



DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224

The Honorable Robert Menendez
United States Senate
Washington, DC 20510

Dear Senator Menendez:

Thank you for your follow-up letter dated April 29, 2020, about the implementation and enforcement of the tax credit for carbon oxide sequestration under Internal Revenue Code Section 45Q. We previously responded to your request for information in our letter dated June 28, 2019.

We appreciate the opportunity to review the letter from the U.S. Treasury Inspector General for Tax Administration (TIGTA) about Section 45Q. Specifically, the TIGTA letter considers the differences between the amount of carbon dioxide claimed as qualified for Section 45Q tax credits on federal tax returns and the amount of sequestered carbon dioxide reported to the Environmental Protection Agency (EPA).

Subpart RR of the EPA's Greenhouse Gas Reporting Requirement requires owners of facilities that inject carbon dioxide underground for geologic sequestration to report greenhouse gases (GHGs). Under the EPA's rules, the owners of these facilities must maintain an EPA-approved, site-specific Monitoring, Reporting, and Verification Plan (MRV Plan).

TIGTA found that for tax years 2010 through 2019, taxpayers claimed approximately \$894 million of Section 45Q tax credits even though they did not have an EPA-approved MRV plan in place at the time they claimed the credit. TIGTA also indicated that the IRS has pursued enforcement against some of those taxpayers, disallowing approximately \$531 million of those credits. We continue to examine other taxpayers in this group.

Your letter also notes TIGTA stated the difference between the amounts of carbon dioxide sequestration taxpayers reported to the IRS and the amounts reported to the EPA is not based on ongoing audits, contrary to what we indicated in our June 28, 2019 response. We believe there may be a misunderstanding. We agree with TIGTA's conclusion that taxpayers reporting amounts of carbon dioxide sequestration to the IRS without properly reporting the amounts to the EPA as required is the basis of this difference, and audit results would not affect what facility owners reported to the EPA in prior years. However, as we indicated in our earlier response, upon audit, we may disallow all or a portion of claimed Section 45Q credits. Also, we would adjust

downward the aggregate amount of metric tons of qualified carbon oxide taken into account upon a final determination of the disallowance.

As TIGTA noted, IRS examiners have consistently denied the credit when taxpayers failed to comply with the EPA's MRV Plan requirements, and the IRS continues to examine such cases. Court orders or agreements finally determining these disallowances will reduce the amount of any discrepancies. In addition, the EPA did not implement subpart RR until 2011. Because TIGTA's inquiry involved tax years beginning in 2010, taxpayers would have claimed credits attributable to periods before those taxpayers were subject to subpart RR.

Finally, your letter presented six proposals. I enclosed substantive responses to each of them.

I hope this information is helpful. If you have questions, please feel free to contact me, or a member of your staff may contact Amy Klonsky, Acting Director, Legislative Affairs, at 202-317-6985.

Sincerely,

Charles P. Rettig

Enclosure