbon oxide under § 45Q(a)(1) and \$12.05 per metric ton of qualified carbon oxide under § 45Q(a)(2).

### **SECTION 4. TAX CREDIT UTILIZATION**

Section 6 of Notice 2009-83 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. The annual reports must be filed with the Internal Revenue Service (Service) not later than the last day of the second calendar month following the month during which the tax return on which the § 45Q credit is claimed was due (including extensions).

Based on all of the information available to the IRS and the EPA as of October 26, 2021, the IRS, in consultation with the EPA, does not certify that the aggregate amount of qualified carbon oxide taken into account for purposes of § 45Q has reached 75,000,000 metric tons.

### **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).