

# KIRKLAND & ELLIS

Blog Post

## Carbon Sequestration Tax Credit FAQ #2: How do Tax Credit Transfers Work?

24 July 2020

*This is part of an ongoing series of blog posts that answer frequently asked questions about the carbon sequestration tax credit under section 45Q of the Internal Revenue Code. See [prior posts](#) for additional background on the tax credit.*

As described in [our last FAQ post](#), carbon capture tax credits are normally available to the person who (1) owns the carbon capture equipment and (2) physically or contractually ensures the capture and disposal, injection or utilization of the carbon. The tax code also provides an alternative rule whereby the owner of the carbon capture equipment can elect to transfer the credits to someone that it contracts with to dispose, inject or utilize the carbon (a “carbon offtaker”).

The tax regulations permit both partial transfers and transfers to multiple carbon offtakers. One caveat with multiple transfers is that the credits allocable to each carbon offtaker must be in proportion to the amount of carbon that they offload. To give an example, if there are \$100 in credits (all of which are transferred to carbon offtakers) and carbon offtaker A offloads 70% of the carbon and carbon offtaker B offloads 30%, then the tax credits are allocated \$70/\$30 between carbon offtaker A and carbon offtaker B. Carbon offtakers can pool credits from multiple sources in the same year, but they cannot further transfer them to someone else.

Tax credit transfer elections are made annually, which gives the commercial parties significant flexibility to allocate credits over the 12-year credit period as dictated by the commercial arrangement.

---

**[Read more insights from Kirkland's Energy & Infrastructure blog](#) or [subscribe](#) to receive future updates.**

# Author

[Scott W. Cockerham](#)

Partner / [Washington, D.C.](#)

## Related Services

### Practices

- [Transactional](#)
- [Tax](#)

This publication is distributed with the understanding that the author, publisher and distributor of this publication and/or any linked publication are not rendering legal, accounting, or other professional advice or opinions on specific facts or matters and, accordingly, assume no liability whatsoever in connection with its use. Pursuant to applicable rules of professional conduct, portions of this publication may constitute Attorney Advertising.

This publication may cite to published materials from third parties that have already been placed on the public record. The citation to such previously published material, including by use of “hyperlinks,” is not, in any way, an endorsement or adoption of these third-party statements by Kirkland & Ellis LLP.