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HIGHLIGHTS OF THIS ISSUE

Bulletin No. 2020–11
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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.

ADMINISTRATIVE & INCOME TAX

Rev. Proc. 2020-12, page 511.

This revenue procedure provides a safe harbor relating to the allocation of section 45Q credits for the sequestration of carbon oxide to partners in a partnership for purposes of section 704(b) of the Code. If taxpayers satisfy the requirements of the safe harbor, the revenue procedure provides that the Internal Revenue Service will treat partnerships as properly allocating the section 45Q credit in accordance with section 704(b) and the regulations thereunder.

Rev. Proc. 2020-13, page 515.

This revenue procedure provides procedures applicable to a taxpayer in a farming business regarding the application of § 263A of the Internal Revenue Code (Code). Prior to the enactment of Public Law 115-97, 131 Stat. 2054 (Dec. 22, 2017), commonly referred to as the Tax Cuts and Jobs Act (TCJA), a taxpayer in a farming business could elect under § 263A(d)(3) to have § 263A not apply to certain plants produced by the taxpayer's farming business. Section 13102 of the TCJA added new § 263A(i) to the Code, which provides that § 263A does not apply to a taxpayer, other than a tax shelter (as defined in § 448(d)(3) of the Code), for a taxable year in which the taxpayer qualifies as a small business taxpayer by satisfying the gross receipts test in § 448(c) of the Code. This revenue procedure provides the exclusive procedures for a taxpayer that qualifies for the § 263A(i) small business taxpayer exemption to revoke its prior election under § 263A(d)(3) and apply the exemption under § 263A(i) in the same taxable year. In addition, this revenue procedure provides the exclusive procedures for a taxpayer that qualifies for and wishes to make an election under § 263A(d)(3) in the same taxable year that it no longer qualifies for the exemption under § 263A(i).

EMPLOYEE PLANS

Notice 2020-11, page 492.

This notice sets forth updates on the corporate bond monthly yield curve, the corresponding spot segment rates for February 2020 used under § 417(e)(3)(D), the 24-month average segment rates applicable for February 2020, and the 30-year Treasury rates, as reflected by the application of § 430(h)(2)(C)(iv).

INCOME TAX

Notice 2020-12, page 495.

Beginning of Construction for the Credit for Carbon Oxide Sequestration under Section 45Q. Notice 2020-12 provides guidance on the determination of when construction has begun on a qualified facility or on carbon capture equipment that may be eligible for the Section 45Q Credit. This notice provides two methods for taxpayers to establish the beginning of construction requirement (Physical Work Test and Five Percent Safe Harbor), a Continuity Requirement for both methods, guidance on transfers of ownership of a qualified facility or carbon capture equipment, and additional guidance applicable to the beginning of construction requirement.

Notice 2020-13, page 502.

Notice 2020-13 provides for adjustments to the limitation on housing expenses for purposes of section 911 of the Internal Revenue Code for the 2020 tax year. These adjustments are made on the basis of geographic differences in housing costs relative to housing costs in the United States. If the limitation on housing expenses is higher for the 2020 tax year than the adjusted limitations on housing expenses provided in Notice 2019-24, qualified taxpayers may apply the adjusted limitations in this notice for the 2020 tax year to their 2019 tax year.

Finding Lists begin on page ii.

Rev. Rul. 2020-6, page 490.

Federal rates; adjusted federal rates; adjusted federal long-term rate, the long-term exempt rate, and the blended annual rate. For purposes of sections 382, 1274, 1288, 7872 and other sections of the Code, tables set forth the rates for March 2020.

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.

Part I

Section 1274.—Determination of Issue Price in the Case of Certain Debt Instruments Issued for Property

(Also Sections 42, 280G, 382, 467, 468, 482, 483, 1288, 7520, 7872.)

Rev. Rul. 2020-6

This revenue ruling provides various prescribed rates for federal income tax purposes for March 2020 (the current month). Table 1 contains the short-term, mid-term, and long-term applicable federal rates (AFR) for the current month for purposes of section 1274(d) of the Internal Revenue Code. Table 2 contains the short-term, mid-term, and long-term adjusted applicable federal rates (adjusted AFR) for the current month for purposes of section 1288(b). Table 3 sets forth the adjusted federal long-term rate and the long-term tax-exempt rate described in section 382(f). Table 4 contains the appropriate percentages for determining the low-income housing credit described in section 42(b)(1) for buildings placed in service during the current month. However, under section 42(b)(2), the applicable percentage for non-federally subsidized new buildings placed in service after July 30, 2008, shall not be less than 9%. Finally, Table 5 contains the federal rate for determining the present value of an annuity, an interest for life or for a term of years, or a remainder or a reversionary interest for purposes of section 7520.

REV. RUL. 2020-6 TABLE 1
Applicable Federal Rates (AFR) for March 2020
Period for Compounding

	Annual	*Semiannual*	*Quarterly*	*Monthly*
		Short-term		
AFR	1.50%	1.49%	1.49%	1.49%
110% AFR	1.65%	1.64%	1.64%	1.63%
120% AFR	1.80%	1.79%	1.79%	1.78%
130% AFR	1.95%	1.94%	1.94%	1.93%
		Mid-term		
AFR	1.53%	1.52%	1.52%	1.52%
110% AFR	1.68%	1.67%	1.67%	1.66%
120% AFR	1.83%	1.82%	1.82%	1.81%
130% AFR	1.99%	1.98%	1.98%	1.97%
150% AFR	2.29%	2.28%	2.27%	2.27%
175% AFR	2.68%	2.66%	2.65%	2.65%
		Long-term		
AFR	1.93%	1.92%	1.92%	1.91%
110% AFR	2.12%	2.11%	2.10%	2.10%
120% AFR	2.31%	2.30%	2.29%	2.29%
130% AFR	2.52%	2.50%	2.49%	2.49%

REV. RUL. 2020-6 TABLE 2
Adjusted AFR for March 2020
Period for Compounding

	Annual	*Semiannual*	*Quarterly*	*Monthly*
Short-term adjusted AFR	1.13%	1.13%	1.13%	1.13%
Mid-term adjusted AFR	1.15%	1.15%	1.15%	1.15%
Long-term adjusted AFR	1.47%	1.46%	1.46%	1.46%

REV. RUL. 2020-6 TABLE 3 Rates Under Section 382 for March 2020	
Adjusted federal long-term rate for the current month	1.47%
Long-term tax-exempt rate for ownership changes during the current month (the highest of the adjusted federal long-term rates for the current month and the prior two months.)	1.63%

REV. RUL. 2020-6 TABLE 4 Appropriate Percentages Under Section 42(b)(1) for March 2020	
Note: Under section 42(b)(2), the applicable percentage for non-federally subsidized new buildings placed in service after July 30, 2008, shall not be less than 9%.	
Appropriate percentage for the 70% present value low-income housing credit	7.40%
Appropriate percentage for the 30% present value low-income housing credit	3.17%

REV. RUL. 2020-6 TABLE 5 Rate Under Section 7520 for March 2020	
Applicable federal rate for determining the present value of an annuity, an interest for life or a term of years, or a remainder or reversionary interest	1.8%

Section 42.—Low-Income Housing Credit

The applicable federal short-term, mid-term, and long-term rates are set forth for the month of March 2020. See Rev. Rul. 2020-6, page 490.

Section 280G.—Golden Parachute Payments

The applicable federal short-term, mid-term, and long-term rates are set forth for the month of March 2020. See Rev. Rul. 2020-6, page 490.

Section 382.—Limitation on Net Operating Loss Carryforwards and Certain Built-In Losses Following Ownership Change

The adjusted applicable federal long-term rate is set forth for the month of March 2020. See Rev. Rul. 2020-6, page 490.

Section 467.—Certain Payments for the Use of Property or Services

The applicable federal short-term, mid-term, and long-term rates are set forth for the month of March 2020. See Rev. Rul. 2020-6, page 490.

Section 468.—Special Rules for Mining and Solid Waste Reclamation and Closing Costs

The applicable federal short-term rates are set forth for the month of March 2020. See Rev. Rul. 2020-6, page 490.

Section 482.—Allocation of Income and Deductions Among Taxpayers

The applicable federal short-term, mid-term, and long-term rates are set forth for the month of March 2020. See Rev. Rul. 2020-6, page 490.

Section 483.—Interest on Certain Deferred Payments

The applicable federal short-term, mid-term, and long-term rates are set forth for the month of March 2020. See Rev. Rul. 2020-6, page 490.

Section 1288.—Treatment of Original Issue Discount on Tax-Exempt Obligations

The adjusted applicable federal short-term, mid-term, and long-term rates are set forth for the month of March 2020. See Rev. Rul. 2020-6, page 490.

Section 7520.—Valuation Tables

The applicable federal mid-term rates are set forth for the month of March 2020. See Rev. Rul. 2020-6, page 490.

Section 7872.—Treatment of Loans With Below-Market Interest Rates

The applicable federal short-term, mid-term, and long-term rates are set forth for the month of March 2020. See Rev. Rul. 2020-6, page 490.

Part III

Update for Weighted Average Interest Rates, Yield Curves, and Segment Rates

Notice 2020-11

This notice provides guidance on the corporate bond monthly yield curve, the corresponding spot segment rates used under § 417(e)(3), and the 24-month average segment rates under § 430(h)(2) of the Internal Revenue Code. In addition, this notice provides guidance as to the interest rate on 30-year Treasury securities under § 417(e)(3)(A)(ii)(II) as in effect for plan years beginning before 2008 and the 30-year Treasury weighted average rate under § 431(c)(6)(E)(ii)(I).

YIELD CURVE AND SEGMENT RATES

Section 430 specifies the minimum funding requirements that apply to single-employer plans (except for CSEC plans under § 414(y)) pursuant to § 412. Section 430(h)(2) specifies the interest rates that must be used to determine a plan's target normal cost and funding target. Under this provision, present value is generally determined using three 24-month average interest rates ("segment rates"), each of which applies to cash flows during specified periods. To the extent provided under § 430(h)(2)(C)(iv), these segment rates are adjusted by the applicable percentage of the 25-year average segment rates for the period ending September 30 of the year preceding the calendar year in which the plan year begins.[1] However, an election may be made under § 430(h)(2)(D)(ii) to use the monthly yield curve in place of the segment rates.

Notice 2007-81, 2007-44 I.R.B. 899, provides guidelines for determining the monthly corporate bond yield curve, and the 24-month average corporate bond segment rates used to compute the target normal cost and the funding target. Consistent with the methodology specified in Notice 2007-81, the monthly corporate bond yield curve derived from January 2020 data is in Table 2020-1 at the end of this notice. The spot first, second, and third segment rates for the month of January 2020 are, respectively, 1.91, 2.93, and 3.54.

The 24-month average segment rates determined under § 430(h)(2)(C)(i) through (iii) must be adjusted pursuant to § 430(h)(2)(C)(iv) to be within the applicable minimum and maximum percentages of the corresponding 25-year average segment rates. For plan years beginning before 2021, the applicable minimum percentage is 90% and the applicable maximum percentage is 110%. The 25-year average segment rates for plan years beginning in 2019 and 2020 were published in Notice 2018-73, 2018-40 I.R.B. 526, and Notice 2019-51, 2019-41 I.R.B. 866, respectively.

24-MONTH AVERAGE CORPORATE BOND SEGMENT RATES

The three 24-month average corporate bond segment rates applicable for February 2020 without adjustment for the 25-year average segment rate limits are as follows:

24-Month Average Segment Rates Without 25-Year Average Adjustment

Applicable Month	First Segment	Second Segment	Third Segment
February 2020	2.75	3.80	4.26

Based on § 430(h)(2)(C)(iv), the 24-month averages applicable for February 2020, adjusted to be within the applicable minimum and maximum percentages of the corresponding 25-year average segment rates, are as follows:

Adjusted 24-Month Average Segment Rates

For Plan Years Beginning In	Applicable Month	First Segment	Second Segment	Third Segment
2019	February 2020	3.74	5.35	6.11
2020	February 2020	3.64	5.21	5.94

30-YEAR TREASURY SECURITIES INTEREST RATES

Section 431 specifies the minimum funding requirements that apply to multiemployer plans pursuant to § 412. Section 431(c)(6)(B) specifies a minimum amount for the full-funding limitation described in § 431(c)(6)(A), based on the plan's current liability. Section 431(c)(6)(E)(ii)(I) provides that the interest rate used to calculate current liability for this purpose must be no more than 5 percent above and no more than 10 percent below the weighted average of the rates of interest on 30-year Treasury securities during the four-year period ending on the last day before the beginning of the plan year. Notice 88-73, 1988-2 C.B.

[1] Pursuant to § 433(h)(3)(A), the 3rd segment rate determined under § 430(h)(2)(C) is used to determine the current liability of a CSEC plan (which is used to calculate the minimum amount of the full funding limitation under § 433(c)(7)(C)).

383, provides guidelines for determining the weighted average interest rate. The rate of interest on 30-year Treasury securities for January 2020 is 2.22 percent. The Service determined this rate as the average of the daily determinations of yield on the 30-year Treasury bond maturing in November 2049. For plan years beginning in February 2020, the weighted average of the rates of interest on 30-year Treasury securities and the permissible range of rates used to calculate current liability are as follows:

Treasury Weighted Average Rates

For Plan Years Beginning In	30-Year Treasury Weighted Average	Permissible Range 90% to 105%
February 2020	*2.78*	*2.50 to 2.92*

MINIMUM PRESENT VALUE SEGMENT RATES

In general, the applicable interest rates under § 417(e)(3)(D) are segment rates computed without regard to a 24-month average. Notice 2007-81 provides guidelines for determining the minimum present value segment rates. Pursuant to that notice, the minimum present value segment rates determined for January 2020 are as follows:

Minimum Present Value Segment Rates

Month	First Segment	Second Segment	Third Segment
January 2020	1.91	2.93	3.54

DRAFTING INFORMATION

The principal author of this notice is Tom Morgan of the Office of the Associate Chief Counsel (Employee Benefits, Exempt Organizations, and Employment Taxes). However, other personnel from the IRS participated in the development of this guidance. For further information regarding this notice, contact Mr. Morgan at 202-317-6700 or Paul Stern at 202-317-8702 (not toll-free numbers).

Table 2020-1

Monthly Yield Curve for January 2020

Derived from January 2020 Data

Maturity	*Yield*	*Maturity*	*Yield*	*Maturity*	*Yield*	*Maturity*	*Yield*	*Maturity*	*Yield*
0.5	1.76	20.5	3.36	40.5	3.56	60.5	3.63	80.5	3.66
1.0	1.80	21.0	3.37	41.0	3.56	61.0	3.63	81.0	3.66
1.5	1.84	21.5	3.38	41.5	3.56	61.5	3.63	81.5	3.66
2.0	1.86	22.0	3.39	42.0	3.56	62.0	3.63	82.0	3.66
2.5	1.89	22.5	3.39	42.5	3.57	62.5	3.63	82.5	3.66
3.0	1.91	23.0	3.40	43.0	3.57	63.0	3.63	83.0	3.66
3.5	1.94	23.5	3.41	43.5	3.57	63.5	3.63	83.5	3.66
4.0	1.97	24.0	3.42	44.0	3.57	64.0	3.63	84.0	3.66
4.5	2.01	24.5	3.42	44.5	3.57	64.5	3.63	84.5	3.67
5.0	2.07	25.0	3.43	45.0	3.58	65.0	3.64	85.0	3.67
5.5	2.13	25.5	3.43	45.5	3.58	65.5	3.64	85.5	3.67
6.0	2.20	26.0	3.44	46.0	3.58	66.0	3.64	86.0	3.67
6.5	2.27	26.5	3.45	46.5	3.58	66.5	3.64	86.5	3.67
7.0	2.35	27.0	3.45	47.0	3.58	67.0	3.64	87.0	3.67
7.5	2.43	27.5	3.46	47.5	3.59	67.5	3.64	87.5	3.67
8.0	2.51	28.0	3.46	48.0	3.59	68.0	3.64	88.0	3.67
8.5	2.58	28.5	3.47	48.5	3.59	68.5	3.64	88.5	3.67
9.0	2.65	29.0	3.47	49.0	3.59	69.0	3.64	89.0	3.67
9.5	2.72	29.5	3.48	49.5	3.59	69.5	3.64	89.5	3.67
10.0	2.79	30.0	3.48	50.0	3.60	70.0	3.64	90.0	3.67
10.5	2.85	30.5	3.49	50.5	3.60	70.5	3.65	90.5	3.67
11.0	2.90	31.0	3.49	51.0	3.60	71.0	3.65	91.0	3.67
11.5	2.95	31.5	3.50	51.5	3.60	71.5	3.65	91.5	3.67
12.0	3.00	32.0	3.50	52.0	3.60	72.0	3.65	92.0	3.67
12.5	3.04	32.5	3.50	52.5	3.60	72.5	3.65	92.5	3.67
13.0	3.08	33.0	3.51	53.0	3.61	73.0	3.65	93.0	3.67
13.5	3.11	33.5	3.51	53.5	3.61	73.5	3.65	93.5	3.67
14.0	3.15	34.0	3.52	54.0	3.61	74.0	3.65	94.0	3.68
14.5	3.17	34.5	3.52	54.5	3.61	74.5	3.65	94.5	3.68
15.0	3.20	35.0	3.52	55.0	3.61	75.0	3.65	95.0	3.68
15.5	3.22	35.5	3.53	55.5	3.61	75.5	3.65	95.5	3.68
16.0	3.24	36.0	3.53	56.0	3.61	76.0	3.65	96.0	3.68
16.5	3.26	36.5	3.53	56.5	3.62	76.5	3.65	96.5	3.68
17.0	3.28	37.0	3.54	57.0	3.62	77.0	3.66	97.0	3.68
17.5	3.29	37.5	3.54	57.5	3.62	77.5	3.66	97.5	3.68
18.0	3.31	38.0	3.54	58.0	3.62	78.0	3.66	98.0	3.68
18.5	3.32	38.5	3.55	58.5	3.62	78.5	3.66	98.5	3.68
19.0	3.33	39.0	3.55	59.0	3.62	79.0	3.66	99.0	3.68
19.5	3.34	39.5	3.55	59.5	3.62	79.5	3.66	99.5	3.68
20.0	3.35	40.0	3.55	60.0	3.62	80.0	3.66	100.0	3.68

Beginning of Construction for the Credit for Carbon Oxide Sequestration under Section 45Q

Notice 2020-12

SECTION 1. PURPOSE

On October 3, 2008, section 115 of the Energy Improvement and Extension Act of 2008, Pub. L. 110-343, Div. B, Title I, 122 Stat. 3765, 3829, enacted the credit for the sequestration of carbon dioxide under § 45Q of the Internal Revenue Code (Code). Section 45Q was amended by section 1131 of the American Recovery and Reinvestment Tax Act of 2009, Pub. L. 111-5, Div. B, Title I, 123 Stat 115, 325 (February 17, 2009) and, more recently, by section 41119 of the Bipartisan Budget Act of 2018 (BBA), Pub. L. 115-123, Div. D, Title II, 132 Stat. 64, 162 (February 9, 2018).

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 the qualified carbon dioxide that was previously the subject of the credit. Further, § 45Q now provides that construction of a qualified facility that includes carbon capture equipment must begin before January 1, 2024. This amendment became effective for taxable years beginning after December 31, 2017.

On May 20, 2019, the Department of Treasury (Treasury) and the Internal Revenue Service (IRS) published Notice 2019-32, 2019-21 I.R.B. 1187, requesting comments on issues concerning the credit for carbon oxide sequestration under § 45Q (Section 45Q Credit). In response to that notice, many commenters requested guidance regarding the beginning of construction requirement for the Section 45Q Credit. This notice provides guidance on the determination of when construction has begun on a qualified facility or on carbon capture equipment that may be eligible for the Section 45Q Credit. This notice provides two methods for taxpayers to establish the beginning of construction requirement (Physical Work Test and Five Percent Safe Harbor), a Continuity Requirement for both methods, guidance on transfers of ownership of a qualified facility, and additional guidance applicable to the beginning of construction requirement.

The IRS will not issue private letter rulings or determination letters to taxpayers regarding the application of this notice or the beginning of construction requirement of § 45Q.

SECTION 2. BACKGROUND

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) neither used by the taxpayer 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)(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 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, 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(d) sets forth the definition of a qualified facility as well as beginning of construction deadlines and the volume of qualified carbon oxide that must be captured.

Pursuant to § 45Q(h), the Secretary of the Treasury or his delegate may prescribe such regulations and other guidance as may be necessary or appropriate to carry out § 45Q, including regulations or other guidance to determine whether a facility satisfies the beginning of construction requirements under § 45Q(d)(1) during such taxable year.

SECTION 3. DEFINITIONS

.01 *Qualified Carbon Oxide*.

(1) Section 45Q(c)(1) defines "qualified carbon oxide" as—

(a) any carbon dioxide that is captured from an industrial source by carbon capture equipment that is originally placed in service before the date of the enactment of the BBA, would otherwise be released into the atmosphere as an industrial emission of greenhouse gas or lead to such release, and is measured at the source of capture and verified at the point of disposal, injection, or utilization,

(b) any carbon dioxide or other carbon oxide that is captured from an industrial source by carbon capture equipment that is originally placed in service on or after the date of the enactment of the BBA, would otherwise be released into the atmosphere as an industrial emission of greenhouse gas or lead to such release, and is measured at the source of capture and verified at the point of disposal, injection, or utilization, or

(c) in the case of a direct air capture facility, any carbon dioxide that is captured directly from the ambient air, and is measured at the source of capture and verified

at the point of disposal, injection, or utilization.

(2) Section 45Q(c)(2) provides that the term "qualified carbon oxide" includes the initial deposit of captured carbon oxide used as a tertiary injectant but does not include carbon oxide that is recaptured, recycled, and re-injected as part of the enhanced oil and natural gas recovery process.

.02 *Qualified Facility*. Section 45Q(d) provides that the term "qualified facility" means any industrial facility or direct air capture facility—

(1) the construction of which begins before January 1, 2024, and

(a) construction of carbon capture equipment begins before such date, or

(b) the original planning and design for such facility includes installation of carbon capture equipment, and

(2) which captures—

(a) 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 (Section 45Q(d)(2)(A) Facility), 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),

(b) in the case of an electricity generating facility which is not a Section 45Q(d)(2)(a) Facility (Section 45Q(d)(2)(B) Facility), not less than 500,000 metric tons of qualified carbon oxide during the taxable year, or

(c) in the case of a direct air capture facility or any facility which is not a Section 45Q(d)(2)(A) Facility or a Section 45Q(d)(2)(B) Facility, not less than 100,000 metric tons of qualified carbon oxide during the taxable year.

.03 *Industrial Facility*. An industrial facility is a facility that produces a carbon oxide stream from a fuel combustion source, a manufacturing process, or a fugitive carbon oxide-emission source that, absent capture and disposal or utilization, would otherwise be released into the atmosphere as industrial emission of greenhouse gas or lead to such release. An industrial facility does not include a facility that produces carbon dioxide through carbon dioxide production wells from natural carbon dioxide-bearing formations.

.04 *Direct Air Capture Facility*. Section 45Q(e)(1) provides that the term "direct air capture facility" means any facility that uses carbon capture equipment to capture carbon dioxide directly from the ambient air. A direct air capture facility does not include any facility that captures carbon dioxide that is deliberately released from naturally occurring subsurface springs or using natural photosynthesis.

.05 *Carbon Capture Equipment*. Carbon capture equipment includes all components of property that are used to capture or process (for example, separation, purification, drying, and/or compression) carbon oxide until it is transported away from the qualified facility for disposal, utilization, or use as a tertiary injectant. For these purposes, carbon capture equipment includes a system of gathering lines that collect carbon oxide captured from a qualified facility or multiple qualified facilities that constitute a single project (as described in section 8.01 of this notice) for the purpose of transporting that carbon oxide away from the qualified facility or single project to a pipeline used to transport carbon oxide from multiple taxpayers and projects.

SECTION 4. METHODS FOR ESTABLISHING BEGINNING OF CONSTRUCTION

.01 *In general*. This notice provides two methods for a taxpayer to establish that construction of a qualified facility or carbon capture equipment has begun for purposes of the Section 45Q Credit. A taxpayer may establish the beginning of construction by starting physical work of a significant nature as set forth in section 5 of this notice (Physical Work Test). A taxpayer may also establish the beginning of construction by meeting a safe harbor based on having paid or incurred five percent or more of the total cost of the qualified facility or carbon capture equipment as set forth in section 6 of this notice (Five Percent Safe Harbor).

Both methods require that a taxpayer make continuous progress towards completion once construction has begun (Continuity Requirement). Section 7 of this notice discusses the Continuity Requirement and provides a safe harbor for satisfying this requirement (Continuity Safe Harbor).

.02 *Combination of methods*. Although a taxpayer may satisfy both methods of establishing the beginning of construction, construction will be deemed to have begun on the date the taxpayer first satisfies one of the two methods. For example, if a taxpayer performs physical work of a significant nature on a qualified facility or carbon capture equipment in 2020, and then pays or incurs five percent or more of the total cost of the qualified facility or carbon capture equipment in 2021, construction will be deemed to begin in 2020 under the Physical Work Test, not in 2021 under the Five Percent Safe Harbor. Thus, the Continuity Safe Harbor will be applied beginning in 2020, not in 2021.

For this purpose, a taxpayer that fails to satisfy the Five Percent Safe Harbor in one year due to cost overruns (see section 6.03 of this notice) will not be prevented from using the Physical Work test in a later year to establish beginning of construction, provided that occurs before January 1, 2024.

SECTION 5. PHYSICAL WORK TEST

.01 *In general*. Construction of a qualified facility or carbon capture equipment will be considered as having begun when physical work of a significant nature (as determined under section 5.02 of this notice) begins, provided that the taxpayer maintains a continuous program of construction (as determined under section 7.01 of this notice). Work performed by the taxpayer and work performed for the taxpayer by other persons under a binding written contract that is entered into prior to the manufacture, construction, or production of components of a qualified facility or components of carbon capture equipment is taken into account to determine whether construction has begun. Whether and when a taxpayer has begun construction of a qualified facility or carbon capture equipment will depend on the relevant facts and circumstances.

.02 *Physical Work of a Significant Nature*. The Physical Work Test requires that a taxpayer begin physical work of a

significant nature. This test focuses on the nature of the work performed, not the amount or the cost. Assuming that physical work performed is of a significant nature, there is no fixed minimum amount of work or monetary or percentage threshold required to satisfy the Physical Work Test. Both off-site and on-site work may be taken into account for purposes of demonstrating that physical work of a significant nature has begun.

(1) *Off-Site Physical Work of a Significant Nature*. Generally, off-site physical work of a significant nature includes the manufacture of components. Examples illustrating off-site physical work of a significant nature with respect to a qualified facility or carbon capture equipment include, but are not limited to:

(a) the manufacture of mounting equipment and support structures such as racks, skids, and rails;

(b) the manufacture of components necessary for carbon capture processes such as membranes, sorbent vessels, adsorbers, compressors, engines, motors, power generators and regenerators, reboilers, turbines, pressure vessels and other vessels, piping and pipelines, pumps, heat exchangers, solvent pumps, filters, recycling units, electrostatic filtration, water wash equipment, lube oil systems, dehydration systems, glycol contractors, specially designed flue gas ducts, conditioners, cooling towers, absorber units, and other types of gas separation, liquification, or processing equipment;

(c) the manufacture of components necessary for disposal of qualified carbon oxide in secure geological storage (as described in § 45Q(a)(1)(B) and (a)(3)(B)) such as valves, specialized casing, or other components of a wellhead or well; and

(d) the manufacture of equipment necessary for disposal of qualified carbon oxide in secure geological storage (as described in § 45Q(a)(1)(B) and (a)(3)(B)) such as wellhead equipment, booster compressors, and monitoring equipment for a storage site.

(2) *On-Site Physical Work of a Significant Nature*. Examples illustrating on-site physical work of a significant nature with respect to a qualified facility or carbon capture equipment include, but are not limited to:

(a) the excavation for and installation of foundations (for the project as well as for buildings to house equipment necessary to the project) including the setting of anchor bolts into the ground and the pouring of the concrete pads of the foundation;

(b) the installation of a system of gathering lines necessary to connect the industrial facility to the carbon capture equipment or other equipment necessary to the qualified facility *before* transportation away from the qualified facility for disposal, utilization, or use as a tertiary injectant;

(c) the installation of components necessary for carbon capture processes such as membranes, sorbent vessels, adsorbers, compressors, engines, motors, power generators and regenerators, reboilers, turbines, pressure vessels and other vessels, piping and pipelines, pumps, heat exchangers, solvent pumps, filters, recycling units, electrostatic filtration, water wash equipment, lube oil systems, dehydration systems, glycol contractors, specially designed flue gas ducts, conditioners, cooling towers, absorber units, and other types of gas separation, liquification, or processing equipment; and

(d) the installation of equipment and other work necessary for the disposal of qualified carbon oxide in secure geological storage (as described in § 45Q(a)(1)(B) and (a)(3)(B)) at the geological storage site, which may be at a different location than the qualified facility or carbon capture equipment.

.03 *Preliminary Activities*. Physical work of a significant nature does not include preliminary activities, even if the cost of those preliminary activities is properly included in the depreciable basis of the qualified facility or carbon capture equipment. Generally, preliminary activities include, but are not limited to:

(1) securing financing;

(2) exploring;

(3) researching;

(4) obtaining permits and licenses;

(5) conducting test drilling to determine soil condition (including to test the strength of a foundation);

(6) clearing a site;

(7) excavating to change the contour of the land (as distinguished from excavation for a foundation); and

(8) removing existing foundations or any components that are not part of the qualified facility or carbon capture equipment (including those on or attached to building structures).

.04 *Inventory*. Physical work of a significant nature does not include work (performed either by the taxpayer or by another person under a binding written contract) to produce components of a qualified facility or carbon capture equipment that are either in existing inventory or are normally held in inventory by a vendor.

SECTION 6. FIVE PERCENT SAFE HARBOR

.01 *In general*. Construction of a qualified facility or carbon capture equipment will be considered as having begun if:

(1) a taxpayer pays or incurs (within the meaning of § 1.461-1(a)(1) and (2) of the Income Tax Regulations) five percent or more of the total cost of the qualified facility or carbon capture equipment, and

(2) the taxpayer makes continuous efforts to advance towards completion of the qualified facility or carbon capture equipment (as determined under section 7.02 of this notice).

.02 *Total Cost of Qualified Facility or Carbon Capture Equipment*. All costs properly included in the depreciable basis of a qualified facility or carbon capture equipment are taken into account to determine whether the Five Percent Safe Harbor has been met. Costs associated with Front-End Engineering and Design (FEED) activities or other approaches for front-end planning (e.g., the Front-End Loading (FEL) approach) common to projects of similar scope and complexity may also be considered when determining whether the Five Percent Safe Harbor has been met.

.03 *Cost Overruns*.

(1) *Single Project*. If the total cost of a qualified facility or carbon capture equipment that is a single project (as described in section 8.01 of this notice) comprised of multiple qualified facilities or multiple units of carbon capture equipment exceeds its anticipated total cost, so that the amount a taxpayer actually paid or incurred with respect to the single project turns out to be less than five percent of the

total cost of the single project at the time it is placed in service, the Five Percent Safe Harbor is not satisfied. However, the Five Percent Safe Harbor will be satisfied and the Section 45Q Credit may be claimed with respect to some, but not all, of the qualified facilities or units of carbon capture equipment comprising the single project as long as the total aggregate cost of those qualified facilities or units of carbon capture equipment that are eligible for the Section 45Q Credit is not more than twenty times greater than the amount the taxpayer paid or incurred.

(a) *Example*. In 2023, a taxpayer incurs $250,000 in costs to construct Project C, comprised of 5 separate direct air capture facilities that will be operated as a single project (as described in section 8.01 of this notice). The taxpayer anticipates that each direct air capture facility will cost $1,000,000 for a total cost for Project C of $5,000,000. Thereafter, the taxpayer makes continuous efforts to complete Project C. The taxpayer timely places all five of the direct air capture facilities that comprise Project C in service in 2026. At that time, the actual total cost of Project C amounts to $6,000,000, with each direct air capture facility costing $1,200,000. Although the taxpayer did not pay or incur five percent of the actual total cost of Project C in 2023, the taxpayer will be treated as satisfying the Five Percent Safe Harbor in 2023 with respect to 4 of the direct air capture facilities, as their actual total cost of $4,800,000 is not more than twenty times greater than the $250,000 in costs incurred by the taxpayer. Thus, the taxpayer may claim the Section 45Q Credit based on the amount of carbon oxide captured from 4 of the direct air capture facilities. However, if the taxpayer is able to demonstrate that the Physical Work Test was satisfied with respect to Project C prior to January 1, 2024, the taxpayer may claim the Section 45Q Credit based on the entire Project C.

(2) *Single Qualified Facility or Unit of Carbon Capture Equipment*. If the total cost of a single qualified facility or unit of carbon capture equipment, which is not part of a single project (as described in section 8.01 of this notice) comprised of multiple qualified facilities or units of carbon capture equipment and which cannot be separated into multiple qualified facilities or units of carbon capture equipment, exceeds its anticipated total cost so that the amount a taxpayer actually paid or incurred with respect to the single qualified facility or unit of carbon capture equipment as of an earlier year is less than five percent of the total cost of the single qualified facility or unit of carbon capture equipment at the time it is placed in service, then the taxpayer will not satisfy the Five Percent Safe Harbor with respect to any portion of the single qualified facility or unit of carbon capture equipment in such earlier year.

(a) *Example*. In 2023, a taxpayer incurs $250,000 in costs to construct Project D, a qualified facility. The taxpayer anticipates that the total cost of Project D will be $5,000,000. Thereafter, the taxpayer makes continuous efforts to complete Project D. The taxpayer places Project D in service in a later year. At that time, its actual total cost amounts to $6,000,000. Because Project D is a single qualified facility that is not a single project comprised of multiple qualified facilities, the taxpayer will not satisfy the Five Percent Safe Harbor as of 2023. However, the taxpayer may demonstrate that construction began in 2023 if the requirements of the Physical Work Test are satisfied.

SECTION 7. CONTINUITY REQUIREMENT

.01 *Physical Work Test: Continuous Construction Test*. A continuous program of construction involves continuing physical work of a significant nature (as described in section 5.02 of this notice). Whether a taxpayer maintains a continuous program of construction to satisfy the Continuity Requirement will be determined by the relevant facts and circumstances.

.02 *Five Percent Safe Harbor: Continuous Efforts Test*. Whether a taxpayer makes continuous efforts to advance towards completion of a qualified facility or carbon capture equipment to satisfy the Continuity Requirement will be determined by the relevant facts and circumstances. Facts and circumstances indicating continuous efforts to advance towards completion of a qualified facility or carbon capture equipment include, but are not limited to:

(1) paying or incurring additional amounts included in the total cost of the qualified facility or carbon capture equipment;

(2) entering into binding written contracts for the manufacture, construction, or production of components of the qualified facility or components of the carbon capture equipment or for future work to construct the qualified facility or carbon capture equipment;

(3) obtaining necessary permits; and

(4) performing physical work of a significant nature (as described in section 5.02 of this notice).

.03 *Excusable Disruptions to Continuous Construction and Continuous Efforts Tests*. Certain disruptions in a taxpayer's continuous construction or continuous efforts to complete a qualified facility or carbon capture equipment that are beyond the taxpayer's control will not be considered as indicating that a taxpayer has failed to satisfy the Continuity Requirement. However, these disruptions will not extend the Continuity Safe Harbor Deadline as provided in section 7.05 of this notice. Following is a *non-exclusive* list of construction disruptions that will not be considered as indicating that a taxpayer has failed to satisfy the Continuity Requirement:

(1) delays due to severe weather conditions;

(2) delays due to natural disasters;

(3) delays in obtaining permits or licenses from any federal, state, local, or Indian tribal government;

(4) delays at the written request of a federal, state, local, or Indian tribal government regarding matters of public safety, security, or similar concerns;

(5) interconnection-related delays, such as those relating to the completion of construction on a new carbon dioxide pipeline or necessary upgrades to resolve capacity or congestion issues that may be associated with a project's planned interconnection;

(6) delays in the manufacture of custom components;

(7) delays due to labor stoppages;

(8) delays due to the inability to obtain specialized equipment of limited availability;

(9) delays due to the presence of endangered species;

(10) financing delays; and

(11) delays due to supply shortages.

.04 *Timing of Excusable Disruption Determination*. In the case of a single project comprised of a single qualified facility or carbon capture equipment, whether an excusable disruption has occurred for purposes of the satisfying the Continuity Requirement must be determined in the calendar year during which the qualified facility or carbon capture equipment is placed in service. In the case of a single project comprised of multiple qualified facilities or units of carbon capture equipment, whether an excusable disruption has occurred for purposes of the beginning of construction requirement of § 45Q must be determined in the calendar year during which the last of multiple qualified facilities or units of carbon capture equipment is placed in service.

.05 *Continuity Safe Harbor: Deemed Satisfaction of Continuity Requirement*. Except as provided in this section, if a taxpayer places a qualified facility or carbon capture equipment in service by the end of a calendar year that is no more than six calendar years after the calendar year during which construction of the qualified facility or carbon capture equipment began (Continuity Safe Harbor Deadline), the qualified facility or carbon capture equipment will be considered to satisfy the Continuity Safe Harbor. The excusable disruption rules in section 7.03 of this notice do not extend the Continuity Safe Harbor Deadline. If a qualified facility or carbon capture equipment is not placed in service before the end of the sixth calendar year after the calendar year during which construction of the qualified facility or carbon capture equipment began, whether the qualified facility or carbon capture equipment satisfies the Continuity Requirement under either the Physical Work Test or the Five Percent Safe Harbor will be determined based on the relevant facts and circumstances.

For example, if construction begins on a qualified facility or carbon capture equipment on January 15, 2021, and the qualified facility or carbon capture equipment is placed in service by December 31, 2027, the qualified facility or carbon capture equipment will be considered to satisfy the Continuity Safe Harbor. If the qualified facility or carbon capture equipment is not placed in service before January 1, 2028, whether the Continuity Requirement was satisfied will be determined based on the relevant facts and circumstances.

SECTION 8. OTHER GUIDANCE APPLICABLE TO PHYSICAL WORK TEST AND FIVE PERCENT SAFE HARBOR

.01 *Single project*. Solely for purposes of determining whether construction of a qualified facility or carbon capture equipment has begun for purposes of the Section 45Q Credit, multiple qualified facilities or units of carbon capture equipment that are operated as part of a single project (along with any components of property that serve some or all such qualified facilities or units of carbon capture equipment) may be treated as a single qualified facility or unit of carbon capture equipment. Whether multiple qualified facilities or units of carbon capture equipment are operated as part of a single project will depend on the relevant facts and circumstances.

(1) *Factors for Single Project Determination*. Factors indicating that multiple qualified facilities or units of carbon capture equipment are operated as part of a single project include, but are not limited to:

(a) the qualified facilities or units of carbon capture equipment are owned by a single legal entity;

(b) the qualified facilities or units of carbon capture equipment are constructed in the same general geographic location or on adjacent or contiguous pieces of land;

(c) a single system of gathering lines or a single off-take operation is used to collect and deliver carbon oxide to a transportation pipeline;

(d) carbon oxide captured from the qualified facilities is disposed of, utilized, or used as a tertiary injectant pursuant to a shared contract;

(e) the qualified facilities or units of carbon capture equipment are described in one or more common environmental or other regulatory permits or are required to collectively report their activities;

(f) the qualified facilities or units of carbon capture equipment were constructed pursuant to a single contract providing FEED or similar services covering the full scope of the single project;

(g) the qualified facilities or units of carbon capture equipment were constructed pursuant to a single master construction contract; and

(h) the construction of the qualified facilities or units of carbon capture equipment was financed pursuant to the same loan agreement.

(2) *Example*. A taxpayer is developing 5 separate units of carbon capture equipment that will be constructed adjacent to and connected to multiple industrial facilities. These industrial facilities are located within the same general geographic location. All 5 units of carbon capture equipment are described in common environmental and other regulatory permits. Pursuant to a single contract, carbon oxide captured from all 5 units of carbon capture equipment will be transported to a single off-taker that will use that carbon oxide as a tertiary injectant. In 2022, the taxpayer manufactures 1 of the 5 units of carbon capture equipment. Thereafter, the taxpayer completes the construction of all 5 units of carbon capture equipment pursuant to a continuous program of construction and connects them to industrial facilities. The taxpayer may treat the 5 units of carbon capture equipment as a single project (Project E). For purposes of the Section 45Q Credit, the taxpayer has performed physical work of a significant nature that constitutes the beginning of construction of Project E in 2022.

(3) *Timing of Single Project Determination*. The determination of whether multiple qualified facilities or units of carbon capture equipment are operated as part of a single project and are therefore treated as a single qualified facility or unit of carbon capture equipment for purposes of the beginning of construction requirement of § 45Q must be determined in the calendar year during which the last of the multiple qualified facilities or units of carbon capture equipment is placed in service.

(4) *Disaggregation for Continuity Safe Harbor*. Multiple qualified facilities or units of carbon capture equipment that are operated as part of a single project and treated as a single qualified facility or carbon capture equipment under section 8.01 of this notice for purposes of determining whether construction of a qualified

facility or carbon capture equipment has begun may be disaggregated and treated as multiple separate qualified facilities or units of carbon capture equipment for purposes of determining whether a separate qualified facility or unit of carbon capture equipment satisfies the Continuity Safe Harbor. Those disaggregated separate qualified facilities or units of carbon capture equipment that are placed in service prior to the Continuity Safe Harbor Deadline will be eligible for the Continuity Safe Harbor. The remaining disaggregated separate qualified facilities or units of carbon capture equipment may satisfy the Continuity Requirement under a facts and circumstances determination.

(5) *Example*. A taxpayer is developing Project F that will consist of 5 qualified facilities. Carbon oxide captured from Project F will be collected and delivered to a transportation pipeline through a single system of gathering lines and disposed of through a single contract for secure geological storage. Project F will be treated as a single project under section 8.01 of this notice.

In 2022, the taxpayer performs physical work of a significant nature on Project F that satisfies the Physical Work Test. Thereafter, the taxpayer places in service only 4 of the 5 separate qualified facilities comprising Project F in 2028. The taxpayer disaggregates Project F under section 8.01(4) of this notice; 4 of the 5 separate qualified facilities satisfy the Continuity Safe Harbor. For the remaining qualified facility, the taxpayer may demonstrate that it satisfies the Continuous Construction Test described in section 7.01 of this notice based on the facts and circumstances.

.02 *Construction by Contract*. For components of qualified facility or carbon capture equipment that are manufactured, constructed, or produced for the taxpayer by another person under a binding written contract (as described in section 8.02(1) of this notice), the work performed and amounts paid or incurred under the contract are taken into account in determining whether the Physical Work Test or Five Percent Safe Harbor Test is met, provided the contract is entered into prior to the work taking place or the amounts paid or incurred.

(1) *Binding Written Contract*. A written contract is binding only if it is enforceable under local law against the taxpayer or a predecessor and does not limit damages to a specified amount (for example, by use of a liquidated damages provision). For this purpose, a contractual provision that limits damages to an amount equal to at least five percent of the total contract price will not be treated as limiting damages to a specified amount. For additional guidance regarding the definition of a binding written contract, see § 1.168(k)-1(b)(4)(ii)(A)-(D) of the Income Tax Regulations.

(2) *Master Contract*. If a taxpayer enters into a binding written contract for a specific number of components of property to be manufactured, constructed, or produced for the taxpayer by another person under a binding written contract (master contract), and then through a new binding written contract (project contract) the taxpayer assigns its rights to certain components of property to an affiliated special purpose vehicle that will own the qualified facility or carbon capture equipment for which such components of property are to be used, work performed or amounts paid or incurred with respect to the master contract may be taken into account in determining whether the Physical Work Test or Five Percent Safe Harbor Test is met with respect to the qualified facility or carbon capture equipment.

.03 *Look-through Rule*.

(1) *Physical Work Test*. Both on-site and off-site work (performed either by the taxpayer or by another person under a binding written contract) may be taken into account for purposes of demonstrating that physical work of a significant nature has begun with respect to a qualified facility or carbon capture equipment. For example, in the case of a qualified facility or carbon capture equipment, on-site physical work of a significant nature may begin with the installation of piping and pipelines, including to connect an industrial facility to carbon capture equipment. If the qualified facility or carbon capture equipment's piping and pipelines are to be assembled on-site from components of property manufactured off-site by a person other than the taxpayer and delivered to the site, physical work of a significant nature begins when the manufacture of the components of the piping and pipelines begin at the off-site location, but only if (i) the manufacturer's work is performed pursuant to a binding written contract and (ii) these components of property are not held in the manufacturer's inventory. If a manufacturer produces components of property for multiple qualified facilities or units of carbon capture equipment, a reasonable method must be used to associate individual components of property with a particular purchaser.

(2) *Five Percent Safe Harbor*. For a qualified facility or carbon capture equipment or components of a qualified facility or carbon capture equipment that are manufactured, constructed, or produced for the taxpayer by another person under a binding written contract with the taxpayer, amounts paid or incurred with respect to the qualified facility or carbon capture equipment by the other person before the qualified facility or carbon capture equipment is provided to the taxpayer are deemed paid or incurred by the taxpayer when the amounts are paid or incurred by the other person under the principles of § 461 for purposes of the Five Percent Safe Harbor Test.

(a) *Example*. In 2023, an accrual-method taxpayer, G, enters into a binding written contract with H. Under the contract, G will provide components of carbon capture equipment to H in June 2025. In 2023, G pays J pursuant to a contract for J to provide parts to G (in March 2024) for use in the components of carbon capture equipment. G's employees provide G with services necessary to design and plan for the production of the components of carbon capture equipment in 2023 and with services to manufacture (assemble) the components of carbon capture equipment in 2025.

G incurs the cost to design and plan for the production of the components of carbon capture equipment in 2023, incurs the costs for the components of carbon capture equipment in March 2024 when J delivers the components of carbon capture equipment to G (even though the components of carbon capture equipment were paid for in 2023), and incurs the costs for G's employees to manufacture the components of carbon capture equipment in 2025. For purposes of determining whether H has satisfied the Five Percent Safe Harbor in 2023, H may only include the costs G incurred for its employees' performance of design and planning activities for the

components of carbon capture equipment in 2023. The other costs in this example are treated as incurred by H in 2024 and 2025, and are included in the total cost of the carbon capture equipment.

.04 *Retrofitted Qualified Facility or Carbon Capture Equipment*.

(1) *In general*. A qualified facility or carbon capture equipment may qualify as originally placed in service even though it contains some used components of property, provided the fair market value of the used components of property is not more than 20 percent of the qualified facility or carbon capture equipment's total value (the cost of the new components of property plus the value of the used components of property) (80/20 Rule). See Rev. Rul. 94-31, 1994-1 C.B. 16; Notice 2008-60, 2008-2 C.B. 178. *In the case of a single project comprised of multiple* qualified facilities or units of carbon capture equipment*, the 80/20 Rule is applied to each* qualified facility or unit of carbon capture equipment *comprising the single project.* For purposes of the 80/20 Rule, the cost of a new qualified facility or carbon capture equipment includes all properly capitalized costs of the new qualified facility or carbon capture equipment.

(2) *Beginning of Construction*. To satisfy the beginning of construction requirement of § 45Q, the Physical Work Test or the Five Percent Safe Harbor is applied only with respect to the work performed on, or amounts paid or incurred for, new components of property used to retrofit used components of property or an existing qualified facility or carbon capture equipment. For the Five Percent Safe Harbor, all costs properly capitalized in the basis of the qualified facility or carbon capture equipment are taken into account.

SECTION 9. TRANSFER OF QUALIFIED FACILITY OR CARBON CAPTURE EQUIPMENT

.01 *In general*. The definition of a qualified facility provided in § 45Q(d) requires that the construction of the facility begin before January 1, 2024, and either construction of carbon capture equipment begins before such date or the original planning and design for such facility includes installation of carbon capture equipment. There is no statutory requirement that the taxpayer that places the facility in service also be the taxpayer that begins construction of the facility. Thus, except as provided in section 9.03 of this notice, a fully or partially developed facility may be transferred without losing its qualification under the Physical Work Test or the Five Percent Safe Harbor for purposes of § 45Q.

For example, a taxpayer may acquire a qualified facility or carbon capture equipment (that consists of more than just tangible personal property) from an unrelated developer that had begun construction of the qualified facility or carbon capture equipment prior to January 1, 2024, and thereafter the taxpayer may complete the qualified facility or carbon capture equipment and place it in service. The work performed or amount paid or incurred prior to January 1, 2024, by the unrelated transferor developer may be taken into account for purposes of determining whether the qualified facility or carbon capture equipment satisfies the Physical Work Test or Five Percent Safe Harbor.

(1) *Example*. In August 2023, a developer acquires a parcel of land on which it intends to build and operate Project K, a qualified facility that will include carbon capture equipment. The developer contributes the land to its wholly-owned limited liability company (LLC), which is disregarded as an entity separate from its owner for federal tax purposes, to hold and develop Project K**.** In November 2023, the developer incurs 5 percent of the total cost of Project K and thereafter maintains continuous efforts to advance towards the completion of Project K. In April 2024, to finance the development of Project K, the developer sells 95 percent of the interests in LLC to a group of investors who are not related to the developer, and the developer does not contribute the sales proceeds to LLC.

Under Rev. Rul. 99-5, 1999-1 C.B. 434, the developer is treated as selling 95 percent of each of the assets of LLC to the investors, and immediately thereafter the developer and investors are treated as contributing their respective 5 percent and 95 percent interests in those assets to LLC, which is now a partnership and the owner of Project K for federal tax purposes. In October 2026, LLC places Project K in service. Because Project K satisfies the Five Percent Safe Harbor in November 2023 and assuming Project K otherwise satisfies the requirements of the Section 45Q Credit, the LLC is eligible to claim the Section 45Q Credit with respect to Project K.

(2) *Example*. In 2025, a taxpayer acquires an unfinished qualified facility (that consists of land and components of an industrial facility and components of carbon capture equipment) from an unrelated developer that had begun construction of the qualified facility in 2022, and thereafter the taxpayer completes the development of that qualified facility and places it in service in 2028. The work performed or the amounts paid or incurred by the unrelated developer prior to the taxpayer's acquisition of the qualified facility may be taken into account by the taxpayer for purposes of determining when the qualified facility satisfies the Physical Work Test or the Five Percent Safe Harbor.

.02 *Relocation of components of a Qualified Facility or Carbon Capture Equipment by taxpayer*. A taxpayer may begin construction of a qualified facility or carbon capture equipment with the intent to develop the qualified facility or carbon capture equipment at a certain site, and thereafter transfer components of the qualified facility or carbon capture equipment to a different site, complete its development, and place it in service. The work performed or amount paid or incurred prior to the site transfer by such a taxpayer may be taken into account for purposes of determining whether the qualified facility or carbon capture equipment satisfies the Physical Work Test or the Five Percent Safe Harbor.

.03 *Transfers of components of a Qualified Facility or Carbon Capture Equipment between unrelated parties*.

(1) *In general*. In the case of a transfer consisting solely of tangible personal property (including contractual rights to such property under a binding written contract) to a transferee not related (within the meaning of § 197(f)(9)(C) and § 1.197-2(h)(6) of the Income Tax Regulations) to the transferor, any work performed or amount paid or incurred by the transferor with respect to such transferred property will not be taken into account with respect to the transferee for purposes of the Phys-

ical Work Test or the Five Percent Safe Harbor.

(2) *Example*. Developer D intends to develop and operate carbon capture equipment at Facility L, an industrial facility owned and operated by a different taxpayer. Prior to January 1, 2024, Developer D pays or incurs $60,000 to have CO_2 compressors that will be used in the capture of carbon oxide manufactured off-site pursuant to a binding written contract. Thereafter Developer D incurs no further development costs and engages in no further development activity with respect to the carbon capture equipment. In January 2024, Developer D sells the CO_2 compressors to Developer E, a party unrelated to Developer D. Developer E is developing and intends to operate carbon capture equipment at Facility M, an industrial facility located on a parcel of land owned by Developer E. Developer E incorporates the CO_2 compressors acquired from Developer D into the carbon capture equipment to be used at Facility M. In October 2028, Developer E places the carbon capture equipment in service at Facility M. The total cost of the carbon capture equipment at Facility M is $1,000,000.

Amounts paid or incurred by Developer D prior to January 1, 2024, for the CO_2 compressors will not be taken into account for purposes of satisfying the Five Percent Safe Harbor with respect to the carbon capture equipment at Facility M. However, if without regard to the CO_2 compressors, Developer E has otherwise satisfied the Physical Work Test or the Five Percent Safe Harbor with respect to the carbon capture equipment at Facility M, Developer E will be considered to have begun construction on Facility M for purposes of the Section 45Q Credit.

SECTION 10. RELIANCE ON NOTICE 2009-83

Notice 2009-83, 2009-44 I.R.B. 588, which Notice 2011-25, I.R.B. 2011-14 604, modified by removing section 4.07 of Notice 2009-83, provides guidance on determining eligibility for the former credit under § 45Q for carbon dioxide sequestration, the amount of the credit for tax years prior to the BBA amendments to § 45Q, and the rules regarding adequate security measures for secure geological storage of carbon dioxide. Taxpayers may rely on Notice 2009-83, as modified by Notice 2011-25, until additional guidance on those specific issues is provided by the Treasury Department and the IRS.

SECTION 11. EFFECTIVE DATE

The provisions of this notice are effective on March 9, 2020. Taxpayers that began construction on a qualified facility or carbon capture equipment by satisfying either the Physical Work Test or the Five Percent Safe Harbor Test, or both, before the effective date of this notice, may use the effective date of this notice as the date that construction began on such qualified facility or carbon capture equipment. A taxpayer that began construction on a qualified facility or carbon capture equipment before the effective date of this notice under both the Physical Work Test and the Five Percent Safe Harbor may choose either method (but not both) for the purpose of applying the beginning of construction rules of this notice.

SECTION 12. DRAFTING INFORMATION

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

Determination of Housing Cost Amounts Eligible for Exclusion or Deduction for 2020

Notice 2020-13

I. PURPOSE

This notice provides adjustments to the limitation on housing expenses for purposes of section 911 of the Internal Revenue Code for specific locations for 2020. These adjustments are made on the basis of geographic differences in housing costs relative to housing costs in the United States.

II. BACKGROUND

Section 911(a) allows a qualified individual to elect to exclude from gross income the foreign earned income and housing cost amount of such individual. The term "housing cost amount" is generally the total of the housing expenses for the taxable year minus a base housing amount. See § 911(c)(1). For this purpose, the base housing amount for the taxable year is limited to an amount that is tied to the maximum foreign earned income exclusion amount, which is $107,600 for 2020. See § 911(c)(1)(B) and (d)(1). Specifically, the base housing amount is 16 percent of the maximum foreign earned income exclusion amount (computed on a daily basis), multiplied by the number of days in the applicable period that fall within the taxable year. Assuming that the entire taxable year of a qualified individual is within the applicable period, the base housing amount for 2020 is $17,216 ($107,600 x .16).

Similarly, the housing expense amount is also limited, based on a percentage of the maximum foreign earned income exclusion amount. Specifically, the limit on such housing expenses generally equals 30 percent of the maximum foreign earned income exclusion amount (computed on a daily basis), multiplied by the number of days in the applicable period for which the taxpayer is a qualified individual. See § 911(c)(2)(A) and (d)(1). Thus, under this general limitation, a qualified individual whose entire taxable year is within the applicable period is limited to maximum housing expenses of $32,280 ($107,600 x .30) for 2020. However, section 911(c)(2)(B) authorizes the Secretary to issue regulations or other guidance to adjust the percentage under section 911(c)(2)(A)(i) (which determines the limit on housing expenses) based on geographic differences in housing costs relative to housing costs in the United States. Pursuant to this authority, the Department of the Treasury

(Treasury Department) and the Internal Revenue Service (IRS) have published annual notices concerning the limitation on the section 911 housing cost amounts since the 2006 taxable year.

For more background on the foreign housing exclusion, see https://www.irs.gov/individuals/international-taxpayers/foreign-housing-exclusion-or-deduction.

III. TABLE OF ADJUSTED HOUSING LIMITATIONS FOR 2020

The following table provides adjusted limitations on housing expenses (in lieu of the otherwise applicable limitation of $32,280) for 2020.

Country	Location	Limitation on Housing Expenses (full year)	Limitation on Housing Expenses (daily)
Angola	Luanda	84,000	229.51
Argentina	Buenos Aires	56,500	154.37
Australia	Canberra	35,300	96.45
Australia	Sydney	67,900	185.52
Austria	Vienna	35,400	96.72
Bahamas, The	Nassau	49,700	135.79
Bahrain	Bahrain	48,300	131.97
Barbados	Barbados	37,700	103.01
Barbados	Bridgetown	37,700	103.01
Belgium	Brussels	40,500	110.66
Belgium	Gosselies	36,100	98.63
Belgium	Mons	36,100	98.63
Belgium	SHAPE/Chièvres	36,100	98.63
Bermuda	Bermuda	90,000	245.90
Brazil	Rio de Janeiro	35,100	95.90
Brazil	Sao Paulo	56,600	154.64
Canada	Calgary	38,200	104.37
Canada	Montreal	52,100	142.35
Canada	Ottawa	44,000	120.22
Canada	Quebec	34,600	94.54
Canada	Toronto	50,000	136.61
Canada	Vancouver	45,300	123.77
Canada	Victoria	39,500	107.92
Cayman Islands	Grand Cayman	48,000	131.15
Chile	Santiago	34,400	93.99
China	Beijing	69,000	188.52
China	Hong Kong	114,300	312.30
China	Shanghai	57,001	155.74
Colombia	Bogota	58,700	160.38
Colombia	All cities other than Bogota	49,400	134.97
Costa Rica	San Jose	37,800	103.28
Democratic Republic of the Congo	Kinshasa	42,000	114.75
Denmark	Copenhagen	43,704	119.41
Dominican Republic	Santo Domingo	45,500	124.32
Ecuador	Quito	38,200	104.37

Country	Location	Limitation on Housing Expenses (full year)	Limitation on Housing Expenses (daily)
Estonia	Tallinn	46,600	127.32
France	Garches	69,400	189.62
France	Lyon	38,400	104.92
France	Marseille	37,400	102.19
France	Paris	69,400	189.62
France	Sevres	69,400	189.62
France	Suresnes	69,400	189.62
France	Versailles	69,400	189.62
Germany	Babenhausen	34,000	92.90
Germany	Baumholder	33,800	92.35
Germany	Berlin	41,600	113.66
Germany	Birkenfeld	33,800	92.35
Germany	Boeblingen	40,300	110.11
Germany	Bonn	42,000	114.75
Germany	Cologne	56,200	153.55
Germany	Darmstadt	34,000	92.90
Germany	Frankfurt am Main	35,500	96.99
Germany	Gelnhausen	42,900	117.21
Germany	Giessen	36,000	98.36
Germany	Grafenwoehr	34,400	93.99
Germany	Hanau	42,900	117.21
Germany	Idar-Oberstein	33,800	92.35
Germany	Ingolstadt	48,600	132.79
Germany	Kaiserslautern, Landkreis	42,200	115.30
Germany	Karlsruhe	32,800	89.62
Germany	Koblenz	33,400	91.26
Germany	Ludwigsburg	40,300	110.11
Germany	Mainz	46,500	127.05
Germany	Munich	48,600	132.79
Germany	Nellingen	40,300	110.11
Germany	Neubruecke	33,800	92.35
Germany	Ober Ramstadt	34,000	92.90
Germany	Pfullendorf	33,400	91.26
Germany	Pirmasens	42,200	115.30
Germany	Sembach	42,200	115.30
Germany	Stuttgart	40,300	110.11
Germany	Vilseck	34,400	93.99
Germany	Wahn	42,000	114.75
Germany	Wiesbaden	46,500	127.05
Germany	Zweibrueken	42,200	115.30

Country	Location	Limitation on Housing Expenses (full year)	Limitation on Housing Expenses (daily)
Germany	All cities other than Augsburg, Babenhausen, Bad Aibling, Bad Kreuznach, Bad Nauheim, Baumholder, Berchtesgaden, Berlin, Birkenfeld, Boeblingen, Bonn, Bremen, Bremerhaven, Butzbach, Cologne, Darmstadt, Delmenhorst, Duesseldorf, Erlangen, Flensburg, Frankfurt am Main, Friedberg, Fuerth, Garlstedt, Garmisch-Partenkirchen, Geilenkirchen, Gelnhausen, Germersheim, Giebelstadt, Giessen, Grafenwoehr, Grefrath, Greven, Gruenstadt, Hamburg, Hanau, Handorf, Hannover, Heidelberg, Heilbronn, Herongen, Idar-Oberstein, Ingolstadt, Kaiserslautern, Landkreis, Kalkar, Karlsruhe, Kerpen, Kitzingen, Koblenz, Leimen, Leipzig, Ludwigsburg, Mainz, Mannheim, Mayen, Moenchen-Gladbach, Muenster, Munich, Nellingen, Neubruecke, Noervenich, Nuernberg, Ober Ramstadt, Oberammergau, Osterholz-Scharmbeck, Pfullendorf, Pirmasens, Rheinau, Rheinberg, Schwabach, Schwetzingen, Seckenheim, Sembach, Stuttgart, Twisteden, Vilseck, Wahn, Wertheim, Wiesbaden, Worms, Wuerzburg, Zirndorf, and Zweibrueken	33,400	91.26
Ghana	Accra	36,000	98.36
Greece	Athens	34,000	92.90
Greece	Elefsis	34,000	92.90
Greece	Ellinikon	34,000	92.90
Greece	Mt. Parnis	34,000	92.90
Greece	Mt. Pateras	34,000	92.90
Greece	Nea Makri	34,000	92.90
Greece	Piraeus	34,000	92.90
Greece	Tanagra	34,000	92.90
Guatemala	Guatemala City	42,000	114.75

Country	Location	Limitation on Housing Expenses (full year)	Limitation on Housing Expenses (daily)
Guinea	Conakry	51,300	140.16
Guyana	Georgetown	35,000	95.63
Holy See, The	Holy See, The	46,200	126.23
Hungary	Budapest	32,500	88.80
India	Mumbai	67,920	185.57
India	New Delhi	56,124	153.34
Indonesia	Jakarta	37,776	103.21
Ireland	Dublin	40,200	109.84
Israel	Beer Sheva	57,400	156.83
Israel	Tel Aviv	50,800	138.80
Italy	Genoa	41,800	114.21
Italy	La Spezia	40,400	110.38
Italy	Milan	69,000	188.52
Italy	Naples	47,400	129.51
Italy	Parma	35,100	95.90
Italy	Pordenone-Aviano	36,800	100.55
Italy	Rome	46,200	126.23
Italy	Turin	34,600	94.54
Italy	Vicenza	38,600	105.46
Jamaica	Kingston	41,200	112.57
Japan	Atsugi	41,600	113.66
Japan	Camp Zama	41,600	113.66
Japan	Chiba-Ken	41,600	113.66
Japan	Fussa	41,600	113.66
Japan	Gifu	74,300	203.01
Japan	Haneda	41,600	113.66
Japan	Iwakuni	32,800	89.62
Japan	Kanagawa-Ken	41,600	113.66
Japan	Komaki	74,300	203.01
Japan	Machidi-Shi	41,600	113.66
Japan	Misawa	33,200	90.71
Japan	Nagoya	74,300	203.01
Japan	Okinawa Prefecture	57,500	157.10
Japan	Osaka-Kobe	90,664	247.72
Japan	Sagamihara	41,600	113.66
Japan	Saitama-Ken	41,600	113.66
Japan	Sasebo	34,100	93.17
Japan	Tachikawa	41,600	113.66
Japan	Tokyo	93,200	254.64
Japan	Tokyo-to	41,600	113.66
Japan	Yokohama	49,600	135.52
Japan	Yokosuka	51,200	139.89
Japan	Yokota	39,200	107.10

Country	Location	Limitation on Housing Expenses (full year)	Limitation on Housing Expenses (daily)
Jerusalem	Jerusalem	49,000	133.88
Jerusalem	West Bank	49,000	133.88
Kazakhstan	Almaty	48,000	131.15
Korea	Camp Colbern	54,200	148.09
Korea	Camp Market	53,800	146.99
Korea	Camp Mercer	54,200	148.09
Korea	K-16	53,800	146.99
Korea	Kimpo Airfield	53,800	146.99
Korea	Osan AB	35,300	96.45
Korea	Pyongtaek	38,600	105.46
Korea	Seoul	53,800	146.99
Korea	Suwon	53,800	146.99
Korea	Taegu	32,900	89.89
Korea	Tongduchon	35,200	96.17
Kuwait	Kuwait City	64,400	175.96
Kuwait	All cities other than Kuwait City	57,700	157.65
Luxembourg	Luxembourg	37,900	103.55
Macedonia	Skopje	35,400	96.72
Malaysia	Kuala Lumpur	46,200	126.23
Malaysia	All cities other than Kuala Lumpur	33,700	92.08
Malta	Malta	55,100	150.55
Mexico	Merida	37,900	103.55
Mexico	Mexico City	47,900	130.87
Mexico	Monterrey	33,200	90.71
Mexico	All cities other than Ciudad Juarez, Cuernavaca, Guadalajara, Hermosillo, Matamoros, Mazatlan, Merida, Metapa, Mexico City, Monterrey, Nogales, Nuevo Laredo, Reynosa, Tapachula, Tijuana, Tuxtla Gutierrez, and Veracruz	39,400	107.65
Mozambique	Maputo	39,500	107.92
Netherlands	Amsterdam	52,900	144.54
Netherlands	Aruba	39,100	106.83
Netherlands	Brunssum	34,600	94.54
Netherlands	Eygelshoven	34,600	94.54
Netherlands	Hague, The	55,100	150.55
Netherlands	Heerlen	34,600	94.54
Netherlands	Hoensbroek	34,600	94.54
Netherlands	Hulsberg	34,600	94.54
Netherlands	Kerkrade	34,600	94.54

Country	Location	Limitation on Housing Expenses (full year)	Limitation on Housing Expenses (daily)
Netherlands	Landgraaf	34,600	94.54
Netherlands	Maastricht	34,600	94.54
Netherlands	Papendrecht	33,200	90.71
Netherlands	Rotterdam	33,200	90.71
Netherlands	Schaesburg	34,600	94.54
Netherlands	Schinnen	34,600	94.54
Netherlands	Schiphol	52,900	144.54
Netherlands	Ypenburg	55,100	150.55
Netherlands	All cities other than Amsterdam, Aruba, Brunssum, Coevorden, Eygelshoven, The Hague, Heerlen, Hoensbroek, Hulsberg, Kerkrade, Landgraaf, Maastricht, Margraten, Papendrecht, Rotterdam, Schaesburg, Schinnen, Schiphol, and Ypenburg.	32,800	89.62
Netherlands Antilles	Curacao	45,800	125.14
New Zealand	Auckland	35,700	97.54
New Zealand	Wellington	33,800	92.35
Nigeria	Abuja	36,000	98.36
Norway	Oslo	32,800	89.62
Oman	Muscat	41,300	112.84
Panama	Panama City	39,500	107.92
Peru	Lima	39,100	106.83
Philippines	Cavite	39,300	107.38
Philippines	Manila	39,300	107.38
Poland	Warsaw	40,900	111.75
Portugal	Alverca	42,300	115.57
Portugal	Lisbon	42,300	115.57
Qatar	Doha	45,888	125.38
Qatar	All cities other than Doha	32,400	88.52
Romania	Bucharest	41,200	112.57
Russia	Moscow	108,000	295.08
Russia	Saint Petersburg	60,000	163.93
Russia	Sakhalin Island	77,500	211.75
Russia	Vladivostok	77,500	211.75
Russia	Yekaterinburg	47,400	129.51
Saudi Arabia	Jeddah	30,667	83.79
Saudi Arabia	Riyadh	40,000	109.29
Singapore	Singapore	82,900	226.50
Slovenia	Ljubljana	48,500	132.51
South Africa	Pretoria	39,300	107.38

Country	Location	Limitation on Housing Expenses (full year)	Limitation on Housing Expenses (daily)
Spain	Barcelona	40,600	110.93
Spain	Madrid	56,300	153.83
Spain	Rota	34,400	93.99
Spain	Valencia	32,400	88.52
Suriname	Paramaribo	33,000	90.16
Switzerland	Bern	65,600	179.23
Switzerland	Geneva	93,300	254.92
Switzerland	Zurich	39,219	107.16
Switzerland	All cities other than Bern, Geneva and Zurich	32,900	89.89
Taiwan	Taipei	46,188	126.20
Tanzania	Dar Es Salaam	44,000	120.22
Thailand	Bangkok	59,000	161.20
Trinidad and Tobago	Port of Spain	54,500	148.91
Ukraine	Kiev	72,000	196.72
United Arab Emirates	Abu Dhabi	49,687	135.76
United Arab Emirates	Dubai	57,174	156.21
United Kingdom	Basingstoke	41,099	112.29
United Kingdom	Bath	41,000	112.02
United Kingdom	Bracknell	62,100	169.67
United Kingdom	Bristol	32,600	89.07
United Kingdom	Brookwood	32,600	89.07
United Kingdom	Cambridge	35,500	96.99
United Kingdom	Caversham	73,800	201.64
United Kingdom	Cheltenham	43,300	118.31
United Kingdom	Croughton	37,400	102.19
United Kingdom	Fairford	35,300	96.45
United Kingdom	Farnborough	54,700	149.45
United Kingdom	Felixstowe	34,300	93.72
United Kingdom	Gibraltar	44,616	121.90
United Kingdom	Harrogate	38,600	105.46
United Kingdom	High Wycombe	62,100	169.67
United Kingdom	Huntingdon	36,700	100.27
United Kingdom	Kemble	35,300	96.45
United Kingdom	Lakenheath	47,800	130.60
United Kingdom	London	71,500	195.36
United Kingdom	Loudwater	56,400	154.10
United Kingdom	Menwith Hill	38,600	105.46
United Kingdom	Mildenhall	47,800	130.60
United Kingdom	Oxfordshire	35,900	98.09
United Kingdom	Plymouth	35,900	98.09
United Kingdom	Portsmouth	35,900	98.09
United Kingdom	Reading	62,100	169.67

Country	Location	Limitation on Housing Expenses (full year)	Limitation on Housing Expenses (daily)
United Kingdom	Rochester	36,900	100.82
United Kingdom	Samlesbury	36,700	100.27
United Kingdom	Southampton	44,200	120.77
United Kingdom	Surrey	48,402	132.25
United Kingdom	Waterbeach	36,700	100.27
United Kingdom	Wiltshire	34,700	94.81
United Kingdom	All cities other than Basingstoke, Bath, Belfast, Birmingham, Bracknell, Bristol, Brookwood, Brough, Cambridge, Caversham, Chelmsford, Cheltenham, Chicksands, Croughton, Dunstable, Edinburgh, Edzell, Fairford, Farnborough, Felixstowe, Ft. Halstead, Gibraltar, Glenrothes, Greenham Common, Harrogate, High Wycombe, Huntingdon, Hythe, Kemble, Lakenheath, Liverpool, London, Loudwater, Menwith Hill, Mildenhall, Nottingham, Oxfordshire, Plymouth, Portsmouth, Reading, Rochester, Samlesbury, Southampton, Surrey, Waterbeach, Welford, West Byfleet, and Wiltshire.	36,700	100.27
Venezuela	Caracas	57,000	155.74
Vietnam	Hanoi	46,800	127.87
Vietnam	Ho Chi Minh City	42,000	114.75

IV. OPTION TO APPLY 2020 ADJUSTED HOUSING LIMITATIONS TO 2019 TAXABLE YEAR

For some locations, the limitation on housing expenses provided in Section 3 of this notice may be higher than the limitation on housing expenses provided in the "Table of Adjusted Limitations for 2019" in Notice 2019-24. A qualified individual incurring housing expenses in such a location during 2019 may apply the adjusted limitation on housing expenses provided in Section 3 of this notice for 2020 in lieu of the amounts provided in the "Table of Adjusted Limitations for 2019" in Notice 2019-24 (and as set forth in the Instructions to Form 2555, *Foreign Earned Income*, for 2019).

The Treasury Department and the IRS anticipate that future annual notices providing adjustments to housing expense limitations will make a similar option available to qualified individuals that incur housing expenses in the immediately preceding year. For example, when adjusted housing expense limitations for 2021 are issued, it is expected that taxpayers will be permitted to apply those adjusted limitations to the 2020 taxable year.

V. Filing Prior Year or Amended Tax Returns

Notice 2011–8, 2011-8 I.R.B. 503; Notice 2012–19, 2012-10 I.R.B. 440; Notice 2013–31, 2013-21 I.R.B. 1099; Notice 2014-29, 2014-18 I.R.B. 991; Notice 2015-33, 2015-18 I.R.B. 934; Notice 2016-21, 2016-12 I.R.B. 465; Notice 2017-21, 2017-13 I.R.B. 1026; Notice 2018-44, 2018-21 I.R.B. 611; and Notice 2019-24, 2019-14, I.R.B.932 are relisted to assist those individuals who are filing prior year or amended tax returns.

VI. EFFECT ON OTHER DOCUMENTS

This notice supersedes Notice 2006-87, 2006-43 I.R.B. 766; Notice 2007-25, 2007-12 I.R.B. 760; Notice 2007-77, 2007-40 I.R.B. 735; Notice 2008-107, 2008-50 I.R.B. 1265; Notice 2010-27, 2010-15 I.R.B. 531; Notice 2011–8, 2011-8 I.R.B. 503; Notice 2012–19, 2012-10 I.R.B. 440; Notice 2013–31, 2013-21 I.R.B. 1099; Notice 2014-29, 2014-18 I.R.B. 991; Notice 2015-33, 2015-18 I.R.B. 934; Notice 2016-21, 2016-12 I.R.B. 465; Notice 2017-21, 2017-13 I.R.B. 1026; Notice 2018-44, 2018-21 I.R.B. 611; and Notice 2019-24, 2019-14, I.R.B.932.

VII. EFFECTIVE DATE

This notice is effective for taxable years beginning on or after January 1, 2020. However, as provided in Section 4, a taxpayer may apply the 2020 adjusted housing limitations contained in Section 3 of this notice to his or her taxable year beginning in 2019.

VIII. DRAFTING INFORMATION

The principal author of this notice is Kate Y. Hwa of the Office of Associate Chief Counsel (International). For further information regarding this notice, contact Kate Y. Hwa at (202) 317-5001 (not a toll-free number).

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26 CFR 601.105: Examination of returns and claims for refund, credit or abatement; determination of correct tax liability.
(Also: §§ 45Q, 704, 1.704-1)

Rev. Proc. 2020-12

SECTION 1. PURPOSE

This revenue procedure establishes a safe harbor (Safe Harbor) under which the Internal Revenue Service (IRS) will treat partnerships as properly allocating, in accordance with section 704(b) of the Internal Revenue Code (Code), the credit for carbon oxide sequestration under section 45Q of the Code (Section 45Q Credit). The Department of the Treasury (Treasury Department) and the IRS intend for the Safe Harbor to simplify the application of section 45Q to partnerships that are eligible to claim the Section 45Q Credit.

SECTION 2. BACKGROUND

.01 Section 45Q generally allows a credit of an amount per metric ton of qualified carbon oxide captured by the taxpayer that is either: (i) disposed of in secure geological storage; (ii) used as a tertiary injectant in a qualified enhanced oil or natural gas recovery project and disposed of in secure geological storage; or (iii) utilized in certain ways described in section 45Q(f)(5). The amount of the credit depends on the date the carbon capture equipment is placed in service and whether the qualified carbon oxide is disposed of in secure storage, used, or utilized.

.02 In the case of carbon oxide captured using carbon capture equipment that is originally placed in service at a qualified facility on or after February 9, 2018, the Section 45Q Credit is available during the 12-year period beginning on the date the equipment was originally placed in service. Although section 45Q does not define "placed in service," the term has been defined for purposes of the investment tax credit and the deduction for depreciation. For these purposes, property is considered to be placed in service in the taxable year that the property is placed in a condition or state of readiness and availability for a specifically assigned function. *See* §§ 1.46-3(d)(1)(ii) and 1.167(a)-11(e)(1)(i) of the Income Tax Regulations.

.03 Section 704(a) provides that a partner's distributive share of income, gain, loss, deduction, or credit is, except as otherwise provided in chapter 1 of subtitle A of the Code, determined by the partnership agreement. Section 704(b) provides that a partner's distributive share of income, gain, loss, deduction, or credit (or item thereof) is determined in accordance with the partner's interest in the partnership (determined by taking into account all facts and circumstances), if: (i) the partnership agreement does not provide as to the partner's distributive share of income, gain, loss, deduction, or credit (or item thereof); or (ii) the allocation to a partner under the partnership agreement of income, gain, loss, deduction, or credit (or item thereof) does not have substantial economic effect.

.04 Section 1.704-1(b)(4)(ii) provides that allocations of tax credits and tax credit recapture are not reflected by adjustments to the partners' capital accounts (except with respect to certain investment tax credit property under section 38 of the Code). Thus, these allocations cannot have economic effect under § 1.704-1(b)(2)(ii)(b)(1), and the tax credits and tax credit recapture must be allocated in accordance with the partners' interests in the partnership as of the time the tax credit or credit recapture arises. With respect to tax credits other than the investment tax credit provided by section 38, if a partnership expenditure (whether or not deductible) that gives rise to a tax credit in a partnership taxable year also gives rise to valid allocations of partnership loss or deduction (or other downward capital account adjustments) for the year, then the partners' interests in the partnership with respect to the credit (or the cost giving rise to it) are in the same proportion as the partners' respective distributive shares of the loss or deduction (and adjustments). *See* § 1.704-1(b)(5), Example 11. Section 1.704-1(b)(4)(ii) further provides that identical principles apply in determining the partners' interests in the partnership regarding tax credits that arise from receipts of the partnership (whether or not taxable).

.05 A partnership exists when two or more "parties in good faith and acting with a business purpose intended to join together in the present conduct of the enterprise." *Commissioner v. Culbertson*, 337 U.S. 733, 742 (1949). In making this determination, courts "look not so much at the labels used by the partnership but at true facts and circumstances" to determine whether a partner has a "meaningful stake in the success or failure" of the enterprise. *TIFD III-E, Inc. v. United States*, 459 F.3d 220, 231 and 241 (2d Cir. 2006). A purported partner in a partnership may in substance be more properly viewed as a lender to the partnership or purchaser of partnership assets if the purported partner lacks "any meaningful downside risk or any meaningful upside potential in" the partnership. *Historic Boardwalk Hall, LLC v. Commissioner*, 694 F.3d 425, 455 (3d Cir. 2012).

SECTION 3. SCOPE

.01 The Safe Harbor provided in section 4 of this revenue procedure applies to any partnership (Project Company) that validly claims the Section 45Q Credit. Partners in a Project Company may include a project developer (Developer) and one or more investors, as defined in section 4.01 of this revenue procedure (Investors). The Project Company typically owns the carbon capture equipment (Equipment). In addition to the Project Company, the Developer, and the Investors, carbon oxide capture and sequestration transactions may involve lenders, one or more carbon oxide emitters (Emitters), one or more construction contractors, one or more qualified carbon oxide purchasers (Offtakers), and one or more project operators.

.02 If a Project Company, Developer, and Investor(s) satisfy all of the requirements of the Safe Harbor provided in section 4 of this revenue procedure, the IRS will treat the Investor as a partner in the Project Company and will treat the Project Company as properly allocating the Section 45Q Credit in accordance with section 704(b).

.03 The federal income tax treatment described in section 3.02 of this revenue procedure applies solely with respect to carbon oxide capture and sequestration transactions described in sections 3.01 and 3.02 of this revenue procedure and should not be viewed as precedent for any other federal tax credit transaction. Taxpayers should not infer that compliance with the Safe Harbor ensures that they are otherwise entitled to validly claim the Section 45Q Credit. A Project Company and its partners that do not satisfy each of the requirements in section 4 of this revenue procedure do not qualify for the Safe Harbor.

.04 This revenue procedure applies only to partnerships with a Section 45Q Credit and partners in such partnerships. This revenue procedure does not apply to any other tax credits and may not be cited as precedent for any other federal tax credit allocation.

.05 The Safe Harbor in this revenue procedure provides guidance on partnership allocations of the Section 45Q Credit to taxpayers establishing or participating in carbon capture partnerships in lieu of such taxpayers requesting letter rulings. Therefore, the IRS will not issue letter rulings on any issues under subchapter K of chapter 1 of subtitle A of the Code for partnerships claiming or seeking to claim the Section 45Q Credit.

SECTION 4. SAFE HARBOR

This section 4 sets forth the Safe Harbor under which the IRS will treat partnerships as properly allocating the Section 45Q Credit in accordance with section 704(b). If a Project Company and its partners do not satisfy each of the requirements in this section 4, the Project Company and its partners do not qualify for the Safe Harbor.

.01 *Investors Defined*. Investors hold an interest in the Project Company (Partnership Interest) as described in section 4.02(2) of this revenue procedure. An Investor may be an initial partner in the Project Company or may later become an Investor by acquiring an interest in the Project Company either directly from the Project Company by contribution or from another partner by purchase.

.02 *Partners' Partnership Interests*.

(1) *Developer's Minimum Partnership Interest*. The Developer must have a minimum one percent Partnership Interest in each material item of partnership income, gain, loss, deduction, and credit at all times during the existence of the Project Company.

(2) *Investor's Partnership Interest*.

(a) *Investor's Minimum Partnership Interest*. Each Investor must have, at all times during the period it owns a Partnership Interest, a minimum interest in each material item of partnership income, gain, loss, deduction, and credit equal to at least five percent of the Investor's percentage interest in each such item for the taxable year for which the Investor's percentage share of that item is the largest (as adjusted for sales, redemptions, or dilutions of its interest).

(b) *Requirements Regarding the Investor's Partnership Interest*. The Investor's Partnership Interest must constitute a bona fide equity investment with a reasonably anticipated value commensurate with the Investor's overall percentage interest in the Project Company, separate from any federal, state, and local tax deductions, allowances, credits, and other tax attributes to be allocated by the Project Company to the Investor. An Investor's Partnership Interest is a bona fide equity investment only if that reasonably anticipated value is contingent upon the Project Company's net income, gain, and loss, and is not substantially fixed in amount. Likewise, the Investor must not be substantially protected from losses from the Project Company's activities. The Investor's return from its investment in the Project Company must not be limited in a manner comparable to a preferred return representing a payment for capital.

(c) *Arrangements to Reduce the Value of the Investor's Partnership Interest or the Investor's Economic Return*. The value of the Investor's Partnership Interest may not be reduced through fees (including developer, management, and incentive fees), or other arrangements, that are unreasonable compared with fees or other arrangements for a carbon oxide capture and utilization or sequestration project that does not qualify for the Section 45Q Credit, and may not be reduced by disproportionate rights to distributions or by issuances of interests in the Project Company (or rights to acquire interests in the Project Company) for less than fair market value consideration.

.03 *Investor's Minimum Unconditional Investment*. On the date the Investor acquires a Partnership Interest, the Investor must make a minimum unconditional investment with respect to the Project Company (Investor Minimum Investment). The Investor must maintain the Investor Minimum Investment throughout the duration of its ownership of its Partnership Interest, except that the Investor Minimum Investment may be reduced as a result of distributions of cash flow from the Project Company's operation of the Equipment. Investments required to be made by the Investor in the future will not be included in the Investor Minimum Investment until the investment is actually made with respect to the partnership. The Investor Minimum Investment must be equal to at least 20 percent of the sum of the fixed capital investment plus any reasonably anticipated contingent investment required to be made by the Investor under the partnership agreement. The Investor

must not be protected against loss of any portion of the Investor Minimum Investment through any arrangement, directly or indirectly, with: the Developer; any other Investor; an Emitter; an Offtaker; or any person related to the Developer, other Investors, an Emitter, or an Offtaker.

.04 *Contingent Consideration*. More than 50 percent of the sum of the fixed investment plus reasonably anticipated contingent investment to be made by an Investor with respect to a Partnership Interest must be fixed and determinable obligations that are not contingent in amount or certainty of payment. Contributions to the Project Company to pay ongoing operating expenses will not be treated as part of the Investor's contingent investment for purposes of this requirement.

.05 *Purchase Rights*. Neither the Developer, the Investors, nor any related person may have a call option or other contractual right or agreement to purchase, at any time, the Equipment, any property included in the Equipment, or a Partnership Interest at a future date (other than a contractual right or agreement for a present sale).

.06 *Sale Rights*. An Investor may not have a contractual right or other agreement to require any person involved in any part of the carbon capture transaction to purchase or liquidate the Investor's Partnership Interest at a future date at a price that is more than its fair market value determined at the time of exercise of the contractual right to sell.

.07 *Determination of Fair Market Value*. Solely for the purposes of this revenue procedure, any determination of the fair market value of the Equipment or a Partnership Interest may take into account contracts or other arrangements creating rights or obligations only if such contracts or other arrangements creating rights or obligations are entered into in the ordinary course of the Project Company's business and are negotiated at arm's length.

.08 *Guarantees and Loans*.

(1) No person involved in any part of the Project Company may directly or indirectly guarantee or otherwise insure the Investor's ability to claim the Section 45Q Credit, the cash equivalent of the credits, or the repayment of any portion of the Investor's contribution due to inability to claim the Section 45Q Credit, in the event that the IRS challenges all or a portion of the transactional structure of the partnership. Further, no person involved in any part of the Project Company (or any related person) may guarantee that the Investor will receive distributions from the Project Company or consideration in exchange for its interest in the Project Company (except for a fair market value sale right described in section 4.06 of this revenue procedure). This requirement does not prohibit the Investor from procuring insurance, including recapture insurance, from persons not related to the Developer, any other Investor, an Emitter, or an Offtaker.

(2) The following guarantees may be provided to the Investor or the Project Company: (i) guarantees for the performance of any acts necessary to claim the Section 45Q Credit (including ensuring proper secure geological storage of the qualified carbon oxide through disposal, or use as a tertiary injectant, or utilization); and (ii) guarantees for the avoidance of any act (or omissions) that would cause the Project Company to fail to qualify for the Section 45Q Credit or that would result in a recapture of the Section 45Q Credit. Examples of guarantees permitted under this section include completion guarantees, operating deficit guarantees, environmental indemnities, and financial covenants.

(3) A long-term carbon oxide purchase agreement entered into on arm's-length terms between the Project Company and an Emitter, between the Project Company and an Offtaker, or between an Emitter and an Offtaker, does not constitute a guarantee even if the Emitter or the Offtaker is related to the Project Company, and even if such contracts contain "supply all," "supply-or-pay," "take all," "take-or-pay," or "securely-store-or-pay" provisions. A long-term contract between the Project Company and the Emitter or the Offtaker pursuant to which the Project Company leases the equipment to the Emitter or the Offtaker or agrees to use the Equipment to perform services for the Emitter or the Offtaker also does not constitute a guarantee even if the Emitter or the Offtaker is related to the Project Company.

(4) The Developer (or a person related to the Developer) may not lend any Investor the funds to acquire any part of the Investor's interest in the Project Company or guarantee any indebtedness incurred or created in connection with the acquisition of such Investor's interest in the Project Company.

.09 *Allocation of the Section 45Q Credit*. Allocations under the Project Company's partnership agreement must satisfy the requirements of section 704(b) and the regulations thereunder. The Section 45Q Credit and any recapture of the Section 45Q Credit must be allocated in accordance with § 1.704-1(b)(4)(ii). If the Project Company generates receipts from its activities relating to carbon oxide sequestration (such as payments for capturing qualified carbon oxide or for the sale of qualified carbon oxide), and those receipts give rise to valid allocations of partnership income, an allocation of the Section 45Q Credit in the same proportion as the partners' respective distributive shares of such income will be treated as in accordance with the partners' interests in the partnership for this purpose. If the Project Company does not receive payments for its activities relating to carbon oxide sequestration, an allocation of the Section 45Q Credit in the same proportion as the partners' respective distributive shares of the loss or deduction (or other downward capital account adjustments) associated with the cost of the capture and disposal, use as a tertiary injectant, or utilization of the qualified carbon oxide will be treated as in accordance with the partners' interests in the partnership for this purpose.

SECTION 5. EXAMPLE

This section 5 provides an example of a valid allocation of the Section 45Q Credit by a limited liability company (LLC) that is classified as a partnership for federal income tax purposes.

.01 *Facts.*

(1) The Developer is a C corporation for federal income tax purposes that owns and operates carbon capture projects. The Developer may also use carbon oxide for enhanced oil recovery. The Project Company is an LLC classified as a partnership for federal income tax purposes that has been formed by the Developer to own and manage a carbon capture project that: (i) owns Equipment; (ii) has rights to capture carbon oxide from an Emitter; and (iii) sells the carbon oxide to an Offtaker

(which may be the Developer and may be a partner). The Investor is a C corporation for federal income tax purposes that invests in carbon capture projects primarily to benefit from the Section 45Q Credit. The Developer will assign to the Project Company a number of contracts or agreements relating to the development of the carbon capture project.

(2) The Developer will cause the Equipment to be constructed and placed in service. Construction of the Equipment will be financed with $100x of construction financing. At some point before the Equipment is placed in service, the Developer will contribute the Equipment to the Project Company. The Investor will contribute $10x to the Project Company in exchange for an interest in the Project Company. The Investor's contribution of $10x is 20 percent of the Investor's total agreed investment of $50x.

(3) The Project Company will be a party to a long-term contract with the Emitter, pursuant to which the Project Company will install the carbon capture equipment on or adjacent to the Emitter's facility and will have rights to capture carbon oxide emissions. The contract with the Emitter may provide for either a fixed or variable payment for the right to capture or purchase the carbon oxide emissions. The contract may also permit the Project Company to capture the Emitter's entire emission stream or may specify a minimum amount of carbon oxide that the Emitter must supply to the Project Company. The Project Company will also be party to a long-term contract with the Offtaker, pursuant to which the Offtaker will undertake to purchase carbon oxide from the Project Company. That contract may be at a fixed or variable price and may provide a commitment from the Offtaker to purchase all of the Project Company's carbon oxide. The Offtaker will also agree to use the carbon oxide as a tertiary injectant in enhanced oil recovery and store it in secure geological storage, and avoid any release of the stored carbon oxide. These agreements will provide for remedies for breach of contract. Neither the Developer nor any person involved in the Project Company will provide a guarantee or otherwise insure the Investor's ability to claim the Section 45Q Credit, the cash equivalent of the credit, or the repayment of any portion of the Investor's contribution due to inability to claim the Section 45Q Credit, or guarantee that the Investor will receive distributions from the Project Company or consideration in exchange for its interest in the Project Company (except for a sale right, described in section 4.06 of this revenue procedure, at fair market value, as described in section 4.07 of this revenue procedure).

(4) Pursuant to the Project Company operating agreement (Operating Agreement), the Developer will have the right to manage the Project Company, subject to the right of the Investor to consent to certain activities. The Operating Agreement also provides that all allocations must satisfy the requirements of section 704(b) and the regulations thereunder.

(5) Below are a chart and an explanation that describe the distribution and allocation provisions applicable to Developer and Investor over various time periods.

	Developer		Investor	
	Cash	Gross Income/Loss and Section 45Q Credits	Cash	Gross Income/Loss and Section 45Q Credits
Period 1	100%	1%	0%	99%
Period 2	0%	1%	100%	99%
Period 3	95%	95%	5%	5%

(a) During Period 1, 99 percent of the Project Company's gross income or loss and the Section 45Q Credit will be allocated to the Investor, and the remainder will be allocated to the Developer, and 100 percent of the Project Company's cash flows will be distributed to the Developer. Period 1 will continue until the earlier of: (i) the date that the Developer receives an agreed cash return, which may be an amount equal to the aggregate contributions made by the Developer; or (ii) a fixed outside date. When Period 1 ends, Period 2 begins.

(b) During Period 2, 99 percent of the Project Company's gross income or loss and the Section 45Q Credit will be allocated to the Investor, the remainder will be allocated to the Developer, and 100 percent of the Project Company's cash flows will be distributed to the Investor. Period 2 will continue until the Investor achieves an agreed after-tax internal rate of return (Flip Point). When Period 2 ends, Period 3 begins. If the Flip Point occurs before Period 1 ends, Period 1 ends at that time, and Period 3 begins.

(c) During Period 3, five percent of the Project Company's gross income or loss and the Section 45Q Credit will be allocated to, and five percent of the Project Company's cash flows will be distributed to, the Investor, and 95 percent of the Project Company's gross income or loss and the Section 45Q Credit will be allocated to, and 95 percent of the Project Company's cash flows will be distributed to, the Developer. Period 3 will continue for the remaining life of the project.

.02 *Conclusion*. Under the facts set forth in section 5.01 of this revenue procedure, the IRS will treat the Investor as a partner in the Project Company and will treat the Project Company as properly allocating the Section 45Q Credit in accordance with section 704(b) and the regulations thereunder.

SECTION 6. REQUEST FOR COMMENTS

The Treasury Department and the IRS request comments on the requirements of the Safe Harbor.

SECTION 7. EFFECTIVE DATE

This revenue procedure is effective for transactions entered into on or after March 9, 2020. If a Project Company, Developer, and Investor satisfy all the requirements of the Safe Harbor provided in section 4 of this revenue procedure for transactions entered into before March 9, 2020, the IRS will treat the Investor as a partner in the Project Company and treat the Project Company as properly allocating the Section 45Q Credit in accordance with the Safe Harbor, and therefore section 704(b) and the regulations thereunder, for such taxable year(s). However, taxpayers should not infer that compliance with the Safe Harbor ensures that they are otherwise entitled to validly claim the Section 45Q Credit.

SECTION 8. DRAFTING INFORMATION

The principal author of this revenue procedure is Sonia K. Kothari of the Office of Associate Chief Counsel (Passthroughs and Special Industries). For further information regarding this revenue procedure, contact Sonia K. Kothari at (202) 317-6850.

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26 CFR 601.601: Rules and regulations.
(Also Part 1, §§ 168, 263A, 446, 448; 1.168(i)-4, 1.168(k)-1, 1.168(k)-2, 1.263A-1, 1.263A-4, 1.446-1, 1.448-1T.)

Rev. Proc. 2020-13

SECTION 1. PURPOSE

.01 This revenue procedure provides procedures applicable to a taxpayer in a farming business regarding the application of § 263A of the Internal Revenue Code (Code). Prior to the enactment of Public Law 115-97, 131 Stat. 2054 (Dec. 22, 2017), commonly referred to as the Tax Cuts and Jobs Act (TCJA), a taxpayer in a farming business could elect under § 263A(d)(3) to have § 263A not apply to certain plants produced by the taxpayer's farming business. Section 13102 of the TCJA added new § 263A(i) to the Code, which provides that § 263A does not apply to a taxpayer, other than a tax shelter (as defined in § 448(d)(3) of the Code), for a taxable year in which the taxpayer qualifies as a small business taxpayer by satisfying the gross receipts test in § 448(c) of the Code.

.02 Section 5 of this revenue procedure provides the exclusive procedures for a taxpayer that elected under § 263A(d)(3) to have § 263A not apply to certain plants produced by the taxpayer in a farming business if the taxpayer: (1) wants to revoke its election under § 263A(d)(3); (2) qualifies as a small business taxpayer within the meaning of § 263A(i); and (3) wants to apply the exemption from § 263A that is provided in § 263A(i) beginning with such revocation taxable year.

.03 Section 6 of this revenue procedure provides the exclusive procedures for a taxpayer in a farming business that uses the exemption from the application of § 263A provided under § 263A(i) if the taxpayer: (1) no longer qualifies as a small business taxpayer eligible to use the exemption under § 263A(i); and (2) wants to make an election under § 263A(d)(3) and the accompanying regulations for certain plants produced by the taxpayer in a farming business for the first taxable year in which the taxpayer is ineligible to use the exemption in § 263A(i).

SECTION 2. BACKGROUND

.01 Section 263A generally requires direct costs and an allocable portion of indirect costs of certain property produced or acquired for resale by a taxpayer to be included in inventory costs, in the case of property that is inventory in the hands of the taxpayer, or to be capitalized, in the case of other property.

.02 Section 263A(d)(3) and its accompanying regulations allow certain taxpayers that are not required to use an accrual method of accounting under § 447 (relating to certain corporations engaged in farming) or § 448(a)(3) (relating to tax shelters) to make an election to have § 263A not apply to certain costs related to certain plants produced in any farming business carried on by such taxpayer. Section 263A(e)(4) and § 1.263A-4(a)(4) of the Income Tax Regulations generally define the term "farming business" as a trade or business involving the cultivation of land or the raising or harvesting of any agricultural or horticultural commodity, including: the trade or business of operating a nursery or sod farm; the raising or harvesting of trees bearing fruit, nuts, or other crops; the raising of ornamental trees (other than evergreen trees that are more than 6 years old at the time they are severed from their roots); and the raising, shearing, feeding, caring for, training, and management of animals. See § 1.263A-4 for specific guidance on the application of § 263A and the accompanying regulations to farming businesses.

.03 If the election under § 263A(d)(3) is made, the taxpayer and any related person in a farming business are subject to special rules provided in § 263A(e)(1) and (2). Under these special rules, the plants produced by the taxpayer are treated as § 1245 property, if not otherwise § 1245 property, and any gain resulting from any disposition of a plant is recaptured to the extent of the total amount of the deductions that, but for the election, would have been required to be capitalized with respect to the plant. In addition, the special rules require that the alternative depreciation system (ADS), as described in § 168(g)(2), be applied to all property used predominantly in any farming business of the taxpayer or related person and placed in service in any taxable year during which the election is in effect.

.04 Section 263A(d)(3)(D) and § 1.263A-4(d)(1) provide that an election under § 263A(d)(3) not to capitalize costs under § 263A for certain plants produced in the taxpayer's farming business is a method of accounting under § 446 and, once made, may be revoked only with the consent of the Secretary of the Treasury or his delegate. A taxpayer must file a change in method of accounting request using the non-automatic change procedures of Rev. Proc. 2015-13, 2015-5 I.R.B. 419, (or its successor) to revoke its election under § 263A(d)(3) before applying § 263A to such capitalizable costs.

.05 Section 13102 of the TCJA added § 263A(i), which provides that § 263A does not apply to a taxpayer, other than a tax shelter prohibited from using the cash receipts and disbursements method under § 448(a)(3), for a taxable year in which the taxpayer meets the gross receipts test of § 448(c). Section 263A(i) applies to taxable years beginning after December 31, 2017.

.06 The exemption provided in § 263A(i) does not require a taxpayer to apply the special rules provided in § 263A(e)(1) and (2) relating to the treatment of plants produced by the taxpayer as § 1245 property or, in the case of the taxpayer or related person, to use ADS for all property predominantly used in any farming business of the taxpayer or related person. However, any plant as defined in section 4.06 of this revenue procedure that is or has been treated as § 1245 property with respect to taxable years before the year in which the revocation is effective continues to be treated as § 1245 property. *See* §§ 263A(e)(1)(A)(ii), 1245(a)(3) and 1.1245-3(c).

.07 Some taxpayers have inquired whether they must file a Form 3115, *Application for Change in Accounting Method*, to revoke the election under § 263A(d)(3) and to apply the exemption under § 263A(i) for the same taxable year. A taxpayer that revokes its election under § 263A(d)(3) and applies the exemption under § 263A(i) for the same taxable year is not changing its treatment of plants produced in the taxpayer's farming business under § 263A. Consequently, there is not a change in method of accounting under § 446(e). However, the consent of the Commissioner of Internal Revenue (Commissioner) is needed to revoke the election under § 263A(d)(3) pursuant to §§ 263A(d)(3)(D) and 1.263A-4(d)(1). Section 5 of this revenue procedure provides the exclusive procedures for obtaining the consent of the Commissioner to revoke the election under § 263A(d)(3) by a taxpayer in a farming business if the taxpayer: (1) meets the requirements of § 263A(i); (2) previously elected under § 263A(d)(3) to have § 263A not apply to certain plants produced by the taxpayer in a farming business; and (3) wants to apply the exemption from § 263A provided in § 263A(i) for the same taxable year as the taxable year it revokes its election under § 263A(d)(3).

.08 The Department of the Treasury and the Internal Revenue Service (IRS) also are aware that a taxpayer in a farming business may become ineligible for the exemption to capitalization under § 263A(i) because, for example, the taxpayer no longer satisfies the gross receipts test in § 448(c). Such a taxpayer might want to make an election under § 263A(d)(3) for the first taxable year the taxpayer is no longer eligible to apply § 263A(i). Section 6 of this revenue procedure provides the exclusive procedures for a taxpayer in a farming business if the taxpayer: (1) uses the exemption to capitalization under § 263A(i) with respect to a farming business; (2) is no longer eligible to use the exemption under § 263A(i) because the taxpayer no longer meets the requirements of § 263A(i); and (3) wants to make the election under § 263A(d)(3) and the accompanying regulations for the first taxable year the taxpayer is no longer eligible to apply § 263A(i).

SECTION 3. SCOPE

This revenue procedure applies to a taxpayer that:

.01 Is an eligible small business taxpayer, as defined in section 4.01 of this revenue procedure, that wants to revoke its election made under § 263A(d)(3), and in the same taxable year, apply the exemption under § 263A(i); or

.02 Is a former eligible small business taxpayer, as defined in section 4.02 of this revenue procedure, that wants to make an election under § 263A(d)(3) in the first taxable year that the taxpayer no longer qualifies to use the exemption under § 263A(i); or

.03 Is a related person, as defined in section 4.03 of this revenue procedure, of either:

(1) An eligible small business taxpayer, as defined in section 4.01 of this revenue procedure, or

(2) A former eligible small business taxpayer, as defined in section 4.02 of this revenue procedure.

SECTION 4. DEFINITIONS

.01 *Eligible small business taxpayer*. An eligible small business taxpayer is a taxpayer, other than a tax shelter as defined in § 448(d)(3), that meets the § 448(c) gross receipts test, as defined in section 4.05 of this revenue procedure, and that:

(1) made a valid election under § 263A(d)(3) for plants produced in the taxpayer's farming business for a taxable year prior to the taxable year for which the taxpayer wants to revoke such election; and

(2) properly implemented the election under § 263A(d)(3).

.02 *Former eligible small business taxpayer*. A former eligible small business taxpayer is a taxpayer whose method of accounting is not to capitalize costs under § 263A based on the exemption provided in § 263A(i), and for the taxable year:

(1) becomes ineligible to use the exemption under § 263A(i); and

(2) is eligible to and wants to elect under § 263A(d)(3) not to capitalize costs under § 263A for certain plants produced in the taxpayer's farming business.

.03 *Related person*. A related person is as defined in § 1.263A-4(d)(4)(iii).

.04 *Farming business*. A farming business is as defined in § 263A(e)(4) and § 1.263A-4(a)(4).

.05 *Gross receipts test*. The gross receipts test is as defined § 448(c).

.06 *Plant*. A plant is as defined in § 1.263A-4(a)(4)(A).

SECTION 5. PROCEDURES FOR ELIGIBLE SMALL BUSINESS TAXPAYERS TO REVOKE THE ELECTION MADE UNDER § 263A(d)(3) AND TO APPLY § 263A(i)

.01 *In general.* An eligible small business taxpayer has the consent of the Commissioner to revoke its election made under § 263A(d)(3) and § 1.263A-4(d)(3) (§ 263A(d)(3) election) and apply the exemption under § 263A(i) for the same taxable year if the taxpayer complies with the procedures provided in this section 5. See section 5.03 of this revenue procedure for the effect of the revocation of the § 263A(d)(3) election on the depreciation of property used in a farming business of the eligible small business taxpayer or related person. A valid § 263A election revoked pursuant to this revenue procedure remains in effect with respect to taxable years before the year in which the revocation is effective. An eligible small business taxpayer that revokes its own § 263A(d)(3) election but also is a related person to a taxpayer that made a § 263A(d)(3) election that has not also been revoked must continue to apply § 1.263A-4(d)(4)(ii) for taxable years that the unrevoked § 263A(d)(3) election is in effect.

.02 *Time and manner of revocation*.

(1) *In general*. Except as provided in section 5.02(2) of this revenue procedure, an eligible small business taxpayer revokes its § 263A(d)(3) election under this section 5 on its original federal income tax return, including extensions, for the taxable year for which the taxpayer wants to revoke its § 263A(d)(3) election (revocation year), by:

(a) Continuing not to capitalize costs of plants produced in its farming business under § 263A;

(b) Applying section 5.03 of this revenue procedure for determining depreciation of property predominantly used in a farming business of the eligible small business taxpayer or related person; and

(c) Continuing to treat plants that are or have been treated as § 1245 property for prior taxable years as § 1245 property. *See* §§ 263A(e)(1)(A)(ii), 1245(a)(3) and 1.1245-3(c).

(2) *Making a revocation of § 263A(d)(3) election for a taxable year beginning in 2018*. If an eligible small business taxpayer timely filed its federal income tax return for its taxable year beginning in 2018 (2018 taxable year), wants to revoke its § 263A(d)(3) election for the 2018 taxable year, and did not revoke the § 263A(d)(3) election within the time and in the manner provided in section 5.02(1) of this revenue procedure, the taxpayer may revoke its § 263A(d)(3) election by using one of the options described in this section 5.02(2):

(a) *Amended return or AAR*. The taxpayer may file an amended federal income tax return, or in the case of a partnership subject to the centralized partnership audit regime enacted as part of the Bipartisan Budget Act of 2015, an administrative adjustment request (AAR), for the 2018 taxable year before the taxpayer files its federal income tax return for the first taxable year beginning after the 2018 taxable year. This amended return or AAR must include the adjustment to taxable income for the revocation of the § 263A(d)(3) election in the manner provided in section 5.02(1) of this revenue procedure and any collateral adjustments to taxable income or to tax liability. Such collateral adjustments also must be made on federal income tax returns or AARs for any affected succeeding taxable years, if applicable. If an eligible small business taxpayer uses the option under this section 5.02(2)(a), then all related persons affected by the taxpayer's revocation of the § 263A(d)(3) election must also use this option to reflect the taxpayer's revocation; or

(b) *Form 3115*. The taxpayer may file a Form 3115 with the eligible small business taxpayer's timely filed federal income tax return for the first, second, or third taxable year beginning after the 2018 taxable year. Only during this limited period of time will the late revocation of the § 263A(d)(3) election under this section 5.02(2)(b) be treated as a change in method of accounting with a § 481(a) adjustment. No part of the § 481(a) adjustment shall be based on amounts that were, or which should have been, taken into account in computing taxable income for taxable years prior to the 2018 taxable year. The § 481(a) adjustment takes into account only the adjustments resulting from the change in the applicable depreciation method, the applicable recovery period, and/or the applicable convention under the ADS to the applicable depreciation method, the applicable recovery period, and/or the applicable convention under the general depreciation system of § 168(a) (GDS) for all property used predominantly in any farming business of the eligible small business taxpayer. The time and manner of making this late revocation are described in the procedures for automatic method changes described in Rev. Proc. 2015-13 and section 7 of this revenue procedure. If an eligible small business taxpayer uses the option under this section 5.02(2)(b), then all related persons affected by the taxpayer's revocation of the § 263A(d)(3) election must also use this option to reflect the taxpayer's revocation.

.03 *Changing depreciation of property to the GDS.*

(1) *In general*. Beginning with the revocation year, an eligible small business taxpayer that revokes its § 263A(d)(3) election under this section 5, or a related person, is not required under § 263A(e)(2) and § 1.263A-4(d)(4)(ii) to depreciate all property used predominantly in any farming business of the taxpayer, or related person, in accordance with the ADS, unless such property is otherwise required to be depreciated in accordance with the ADS (for example, § 168(g)(1)(G) applies to such property). The preceding sentence applies to such property placed in service by the eligible small business taxpayer or related person in taxable years beginning before the revocation year (existing property) and to such property placed in service by the eligible small business taxpayer or related person in the revocation year and subsequent taxable years (newly-acquired property). If an eligible small business taxpayer revokes its own § 263A(d)(3) election but also is a related person to a taxpayer that made a § 263A(d)(3) election that has not been revoked, the eligible small business taxpayer must continue to apply § 263A(e)(2) and § 1.263A-4(d)(4)(ii) for taxable years that such § 263A(d)(3) election is in effect.

(2) *Existing property*. For all property used predominantly in any farming business of the eligible small business taxpayer or related person that was placed in service in a taxable year prior to the revocation year and that is not otherwise required to be depreciated in accordance with the ADS, a change in use occurs for such property under § 168(i)(5) and § 1.168(i)-4(d) for the revocation year as a result of its revocation of the § 263A(d)(3) election. Accordingly, depreciation for such property beginning for the revocation year is determined in accordance with § 1.168(i)-4(d). However, pursuant to § 1.168(i)-4(d)(3)(C)(ii), the eligible small business taxpayer or related person may elect to determine the depreciation for such property as though the change in use had not occurred. See § 1.168(i)-4(d)(3)(C)(ii) for the time and manner of making this election for the revocation year. Pursuant to § 1.168(i)-4(f), a change in computing depreciation for the revocation year for such property is not a change in method of accounting under § 446(e). The additional first year depreciation deduction under § 168(k) is not allowable for any such existing property. *See* §§ 1.168(k)-1(f)(6)(iv)(B) and 1.168(k)-2(g)(6)(iv)(B).

(3) *Newly-acquired property*. For all property used predominantly in any farming business of the eligible small business taxpayer or related person that was placed in service in the revocation year and subsequent taxable years and that is not otherwise required to be depreciated in accordance with the ADS, the eligible small

business taxpayer or related person determines the depreciation in accordance with the GDS. Because such newly-acquired property is not required to be depreciated under the ADS, the property may be qualified property for purposes of the additional first year depreciation deduction under § 168(k), if all requirements under § 168(k) and § 1.168(k)-1 or § 1.168(k)-2, as applicable, are satisfied.

(4) *Failure to change to GDS.*

(a) *Existing property*. If an eligible small business taxpayer or related person does not depreciate any existing property that is described in section 5.03(1) of this revenue procedure and that is not otherwise required to be depreciated in accordance with the ADS, under the GDS for the revocation year and the subsequent taxable year, then that taxpayer or related person has adopted an impermissible method of accounting for that item of MACRS property, as defined in § 1.168(b)-1(a)(2). A change from that impermissible method of accounting to the applicable depreciation method, the applicable recovery period, and/or the applicable convention under the GDS is a change in method of accounting under § 446(e). *See* § 1.446-1(e)(2)(ii)(*d*)(*2*)(*i*). The taxpayer requests to make such a method change by filing Form 3115 in accordance with the automatic change procedures or non-automatic change procedures, as applicable, in Rev. Proc. 2015-13 (or any successor). If the taxpayer is eligible to make this method change under the automatic change procedures, the method change is described in section 6.05 of Rev. Proc. 2019-43, 2019-48 I.R.B. 1107 (or any successor). The § 481(a) adjustment as of the first day of the year of change is calculated as though the change in use occurred for the item of MACRS property in the revocation year.

(b) *Newly-acquired property*. If an eligible small business taxpayer or related person does not depreciate any newly-acquired property that is described in section 5.03(1) of this revenue procedure and that is not otherwise required to be depreciated under the ADS (including property described in § 168(g)(1)(E)), under the GDS for the property placed-in-service year and the subsequent taxable year, then that taxpayer or related person has adopted an impermissible method of accounting for that item of MACRS property. A change from that impermissible method of accounting to the applicable depreciation method, the applicable recovery period, and/or the applicable convention under the GDS for the item of MACRS property is a change in method of accounting under § 446(e). *See* § 1.446-1(e)(2)(ii)(*d*)(*2*)(*i*). The taxpayer requests to make such a method change by filing Form 3115 in accordance with the automatic change procedures or non-automatic change procedures, as applicable, in Rev. Proc. 2015-13 (or any successor). If the taxpayer is eligible to make this method change under the automatic change procedures, the method change is described in section 6.01 of Rev. Proc. 2019-43 (or any successor).

SECTION 6. PROCEDURES FOR FORMER ELIGIBLE SMALL BUSINESS TAXPAYERS TO CHANGE FROM APPLYING § 263A(i) TO MAKING A § 263A(d)(3) ELECTION

.01 *In general.* A former eligible small business taxpayer may make a § 263A(d)(3) election for plants produced in its farming business in the first taxable year the former small business taxpayer no longer qualifies to use the exemption under § 263A(i), if the taxpayer complies with the procedures provided in this section 6. A § 263A(d)(3) election made under this section 6 is in effect for the taxable year the § 263A(d)(3) election is made (election year), and for any subsequent taxable year that the taxpayer has a valid § 263A(d)(3) election in effect. A former eligible small business taxpayer that follows the procedures under this section 6 to make the § 263A(d)(3) election for the first taxable year the taxpayer no longer qualifies as a small business taxpayer under § 263A(i) is not treated as making a change in method of accounting under § 446(e).

.02 *Time and manner of making the § 263A(d)(3) election*. A former eligible small business taxpayer makes its § 263A(d)(3) election under this section 6 on its original federal tax return, including extensions, for the first taxable year for which the taxpayer no longer qualifies to use the exemption under § 263A(i), by:

(1) Following the manner of making the § 263A(d)(3) election provided in § 1.263A-4(d)(3); and

(2) Continuing not to capitalize costs of plants produced in its farming business under § 263A.

.03 *Depreciation of property.*

(1) *Newly-acquired property*. A former eligible small business taxpayer that makes a § 263A(d)(3) election under this section 6 is required under § 1.263A-4(d)(4)(ii) to apply the ADS to depreciate all property used predominantly in any farming business of the taxpayer and placed in service by the taxpayer in the election year and in any subsequent taxable year during which the § 263A(d)(3) election is in effect. A related person of such former eligible small business taxpayer also is required under § 1.263A-4(d)(4)(ii) to apply the ADS to depreciate all property used predominantly in any farming business of the related person and placed in service by the related person in the election year and in any subsequent taxable year during which the § 263A(d)(3) election is in effect for the former eligible small business taxpayer, even if the related person qualifies for the exemption under § 263A(i). The additional first year depreciation deduction under § 168(k) is not allowable for any property described in this section 6.03(1). *See* §§ 1.168(k)-1(b)(2)(ii)(A)(*2*), 1.168(k)-1(b)(2)(ii)(B)(*1*), and 1.168(k)-2(b)(2)(ii)(B).

(2) *Existing property*. A former eligible small business taxpayer that makes a § 263A(d)(3) election under this section 6, or related person, is not required under § 1.263A-4(d)(4)(ii) to apply the ADS to depreciate all property used predominantly in any farming business of the taxpayer or related person and placed in service by the taxpayer or related person in a taxable year prior to the election year.

(3) *Failure to use the ADS for newly-acquired property*.

(a) *Former eligible small business taxpayer*. If a former eligible small business taxpayer that makes a § 263A(d)(3) election under this section 6 does not determine its depreciation under the ADS for any property described in section 6.03(1) of this revenue procedure for its placed-in-service year and the subsequent tax-

able year, then that taxpayer has not made a valid § 263A(d)(3) election under § 1.263A-4(d)(3)(i) and this section 6. To make such election valid, the taxpayer must obtain the consent of the Commissioner by filing a Form 3115 in accordance with the non-automatic change procedures in Rev. Proc. 2015-13 (or any successor). *See* § 1.263A-4(d)(3)(ii).

(b) *Related person*. If a related person of a former eligible small business taxpayer that makes the § 263A(d)(3) election under this section 6 does not determine its depreciation under the ADS for any property described in section 6.03(1) of this revenue procedure, then the related person has adopted an impermissible method of accounting for that item of MACRS property. A change from that impermissible method of accounting to the applicable depreciation method, recovery period, applicable convention under the ADS for the item of MACRS property is a change in method of accounting under § 446(e). *See* § 1.446-1(e)(2)(ii)(*d*)(*2*)(*i*). A related person that wants to change its method of accounting from that impermissible method of accounting must make the method change by filing Form 3115 in accordance with the automatic change procedures or non-automatic change procedures, as applicable, in Rev. Proc. 2015-13 (or any successor). If the related person is eligible to make this method change under the automatic change procedures, the method change is described in section 6.01 of Rev. Proc. 2019-43 (or any successor). Section 6.03(3)(a) of this revenue procedure, and not this section 6.03(3)(b), applies to a related person if the related person itself is a former eligible small business taxpayer and makes the § 263A(d)(3) election under this section 6.

SECTION 7. CHANGE IN METHOD OF ACCOUNTING

.01 *In general*. The making of a late revocation of the eligible small business taxpayer's § 263A(d)(3) election for the 2018 taxable year, under section 5.02(2)(b) of this revenue procedure, is treated for a limited period of time as a change in method of accounting to which §§ 446(e) and 481, and the corresponding regulations, apply. An eligible small business taxpayer that wants to revoke its § 263A(d)(3) election for the 2018 taxable year, as described in section 5.02(2)(b) of this revenue procedure, must use the automatic change procedures in Rev. Proc. 2015-13 or its successor.

.02 *Automatic change*. Rev. Proc. 2019-43 is modified to add new section 12.19 to read as follows:

.19 *Late revocation of elections under § 263A(d)(3)*.

(1) *Description of change*.

(a) *Applicability*. This change applies to an eligible small business taxpayer within the scope of Rev. Proc. 2020-13, 2020-11 I.R.B. 515, that wants to make a late revocation of the election under § 263A(d)(3) provided in section 5.02(2)(b) of Rev. Proc. 2020-13.

(b) *Inapplicability*. The IRS will treat the late revocation of an election under § 263A(d)(3) that is provided in section 5.02(2)(b) of Rev. Proc. 2020-13 as a change in method of accounting with a § 481(a) adjustment only for the taxable years specified in section 12.19(2) of this revenue procedure. This treatment does not apply to a taxpayer that makes a late revocation under § 263A(d)(3) provided in section 5.02(2)(b) of Rev. Proc. 2020-13 before or after the time specified in section 12.19(2) of this revenue procedure, and any such late revocation is not a change in method of accounting.

(2) *Time for making the change*. The change under this section 12.19 must be made for the taxpayer's first, second, or third taxable year beginning after the taxpayer's first taxable year beginning in 2018 (2018 taxable year).

(3) *Certain eligibility rules inapplicable*. The eligibility rules in section 5.01(1)(d) and (f) of Rev. Proc. 2015-13, 2015-5 I.R.B 419, do not apply to this change for the taxpayer's first, second, or third taxable year succeeding the 2018 taxable year.

(4) *Concurrent automatic change*. A taxpayer making this change for more than one property used predominantly in any farming business of the taxpayer under section 5.02(2)(b) of Rev. Proc. 2020-13 for the same year of change should file a single Form 3115 for all such farming property. The single Form 3115 must provide a single net § 481(a) adjustment for all such changes.

(5) *Designated automatic accounting method change number*. The designated automatic accounting method change number for a change to the method of accounting under this section 12.19 is "243."

(6) *Contact information*. For further information regarding a change under this section, contact Anna Gleysteen at (202) 317-7007 (not a toll-free call).

SECTION 8. EFFECTIVE DATE

.01 *In general*. This revenue procedure is effective on February 21, 2020.

.02 *Transition rule*. If on or before February 21, 2020, a taxpayer properly filed a Form 3115 under the non-automatic change procedures in Rev. Proc. 2015-13 requesting the Commissioner's consent to revoke its § 263A(d)(3) election, and the Form 3115 is pending with the national office on February 21, 2020, the taxpayer may choose to revoke its § 263A(d)(3) election using the procedures provided in this revenue procedure, if the taxpayer is otherwise eligible to use this revenue procedure. The taxpayer must notify the national office contact person for the Form 3115 (if unknown, *see* section 9.08(6) of Rev. Proc. 2020-1, 2020-1 I.R.B. 1, 51 (or any successor)) of the taxpayer's intent to make the § 263A(d)(3) revocation under this revenue procedure before the later of (a) March 22, 2020, or (b) the issuance of a letter ruling granting or denying consent for the revocation. The notification should indicate that the taxpayer chooses to apply the revocation procedures contained in this revenue procedure. If the taxpayer timely notifies the national office that it chooses to convert the Form 3115 to the procedures contained in this revenue procedure, the national office will send a letter to the taxpayer acknowledging its request and will return the user fee submitted with the Form 3115.

SECTION 9. EFFECT ON OTHER DOCUMENTS

Rev. Proc. 2019-43 is modified to include the accounting method change provided in section 7.02 of this revenue procedure in section 12 of Rev. Proc. 2019-43.

SECTION 10. PAPERWORK REDUCTION ACT

This revenue procedure does not impose any additional information collection requirements in the form of reporting, recordkeeping requirements or third-party disclosure requirements. However, because this revenue procedure provides a method change option for taxpayers to revoke their § 263A(d)(3) election for the 2018 taxable year in section 5.02(2)(b) of this revenue procedure, the consent of the Commissioner under § 446(e) is required before the taxpayer or related person can use the exemption in § 263A(i). The IRS expects that these taxpayers will request this consent by filing Form 3115, *Application for Change in Accounting Method*. This revenue procedure alternatively provides an option for taxpayers to revoke their § 263A(d)(3) election for the 2018 taxable year in section 5.02(2)(a) of this revenue procedure by filing an amended return. For purposes of the Paperwork Reduction Act, the reporting burden associated with any collection of information using the method of accounting option in sections 5.02(2)(a) and (b) of this revenue procedure will be reflected in OMB control number 1545-0074 for individual income tax returns; OMB control number 1545-0123 for business taxpayers; or OMB control number 1545-2070 for other taxpayers in the case of a Form 3115.

SECTION 11. DRAFTING INFORMATION

The principal author of this revenue procedure is Anna Gleysteen of the Office of Associate Chief Counsel (Income Tax and Accounting). For further information regarding this revenue procedure, contact Ms. Gleysteen or Evan Hewitt at (202) 317-7007 (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.
F.R.—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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