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Blog Post

Tax-Equity Market Eagerly Awaiting Carbon Sequestration Guidance

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Fifteen members of the U.S. House of Representatives sent a letter to the U.S. Department of the Treasury in December urging it to release guidance for carbon capture projects under section 45Q of the tax code. The reason for the letter, in addition to a looming January 1, 2024, start of construction deadline, is that there are “hundreds of millions of dollars in investments sitting on the sidelines.” It was the second such letter sent by members of Congress in the past eight months.

The carbon sequestration credit provides a dollar-for-dollar reduction in federal income tax liability for each metric ton of carbon oxide captured at a qualifying plant and then (i) permanently buried, (ii) used as a tertiary injectant in an enhanced oil or natural gas recovery project or (iii) used in another commercial process that would result in the permanent disposal of the carbon oxide. Similar to the production tax credit, it is available as a credit stream for a 12-year period beginning on the date the carbon capture equipment is first placed in service.

Potential tax-equity investors have expressed interest in carbon capture projects, but the market has yet to develop due largely to a lack of guidance around key aspects of the statute and how tax-equity financing would work. Open questions include the circumstances under which the credit is subject to recapture, the allocation of the credit among partners of a partnership, and the mechanics for making an election permitted by the statute to allow the entity that permanently buries or otherwise uses the carbon oxide to claim the credit in lieu of the owner of the carbon recapture equipment.

Guidance for the carbon sequestration credit is on the Department of the Treasury and the IRS’s [priority guidance plan](#) for 2020. Practitioners expect that the guidance will be issued in multiple tranches. An IRS attorney working on the guidance confirmed at the

American Bar Association Section of Taxation meeting on January 31, 2020, that the first two pieces of guidance will be out “in the next couple of months.”¹

1. Kristen Parillo, "First Tranche of Carbon Capture Credit Guidance Will Be Out Soon," *Tax Notes* (Feb 5., 2020) ↵

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