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Secretary Bessent
U.S. Department of Treasury
1500 Pennsylvania Avenue NW
Washington, DC 20460

Attention: REG-121244-23
Internal Revenue Service



Comments to the Department of the Treasury and IRS on Section 45Z Clean Fuel Production Credit Proposed Regulations; RIN 1545-BQ97

Dear Secretary Bessent:

Taxpayers for Common Sense (TCS) appreciates the opportunity to submit comments to the Department of the Treasury and the Internal Revenue Service (IRS) in response to the proposed rule entitled "Section 45Z Clean Fuel Production Credit" (REG-121244-23), released on February 4, 2026.

The Clean Fuel Production Credit was created as a technology-neutral incentive to support the production of transportation fuels with low to no greenhouse gas (GHG) emissions. Designed as a sliding scale, the credit increases in value as a fuel's carbon intensity decreases. As the IRS has noted, Section 45Z was intended to replace a set of expiring tax incentives for biodiesel, renewable diesel, and several alternative fuels—including compressed natural gas and second-generation biofuel—that ended at the end of 2024.

To protect taxpayers and ensure fiscal responsibility, 45Z must be limited in size and scope and avoid supporting mature, first-generation biofuels that increase taxpayer costs and liabilities.

Taxpayer Costs of Expanding Credit Eligibility

The One Big Beautiful Bill Act of 2025 (OBBBA) made several changes to the 45Z tax break. The bill decreased the maximum payout for aviation fuel—originally \$1.75 per gallon—down to \$1.00 per gallon and restricted eligibility to feedstocks grown in the U.S., Canada, or Mexico. Most importantly for taxpayers, the bill also eliminated consideration of emissions from indirect land use change in a fuel's carbon intensity score. While this alters the original intent of 45Z, Treasury/IRS can still take steps to ensure taxpayers are not on the hook for subsidizing biofuels that carry increased costs and liabilities for taxpayers and consumers.

Changes made to the Clean Fuel Production Credit in OBBBA are expected to be costly for taxpayers. The Joint Committee on Taxation (JCT) estimated that the expansion and extension of 45Z would cost taxpayers \$25.7 billion over the next decade.¹ The credit is now expected to cost taxpayers a total of \$53.1 billion between FY2026 and FY2035—although the credit expires in 2030.² Costs will increase further if the pool of fuels allowed to qualify for tax credits is expanded.

TCS has submitted prior comments to Treasury/IRS on the Clean Fuel Production Credit, including on April 10, 2025.³ In these comments, TCS highlighted the taxpayer costs of expanding Sustainable Aviation Fuel sub-credit eligibility through use of the 45ZCF-GREET model and other similarly less robust replacements compared to the Carbon Offsetting and Reduction Scheme for International Aviation (CORSA) model, as well as the risk of increasing wasteful, duplicative spending, since 45Z overlaps significantly with other federal programs and tax incentives. Instead of repeating these comments here, TCS urges Treasury/IRS to review our past comments (see attached file), which still hold true for common sense implementation of 45Z.

In addition to our past comments, TCS supports Treasury's decision to reject a request to allow facilities to use an emissions rate table tied to the year construction of a facility began, as opposed to the year of sale.

Climate Smart Agricultural (CSA) Production Practices

While TCS has written on this in our past comments, which remain relevant, we would like to re-emphasize that providing higher tax credits to fuels derived from feedstocks—such as corn or soybeans—produced with CSA practices could lead to unintended consequences, unless implemented properly. Treasury/IRS currently proposes to allow county-based calculations for climate smart agricultural practices' reduction of carbon emissions. However, not only do agricultural practices—such as cover crops, limited tillage, and precision fertilizer applications—range widely from field to field within a county, emissions can differ significantly even within the same field.

Methods to quantify carbon intensities of agricultural practices are currently not widespread or accurate enough to implement for 45Z. On any one field in states such as Nebraska, for instance, a farmer may plant corn in a wet, low-lying area in addition to a high hilltop with poor quality soil. Carbon impacts of different agricultural practices in these soils differ widely, so applying the same carbon intensity factor for every county will not only fail to be accurate but could risk providing lucrative tax credits to feedstocks that do not reduce taxpayers costs or liabilities.

Treasury/IRS should therefore avoid finalizing any feedstock-specific adjustments until underlying methodologies have undergone transparent, independent review and are demonstrably reliable. And any such adjustments should be conservative.

Preventing Abuse

TCS and others have long raised serious concerns about potential abuse of the 45Z tax credit. The proposed rule echoes these concerns, stating that “Treasury Department and the IRS are cognizant of potential abuses of the section 45Z credit, including situations in which a taxpayer produces and sells transportation fuel in a manner that is inconsistent with Congressional intent [and] other potential abuse, such as circular production, credit churning or wasteful production with no intended use, and abuse of the anti-stacking rules.” To minimize these risks, the proposed rule states that 45Z is not allowed if an operator’s primary purpose in producing and selling transportation fuel is “to obtain the benefit of the section 45Z credit in a manner that is wasteful, such as discarding, disposing of, or destroying the transportation fuel without putting it to a productive use.”

TCS applauds this effort to rein in potential waste and abuse of the tax credit. However, we urge the IRS to provide more detail on how the agency intends to enforce this standard in practice. At a minimum, Treasury/IRS should:

- Provide examples of prohibited schemes, including circular production and deliberate overproduction of fuel that is discarded or destroyed;
- Clarify that such activities will result in disallowance of credits and, where appropriate, penalties or recapture; and
- Describe how the agencies will identify suspicious production and sales patterns.

Clear guardrails will help deter abusive structures before they siphon off taxpayer dollars.

In addition, Treasury/IRS should consider basic transparency measures, such as periodic public reporting on the amount of credits claimed, disallowed, or recaptured, and common compliance issues identified through audits.

Conclusion

The U.S. currently has \$39 trillion in national debt and cannot afford to further subsidize the mature corn ethanol or biomass-based diesel industries that have been subsidized by taxpayers for decades. Congress was clear when it eliminated the ethanol tax credit in 2011 and the biodiesel tax credit in the Inflation Reduction Act of 2022. Reviving tax breaks for these fuels would be contrary to public interest and could cost taxpayers billions of dollars.

¹ Congressional Budget Office, “Estimated Budgetary Effects of Public Law 119-21, to Provide for Reconciliation Pursuant to Title II of H. Con. Res. 14, Relative to CBO’s January 2025 Baseline,” July 21, 2025. <https://www.cbo.gov/publication/61570>

² U.S. Department of the Treasury, “Tax Expenditures Fiscal Year 2027,” December 16, 2025. <https://home.treasury.gov/system/files/131/Tax-Expenditures-FY2027.pdf>

³ Docket Number IRS-2025-0002, Comment ID IRS-2025-0002-0196