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November 3, 2022

Internal Revenue Service
CC:PA:LPD:PR (Notice 2022-50)
Room 5203
P.O. Box 7604, Ben Franklin Station
Washington, DC 20044

Re: Notice 2022-50: Request for Comments on Elective Payment of Applicable Credits and Transfer of Certain Credits

Dear Ladies and Gentlemen:

Navigator CO2 Ventures LLC (“Navigator CO2”) submits the following comments in response to the newly published Internal Revenue Service (“IRS”) Notice 2020-50, which requested comments on the elective payment provisions under Internal Revenue Code (“IRC”) section 6417 and the elective credit transfer provisions under IRC section 6418, as enacted by the Inflation Reduction Act pursuant to section 13801 of Public Law 117-1the 69, 136 Stat. 2003 (August 16, 2022).

Company Background

Navigator CO2 is a company developed and managed by the Navigator Energy Services management team with over 200 years of collective industry experience. The company specializes in carbon capture, utilization, and sequestration (“CCUS”), and the management team has safely constructed and operated over 1,300 miles of new infrastructure since 2012. The company is committed to building and operating its projects to meet and exceed safety requirements while minimizing the collective impact on the environment, landowners, and the public during construction and ongoing operations.

As Navigator CO2 evaluates its tax monetization strategy, it is imperative to understand when a taxpayer is eligible to make an election under IRC sections 6417 and 6418. Therefore, Navigator CO2 respectfully submits the below recommendations for consideration.

Elective Payment of Applicable Credits under section 6417 (Direct Pay)

- I. With respect to the definition of the term “applicable entity” in section 6417(d)(1):

- A. Is guidance needed to clarify the application of any Code provision other than section 6417 to an applicable entity, or a taxpayer electing to be treated as an applicable entity, that makes an election under section 6417(a)? If so, what is the Code provision and what clarification is needed?

Yes, guidance is needed to clarify the application and interplay of IRC sections 45Q and 6417. Specifically, Navigator CO₂ requests that the taxpayer in which the credit is attributable to under section 45Q(f)(3)(B) be treated as an applicable entity under section 6417(d)(1)(C).

Pursuant to section 6417(d)(1)(C), if a taxpayer, other than an entity listed in section 6417(d)(1)(A), makes an election under section 6417(d)(1)(C) with respect to any taxable year in which such taxpayer has, after December 31, 2022, placed in service carbon capture equipment at a qualified facility (as defined in section 45Q(d)), such taxpayer is treated as an applicable entity for purposes of section 6417 for such taxable year, but only with respect to the credit under section 45Q to the extent described in section 6417(b)(3).

Under IRC section 45Q(f)(3)(A)(ii), any credit under [IRC section 45Q] shall be attributable to – “in the case of qualified carbon oxide captured using carbon capture equipment which is originally placed in service at a qualified facility on or after the date of the enactment of the Bipartisan Budget Act of 2018, **the person that owns the carbon capture equipment and physically or contractually ensures the capture and disposal, utilization, or use as a tertiary injectant of such qualified carbon oxide**” (emphasis added).

Treas. Reg. section 1.45Q-1(h)(1)(ii) provides that for each single process train of carbon capture equipment (as defined under 1.45Q-2(c)(3)), the IRC section 45Q credit is attributable to only one taxpayer. Rev. Rul. 2021-13; 2021-30 IRB 152, further clarifies that a person must own at least one component of carbon capture equipment in the single process train and be the same person who either physically ensures the capture and disposal, injection, or utilization of qualified carbon oxide or enters into a contract with others to capture and dispose, inject, or utilize such qualified carbon oxide to be the eligible taxpayer to whom the IRC section 45Q credit is attributable.

Furthermore, IRC section 45Q(f)(3)(B) permits the taxpayer to whom the IRC section 45Q credit is attributable to make an election in which the

credit shall be allowable to the person that disposes of the qualified carbon oxide, utilizes the qualified carbon oxide, or uses the qualified carbon oxide as a tertiary injectant, and shall not be allowable to the person described in IRC section 45Q(f)(3)(A).

As demonstrated above, IRC section 45Q and the guidance promulgated thereunder requires more than placing in service carbon capture equipment, as outlined in IRC section 6417(d)(1)(c), to be the eligible taxpayer to whom the IRC section 45Q credit is attributable. In addition, IRC section 45Q(f)(3)(B) even permits such taxpayer to make a transfer election to permit the person that disposes, injects, or utilizes the qualified carbon oxide to be an eligible claimant. Therefore, Navigator CO₂ kindly requests that the government clarify that the taxpayer eligible to make an election under section 6417(d)(1)(C) is the same taxpayer to whom the credit is attributable under section 45Q(f)(3)(B). Otherwise, there is a risk that the taxpayer eligible to make an election under IRC section 6417 is not the same taxpayer eligible to claim the tax credit under IRC section 45Q.

Transfer of Certain Credits under section 6418

- I. What, if any, guidance is needed to clarify the meaning of certain terms in section 6418, such as eligible credit, eligible taxpayer, and excessive credit transfer? Is there any term not defined in section 6418 that should be defined in guidance? If so, what is the term and how should it be defined?

Navigator CO₂ respectfully requests the government to clarify that: (i) an eligible taxpayer may transfer all or a portion thereof of an eligible credit to more than one taxpayer; (ii) the taxpayer in which the IRC section 45Q credit is attributable to under section 45Q(f)(3)(B) may be permitted to make an election under section 6418(a); and (iii) “facility” as used in IRC section 6418(f)(1)(B) has the same meaning as a single process train of carbon capture equipment, as defined under Treas. Reg. section 1.45Q-2(c)(3).

- a. IRC section 6418(a) provides that “in the case of an eligible taxpayer which elects to transfer all (or any portion specified in the election) of an eligible credit determined with respect to such taxpayer for any taxable year to a **taxpayer** which is not related to the eligible taxpayer, the transferee taxpayer specified in such election shall be treated as the taxpayer for purposes of this title with respect to such credit (or such portion thereof)” (emphasis added). Navigator CO₂ believes the usage of “a taxpayer” was not intended to limit how many taxpayers to whom the eligible taxpayer may transfer an eligible

credit. Therefore, Navigator CO₂ kindly requests the government to clarify that an eligible taxpayer may transfer all or a portion thereof of an eligible credit to more than one taxpayer.

- b. Navigator CO₂ asks the government to consider clarifying the definition of an “eligible taxpayer” as it relates to the IRC section 45Q tax credit, such that the same taxpayer to whom the credit is attributable under section 45Q(f)(3)(B) may be permitted to make an election under section 6418(a). As outlined in the *Elective Payment of Applicable Credits under section 6417 (Direct Pay)* section, there is currently a misalignment between the eligible taxpayer to whom the IRC section 45Q credit is attributable and who may make an election under IRC section 6417. Navigator CO₂ requests that the government clarify that the taxpayer to whom the credit is attributable under section 45Q(f)(3)(B) be the eligible taxpayer for purposes of IRC section 6418.
- c. IRC section 6418(f)(1)(B) states an election shall be made separately with respect to each facility for which such credit is determined. Because a qualified facility could contain more than one single process train of carbon capture equipment, Navigator CO₂ respectfully calls on the government to clarify that the election under IRC section 6418(f)(1)(B) may be made in regards to each single process train of carbon capture equipment, as defined under Treas. Reg. section 1.45Q-2(c)(3).

Thank you for your consideration.

Sincerely,



Jeff Allen
EVP and CFO, Navigator CO₂