TAXPAYERS for COMMON SENSE

August 14, 2023

Re: Notice of Proposed Rulemaking on Section 6417 Elective Payment of Applicable Credits

Docket No.:
RIN 1545-BQ63

To Whom it May Concern:

Taxpayers for Common Sense (TCS) respectfully submits the following comments to the Department of the Treasury and the Internal Revenue Service (IRS) on the proposed rule, "Section 6417 Elective Payment of Applicable Credits", with specific concerns regarding the §45Q credit for carbon oxide sequestration.

TCS is an independent, nonpartisan budget watchdog that has been working on behalf of the nation's taxpayers since 1995. TCS works 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 advocates for a balanced and responsible approach to tax policy that promotes both fiscal responsibility and fairness. We believe that tax expenditures should be scrutinized to ensure they effectively promote economic growth, innovation, and societal well-being. While targeted tax expenditures can play a role in encouraging specific behaviors and industries, it is essential that they are transparent, well-designed, and regularly evaluated for their cost-effectiveness. We emphasize the importance of a streamlined tax code that minimizes complexity and loopholes, ensuring that all citizens and corporations contribute their fair share to support vital public services and infrastructure. By prioritizing prudent tax policies, we strive to create a level playing field and foster a strong, sustainable economy that benefits all Americans.

TCS has long been critical of federal subsidies for carbon capture and sequestration (CCS). There is mounting evidence that CCS is neither economically viable nor an efficient emissions reduction solution to climate change. 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] Moreover, the effectiveness of CCS technology as a greenhouse gas emissions reduction strategy is largely untested

[1] "Technology Assessment: Decarbonization Status, Challenges, and Policy Options for Carbon Capture, Utilization, and Storage." Government Accountability Office, September 2022. https://www.gao.gov/assets/gao-22-105274.pdf.

and unproven. A report from the Intergovernmental Panel on Climate Change in 2022 ranks CCS as one of the highest cost, and lowest potential options for reducing greenhouse gas emissions.[2] Furthermore, much of the current CCS technology is used for enhanced oil recovery (EOR). Of the 13 commercial carbon capture projects currently operating in the United States, 11 are capturing and injecting CO_2 for enhanced oil recovery,[3] as most CCS projects will do in the near future.[4] Recent papers also suggest that EOR projects do not have net emissions reduction throughout the entire life of the project.[5] Additionally, sequestering billions of tons of CO_2 underground annually could have unintended negative consequences, potentially contaminating groundwater and leaving taxpayers with long-term environmental liabilities.

Government programs to support this technology, including the 45Q carbon oxide sequestration tax credit, have historically primarily served as subsidies to the oil and gas industry, which is itself responsible for much of our global CO_2 emissions.[6] Our policy preference would be to reverse course on federal support for carbon capture and sequestration. Given the expansion of the credit in the Inflation Reduction Act (IRA), it is critical that implementation and adjustments to 45Q, as well as other energy credits, limit waste, fraud, or abuse, especially considering that the 45Q tax credit program already has a record of improper claims. The Treasury Inspector General for Tax Administration reported that between Tax Years 2010 and 2019, taxpayers claimed $1.024 billion worth of 45Q credits. Of this amount, 87 percent of the credits were claimed by taxpayers not in compliance with the Environmental Protection Agency's (EPA's) monitoring, reporting, and verification (MRV) requirements.[7]

The intent of 45Q and the suite of tax credits established to reduce greenhouse gas emissions is to mitigate the progress of climate change through the reduction of carbon emissions. Without strong compliance and anti-fraud safeguards, these tax credits will not achieve their intended goals.

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. Since Section 6417 treats non-tax-exempt entities like corporations as applicable entities with regard to claiming 45Q, 45V,

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[2] "IPCC Sixth Assessment : Figure SPM.7." Intergovernmental Panel on Climate Change, February 28, 2022. https://www.ipcc.ch/report/ar6/wg3/figures/summary-for-policymakers/figure-spm-7/.
[3] "Global Status of CCS 2020 ." Global CCS Institute, December 1, 2020. https://www.globalccsinstitute.com/wp-content/uploads/2021/03/Global-Status-of-CCS-Report-English.pdf.
[4] "The Tax Credit for Carbon Sequestration (Section 45Q)." Congressional Research Service, June 8, 2021. https://sgp.fas.org/crs/misc/IF11455.pdf.
[5] Núñez-López and Moskal, "Potential of CO2-EOR for Near-Term Decarbonization," Frontiers in Climate., Sept 27, 2019. https://doi.org/10.3389/fclim.2019.00005; Sekera, J. & Lichtenberger, A. (2020) Assessing Carbon Capture: Public Policy, Science, and Societal Need: A Review of the Literature on Industrial Carbon Removal. Biophysical Economics and Sustainability. Available: https://link.springer.com/article/10.1007/s41247-020-00080-5
[6] 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: "Federal Actions Needed to Address Methane Emissions from Oil and Gas Development." Government Accountability Office, May 20, 2022. https://www.gao.gov/products/gao-22-104759.
[7]George, J Russell. "Department of the Treasury Memo to Sen. Robert Menendez." United States Treasury Inspector General for Tax Administration; , April 15, 2020. https://www.menendez.senate.gov/imo/media/doc/TIGTA%20IRC%2045Q%20Response%20Letter%20FINAL%2004-15-2020.pdf.

and 45X, direct payment is particularly concerning as it provides cash for oil and gas companies, which have historically reduced their effective federal tax rate. Adding a refundable 45Q will allow them to further reduce their tax liabilities.

The proposed rule will not permit applicable entities to chain an election under section 6417(a) for credits obtained from other sources, such as credits purchased under Section 6418 of the Code, enacted by Section 13801 of the IRA, which allows the transfer of eligible credits from eligible taxpayers to an unrelated taxpayer. TCS supports the IRS's proposal to disallow an electing taxpayer from making a transfer election under Section 6418 with respect to any applicable credit for which a direct payment election was made. As noted, there are several administrative reasons why making an elective payment election with respect to transferred credits under section 6418 would be problematic. For example, the elective payment election under section 6417 with respect to the section 45Q credit only applies to applicable credit property that is originally placed in service after December 31, 2022, but there are no such restrictions under section 6418. Additionally, a transferee may purchase only a portion of a credit determined with respect to an eligible credit property pursuant to section 6418(a), which is inconsistent with the requirement under section 6417(a) that the elective payment election be made with respect to the entire applicable credit determined with respect to applicable credit property for a taxable year.

Besides these administrative challenges, establishing mutual exclusivity of the elective pay election under section 6417(a) and the transfer election under section 6418(a) will better safeguard applicable credits against fraud and abuse, especially given the history of fraudulent 45Q claims. Mutual exclusivity of the elective pay election and transfer election will also alleviate the administrative burden on the IRS in the event of excess payment or recapture. Therefore, TCS urges the IRS not to allow exceptions to this proposed rule, as any exception will likely create practical and administrative challenges and make the applicable credits more vulnerable to fraud and abuse.

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 sufficient tax liability to benefit. TCS urges the IRS to take all possible precautionary measures in the final rule to protect taxpayer interests and minimize the possibility of fraud and abuse. The Joint Committee on Taxation estimated that the IRA's extension and expansion of the 45Q credit 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 the proposed rule on section 6417 Elective Payment of Applicable Credits. Please let us know if you have any questions.

Sincerely,

Steve Ellis
President