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April 29, 2020

The Honorable Charles P. Rettig  
Commissioner  
Internal Revenue Service  
1111 Constitution Avenue, NW  
Washington, DC 20224

Dear Commissioner Rettig:

I write to you today to follow-up on your June 28, 2019 response to my letter requesting additional information regarding the implementation and enforcement of the tax credit for carbon oxide sequestration under Internal Revenue Code Section 45Q.

As you know, interim guidance issued by the Internal Revenue Service (IRS) in 2010 required any taxpayer claiming a credit under section 45Q to adhere to the Environmental Protection Agency's (EPA) Greenhouse Gas Reporting Requirement under subpart RR, Geologic Sequestration of Carbon Dioxide. While your response acknowledged a significant discrepancy between the number of credits claimed under Section 45Q, it failed to adequately explain any legitimate reason for this discrepancy, or lay out any actions that the IRS intended to take to investigate this potential fraud. As such, I asked the U.S. Treasury Inspector General for Tax Administration (TIGTA) to initiate an investigation, which was recently completed. I have attached TIGTA's response to my inquiry here for your review and action.

TIGTA confirms that fossil fuel companies have for years, improperly claimed nearly \$900 million worth of the 45Q tax credit. TIGTA states that "the reason for the discrepancy is that some taxpayers have claimed the I.R.C. § 45Q credit on tax returns without complying with the EPA's monitoring, reporting, and verification (MRV) requirements," and "determined that for TYs [tax years] 2010 through 2019, a total of \$893,935,025 (87 percent) worth of I.R.C. § 45Q credits were claimed by...taxpayers when they were not in compliance with the EPA." Of the ten companies claiming 99.9 percent of the 45Q credits, TIGTA found that only three had the required MRV plans in place with the EPA. Additionally, while TIGTA acknowledged that the IRS had conducted audits and denied 45Q credits for a portion of these claims, hundreds of millions of improperly claimed taxpayer dollars remain unchallenged by the IRS.

In your June 2019 response to my initial inquiry, you also stated that "part of the discrepancy between the EPA's and IRS's reporting numbers may be attributable to a delay between the time taxpayers claim Section 45Q credits and the time within which an audit of those credits is

resolved.” However, TIGTA unequivocally stated that this explanation is false, writing that the discrepancy is “...not based on ongoing audits.” It is troubling that the explanation provided by the IRS appears to lack accuracy and merit.

Given the apparent failure of the fossil fuel industry to act in good faith when claiming Section 45Q credits, as demonstrated in TIGTA’s response, and the lack of urgency by the IRS to enforce compliance, I urge the IRS to take the following steps and provide substantive responses to each of these points no later than May 13, 2020:

1. Conduct an audit of every taxpayer that has previously claimed more than \$10,000 in value of the Section 45Q credit, and retroactively deny any credits to that were not in compliance with necessary EPA subpart RR regulations;
2. As laid out in TIGTA’s response, “conduct a campaign or special project to examine every taxpayer that claimed the credit” moving forward to ensure that the taxpayer is in compliance with all necessary regulations;
3. Transmit to my office in compliance with I.R.C. §6103, in writing, the names of all companies that have claimed the credit since tax year 2010, as well as the amount of carbon dioxide each company has claimed to have sequestered, and the value of any credits claimed;
4. As the IRS works to update its guidance to implement changes to the Section 45Q credit, it must ensure that all claimants adhere to the standards contained in EPA subpart RR, including MRV requirements. While the minority of claimants with approved EPA MRV plans have demonstrated the technical feasibility of current requirements, the widespread and improper use of the Section 45Q credit has clearly demonstrated an inability of the fossil fuel industry to self-regulate;
5. Ensure that any new regulations hold responsible companies who made improper or erroneous claims;
6. Suspend the use of the Section 45Q credit entirely for enhanced oil recovery operations until a full investigation on the past misuse of the credit by this industry can be conducted, and appropriate guarantees can be put in place, including those outlined above, that would prevent any future misconduct.

Thank you for your attention to this important matter, and I look forward to your prompt response.

Sincerely,



Robert Menendez  
United States Senator