

NOT-104902-11

Part III - Administrative, Procedural, and Miscellaneous

Credit for Carbon Dioxide Sequestration; Modification of Notice 2009-83

Notice 2011-25

This notice modifies Notice 2009-83, 2009-44 I.R.B. 588, by removing section 4.07 of the Notice. Section 4.07 provided that for purposes of § 45Q of the Internal Revenue Code, qualified carbon dioxide (CO<sub>2</sub>) does not include CO<sub>2</sub> that is captured and sequestered in a project as required under an agreement entered into in connection with the qualifying advanced coal project program of § 48A or the qualifying gasification project program of § 48B.

SECTION 1. BACKGROUND

Section 45Q was enacted by § 115 of the Energy Improvement and Extension Act of 2008, Pub. L. No. 110-343, 122 Stat. 3829 (October 3, 2008), as amended by section 1131 of the American Recovery and Reinvestment Tax Act of 2009, Division B of Pub. L. 111-5, 123 Stat 115 (Feb. 17, 2009). Section 45Q(a) provides that a credit for CO<sub>2</sub> sequestration is generally available to a taxpayer that captures qualified CO<sub>2</sub> at a qualified facility and disposes of qualified CO<sub>2</sub> in secure geological storage within the

United States, effective for CO<sub>2</sub> captured after October 3, 2008.

Section 45Q(b)(1) defines qualified CO<sub>2</sub> as CO<sub>2</sub> from an industrial source which (A) would otherwise be released into the atmosphere as industrial emission of greenhouse gas, and (B) is measured at the source of capture and verified at the point of disposal or injection.

On November 2, 2009, the Internal Revenue Service (Service) issued Notice 2009-83, providing guidance on determining eligibility for the credit and the amount of the credit, as well as rules regarding adequate security measures for secure geological storage of CO<sub>2</sub>. Section 4.07 of Notice 2009-83 provides that “qualified CO<sub>2</sub> for purposes of the § 45Q credit does not include CO<sub>2</sub> that is captured and sequestered in a project to the extent required under an agreement executed with the Service under the qualifying advanced coal project program of § 48A or the qualifying gasification project program of § 48B.”

Since the issuance of Notice 2009-83, several commenters asserted that the interpretation of § 45Q(b)(1) in section 4.07 is too restrictive and is inconsistent with the tax and energy policy underlying the § 45Q credit, the § 48A program, and the § 48B program. According to these commenters, the intent of § 45Q(b)(1) is not to exclude CO<sub>2</sub> that has been captured and sequestered under the § 48A program or the § 48B program, but to ensure merely that the § 45Q credit is limited to CO<sub>2</sub> captured from an industrial source that, but for the physical act of capture, would otherwise be released into the atmosphere as an industrial emission of greenhouse gas.

## SECTION 2. MODIFICATION OF NOTICE 2009-83

This notice removes section 4.07 of Notice 2009-83. Accordingly, qualified CO<sub>2</sub>, as defined under § 45Q(b)(1), does not exclude CO<sub>2</sub> that is required to be captured and sequestered under the § 48A program or the § 48B program.

## SECTION 3. EFFECT ON OTHER DOCUMENTS

Notice 2009-83 is modified as provided in this notice. Except as explicitly provided, this notice does not otherwise affect the guidance provided in Notice 2009-83.

## SECTION 4. EFFECTIVE DATE

This notice is effective November 2, 2009, the effective date of Notice 2009-83.

## SECTION 5. DRAFTING INFORMATION

The principal author of this notice is Jennifer C. Bernardini of the Office of Associate Chief Counsel (Passthroughs & Special Industries). For further information regarding this Notice contact Jennifer C. Bernardini on (202) 622-3110 (not a toll-free call).