



LB&I Process Unit

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Table of Contents

- Process Overview 1**
- Detailed Explanation of the Process 2**
 - Legal Framework..... 2
 - IRA 3
 - Deduction Limitation for EECBP Placed in Service Before January 1, 2023..... 4
 - Deduction for IRC 179D Property Placed in Service After December 31, 2022,
Per the IRA..... 6
 - ASHRAE Standard 90.1 or Reference Standard 90.1 8
 - Computer Modeling 9
 - Building Retrofit Property - EEBRP 10
 - Certification 11
 - Government building owners, Specified tax-exempt entities, and Designers ... 11
 - Allocation of Deduction to Designer 13
- Process Steps 13**
 - Step 1: Determine if IRC 179D Deduction Was Claimed 13
 - Step 2: Obtain IRC 179D Study 14
 - Step 3: Determine If Taxpayer Is Building Owner or Lessee 15
 - Step 4: Determine If Deduction Claimed for Taxable Year Property Placed in
Service 16
 - Step 5: Obtain Relevant IRC 179D Information 16
 - Step 6: Obtain Copy of IRC 179D Certification 18
 - Step 7: Obtain Copy of IRC 179D Allocation 21
 - Step 8: Verify Allocation of Deduction Is to Designer(s) 21
 - Step 9: Interview Representative of Specified Tax-Exempt Entity Building
Owner 22
 - Step 10: Verify Taxpayer Is the Designer of the IRC 179D property 23
 - Step 11: Review and Determine Amount of IRC 179D Deduction 24
 - Step 12: Verify Accuracy of Computer Modeling 24
 - Step 13: Verify Basis Reductions Were Properly Made 26
 - Step 14: Consider If Penalty Assertion Is Appropriate 26

Glossary of Terms and Acronyms	26
Related Practice Units	35
Training and Additional Resources	35
Additional Resources	35
References	36

Process Overview

Note: This updated Practice Unit reflects amendments made to IRC 179D by the Inflation Reduction Act of 2022 (IRA), Public Law 117-169, Title I, Sec. 13303, 136 Stat. 1818, 1947 (August 16, 2022). The IRA amendments apply to taxable years beginning after December 31, 2022, except for the newly enacted IRC 179D(f) (alternative deduction for energy efficient building retrofit property). IRC 179D(f), as amended by the IRA, and any other provision of IRC 179D solely for purposes of applying IRC 179D(f), applies to property placed in service after December 31, 2022 (in taxable years ending after such date) if such property is placed in service pursuant to a qualified retrofit plan established after such date. This Practice Unit supersedes the December 11, 2018, June 19, 2020, and May 26, 2022, Practice Units with the same title.

IRC 179D was enacted to encourage building owners to install energy efficient commercial building property (EECBP) in a new or existing commercial building or government building.

IRC 179D allows a taxpayer who owns or leases a commercial building to deduct the cost or a portion of the cost of EECBP placed in service during the taxable year. Additionally, if the EECBP is installed in a government-owned building, the deduction can be allocated to the person(s) primarily responsible for designing the EECBP (“the designer” or “the designers”). For EECBP placed in service after 2022, IRC 179D expanded the allocation of the deduction to the designers of EECBP placed in service in a building owned by a “specified tax-exempt entity” under IRC 179D(d)(3)(B).

EECBP is defined in part as being property installed as part of one of three systems:

1. Interior lighting systems (Interior Lighting);
2. Heating, cooling, ventilation, and hot water systems (HVAC/HW);or
3. The building envelope (ENV).

This Practice Unit addresses requirements taxpayers must meet to claim the IRC 179D deduction for property placed in service both prior to January 1, 2023, and January 1, 2023, or later. This Unit covers key concepts and definitions related to the IRC 179D deduction, including the certification, the allocation, the IRC 179D study, deduction limitations and computation (including the new IRC 179D(f) alternative deduction for “energy efficient building retrofit property”), computer modeling, the new prevailing wage and apprenticeship (PWA) requirements, and basis reduction requirements.

Any pending regulations, notices or other guidance concerning the IRC 179D deduction will prompt an update to this Practice Unit.

While the IRS has not formally defined some industry terms, for purposes of this Practice Unit, we have adopted some definitions from industry sources. See Glossary of Terms for more information.

Detailed Explanation of the Process

Legal Framework

The IRC 179D energy efficient commercial buildings deduction was enacted by the Energy Policy Act of 2005, Public Law 109-58, 119 Stat. 594, 1020 (Aug. 8, 2005). The IRS has published several items of IRC 179D guidance, including four notices (Notice 2006-52, Notice 2008-40, Notice 2012-26, and Notice 2022-61 (IRS Notices), Chief Counsel Advisory (CCA) 201451028, two Chief Counsel Attorney Memoranda (IRS AM 2010-007 and 2018-005), and two announcements, Announcement 2023-1, and Announcement 2024-24.

Notice 2006-52 applies to EECBP placed in service before January 1, 2023, and explains how building owners or lessees can qualify for an IRC 179D deduction and establishes a process to certify that the required total annual energy and power cost savings have been achieved to claim the deduction. Additionally, it provides an energy savings percentage (ESP) for a partial deduction computed under the permanent rule (as defined in the discussion of the partial deduction later in this Practice Unit) for all three systems (16 2/3%) for property placed in service after December 31, 2005, and before January 1, 2009. (This ESP was subsequently adjusted in Notice 2012-26.) The Notice also provides a partial deduction under the interim lighting rule for Interior Lighting, for property placed in service after December 31, 2005, and before January 1, 2009. Finally, the Notice announces that the Department of Energy (DOE) will maintain on its website a public list of software programs that may be used to calculate total annual energy and power costs for purposes of the IRC 179D deduction.

Notice 2008-40 clarifies and amplifies Notice 2006-52 and is intended to be used with Notice 2006-52. The Notice addresses the allocation of the deduction to a designer of EECBP, the certification requirements for the interim lighting rule, and the application of the interim lighting rule to unconditioned garage space. It also provides another set of ESPs available for partially qualifying property for each system using the permanent rule: 20% for Interior Lighting, 20% for HVAC/HW, and 10% for ENV, for property placed in service after December 31, 2005, and before January 1, 2014.

Notice 2012-26 modifies Notice 2008-40 by providing another set of ESPs for partial deductions using the permanent rule: 25% for Interior Lighting, 15% for HVAC/HW, and 10% for ENV, for property placed in service on or after March 29, 2012. These ESPs were in effect through December 31, 2022, until the IRA became effective.

AM 2010-007 considers whether partners in a designer that is a partnership or shareholders in a designer that is an S-corporation must reduce the adjusted bases in their partnership interests or S corporation stock by the amount of the IRC 179D deduction. The memorandum concludes that they must, and that IRC 704(d) and IRC 1366(d) limit the benefit of the IRC 179D deduction to the partners' or shareholders' adjusted bases in their partnership interests or S corporation stock.

CCA 201451028 considers the issue of which entities can allocate the deduction under IRC 179D to the designer of EECBP that is installed on or in property owned by the entity. The opinion concludes that the only entities that may allocate an IRC 179D deduction to a designer are a federal, state, or local government or a political subdivision thereof (“governmental entity”), and that the IRC 179D deduction cannot be allocated by entities that are not a governmental entity.

AM 2018-005 considers whether a taxpayer qualifies under various examples as a designer and concludes that a taxpayer could qualify as a designer if the taxpayer created technical specifications for construction contract documents for the design of EECBP. The memorandum also considers whether a designer could qualify for the maximum IRC 179D deduction of \$1.80/sf if it only designed one system of EECBP and concludes that if a building owner could have qualified for such maximum deduction, then the building owner has discretion to allocate the full \$1.80/sf deduction to such designer.

IRA

The IRA amended IRC 179D by changing the deduction amount (subject to PWA requirements), revising the energy efficiency requirements, removing the partial deduction and the interim rule for lighting systems, broadening the type of entities that may allocate the deduction to a designer, and adding a new alternative deduction for energy efficient building retrofit property (EEBRP).

Notice 2022-61 (November 30, 2022) provides guidance on the PWA requirements that apply to IRC 179D and other sections as amended by the IRA. The notice also serves as the published guidance establishing the 60-day period described in those provisions of the Internal Revenue Code (Code) with respect to the applicability of the PWA requirements. The notice also provides guidance for determining the beginning of installation under IRC 179D.

Announcement 2023-1 (December 2022) notifies taxpayers of the applicable reference standard required to be used to determine the amount of the EECBP deduction allowed under IRC 179D as amended by the IRA. This announcement identifies the existing reference standard, affirms a new reference standard, and clarifies when each of the two reference standards will apply to taxpayers. The effective date of this announcement is January 1, 2023. (See table further down in this section.)

Announcement 2024-24 (June 2024) notifies taxpayers of the applicable Reference Standard 90.1 required under IRC 179D(c)(2) as part of the definition of EECBP. This announcement supplements and supersedes Announcement 2023-1, 2023-3 I.R.B. 422 (2023), by affirming ASHRAE/IES Reference Standard 90.1-2022 (Reference Standard 90.1-2022) as the applicable Reference Standard 90.1 for EECBP placed in service after December 31, 2028, and the construction of which did not begin by December 31, 2022. The effective date of this announcement is May 17, 2024.

Treasury Decision 9998 (TD 9998, August 2024) sets forth final regulations regarding the increased credit amounts or the increased deduction amount available for taxpayers satisfying the PWA requirements established by the IRA.

Deduction Limitation for EECBP Placed in Service Before January 1, 2023

The amount of the IRC 179D deduction is the cost of EECBP placed in service during the taxable year limited to a “Maximum amount of deduction” or “partial deduction” (as defined on the next pages). The cost of the EECBP is not the cost of the entire project: just the costs of the prescribed building systems: the ENV, HVAC/HW, or Interior Lighting.

Maximum Amount of the Deduction for EECBP Placed in Service Before January 1, 2023

For EECBP placed in service before January 1, 2023, the maximum amount of the IRC 179D deduction with respect to any building for any taxable year is \$1.80/sf of the building over the aggregate amount of the IRC 179D deductions allowed with respect to the building for all prior taxable years. For property placed in service after December 31, 2020, the deduction amount is given a cost-of-living adjustment determined under IRC 1(f)(3).¹ The deduction is only allowed if the EECBP is certified as being installed as part of a plan designed to reduce the total annual energy and power costs with respect to the HVAC/HW and Interior Lighting by 50% or more in comparison to a reference building which meets the minimum requirements of Reference Standard 90.1 using methods of calculation under IRC 179D(d)(2). Reference Standard 90.1 means, with respect to any property, the most recent Standard 90.1 published by the American Society of Heating, Refrigerating, and Air Conditioning Engineers and the Illuminating Engineering Society of North America (ASHRAE) which has been affirmed by the Secretary of the Treasury, after consultation with the Secretary of Energy, for purposes of IRC 179D not later than the date that is 2 years before the date that construction of such property begins. The reduction must be verified by software that performs computer modeling (as discussed later in this Practice Unit), except in the case of a deduction calculated using the interim lighting rule (discussed below).

Partial Deduction for EECBP Placed In Service Prior to January 1, 2023

For EECBP placed in service before January 1, 2023, a partial deduction is allowed with respect to partially qualifying commercial building property, which Notice 2006-52 describes as property that would be EECBP but for the failure to achieve the 50% reduction in total annual energy and power costs. A partial deduction is allowed under the permanent rule or the interim lighting rule. The permanent rule requires a taxpayer to compute the amount of the deduction based on a reduction in total annual energy and power costs when compared to a reference building which meets the minimum requirements of Reference Standard 90.1. This calculation must be performed separately for each EECBP system for which a taxpayer claims a partial deduction as

explained in Notice 2006-52, sections 2.03(1)(a), 2.04(1), and 2.05(1). Each system must satisfy targets established in the IRS Notices that must be documented in a certification (as discussed later). The partial deduction for each system is capped at \$0.60/sf (adjusted for inflation for EECBP placed in service after December 31, 2020).²

The specified energy savings percentages established by the IRS Notices are shown below.

Table 1

Property Type	Energy Savings Percentages permitted under Notice 2006-52	Energy Savings Percentages permitted under Notice 2008-40	Energy Savings Percentages permitted under Notice 2012-26³
Interior Lighting	16 2/3	20	25
HVAC/HW	16 2/3	20	15
ENV	16 2/3	10	10
Effective for property placed in service	January 1, 2006 - December 31, 2008	January 1, 2006 - December 31, 2013	January 1, 2014 - December 31, 2022.

Alternatively, for Interior Lighting, the interim lighting rule allows a taxpayer to compute the deduction based on the interior lighting system’s power density in watts per square foot (W/sf) as compared to a chart of standard lighting densities (within those provided in ASHRAE Standard 90.1 and as explained in Notice 2006-52, section 2.03(1)(b)). The partial deduction for Interior Lighting using the interim lighting rule ranges from \$0.30 to \$0.60/sf and is adjusted for inflation for EECBP placed in service after December 31, 2020.⁴ The interim lighting rule does not require computer modeling, but still requires a certification.

IRC 179D Deduction limit amounts per year including inflation adjustments.

Table 2

Tax Years	Maximum Deductions (Fully Qualifying)	Partial Deduction (Partially Qualifying)
2006 to 2020	\$1.80/sf	\$0.60/sf
2021	\$1.82/sf	\$0.61/sf

Tax Years	Maximum Deductions (Fully Qualifying)	Partial Deduction (Partially Qualifying)
2022	\$1.88/sf	\$0.63/sf
2023*	Not applicable, see table below	Not applicable, see table below

NOTE: Both the partial deductions for each individual building system and the interim lighting rule were discontinued for tax years after December 31, 2022.

Deduction for IRC 179D Property Placed in Service After December 31, 2022, Per the IRA

The partial deduction and the deduction under the interim lighting rule are removed from the statute and no longer apply. A PWA requirement was added that substantially increases the deduction for IRC 179D property (EECBP and the new alternative deduction for energy efficient building retrofit property, or EEBRP) placed in service after 2022. The deduction for EEBRP was added in IRC 179D(f).

Table 3

Tax Years	Base Deduction	Deduction Meeting PWA**	\$/sf per percent increase in ESP
2022 year of IRA	\$0.50 to \$1.00/sf	\$2.50 to \$5.00/sf	\$0.02 no PWA, \$0.10 with PWA
2023*	\$0.54 to \$1.07/sf or	\$2.68 to \$5.36/sf	\$0.02 no PWA, \$0.10 with PWA*
2024***	\$0.57 to \$1.13/sf	\$2.83 to \$5.65/sf	\$0.02 no PWA, \$0.11 with PWA***

Tax Years	Base Deduction	Deduction Meeting PWA**	\$/sf per percent increase in ESP
2025****	\$0.58 to \$1.16/sf	\$2.90 to \$5.81/sf	\$0.02 no PWA, \$0.12 with PWA****

*Rev. Proc. 2022-38 – Section 3.26

**PWA Requirements

***Rev. Proc. 2023-34 – Section 3.26

****Rev. Proc. 2024-40 – Section 3.26, for tax years beyond 2025 see the current inflation adjustment rates for that year

Prevailing Wage and Apprenticeship Requirements

The prevailing wage requirement under IRC 179D(b)(4)(A) generally is that the taxpayer shall ensure that any laborers and mechanics employed by the taxpayer or any contractor or subcontractor in the installation of any property shall be paid wages at rates not less than the prevailing rates for construction, alteration, or repair of a similar character in the locality in which such property is located as most recently determined by the Secretary of Labor. The PWA regulations⁵ provide that the taxpayer must meet the prevailing wage requirements of IRC 45(b)(7) and Treas. Reg. 1.45-7, and the recordkeeping and reporting requirements of Treas. Reg. 1.45-12, with respect to the installation of any property.

The apprenticeship requirement under IRC 179D(b)(5) is that rules similar to the rules of IRC 45(b)(8) apply. IRC 45(b)(8) generally provides that the taxpayer must ensure that, with respect to the construction of any qualified facility, not less than the applicable percentage of the total labor hours of the construction, alteration, or repair work (including such work performed by any contractor or subcontractor) with respect to such facility must, subject to IRC 45(b)(8)(B), be performed by qualified apprentices. Under IRC 45(b)(8)(A)(ii), for purposes of IRC 45(b)(8)(A)(i), the applicable percentage is:

1. In the case of a qualified facility the construction of which begins before January 1, 2023, 10%,
2. In the case of a qualified facility the construction of which begins after December 31, 2022, and before January 1, 2024, 12.5%, and
3. In the case of a qualified facility the construction of which begins after December 31, 2023, 15%.

The PWA regulations provide that the taxpayer must meet the apprenticeship requirements of IRC 45(b)(8) and Treas. Reg. 1.45-8, and the recordkeeping and reporting requirements of Treas. Reg. 1.45-12, with respect to the installation of any property.

Maximum Deduction After December 31, 2022

The IRA changed the maximum amount of the deduction for IRC 179D property (EECBP and EEBRP) placed in service after December 31, 2022. A deduction is allowed for an amount equal to \$0.50 increased (but not above \$1.00) by \$0.02 for each percentage point by which the total annual energy and power costs for the building are certified to be reduced by a percentage greater than 25%. For example, if the total annual energy and power costs for the building are reduced by 30%, then the associated dollar value would be \$0.60 ($\$0.50 + [(30 - 25) \times \$0.02]$).

In the case of any property that satisfies the PWA requirements, a deduction is allowed for an amount equal to \$2.50 increased (but not above \$5.00) by \$0.10 for each percentage point by which the total annual energy and power costs for the building are certified to be reduced by a percentage greater than 25%. For example, if the total annual energy and power costs for the building are reduced by 30%, then the associated dollar value would be \$3.00 ($\$2.50 + [(30 - 25) \times \$0.10]$).

Note: Each of these dollar amounts is adjusted for inflation under IRC 179D(g); see inflation-adjusted IRC 179D deduction amounts in Table 3.

ASHRAE Standard 90.1 or Reference Standard 90.1

The reduction in total annual energy and power costs required by the IRC 179D deduction is set out and defined by the American Society of Heating, Refrigerating, and Air Conditioning Engineers and the Illuminating Engineering Society of North America (ASHRAE) in their Standard 90.1 (“Reference Standard 90.1”). ASHRAE is a global professional association seeking to advance the arts and sciences of heating, ventilation, air conditioning, refrigeration, and their allied fields.⁶ The purpose of the ASHRAE Standard 90.1 is to provide minimum requirements for the energy efficient design of commercial buildings. It explicitly excludes low-rise residential buildings of three or fewer floors. ASHRAE Standard 90.1 is periodically updated. For EECBP placed in service before January 1, 2015, ASHRAE Standard 90.1-2001 must be used. For EECBP placed in service after December 31, 2014, and before January 1, 2027, ASHRAE Standard 90.1-2007 must be used.

The Taxpayer Certainty and Disaster Tax Relief Act of 2020 (“2020 Act”), Public Law 116-260, Title I, Subtitle A, Sec. 102, 134 Stat. 1182, 3039 (December 27, 2020), updates the energy efficiency standard for the IRC 179D deduction by providing that for EECBP placed in service after December 31, 2020, EECBP means, in part, property installed on or in any building that is within the scope of “Reference Standard 90.1.” The 2020 Act amended IRC 179D(c)(2) to provide that Reference Standard 90.1 means, with respect to any property, the most recent Standard 90.1 published by ASHRAE which has been affirmed by the Secretary of the Treasury, after consultation with the

Secretary of Energy, for purposes of IRC 179D not later than the date that is 2 years before the date that construction of such property begins. For the remainder of this Practice Unit, we will refer to this standard as “Reference Standard 90.1.” The ASHRAE Standard 90.1-2007 is the most current affirmed version as of the publication date of this Practice Unit.

The Secretary of the Treasury has affirmed ASHRAE standards for Reference Standard 90.1 in two announcements (described above), Announcement 2023-1 and Announcement 2024-24. The latter includes the most current information as of the date of this Practice Unit, which is provided in the table below:

Table 4

Date EECBP Placed In Service*	Applicable Reference Standard 90.1
Before 1/1/2015	Reference Standard 90.1-2001
After 12/31/2014 and before 1/1/2027	Reference Standard 90.1-2007
After 12/31/2026 and before 1/1/2029	Reference Standard 90.1-2019
After 12/31/2028	Reference Standard 90.1-2022

*Taxpayers for whose EECBP construction began before January 1, 2023, may apply Reference Standard 90.1-2007 regardless of when EECBP is placed in service.

Computer Modeling

This section applies to all EECBP for which the Performance Rating Method (ASHRAE Standard 90.1 Appendix G - 2007) is used to calculate the total annual energy and power costs both before January 1, 2023, and after December 31, 2022.

Computer modeling is used to determine if property installed in a building is eligible for the IRC 179D deduction. As discussed earlier, the deduction is only allowed if the EECBP is certified as being installed as part of a plan designed to reduce the total annual energy and power costs with respect to the HVAC/HW and Interior Lighting by 25% (50% for EECBP placed in service after 2022) or more in comparison to a reference building which meets the minimum requirements of Reference Standard 90.1 using methods of calculation under IRC 179D(d)(2). The computer modeling must be performed using DOE-approved software. Approved software must have the features described in section 6 of Notice 2006-52 or section 4 of Notice 2008-40. As noted above, the interim lighting rule does not require computer modeling, but still requires a certification. For a list of DOE-approved software, visit the DOE website at www.energy.gov, and specifically, the Qualified Software for Calculating Commercial Building Tax Deductions page at www.energy.gov/eere/buildings/qualified-software-calculating-commercial-building-tax-deductions.

Computer modeling compares two virtual buildings. The first virtual building is the “Reference Building.” The Reference Building is located in the same climate zone as taxpayer’s building and is otherwise comparable to the taxpayer’s building except that

the Interior Lighting, HVAC/HW, and ENV just meet the minimum requirements of the applicable Reference Standard 90.1 depending upon the year in which the EECBP is placed in service. The second virtual building is the “Proposed Building.” The Proposed Building is identical to the Reference Building except that the ASHRAE-compliant property used in the Reference Building is replaced by the EECBP that the taxpayer has incorporated, or that the taxpayer plans to incorporate, into the subject building. To be eligible for the deduction, the taxpayer’s computer modeling must indicate that the Proposed Building’s total annual energy and power costs savings (ESP) are:

1. 50 percent or greater than the Reference Building’s total annual energy and power costs , or the ESP for each property type, see Table 1 for EECBP placed in service before Jan 1, 2023, or
2. 25 percent or greater up to a prescribed maximum dollar amount for EECBP placed in service after Dec. 31, 2022.

Building Retrofit Property - EEBRP

The IRA added an additional procedure to qualify for the deduction. IRC 179D(f) is the “Alternative deduction for energy efficient building retrofit property,” which is referred to herein as “Retrofit Property” or EEBRP. This procedure, if elected by the taxpayer, does not use the reference standard 90.1 or qualified individuals. It does require a “qualified professional” (QP defined below) to:

1. Write a qualified retrofit plan which is expected to reduce the energy use intensity (EUI) of the building by 25 percent or more compared to the baseline EUI of the building,
2. Certify the Baseline EUI - as of any date during the 1-year period ending on the date on which the property installed pursuant to such plan is placed in service, See IRC 179D(2)(A),
3. Certify the status of EEBRP installed pursuant to such plan as meeting the requirements of IRC 179D(f)(3)(B and C) and,
4. Certify the Final EUI - as of any date that is more than 1 year after the date on which the property installed pursuant to such plan is placed in service, certify that as of such date EUI not more than 75 percent of the baseline EUI of the building.

Qualified Professional (QP) means an individual who is a licensed architect or a licensed engineer and meets such other requirements as the Secretary may provide.

EEBRP or retrofit property is property with respect to which depreciation (or amortization in lieu of depreciation) is allowable, which is installed on or in any qualified building, which is installed as part of the three defined building systems of EECBP, and which is certified in accordance with IRC 179D(f)(2)(B) as meeting the requirements of such section.

Qualified building means any building which is located in the United States and was originally placed in service not less than 5 years before the establishment of the qualified retrofit plan with respect to such building.

Energy use intensity (EUI) is the 12 full months measured site energy use intensity determined in accordance with such regulations or other guidance as the Secretary may provide and measured in British thermal units (over the total gross floor area kBtu/ft² See energy.gov).⁷

Baseline energy use intensity means the energy use intensity certified within 1 year before the EECBP is placed in service, as adjusted to take into account weather.

Qualifying final certification means, the certification by the QP with respect to the qualified retrofit plan, the final EUI as of more than 1 year after the EECBP has been placed in service is not more than 75 percent of the baseline energy use intensity of the building.

Rules similar to the EECBP shall apply for the allocation of the deduction to the taxpayer for the purposes of buildings owned by specified tax-exempt entities.

Certification

Before claiming the IRC 179D deduction, the taxpayer must obtain a certification from a qualified individual. The certification must verify that the EECBP installed satisfies the energy efficiency requirements of IRC 179D. The certification should meet all the requirements listed in Notice 2006-52, section 4 (for the permanent rule) and Notice 2008-40, section 5 (for the interim lighting rule), which includes the name and contact information of the qualified individual, the address of the building being certified, a pre-determined qualifying statement that the EECBP meets the applicable Reference Standard 90.1, and various statements and declarations that the installed property meets the requirements of IRC 179D.

A qualified individual is an individual not related to the taxpayer (within the meaning of IRC 45(e)(4)) who is an engineer or contractor licensed in the jurisdiction in which the building is located, and who has represented in writing to the taxpayer that he or she has the requisite qualifications to provide the certification or to perform the inspection and testing required for the certification (in the case of an individual performing the inspection).⁸

CAUTION: Before claiming the deduction, the taxpayer must obtain a certification that verifies that the EECBP installed satisfied the requirements of IRC 179D.

Government building owners, Specified tax-exempt entities, and Designers

For EECBP placed in service before January 1, 2023, IRC 179D(d)(4) allows only the owner of government buildings (“property owned by a federal, state, or local

government or a political subdivision thereof”) to allocate the IRC 179D deduction to the person primarily responsible for designing the EECBP.

For EECBP and EEBRP placed in service after December 31, 2022, IRC 179D(b)(3) allows this allocation to be made by a specified tax-exempt entity, defined as:

1. The United States, any state or political subdivision thereof, any possession of the United States, or any agency or instrumentality of any of the foregoing,
2. An Indian tribal government (as defined in IRC 30D(g)(9)) or Alaska Native Corporation (as defined in section 3 of the Alaska Native Claims Settlement Act (43 U.S.C. 1602(m)), and
3. Any organization exempt from tax imposed by this Chapter 1 of the Code.

The IRC 179D deduction may be allocated by these entities to the person primarily responsible for the design of the EECBP or EEBRP, IRC 179D(d)(3)(A). There are three building systems included in the EECBP or EEBRP, each may have their own licensed designer which may typically be:

- Heating, Ventilation, Cooling, & Hot Water Systems – Mechanical and/or Plumbing Engineers
- Building Envelope – Architects
- Interior Lighting Systems – Electrical or Lighting Engineers

Local law for building and construction permitting purposes, typically requires the names of the licensed architect and engineers (a.k.a. Designers of Record) be prominently displayed on their construction drawing sets and technical specifications and that architects and engineers stamp their respective drawings.

A designer is defined in section 3.02 of Notice 2008-40 as follows:

A designer is a person that creates the technical specifications for installation of [EECBP]. . . A designer may include, for example, an architect, engineer, contractor, environmental consultant, or energy services provider who creates the technical specifications for a new building or an addition to an existing building that incorporates [EECBP] . . . A person that merely installs, repairs, or maintains the property is not a designer.

For example, a heating and cooling specialist who repairs the EECBP after it is installed is not a designer.

Design responsibilities for a commercial building project are designated by contract. Each party in a construction or renovation project should have a contract that specifies responsibilities. For Design-Bid-Build contracts, general contractors (GC) and designers contract with the building owner in separate contracts. In Design-Build contracts, one party, typically the GC or the construction manager (CM), contracts with the building owner, and then the GC or CM contracts with the designers. In addition, other parties

such as service subcontractors or material suppliers may contract with parties other than the building owner.

CAUTION: The examiner must obtain the contract to review the taxpayer's responsibilities in the design of the EECBP to determine whether the taxpayer is a designer eligible to receive an allocation of the IRC 179D deduction.

For EEBRP, the designers are the same professionals as discussed above. However, there is no related party exclusion for the certification, therefore in some instances a taxpayer who is also a qualified professional, may be allocated the deduction from a specified tax-exempt entity. However, the certification should be carefully analyzed by the examiners for conformity to the applicable requirements of IRC 179D(f).

Allocation of Deduction to Designer

The allocation of the IRC 179D deduction to a designer must meet the requirements of section 3.04 of Notice 2008-40. The allocation must be in writing and include the contact information for the authorized representatives of both the building owner and the designer, the address of the building, the cost of the IRC 179D property and the date it was placed in service, the dollar amount of the deduction allocated to the designer, the signatures of the authorized representatives of the building owner and the designer, and a declaration signed under penalties of perjury by the authorized representative of the building owner attesting that the facts presented are true, correct, and complete.

For the EEBRP, IRC179D(f)(8)(B)(ii) allow similar designer allocation process to the EECBP.

CAUTION: Specified tax-exempt entities, such as charities, churches, hospitals, as well as schools, colleges, and universities, not owned by a federal, state, or local government or a political subdivision thereof, are not eligible to allocate the deduction to the designer for EECBP placed in service before January 1, 2023, as they are not governmental entities. Some state universities place assets such as buildings in private foundations that are not eligible to allocate the IRC 179D deduction. See CCA 201451028 for additional details. For IRC 179D property placed in service after December 31, 2022, however, government and specified tax-exempt entities may allocate the deduction to the designer.

Process Steps

Step 1: Determine if IRC 179D Deduction Was Claimed

Determine if the IRC 179D deduction was claimed on the tax return.

Considerations

Where to Find the IRC 179D Deduction on the Return

The IRC 179D deduction is typically included on the "Other Deductions" line of the return.⁹ The Schedule M should reflect a deduction for tax purposes but not for book

purposes. You should request and review a detail of the other deductions and Schedule M workpapers when this deduction is claimed in years prior to 2022.

Form 7205, Energy Efficient Commercial Buildings Deduction, was released in February of 2023 for use in the 2022 taxable years and later. It can also be used for prior years for a designer's amended returns or a building owner's Form 3115. This form is now required for taxpayers to claim the IRC 179D deduction.¹⁰ If you are examining a 2022 taxable year or later, review the Form 7205 and instructions for the taxable year examined even if the deduction was reported in the Other Deductions line of the return. It summarizes all the important characteristics of the deduction.

Unclaimed Deduction for EECBP or EEBRP Placed in Service in a Prior Year

A taxpayer claiming the deduction as the building owner should file a Form 3115¹¹ to claim the IRC 179D deduction for EECBP placed in service in prior taxable year(s). They also must include the new Form 7205 with their Form 3115.¹² However, a taxpayer claiming the deduction as a designer must file an amended return and may include the Form 7205 for the prior year(s) the EECBP was placed in service because the designer does not have a method of accounting for the building in which EECBP is installed. As a result, the designer cannot depreciate EECBP or EEBRP installed as components of a new building or as improvements to an existing building. You should request and review the appropriate information and workpapers when the IRC 179D deduction is claimed for prior taxable years not barred by statute.

Taxpayers under current examination should file a protective or informal claim for the IRC 179D deduction and include the Form 7205. You should determine if taxpayers have protective or informal claims for this issue and request supporting documentation.

Step 2: Obtain IRC 179D Study

Obtain an IRC 179D Study (including certification, calculation of claimed deduction, and allocation if the taxpayer is the designer). Determine the amount and type of the deduction (standard deduction, partial deduction computed using the permanent rule, or partial deduction computed using the interim lighting rule).

Considerations

Most taxpayers have a third party perform the IRC 179D study.¹³ The study should identify the building (name and location), the building owner, the date the EECBP or EEBRP was placed in service, and the system included in the deduction computation. The qualified computer software used for computer modeling/energy savings calculation should be clearly identified, including the version number and date it was released.

The certification should be attached to or included in the study. If the taxpayer is claiming the deduction as the designer of EECBP or EEBRP, the study should include the allocation letter and identify the authorized representative of the specified tax-exempt building owner.

The study should include details of the deduction calculations, including the types of deductions for EECBP placed in service before January 1, 2023:

- Standard Deduction: Cost of EECBP up to \$1.80/sf; or
- Partial Deduction:
 - Permanent Rule: Cost of EECBP system up to \$0.60/sf for the system; or
 - Interim Lighting Rule: Cost of EECBP up to a range of \$0.30 to \$0.60/sf.

These amounts are adjusted for inflation for property placed in service after December 31, 2020.

For EECBP and EEBRP* placed in service after December 31, 2022:

Standard Deduction:

- Cost of EECBP or EEBRP up to \$0.50/sf if ESP is equal to 25%.
 - Increased by \$0.02/sf for each full 1% over 25% to a maximum of \$1.00/sf.

Increased Deduction meeting PWA Requirements:

- Cost of EECBP or EEBRP up to \$2.50 if ESP is equal to 25%.
 - Increased by \$0.10/sf for each full 1% over 25% to a maximum of \$5.00/sf.

Each dollar amount above is adjusted for inflation for IRC 179D property placed in service after December 31, 2020.

*IRC 179D(f)(1) provides that the amount of the deduction for EEBRP is an amount equal to the lesser of (A) the excess described in IRC 179D(b) (determined by substituting “energy use intensity” for “total annual energy and power costs” or (B) generally, the aggregate adjusted basis of EEBRP placed in service by the taxpayer pursuant to a qualified retrofit plan.

Step 3: Determine If Taxpayer Is Building Owner or Lessee

Determine if the taxpayer is the building owner (or lessee), or the designer of EECBP or EEBRP. (Steps 7 through 10 only apply to taxpayers who are designers of EECBP or EEBRP for specified tax-exempt-owned buildings.)

Considerations

The steps involved in examining an IRC 179D issue depend on whether the taxpayer claims the deduction as the owner or lessee of the building, or as the designer for a specified tax-exempt entity owned building. An owner's or a lessee's depreciation schedule generally reflects the building including the EECBP and EEBRP. Extensive documentation should reflect the identity of the building's owner. Examples of relevant documentation include construction documents, deeds to the building, local real estate ownership records, tax records, and the certificate of occupancy.

If the taxpayer claims the deduction as the designer, extensive documentation showing the work performed to design the EECBP or EEBRP should exist.¹⁴ In general, the designer should be able to present a contract with the owner of the building, the technical specifications for the EECBP or EEBRP, and additional documentation establishing designer status.

CAUTION: If the taxpayer is the building owner or lessee, you may skip steps 7 through 10. However, if the taxpayer claims to be the designer, all steps through step 14 must be performed.

Step 4: Determine If Deduction Claimed for Taxable Year Property Placed in Service

Determine if the IRC 179D deduction was claimed for the taxable year the IRC 179D property was placed in service.

Considerations

You must determine both the placed-in-service date of EECBP or EEBRP as well as the taxable year for which the IRC 179D deduction is claimed. This information can now be obtained by reviewing the taxpayer's tax return. After 2021, Form 7205 must be attached and may be reviewed.¹⁵

Issue: Is the taxable year for which the IRC 179D deduction was claimed the same as the taxable year in which the EECBP or EEBRP was placed in service?¹⁶ If not, why? The taxpayer could have a fiscal-year taxable year.

Example:

The taxpayer's tax year end (TYE) is June 30. For 2017, the TYE is 201706. Assume the EECBP is installed in February 2017 but not actually placed in service until July of 2017. Under these facts, the EECBP is considered placed in service in the 201806 taxable year (not in 201706).

The placed-in-service date can be verified through third-party public records, such as the certificate of occupancy (CO) or through city building permits and certificates. Additionally, the architect's substantial completion letter should state when the work was completed and ready for the building owner's use.

Step 5: Obtain Relevant IRC 179D Information

Obtain and verify relevant IRC 179D deduction information for each building.

Considerations

The IRC 179D study and the Form 7205¹⁷ should contain most of the information that is needed for the deduction.¹⁸ For instance, it should reflect the calculation of the IRC 179D deduction claimed on the return and the square footage of the building. However, all this information should be verified through other sources.

The cost of the EECBP or EEBRP should be verified. Determine whether the study provided the cost of the EECBP or EEBRP as opposed to the cost of the entire building or project. Construction cost documentation should include the costs of the EECBP or EEBRP. These details can be found on the final Contractor's Application for Payment¹⁹ (or equivalent documentation). This information may also be verified from forms commonly used by the construction industry such as the American Institute of Architects (AIA) Forms G702 and G703, which contain detailed breakdowns of the costs for various trades including lighting, HVAC/HW, hot water or plumbing systems, windows, doors, and other materials used in the building envelope systems. Since this information may not directly translate to the qualifying systems of EECBP or EEBRP, an IRS engineer may be needed to derive the costs of the EECBP from the construction documents.

Additionally, you should obtain the following:

- Square footage of the building (used in the calculation of the deduction);
- Architectural documents used to determine the square footage of the building;
- Date placed in service (CO or equivalent);and
- Computer Modeling –Energy model input and output files.
- The qualified retrofit plan written by the qualified professional ("QP") for the EEBRP,
- The qualifying final certification from the QP including the measured baseline and final energy use intensity (EUI) of the EEBRP.

For Taxpayers Claiming the Deduction as the designer²⁰

If the taxpayer claims the IRC 179D deduction as the designer, verify the following items:

1. The contract(s) for design and/or contract(s) for work performed on EECBP or EEBRP that should describe the taxpayer's responsibilities and the scope of work on the project. Any design responsibilities should be described in the contract(s).
2. The technical specifications and sealed drawings produced by the taxpayer. These documents should show the architect or engineer of record for the project. The title block of the sealed drawings typically shows the designer of record. If a taxpayer is a designer of record, it is a useful fact to help determine if the taxpayer is a designer for IRC 179D purposes.
3. For EEBRP the qualified retrofit plan and supporting information written by the QP which specifies modifications to a building which, in the aggregate, are expected to reduce such building's EUI by 25% or more in comparison to the baseline EUI of such building. Make sure to verify the dates of the EUI measurements to conform to the requirements of IRC 179D(f)(2).

4. The allocation document from the building owner should be studied to ensure it contains all the required information. See Step 7.

CAUTION: Many trade sub-contractors (HVAC, Interior Lighting, windows, or doors) produce what is referred to as shop drawings to make sure any material item installed in the building conforms to the design requirements of the architects and engineers. These shop drawings are not the technical specifications required of designers to qualify for the IRC 179D deduction, nor are they a qualified retrofit plan in the case of EEBRP. Shop drawings are subordinate to the technical specifications produced by the architects and engineers who are the designers of the project.

Step 6: Obtain Copy of IRC 179D Certification

For EECBP, obtain a copy of the certification. Verify that the certification has all information required in section 4 of Notice 2006-52. If applicable, see also section 5 of Notice 2008-40 for certification requirements for the interim lighting rule.

For EEBRP, obtain all the certifications (at least three) and the written qualified retrofit plan from the QP. The certifications should be 1. the baseline EUI measurements and date, 2. the certification as to the installation of the EEBRP per the retrofit plan, and 3. the Final EUI certifications showing the final EUI to be no more than 75% of the baseline EUI.

Considerations

Verify that the EECBP certification is signed and contains all nine (9) required information items:²¹

1. Qualified Individual (“QI”)
 - a. Name, address, and telephone number of the QI.
2. Building Address
 - a. Address of the building to which the certification applies.
3. Qualifying Property: EECBP
 - a. One of the applicable statements by the qualified individual describing the EECBP.
4. Amount of Reduction
 - a. A statement by the QI that the reduction in total annual energy and power costs has been determined under the rules of Notice 2006-52.
5. Post-Installation Verification
 - a. A statement by the QI asserting that field inspections of the building performed by a QI after the EECBP has been placed in service have confirmed that the building has met, or will meet, the energy savings targets contained in the design plans and specifications.

- b. A statement by the QI asserting that the field inspections were performed in accordance with any inspection and testing procedures that:
 - i. Have been prescribed by the National Renewable Energy Laboratory (NREL) as Energy Savings Modeling and Inspection Guidelines for Commercial Building Federal Tax Deductions; and
 - ii. Are in effect at the time the certification is given.
6. Owner Notification
 - a. A statement that the building Owner has received an explanation of the energy efficiency features of the building and its projected annual energy costs.
 7. Qualified Computer Software
 - a. A statement that qualified computer software was used to calculate the total annual energy and power costs. The statement must identify the software used.
 8. List of Components of EECBP and Annual Energy Cost Projections
 - a. A list identifying the components of the Interior Lighting, HVAC/HW, and ENV installed on or in the building, the energy efficiency features of the building, and its projected annual energy costs.
 9. Penalty of Perjury Statement
 - a. A declaration, applicable to the certification and any accompanying documents, signed by the QI, in the following form:
 - b. "Under penalties of perjury, I declare that I have examined this certification, including accompanying documents, and to the best of my knowledge and belief, the facts presented in support of this certification are true, correct, and complete."

Interim Lighting Rule - only applies to EECBP placed in service before January 1, 2023

Obtain a copy of the certification for the interim lighting rule. Verify that the certification has all information required in section 5 of Notice 2008-40.

Verify that the certification is signed and contains all seven (7) required information items:

1. Qualified Individual (QI)
 - a. Name, address, and telephone number of the QI.
2. Building Address
 - a. Address of the building to which the certification applies.
3. Qualifying Property: interim lighting rule

- a. A statement by the QI that the interior lighting systems that have been, or are planned to be, incorporated into the building.
 - i. Achieve a reduction in lighting power density of at least 25% (50% in the case of a warehouse) of the minimum requirements in Table 9.3.1.1 or Table 9.3.1.2 (not including additional interior lighting power allowances) of Standard 90.1-2001;
 - ii. Have controls and circuiting that comply fully with the mandatory and prescriptive requirements of the applicable Reference Standard 90.1;
 - iii. Include provision for bi-level switching in all occupancies except hotel and motel guest rooms, storerooms, restrooms, public lobbies, and garages; and
 - iv. Meet the minimum requirements for calculated lighting levels as set forth in the IESNA Lighting Handbook, Performance and Application, Ninth Edition, 2000.
4. Post-Installation Verification
- a. Field inspections of the building were performed by a QI after the energy efficient lighting property has been placed in service;
 - b. The field inspections confirmed that the building has met, or will meet, the reduction in lighting power density required by the design plans and specifications; and
 - c. The field inspections were performed in accordance with inspection and testing procedures that:
 - i. Have been prescribed by the NREL as Energy Savings Modeling and Inspection Guidelines for Commercial Building Federal Tax Deduction; and
 - ii. Are in effect at the time the certification is given.
5. List of Components
- a. A list identifying the components of the energy efficient lighting property installed on or in the building, the energy efficiency features of the building, and its projected lighting power density;
6. Owner Notification
- a. A statement that the building owner has received an explanation of the energy efficiency features of the building and its projected lighting power density;
7. Penalty of Perjury Statement
- a. A declaration, applicable to the certification and any accompanying documents, signed by the QI, in the following form: "Under penalties of perjury, I declare that I have examined this certification, including accompanying documents, and to the best of my knowledge and belief, the facts presented in support of this certification are true, correct, and complete."

Step 7: Obtain Copy of IRC 179D Allocation

Considerations

Verify that the allocation is signed and contains all eight (8) required information items:

1. The name, address, and telephone number of an authorized representative of the building owner;
2. The name, address, and telephone number of an authorized representative of the designer receiving the allocation of the IRC 179D deduction;
3. The address of the building on or in which the EECBP is installed;
4. The cost of the EECBP including labor. This does not include the cost of the entire project;
5. The date the EECBP is placed in service (check against CO or other documentation);
6. The amount of the IRC 179D deduction allocated to the designer. Verify that the allocation amounts are in dollar amounts and not percentages of the deduction;
7. The signatures of the authorized representatives of both the building owner and the designer or the designer's authorized representative; and
8. A penalty of perjury statement, applicable to the allocation and any accompanying documents, signed by the authorized representative of the building owner, in the following form: "Under penalties of perjury, I declare that I have examined this allocation, including accompanying documents, and to the best of my knowledge and belief, the facts presented in support of this allocation are true, correct, and complete."

CAUTION: The IRS has not endorsed a particular allocation form or allocation Letter.

Step 8: Verify Allocation of Deduction Is to Designer(s)

Verify that allocation of IRC 179D deduction is to a designer(s).

Considerations

Once the deduction is calculated, the specified tax-exempt entity has the option to allocate the IRC 179D deduction. The allocation can be made to one or more designers of EECBP as provided in Section 3.03 of Notice 2008-40. If more than one designer is responsible for creating the technical specifications for installation of the EECBP on or in a building, the owner of the building shall:

1. Determine which designer is primarily responsible and allocate the full deduction to that designer, or
2. At the owner's discretion, allocate the deduction among several designers. The amounts or proportions of the IRC 179D deduction allocated to each designer is at the discretion of the building owner.

CAUTION: This provision does not grant the building owner the authority to determine that a taxpayer that is not eligible to be a designer for IRC 179D purposes is a designer, if the individual does not otherwise meet the requirements provided in section 3.02 of Notice 2008-40.

For EEBRP in some instances the person who is the qualified professional may also be the person receiving the deduction. In those instances, the examiner should analyze the allocations and certifications for conformance to the Code and IRS requirements.

Step 9: Interview Representative of Specified Tax-Exempt Entity Building Owner

Interview a representative of the specified tax-exempt entity building owner.

Considerations

The third-party interview can shed light on how knowledgeable the authorized representative is about the IRC 179D deduction and the nature of property installed in the building.²² The following steps can be used:

1. For EECBP placed in service before January 1 2023, verify that the owner of the building is a government agency and not a business, non-profit entity, or private university/school. Some state universities place assets such as buildings in private foundations that are not eligible to allocate the IRC 179D deduction.²³
2. For EECBP and EEBRP placed in service after December 31, 2022, verify that the owner of the building is a specified tax-exempt entity (STE) and not a taxpaying business. Only STE's may allocate their deduction to the designer.
3. If uncertain whether the taxpayer is a designer of EECBP, verify that the taxpayer would be considered a designer of EECBP under the requirements of IRC 179D(d)(4) before 2023 (or IRC 179D(d)(3)(B) after 2022), and section 3.02 of Notice 2008-40. See Step 10 below.
4. If uncertain whether an individual is a qualified professional of EEBRP, verify that the taxpayer meets the requirements of 179D(f)(2) and 179D(f)(7)(B).
5. Verify that the person who signed the allocation has the authority within the STE organization to do so. Within the entity, what is the signor's job description and title? Has this individual signed an allocation for IRC 179D deductions on other projects? Is there a policy on allocating tax benefits to non-tax-exempt parties? What policies or guidelines did they follow to allocate the deduction?

The Taxpayer First Act ("TFA"), Public Law 117-169, 133 Stat. 981 (July 1, 2019), significantly changed third-party contact notice procedures. The TFA guidance provided below is effective for any third-party contact made after August 15, 2019. Also, see IRM 4.11.57.4 – Third Party Contact Notice.

1. Document the case file to support the need to verify informational already provided (or the need to obtain requested information that the taxpayer did not provide).

2. Issue the appropriate Letter 3164²⁴ to the taxpayer by regular mail or personal delivery.
 - a. Specify in Letter 3164 the time period, not to exceed one year, within which the IRS intends to make the third-party contact(s).
 - b. Provide a copy of the letter to any power of attorney.
 - c. Wait until the 46th day after the date on Letter 3164 to contact any third party.
3. Record each third-party contacted by completing and forwarding Form 12175 – Third Party Contact Report Form to the local Third-Party Contact Coordinator.
4. Explain to the taxpayer that a list of third parties contacted may be requested at any time. Issuance of Pub1 and a discussion during the initial interview satisfies this requirement.²⁵
5. Forward any request by the taxpayer for a list of contacts to the designated Third-Party Contact Coordinator immediately upon receipt. See IRM 25.27.1.5 – Providing Taxpayers with TPC List.

NOTE: Examiners should document the case file with the date of the Letter 3164 and the method of delivery. Examiners must document the case file with the date and fact of mailing. This allows the IRS to demonstrate that IRC provisions have been observed.

Step 10: Verify Taxpayer Is the Designer of the IRC 179D property

Considerations

Consider the following when determining if the taxpayer is the designer, rather than the installer, of IRC 179D property.

1. Review the contract to determine whether the taxpayer had any design responsibilities. Statements in the contract that the taxpayer's proposed changes require the architect's or engineer's approval indicate a lack of design responsibilities.
2. Is the taxpayer's name on the sealed drawings and specifications of the project manual, bid documents, or contract documents?
3. Are there other designers? If so, how many, and why are they considered designers? Did the other designers receive an allocation of the IRC 179D deduction?
4. Is the taxpayer merely an installer of the IRC 179D property?
 - a. Are the taxpayer's claimed "technical specifications" subject to review and/or approval by the architects or engineers of the project?

- b. Are the claimed “drawings” and “technical specifications” they produce used to verify that the requirements of the project drawings and specifications produced by the designers are met?

Step 11: Review and Determine Amount of IRC 179D Deduction

Review and determine the amount of IRC 179D deduction.

Considerations

Does the calculated IRC 179D deduction exceed the cost of the EECBP or amount of the maximum or partial deductions?

The deduction is the cost of the EECBP up to either the maximum or partial deductions (adjusted for inflation for EECBP placed in service after December 31, 2020):²⁶

- Maximum Amount of Deduction (computed using permanent rule)
 - \$1.80/sf for the entire building;²⁷
- Partial Deduction computed using permanent rule
 - \$0.60/sf per system²⁸; or
- Partial Deduction using interim lighting rule
 - Up to a calculated limit that ranges from \$0.30 to \$0.60/sf²⁹

For EECBP and EEBRP placed in service after December 31, 2022:

Standard Deduction:

- Cost of EECBP or EEBRP up to \$0.50/sf if ESP is equal to 25%.
 - Increased by \$0.02/sf for each full 1% over 25% to a maximum of \$1.00/sf.

Increased Deduction meeting PWA Requirements:

- Cost of EECBP or EEBRP up to \$2.50 if ESP is equal to 25%.
 - Increased by \$0.10/sf for each full 1% over 25% to a maximum of \$5.00/sf.

Each dollar amount above is adjusted for inflation for IRC 179D property placed in service after December 31, 2020. See Table 3.

Step 12: Verify Accuracy of Computer Modeling

Verify the accuracy of the computer modeling for EECBP.

Considerations

Computer modeling uses multiple data inputs for both the Reference Building and the Proposed Building. The data inputs for each building should be identical except for the proposed EECBP that is to be installed. Incorrect, inaccurate, or incomplete data input into the model can skew the results to reflect incorrect and unwarranted energy savings. This may cause a property to inappropriately qualify as EECBP.

Recall that for EECBP placed in service before January 1, 2023, the taxpayer is eligible for the deduction only if the energy savings percentage (ESP) is 50% or more. However, if the ESP is less than 50%, the taxpayer may still qualify for a partial deduction. Property can still be considered partially qualifying EECBP, if the ESP is equal to or greater than the amounts specified in section 3 of Notice 2012-26. This Notice considers the type of system, and the placed-in-service date to determine the required ESP. For example, if new Interior Lighting is placed in service in January 2016 and produces an ESP of 30%, then the interior lighting system would qualify for the partial deduction of \$0.60/sf of the building.

Remember that there is an inflation adjustment for the deduction for property placed in service after December 31, 2020. See Table 3.

For EECBP placed in service after December 31, 2022, the savings threshold has changed to 25% with a sliding scale up to a maximum allowable deduction amount. The base deduction is \$.50/sf for a 25% savings up to \$1.00/sf for a 50% or higher savings. If PWA requirements are met then those amounts increase to \$2.50/sf up to \$5.00/sf, respectively.

Modeling Documents to Review:

It is important to get the design engineering and architectural drawings from the contract documents. The equipment schedules on the HVAC and lighting drawings as well as the schedules showing the installed exterior doors and windows and other building envelope materials should show the exact EECBP specified by the designers. It is also important to get the input and output sheets for the modeling software used by the qualified individual ("QI"), which is a part of the "Documentation Requirements" of Appendix G1.4.

A comparison should be made of the EECBP included on the contract drawings to the equipment used in the model. These listed items in each document should match each other. If not, then the QI should be questioned and the model should be scrutinized to verify it was done properly within the requirements of Notice 2006-52 and Appendix G of the ASHRAE Standard 90.1.

The input and output files for both the Reference and Proposed Building models should be consistent with sections 3.03 and 3.04 of Notice 2006-52 and follow the guidance of Appendix G Table G3.1, "Modeling Requirements for Calculating Proposed and Baseline Building Performance." You should verify that the output files were correctly used by the taxpayer's QI to calculate the ESP. The difference between the input files

for the Reference and Proposed Building Model determines the ESP. By definition, in Notice 2006-52, section 3.04, the Proposed Building includes the EECBP but “is otherwise identical to the Reference Building.” Therefore, the only differences between the building models should be the replacement of ASHRAE Appendix G Table G3.1 compliant property used in the baseline or Reference model with potentially qualifying EECBP in the Proposed model. You should analyze these differences between the input files to verify that these differences are only for potentially qualifying EECBP and not for property placed in service in other tax years.

Step 13: Verify Basis Reductions Were Properly Made

Verify basis reductions were properly made.

Considerations

Building Owner

The basis of the EECBP must be reduced by the amount of the allowed IRC 179D deduction.³⁰

Designer

If the designer is an S corporation or a partnership, its partnership basis or S corporation stock basis must be reduced by the amount of the IRC 179D deduction.³¹

Step 14: Consider If Penalty Assertion Is Appropriate

Consider penalties if adjustments warrant them.

Considerations

If the adjustment to the IRC 179D deduction results in an underpayment or an excessive refund or credit, consider whether the following penalties apply:³²

- Accuracy-Related Penalties (e.g., negligence penalty, substantial understatement penalty);
- Erroneous Claim for Refund.

Glossary of Terms and Acronyms

Term/Acronym

Definition

AIA

American Institute of Architects - A nationally recognized professional organization of architects. AIA has developed standardized contract documents for building design and construction that are universally accepted in the building design and construction industry. See www.aia.org.

Term/Acronym

Definition

Allocation

Official statement from the authorized representative of a building owner that allocates an IRC 179D deduction from the owner to the designer of section 179D property. An allocation must provide the eight (8) items of information specified by section 3.04 of Notice 2008-40.

Appendix G

Appendix to the ASHRAE Standard 90.1 that defines the Performance Rating Method (“PRM”) required by Notice 2006-52. The PRM must be used to compute the percentage reduction in the total annual energy and power costs with respect to combined usage of a building's HVAC/HW, and Interior Lighting as compared to a Reference Building that meets the minimum requirements of Standard 90.1-2001.

ASHRAE

American Society of Heating, Refrigeration, and Air Conditioning Engineers - A global society advancing human wellbeing through sustainable technology for the building environment. The Society and its members focus on building systems, energy efficiency, indoor air quality, refrigeration, and sustainability within the industry. See www.ashrae.org.

ASHRAE Standard 90.1 (or Applicable Reference Standard 90.1)

Titled “Energy Standard for Buildings Except Low-Rise Residential Buildings” - The purpose of the Standard is to provide minimum requirements for the energy efficient design of commercial buildings. Residential buildings with three floors or fewer are not included in this Standard. The Standard is periodically updated. See Table 4 and Announcement 2024-24 and similar future guidance for the most current applicable Reference Standard 90.1.

Building within the Applicable Reference Standard 90.1

A structure that is wholly or partially enclosed within exterior walls or within exterior and party walls, and a roof, affording shelter to persons, animals, or property; and is not a single-family house, a multi-family structure of three stories or fewer above grade, a manufactured house (mobile home), or a manufactured house (modular).

Building Envelope

The physical separator between the interior and exterior of a building. Components of the envelope are typically walls, floors, roofs, windows, and doors and include insulation, sealants, moisture barriers, and weatherproofing materials. It separates the interior

Term/Acronym

Definition

conditioned space from the weather or outside elements. The term typically defines the environmentally controlled space and has a calculatable insulation value or resistance to temperature and moisture transfer.

Building Square Footage

The sum of the floor areas of the conditioned spaces within the building, including basements, mezzanine, and intermediate-floored tiers, and penthouses with headroom height of 7.5 feet or greater. Building square footage is measured from the exterior faces of exterior walls or from the centerline of walls separating buildings, but excludes covered walkways, open roofed- over areas, porches, and similar spaces, pipe trenches, exterior terraces or steps, chimneys, roof overhangs, and similar features.

Certification

For EECBP the certification must be provided by a qualified individual (“QI”) and contain statements that the property installed is fully or partially qualifying EECBP, that a QI performed field inspection and testing to verify installation of EECBP, and that qualified computer software (except EECBP certified using the interim lighting rule) was used to determine the total annual energy and power costs savings.

For EEBRP the Certification is performed by the Qualified Professional (“QP”) and must comply with all the requirements of IRC 179D(f).

CO

Certificate of Occupancy - A legal document that is issued by the local government that has control over the building project. It establishes that the final inspection, in a series of several inspections, was passed for the completion and safety of the building and indicates that the structure is safe to occupy by the building owner.

Contract Documents

The contract documents are enumerated in the agreement between the building owner and the constructor and consist of; the Agreement, the General Conditions of the Contract, the Drawings and Specifications created by the Architects/Engineers, addenda and amendments concerning the Agreements and other Modifications made to change the design or responsibilities of the parties involved. For more information see the AIA Document Commentary on the

Term/Acronym

Definition

Form AIA 201-2007 Section 1.1.1 The Contract Documents.

Designer

A designer is the person primarily responsible for designing the EECBP or EEBRP and who creates the technical specifications for their installation (or partially qualifying EECBP for which a partial deduction is allowed under pre IRA IRC 179D). A designer may include, for example, an architect, engineer, contractor³³, environmental consultant, or energy services provider who creates the technical specifications for a new building or an addition to an existing building that incorporates EECBP, EEBRP, or partially qualifying EECBP for which a partial deduction is allowed under pre IRA IRC 179D. A person who merely installs, repairs, or maintains the property is not a designer.

DOE

Department of Energy

EEBRP

Energy efficient building retrofit property - property with respect to which depreciation or amortization is allowable, which is installed on or in any qualified building (located in the United States and originally placed in service not less than 5 years before the establishment of the qualified retrofit plan for such building), which is installed as part of the Interior Lighting, the HVAC/HW, or ENV, and, which is certified in accordance with IRC 179D(f)(2)(B) as meeting the requirements of (f)(3)(B) and (C).

EECBP

Energy efficient commercial building property - Property with respect to which depreciation or amortization is allowable, which is installed on or in any building located in the United States and within the scope of the applicable Reference Standard 90.1, installed as part of the Interior Lighting, HVAC/HW, or ENV, and certified under IRC 179D(d)(5) as being installed as part of a plan designed to reduce the total annual energy and power costs with respect to such systems of the building by 25% or more in comparison with a reference building which meets the minimum requirements of Reference Standard 90.1 using methods of calculation under IRC 179D(d)(1). Fully qualifying property and partially qualifying property are both considered EECBP.

Term/Acronym

Definition

ESP

Energy Savings Percentage - The percentage used to qualify property as fully qualifying EECBP or partially qualifying EECBP. The percentage is the difference between the total annual energy and power costs for the Reference Building and Proposed Building models divided by the total annual energy and power costs for the Reference Building model.

EUI

Energy Use Intensity - the annualized, measured site energy use intensity determined in accordance with such regulations or other guidance as the Secretary may provide and measured in British thermal units.

Fully Qualifying Property

EECBP placed in service before January 1, 2023, that meets or exceeds the 50% reduction in total annual energy and power costs required under IRC 179D(c)(1)(D) (2022 or earlier). The maximum amount of the deduction is \$1.80/sf, adjusted for inflation after December 31, 2020.

Government-Owned Building

A building owned by a federal, state, or local government or a political subdivision thereof (governmental entity – government building owner).

HVAC

Heating, Ventilation, Air Conditioning - Also referred to as the HVAC/HW or HVAC/P or HVAC/HW when the hot water system is included for purposes of the IRC 179D deduction.

Interim Lighting Rule (used to compute a partial deduction)

Allows a taxpayer to compute a partial deduction based on the interior lighting system's power density in watts per square foot (W/sf) as compared to a chart of standard lighting densities (within those provided in ASHRAE Standard 90.1 and as explained in Notice 2006-52, section 2.03(1)(b)). The partial deduction for Interior Lighting using the interim lighting rule ranges from \$0.30 to \$0.60/sf and is adjusted for inflation if EECBP is placed in service after December 31, 2020. (See pre 2023 IRC 179D(f), (d)(1)(A), and (g).) The interim lighting rule does not require computer modeling, but still requires a certification.

IRC 179D Study

A study performed for the taxpayer for a specific taxable year, typically performed by an IRC 179D consultant. The study is typically for a single building. If more than one

Term/Acronym

Definition

building is included in a study, each building's results should be explicitly laid out in detail within the study. A study includes the certifications, allocations (if applicable), deduction calculation, list of all buildings included in the study, specific building systems for each individual building qualifying for the deduction, and any other documentation supporting the taxpayer's eligibility to claim the IRC 179D deduction.

Maximum Amount of Deduction

For EECBP placed in service before December 31, 2022, the maximum amount deductible under IRC 179D(b) is up to \$1.80/sf for buildings that achieve a 50% reduction in total annual energy and power costs in comparison to a Reference Building. The Performance Rating Method ("PRM") is used to determine the reduction in total annual energy and power costs. The maximum amount is adjusted for inflation if placed in service after December 31, 2020. See IRC 179D(g).

Notices

There are three notices that address the IRC 179D deduction: Notice 2006-52, Notice 2008-40, and Notice 2012-26. An IRS notice is a public pronouncement that may contain guidance that involves substantive interpretations of the Internal Revenue Code or other provisions of the law. For example, notices can be used to relate what regulations will say in situations where the regulations may not be published in the immediate future.

Partial Deduction

For EECBP placed in service before January 1, 2023, a partial deduction is prescribed for each separate system if the 50% reduction in total annual energy and power costs required under IRC 179D(c)(1)(D) is not achieved but the property satisfies the applicable energy savings percentages provided in section 3 of Notice 2012-26. The partial deduction is \$0.60/sf for each system under the permanent rule. The partial deduction under the interim lighting rule, which can apply under certain circumstances, ranges between \$0.30 to \$0.60/sf. The maximum amount is adjusted for inflation if placed in service after December 31, 2020. See IRC 179D(g).

Permanent Rule (used to compute a partial deduction)

For EECBP placed in service before January 1, 2023, allows a taxpayer to compute the amount of a partial deduction based on a reduction in total annual energy and power costs when compared to a Reference Building

Term/Acronym

Definition

which meets the minimum requirements of ASHRAE Standard 90.1. This calculation must be performed separately for each EECBP system for which a taxpayer claims a partial deduction as explained in Notice 2006-52, sections 2.03(1)(a), 2.04(1), and 2.05(1). Each system must satisfy targets established in the IRS notices that must be documented in a certification. The partial deduction for each system may be up to \$0.60/sf of building floor area (\$0.60/sf) (adjusted for inflation for EECBP placed in service after December 31, 2020). See IRC 179D(d)(1)(A) and (g).

Proposed Building

Virtual modeled building that contains the property being installed by the taxpayer into the subject building as potential EECBP but is otherwise identical to the Reference Building.

PRM

Performance Rating Method - This method must be used to compute the percentage reduction in the total annual energy and power costs with respect to the combined usage of a building's HVAC/HW and Interior Lighting in comparison to a Reference Building that meets the minimum requirements of the applicable version of Reference Standard 90.1 Appendix G. See Notice 2006-52, section 3.

PWA

Prevailing wage and apprenticeship requirements added to IRC 179D and other Code sections by the IRA. See IRC 179D(b)(4) and (5) and Treas. Reg. 1.179D-1 and 1.179D-3. This provision is intended to give an incentive to building owners and designers of EECBP and EEBRP to make sure the mechanics, laborers and other personnel working on the project are paid wages at rates not less than the local prevailing rates for construction, alteration, or repair of a building in that locality, as determined by the Department of Labor. These rates are typically published by the Department of Labor. See this page on the www.DOL.gov website for more information and rates for specific localities.

Qualified Computer Software

Software approved by the DOE for use in calculating total annual energy and power costs for the Reference and Proposed Building Models. Software must have the

Term/Acronym

Definition

features described in section 6 of Notice 2006-52 and section 4 of Notice 2008-40.

Qualified Individual

QI - An individual not related to the taxpayer (within the meaning of IRC 45(e)(4)) who is an engineer or contractor licensed in the state where the building is located. The QI must represent in writing that he or she has the requisite qualifications to provide the certification or perform inspection and testing required for the certification.

Qualified Professional

QP - An individual who is a licensed architect or a licensed engineer and meets such other requirements as the Secretary may provide, and who writes the "qualified retrofit plan" which specifies modifications to a building which, in the aggregate, are expected to reduce such building's EUI by 25% or more in comparison to the baseline EUI of such building.

Qualified Retrofit Building

For purposes of EEBRP, a "qualified building" means any building which: (1) is located in the United States, and (2) was originally placed in service not less than 5 years before the establishment of the qualified retrofit plan with respect to such building.

Qualified Retrofit Plan

A written plan prepared by a QP which specifies modifications to a building which, in the aggregate, are expected to reduce such building's EUI by 25% or more in comparison to the baseline EUI of such building. Such plan shall provide for a QP to: (1) as of any date during the 1-year period ending on the date on which the property installed pursuant to such plan is placed in service, certify the EUI of such building as of such date, (2) certify the status of property installed pursuant to such plan as meeting the requirements of IRC 179D(f)(3)(B) and (C), and (3) as of any date that is more than 1 year after the date on which the property installed pursuant to such plan is placed in service, certify the EUI of such building as of such date.

Reference Building

Virtual modeled building that is comparable to the taxpayer's building except that the Interior Lighting; HVAC/HW; and ENV located in the building merely meet

Term/Acronym

Definition

the MINIMUM requirements of the applicable Reference Standard 90.1, and Appendix G.

Sealed Drawings*

Drawings for the building project that are stamped or sealed by the design professional (Architect of Record and or Engineers of Record) and are used for the permitting, bidding, and construction of the building project. These sealed drawings can typically be the main part of the Contract Documents. The seal applied by the design professional is to certify that the drawings were produced under the direct supervision of the design professional licensed in the state the project is constructed and the design conforms to all local building codes and requirements. The professional who seals the drawing takes full responsibility for the design as shown in the drawings. For more information, see www.nspe.org Code of Ethics, and www.aia.org Code of Ethics and Professional Conduct.

Shop Drawings*

Shop drawings are for the installation of equipment and/or materials into the building project and are not the same as the technical specifications created by the architect or engineering design team. Shop drawings are created to ensure that specific items conform to the technical specifications created by the designers. The individual specialty trades and suppliers use the technical specifications produced by the designers of the EECBP to produce shop drawings. Shop drawings detail the specific building components and are usually produced after the final design phase but before installation into the building. Shop drawings are prepared in accordance with the instructions in the contract. The architect/engineer will check each shop drawing for compliance with the intended building design. Shop drawings are subordinate to the technical specifications produced by the designers.

Specified Tax Exempt Entity

Defined in IRC 179D(d)(3)(B) as: the United States, any State or political subdivision thereof, any possession of the United States, or any agency or instrumentality of any of the foregoing; an Indian tribal government (as defined in section 30D(g)(9)) or Alaska Native Corporation (as defined in section 3 of the Alaska Native Claims Settlement Act (43 U.S.C. 1602(m)), and; any

Term/Acronym

Definition

	organization exempt from tax imposed by chapter 1 of Title 26, Subtitle A of the US Code.
Specified Tax Exempt Entity Owned Building	After December 31, 2022, a building owned by the United States, any State or political subdivision thereof, any possession of the United States, or any agency or instrumentality of any of the foregoing, an Indian tribal government (as defined in section 30D(g)(9)) or Alaska Native Corporation (as defined in section 3 of the Alaska Native Claims Settlement Act (43 U.S.C. 1602(m)), and any organization exempt from tax imposed by chapter 1 of Title 26, Subtitle A of the US Code.
Technical Specifications*	Technical specifications are created by the EECBP designer. See Notice 2008-40, section 3.02. The technical specifications give the written requirements for materials, equipment, systems, standards, and workmanship for the installation of EECBP (or partially qualifying commercial building property for which a deduction is allowed under pre IRA IRC 179D). See AIA Document A201 section 1.1.6 for their definition of specifications of the Contract Documents.

*While the IRS has not formally defined this industry term, for purposes of the Practice Unit, we have adopted the definition from industry sources such as the AIA, ASHRAE and other professional organizations.

Related Practice Units

None at this time.

Training and Additional Resources

Additional Resources

- [IRC 179D Toolkit](#)
- [Technical Specifications Versus Shop Drawings Job Aid](#)
- [American Institute of Architects Website](#)
- [Department of Energy \(DOE\) Website](#)
- [Illuminating Engineering Society of North America Website](#)

References

- ¹ IRC 179D(g)
- ² See IRC 179D(d)(1)(A) and (g)
- ³ “Effective date of Notice 2012-26 - December 31, 2013; if IRC 179D is extended beyond December 31, 2013, also effective (except as otherwise provided in an amendment of IRC 179D or the guidance thereunder) during the period of the extension.”
- ⁴ See IRCs 179D(f), (d)(1)(A), and (g)
- ⁵ TD 9998
- ⁶ See ASHRAE home page at www.ashrae.org
- ⁷ www.energystar.gov/buildings/benchmark/understand-metrics/what-eui
- ⁸ See Notice 2006-52, section 5.05
- ⁹ Form 1120, 1120S or 1065 and accompanying instructions
- ¹⁰ Form 7205 instructions
- ¹¹ Form 3115 instructions
- ¹² IRM 4.19.16, Examining Process, Liability Determination, Claims
- ¹³ Notices 2006-52, 2008-40, and 2012-26 provide taxpayers guidance
- ¹⁴ See CCA 201451028, the only entities that may allocate an IRC 179D deduction to a designer are federal, state, or local government or a political subdivision thereof.
Note: the entities allowed to allocate the deduction was expanded by the IRA to specified tax-exempt entities for taxable years beginning after December 31, 2022. Refer to the revised IRC 179D(d)(3).
- ¹⁵ Form 7205 and instructions
- ¹⁶ Treas. Reg. 1.167(a)-10(b), the period for depreciation of an asset shall begin when the asset is placed in service and shall end when the asset is retired from service.
- ¹⁷ Form 7205 and instructions
- ¹⁸ IRC 179D and Notices 2006-52, 2008-40, and 2012-26 provide documentation guidance.
- ¹⁹ AIA Form G702, Contractor’s Application and Certificate for Payment and AIA Form G703, Contractor’s Application and Certificate for Payment Continuation Sheet
- ²⁰ IRC 179D and Notices 2006-52, 2008-40, and 2012-26
- ²¹ Notice 2006-52, section 4

- ²² IRM 4.11.57, Examining Officers Guide (EOG), Third-Party Contacts and IRM 25.27.1, Third-Party Contacts, Third-Party Contact Program. Specifically, see IRM 25.27.1.1.1, Background, for general requirements.
- ²³ See CCA 201451028 for additional details.
- ²⁴ Letter 3164, Third-Party Contact, series.
- ²⁵ IRM 4.11.57.5.2, Third-Party Contacts, Providing a List to the Taxpayer, and IRM 25.27.1.5, Providing Taxpayers with TPC List
- ²⁶ Notice 2006-52, section 2
- ²⁷ IRC 179D(b)
- ²⁸ IRC 179D(d)(1)
- ²⁹ IRC 179D(f)
- ³⁰ IRC 179D(e)
- ³¹ IRC 179D(e) and IRS AM 2010-007
- ³² IRM 1.2.1.12, Servicewide Policy Statements, Policy Statements for Penalties and Interest Activities, IRM 20.1.1.2.3, Approval Prerequisite to Penalty Assessments, Penalties Practice Network IRS Virtual Library, IRC 6662(a), (c), and (d) and IRC 6676
- ³³ Contractor in this instance refers to one who has the contract containing design responsibilities of the building, this does not explicitly mean the general contractor, any of the trade contractors or sub-contractors involved in the construction project.