DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224

OFFICE OF THE CHIEF COUNSEL

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The Honorable Kay Bailey Hutchinson
United States Senate
Washington, DC 20510

Dear Ms. Hutchinson:

Thank you for your letter dated August 24, 2011, to Commissioner Shulman on the application of the carbon dioxide (CO_2) sequestration credit under section 45Q of the Internal Revenue Code. Specifically, you asked for clarification of the term "qualified facility."

Generally, under section 45Q, a taxpayer can claim a credit of $20 per metric ton of qualified CO_2 that the taxpayer captures at a qualified facility, disposes of in secure geological storage, and does not use as a tertiary injectant. The credit is $10 per metric ton if a taxpayer uses the qualified CO_2 as a tertiary injectant in a qualified enhanced oil or natural gas recovery project. The term "qualified facility" refers to an industrial facility that the taxpayer owns and, at which, the taxpayer places the carbon capture equipment in service and captures at least 500,000 metric tons of CO_2 during the taxable year. Only CO_2 captured at an industrial facility qualifies for the credit.

On November 2, 2009, we issued Notice 2009-83 (see enclosed), which provides guidance to determine eligibility for the credit, including a definition of "industrial facility." Under this guidance, an industrial facility is a facility that meets the following two conditions. The facility:

1. Produces a CO_2 stream from a fuel combustion source, a manufacturing process, or a fugitive CO_2 emission source
2. Does not produce CO_2 from CO_2 production wells at natural CO_2-bearing formations

You stated in your letter that the congressional intent of section 45Q was not to exclude CO_2 captured from a high content natural gas stream, but rather to exclude CO_2 that a taxpayer extracts from the earth for its standalone value. Therefore, in the application of section 45Q, the guidance should not exclude natural gas and oil wells that the

taxpayer drills solely for the purpose of extracting natural gas and oil merely because the produced hydrocarbons are found in “natural CO_2 bearing formations.”

We appreciate receiving your views in this matter. We understand the need for clarity in the application of section 45Q for a facility that processes natural gas produced from natural gas formations. We have shared your letter with the Office of the Assistant Secretary for Tax Policy of the Department of Treasury. We are working with officials at that office to give your views thorough and careful consideration in ensuring the appropriate interpretation of section 45Q.

I hope this information is helpful. If you need further assistance on this matter, please contact at ( ) .

Sincerely,

Curt Wilson
Associate Chief Counsel
(Passthroughs & Special Industries)

Enclosure