

INTERNAL REVENUE BULLETIN



HIGHLIGHTS OF THIS ISSUE

These synopses are intended only as aids to the reader in identifying the subject matter covered. They may not be relied upon as authoritative interpretations.

INCOME TAX

Notice 2021-35, page 723.

The notice publishes the inflation adjustment factor for the carbon oxide sequestration credit under § 45Q for calendar

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year 2021. Also, the notice includes a statement that the IRS is not certifying that 75 million metric tons of qualified carbon oxide has been taken into account by taxpayers filing on annual report pursuant to section 6 of Notice 2009-83, 2009-2 C.B. 588.

The IRS Mission

Provide America's taxpayers top-quality service by helping them understand and meet their tax responsibilities and enforce the law with integrity and fairness to all.

Introduction

The Internal Revenue Bulletin is the authoritative instrument of the Commissioner of Internal Revenue for announcing official rulings and procedures of the Internal Revenue Service and for publishing Treasury Decisions, Executive Orders, Tax Conventions, legislation, court decisions, and other items of general interest. It is published weekly.

It is the policy of the Service to publish in the Bulletin all substantive rulings necessary to promote a uniform application of the tax laws, including all rulings that supersede, revoke, modify, or amend any of those previously published in the Bulletin. All published rulings apply retroactively unless otherwise indicated. Procedures relating solely to matters of internal management are not published; however, statements of internal practices and procedures that affect the rights and duties of taxpayers are published.

Revenue rulings represent the conclusions of the Service on the application of the law to the pivotal facts stated in the revenue ruling. In those based on positions taken in rulings to taxpayers or technical advice to Service field offices, identifying details and information of a confidential nature are deleted to prevent unwarranted invasions of privacy and to comply with statutory requirements.

Rulings and procedures reported in the Bulletin do not have the force and effect of Treasury Department Regulations, but they may be used as precedents. Unpublished rulings will not be relied on, used, or cited as precedents by Service personnel in the disposition of other cases. In applying published rulings and procedures, the effect of subsequent legislation, regulations, court decisions, rulings, and procedures must be considered, and Service personnel and others concerned are cautioned

against reaching the same conclusions in other cases unless the facts and circumstances are substantially the same.

The Bulletin is divided into four parts as follows:

Part I.—1986 Code.

This part includes rulings and decisions based on provisions of the Internal Revenue Code of 1986.

Part II.—Treaties and Tax Legislation.

This part is divided into two subparts as follows: Subpart A, Tax Conventions and Other Related Items, and Subpart B, Legislation and Related Committee Reports.

Part III.—Administrative, Procedural, and Miscellaneous.

To the extent practicable, pertinent cross references to these subjects are contained in the other Parts and Subparts. Also included in this part are Bank Secrecy Act Administrative Rulings. Bank Secrecy Act Administrative Rulings are issued by the Department of the Treasury's Office of the Assistant Secretary (Enforcement).

Part IV.—Items of General Interest.

This part includes notices of proposed rulemakings, disbarment and suspension lists, and announcements.

The last Bulletin for each month includes a cumulative index for the matters published during the preceding months. These monthly indexes are cumulated on a semiannual basis, and are published in the last Bulletin of each semiannual period.

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Part III

Credit for Carbon Oxide Sequestration 2021 Section 45Q Inflation Adjustment Factor

Notice 2021-35

SECTION 1. PURPOSE

This notice publishes the inflation adjustment factor for the credit for carbon oxide sequestration under § 45Q of the Internal Revenue Code (§ 45Q credit) for calendar year 2021. The inflation adjustment factor is used to determine the amount of the credit allowable under § 45Q. This notice also provides that the IRS, in consultation with the EPA, does not certify that the aggregate amount of qualified carbon oxide taken into account for purposes of § 45Q has reached 75,000,000 metric tons.

SECTION 2. BACKGROUND

Section 45Q was enacted by § 115 of the Energy Improvement and Extension Act of 2008, Division B of Pub. L. No. 110-343, 122 Stat. 3765, 3829 (October 3, 2008), to provide a credit for the sequestration of carbon dioxide. Section 45Q was amended by § 1131 of the American Recovery and Reinvestment Tax Act of 2009, Division B of Pub. L. 111-5, 123 Stat 115 (February 17, 2009) and more recently by section 41119 of the Bipartisan Budget Act of 2018 (BBA), Pub. L. No. 115-123 (February 9, 2018) and the Taxpayer Certainty and Disaster Tax Relief Act of 2020, enacted as Division EE of the Consolidated Appropriations Act, 2021, Pub. L. 116-260, 134 Stat. 1182, 3051 (December 27, 2020). As a result of the modifications made by the BBA amendment, the credit under § 45Q now applies to the sequestration of “qualified carbon oxide,” a broader term than qualified carbon dioxide. The amount of the credit is also increased for carbon oxide captured with equipment originally placed in service on or after the date of enactment of BBA.

Section 45Q(a)(1) allows a credit of \$20 per metric ton of qualified carbon oxide (i) captured by the taxpayer using carbon capture equipment which is originally placed in service at a qualified facility before the date of the enactment of BBA, (ii) disposed of by the taxpayer in secure geological storage, and (iii) not used by the taxpayer as a tertiary injectant in a qualified enhanced oil or natural gas recovery project.

Section 45Q(a)(2) allows a credit of \$10 per metric ton of qualified carbon oxide (i) captured by the taxpayer using carbon capture equipment which is originally placed in service at a qualified facility before the date of the enactment of BBA, and (ii) either (I) used by the taxpayer as a tertiary injectant in a qualified enhanced oil or natural gas recovery project and disposed of by the taxpayer in secure geological storage or (II) utilized by the taxpayer in a manner described in § 45Q(f)(5).

Section 45Q(a)(3) allows a credit of the applicable dollar amount (as determined under § 45Q(b)(1)) per metric ton of qualified carbon oxide (i) captured by the taxpayer using carbon capture equipment which is originally placed in service at a qualified facility on or after the date of the enactment of BBA during the 12-year period beginning on the date the equipment was originally placed in service, (ii) disposed of by the taxpayer in secure geological storage, and (iii) neither used as a tertiary injectant in a qualified enhanced oil or natural gas recovery project nor utilized in a manner described in § 45Q(f)(5).

Section 45Q(a)(4) allows credit of the applicable dollar amount (as determined under § 45Q(b)(1)) per metric ton of qualified carbon oxide (i) captured by the taxpayer using carbon capture equipment which is originally placed in service at a qualified facility on or after the date of the enactment of BBA, during the 12-year period beginning on the date the equipment was originally placed in service, and (ii) either (I) used by the taxpayer as a tertiary injectant in a qualified enhanced oil or natural gas recovery project and disposed of by the taxpayer in secure geo-

logical storage or (II) utilized in a manner described in § 45Q(f)(5).

For purposes of determining the carbon oxide sequestration credit under § 45Q, a taxpayer may elect under § 45Q(b)(3) to have the dollar amounts applicable under § 45Q(a)(1) or (2) apply in lieu of the dollar amounts applicable under § 45Q(a)(3) or (4) for each metric ton of qualified carbon oxide which is captured by the taxpayer using carbon capture equipment which is originally placed in service at a qualified facility on or after the date of the enactment of BBA.

Section 45Q(c) defines the term “qualified carbon oxide” as (i) any carbon dioxide which (I) is captured from an industrial source by carbon capture equipment which is originally placed in service before the date of the enactment of BBA, (II) would otherwise be released into the atmosphere as industrial emission of greenhouse gas or lead to such release, and (III) is measured at the source of capture and verified at the point of disposal, injection, or utilization; (ii) any carbon dioxide or other carbon oxide which (I) is captured from an industrial source by carbon capture equipment which is originally placed in service on or after the date of the enactment of BBA, (II) would otherwise be released into the atmosphere as industrial emission of greenhouse gas or lead to such release, and (III) is measured at the source of capture and verified at the point of disposal, injection, or utilization; or (iii) in the case of a direct air capture facility, any carbon dioxide which (I) is captured directly from the ambient air, and (II) is measured at the source of capture and verified at the point of disposal, injection, or utilization.

Section 45Q(d) defines the term “qualified facility” as any industrial facility or direct air capture facility (i) the construction of which begins before January 1, 2026, and (I) construction of carbon capture equipment begins before such date, or (II) the original planning and design for such facility includes installation of carbon capture equipment; and (ii) which captures (I) in the case of a facility which emits not more than 500,000 metric tons of carbon oxide into the atmosphere during the taxable year,

not less than 25,000 metric tons of qualified carbon oxide during the taxable year which is utilized in a manner described in § 45Q(f)(5), (II) in the case of an electricity generating facility which is not described in § 45Q(d)(2)(A), not less than 500,000 metric tons of qualified carbon oxide during the taxable year, or (III) in the case of a direct air capture facility or any facility not described in § 45Q(d)(2)(A) or (B), not less than 100,000 metric tons of qualified carbon oxide during the taxable year.

Under § 45Q(f)(7), for taxable years beginning in a calendar year after 2009, the dollar amounts contained in § 45Q(a)(1) and (2) must be adjusted for inflation by multiplying such dollar amount by the inflation adjustment factor for such calendar year determined under § 43(b)(3)(B), determined by substituting “2008” for “1990.”

Section 43(b)(3)(B) defines the term “inflation adjustment factor” as, with respect to any calendar year, a fraction the numerator of which is the GNP implicit price deflator for the preceding calendar year and the denominator of which is the GNP implicit price deflator for 1990. For purposes of § 45Q(f)(7), for the 2021 calendar year, the inflation adjustment factor is a fraction the numerator of which is

the GNP implicit price deflator for 2020 (113.586) and the denominator of which is the GNP implicit price deflator for 2008 (94.268).

Section 45Q(g) provides that in the case of any carbon capture equipment placed in service before the date of the enactment of BBA, the credit under § 45Q shall apply with respect to qualified carbon oxide captured using such equipment before the end of the calendar year in which the Secretary, in consultation with the Administrator of the Environmental Protection Agency, certifies that, during the period beginning after October 3, 2008, a total of 75,000,000 metric tons of qualified carbon oxide have been taken into account in accordance with (i) § 45Q(a), as in effect on the day before the date of the enactment of BBA, and (ii) § 45Q(a)(1) and (2).

SECTION 3. INFLATION ADJUSTMENT FACTOR

The inflation adjustment factor for calendar year 2021 is 1.2049. The § 45Q credit for calendar year 2021 is \$24.10 per metric ton of qualified carbon oxide under § 45Q(a)(1) and \$12.05 per metric ton of qualified carbon oxide under § 45Q(a)(2).

SECTION 4. TAX CREDIT UTILIZATION

Section 6 of Notice 2009-83 requires taxpayers to file annual reports that provide (among other information) the amount (in metric tons) of qualified carbon oxide for the taxable year that has been taken into account for purposes of claiming the § 45Q credit. The annual reports must be filed with the Internal Revenue Service (Service) not later than the last day of the second calendar month following the month during which the tax return on which the § 45Q credit is claimed was due (including extensions).

Based on all of the information available to the IRS and the EPA as of October 26, 2021, the IRS, in consultation with the EPA, does not certify that the aggregate amount of qualified carbon oxide taken into account for purposes of § 45Q has reached 75,000,000 metric tons.

SECTION 5. DRAFTING INFORMATION

The principal author of this notice is Maggie Stehn of the Office of Associate Chief Counsel (Passthroughs & Special Industries). For further information regarding this notice contact Maggie Stehn at (202) 317-6853 (not a toll-free number).

Definition of Terms

Revenue rulings and revenue procedures (hereinafter referred to as “rulings”) that have an effect on previous rulings use the following defined terms to describe the effect:

Amplified describes a situation where no change is being made in a prior published position, but the prior position is being extended to apply to a variation of the fact situation set forth therein. Thus, if an earlier ruling held that a principle applied to A, and the new ruling holds that the same principle also applies to B, the earlier ruling is amplified. (Compare with *modified*, below).

Clarified is used in those instances where the language in a prior ruling is being made clear because the language has caused, or may cause, some confusion. It is not used where a position in a prior ruling is being changed.

Distinguished describes a situation where a ruling mentions a previously published ruling and points out an essential difference between them.

Modified is used where the substance of a previously published position is being changed. Thus, if a prior ruling held that a principle applied to A but not to B, and the

new ruling holds that it applies to both A and B, the prior ruling is modified because it corrects a published position. (Compare with *amplified* and *clarified*, above).

Obsoleted describes a previously published ruling that is not considered determinative with respect to future transactions. This term is most commonly used in a ruling that lists previously published rulings that are obsoleted because of changes in laws or regulations. A ruling may also be obsoleted because the substance has been included in regulations subsequently adopted.

Revoked describes situations where the position in the previously published ruling is not correct and the correct position is being stated in a new ruling.

Superseded describes a situation where the new ruling does nothing more than restate the substance and situation of a previously published ruling (or rulings). Thus, the term is used to republish under the 1986 Code and regulations the same position published under the 1939 Code and regulations. The term is also used when it is desired to republish in a single ruling a series of situations, names, etc., that were previously published over a period of time in separate rulings. If the

new ruling does more than restate the substance of a prior ruling, a combination of terms is used. For example, *modified* and *superseded* describes a situation where the substance of a previously published ruling is being changed in part and is continued without change in part and it is desired to restate the valid portion of the previously published ruling in a new ruling that is self contained. In this case, the previously published ruling is first modified and then, as modified, is superseded.

Supplemented is used in situations in which a list, such as a list of the names of countries, is published in a ruling and that list is expanded by adding further names in subsequent rulings. After the original ruling has been supplemented several times, a new ruling may be published that includes the list in the original ruling and the additions, and supersedes all prior rulings in the series.

Suspended is used in rare situations to show that the previous published rulings will not be applied pending some future action such as the issuance of new or amended regulations, the outcome of cases in litigation, or the outcome of a Service study.

Abbreviations

The following abbreviations in current use and formerly used will appear in material published in the Bulletin.

A—Individual.
Acq.—Acquiescence.
B—Individual.
BE—Beneficiary.
BK—Bank.
B.T.A.—Board of Tax Appeals.
C—Individual.
C.B.—Cumulative Bulletin.
CFR—Code of Federal Regulations.
CI—City.
COOP—Cooperative.
Ct.D.—Court Decision.
CY—County.
D—Decedent.
DC—Dummy Corporation.
DE—Donee.
Del. Order—Delegation Order.
DISC—Domestic International Sales Corporation.
DR—Donor.
E—Estate.
EE—Employee.
E.O.—Executive Order.
ER—Employer.

ERISA—Employee Retirement Income Security Act.
EX—Executor.
F—Fiduciary.
FC—Foreign Country.
FICA—Federal Insurance Contributions Act.
FISC—Foreign International Sales Company.
FPH—Foreign Personal Holding Company.
FR.—Federal Register.
FUTA—Federal Unemployment Tax Act.
FX—Foreign corporation.
G.C.M.—Chief Counsel’s Memorandum.
GE—Grantee.
GP—General Partner.
GR—Grantor.
IC—Insurance Company.
I.R.B.—Internal Revenue Bulletin.
LE—Lessee.
LP—Limited Partner.
LR—Lessor.
M—Minor.
Nonacq.—Nonacquiescence.
O—Organization.
P—Parent Corporation.
PHC—Personal Holding Company.
PO—Possession of the U.S.
PR—Partner.
PRS—Partnership.

PTE—Prohibited Transaction Exemption.
Pub. L.—Public Law.
REIT—Real Estate Investment Trust.
Rev. Proc.—Revenue Procedure.
Rev. Rul.—Revenue Ruling.
S—Subsidiary.
S.P.R.—Statement of Procedural Rules.
Stat.—Statutes at Large.
T—Target Corporation.
T.C.—Tax Court.
T.D.—Treasury Decision.
TFE—Transferee.
TFR—Transferor.
T.I.R.—Technical Information Release.
TP—Taxpayer.
TR—Trust.
TT—Trustee.
U.S.C.—United States Code.
X—Corporation.
Y—Corporation.
Z—Corporation.

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¹ A cumulative list of all revenue rulings, revenue procedures, Treasury decisions, etc., published in Internal Revenue Bulletins 2021–27 through 2021–52 is in Internal Revenue Bulletin 2021–52, dated December 27, 2021.

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¹ A cumulative list of all revenue rulings, revenue procedures, Treasury decisions, etc., published in Internal Revenue Bulletins 2021-27 through 2021-52 is in Internal Revenue Bulletin 2021-52, dated December 27, 2021.

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We Welcome Comments About the Internal Revenue Bulletin

If you have comments concerning the format or production of the Internal Revenue Bulletin or suggestions for improving it, we would be pleased to hear from you. You can email us your suggestions or comments through the IRS Internet Home Page (www.irs.gov) or write to the Internal Revenue Service, Publishing Division, IRB Publishing Program Desk, 1111 Constitution Ave. NW, IR-6230 Washington, DC 20224.