

LB&I Process Unit

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Process Overview

IRC 179D Energy Efficient Commercial Buildings Deduction

Note: This Practice Unit was updated to incorporate changes due to the Taxpayer First Act, signed into law in July 2019. This Practice Unit supersedes the 12/11/2018 Unit with the same title and DCN/P/250_05-01.

IRC 179D was enacted in order to encourage commercial building owners to install energy efficient property. Installation of energy-efficient commercial building property (EECBP) occurs when constructing a new, or improving an 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 to install EECBP. 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.

EECBP must be part of at least one of three systems:

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

This Practice Unit addresses requirements taxpayers must meet to be eligible to claim the IRC 179D deduction. This Unit covers key concepts and definitions related to the Certification, Allocation, computation, limitations, Computer Modeling, and basis reduction requirements for the IRC 179D deduction.

Detailed Explanation of the Process

IRC 179D Energy Efficient Commercial Buildings Deduction

Analysis

Legal Framework

The IRC 179D deduction for energy efficient commercial buildings was enacted by the Energy Policy Act of 2005. This provision has been extended by Congress several times and is currently available for EECBP placed in service through December 31, 2017. IRC 179D refers to pending Treasury Regulations to be promulgated by the Secretary of the Treasury. Regulations have not yet been published. However, three separate Internal Revenue Service Notices (IRS Notices or Notices) providing guidance under IRC 179D and two additional forms of guidance (AM2010-007 and CCA 201451028) have been published.

Notice 2006-52 explains how commercial building owners or lessees can qualify for a 179D deduction and establishes a process to certify that the required energy and power cost savings have been achieved in order to claim the deduction. Additionally, it provides an energy savings percentage (ESP) for all three systems (16 2/3 percent) for property placed in service after December 31, 2005, and before January 1, 2009. The Notice provides that the Interim Rule for Lighting is available for property placed in service after December 31, 2005. Finally, this Notice announces that the Department of Energy (DOE) will maintain a public list of software programs that may be used to calculate energy and power costs for purposes of the deduction.

Notice 2008-40 clarifies and amplifies Notice 2006-52 and is intended to be used in conjunction with Notice 2006-52. The Notice addresses the Allocation of the deduction to Designers of government-owned buildings, addresses the Certification requirements for the Interim Lighting Rule, and the application of the Interim Lighting Rule to unconditioned garage space. It provides another set of ESPs for a Partial Deduction for partially qualifying property for each system: 20 percent for Lighting, 20 percent for HVAC/HW, and 10 percent for ENV systems 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 a Partial Deduction: 25 percent for Lighting, 15 percent for HVAC/HW, and 10 percent for ENV systems for property placed in service on or after March 29, 2012. These ESPs are still in effect due to numerous extensions of the IRC 179D deduction.

AM2010-007 determined that partners or shareholders of a Designer claiming the IRC 179D deduction must reduce the adjusted bases in their partnership interests or S corporation stock by the amount of the deduction.

Detailed Explanation of the Process (cont'd)

IRC 179D Energy Efficient Commercial Buildings Deduction

Analysis

Legal Framework (Continued)

CCA 201451028 determined that the only entities that may allocate a 179D deduction to a Designer are a federal, state, or local government or a political subdivision thereof.

Amount of the Deduction

The amount of the 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 below). The cost of the EECBP is not the cost of the entire project: just the costs of the prescribed building systems: the building envelope (ENV); the heating, cooling, ventilation, and hot-water systems (HVAC/HW); and/or the interior lighting system (Lighting).

Deduction Limitation

There are two ways in which a taxpayer may calculate the “Maximum Amount of Deduction.” The first is the “Maximum Amount of Deduction” of \$1.80/sf which applies to the entire building. The second is the “Partial Deduction” of \$0.60/sf which is applied to one or more of the three individual EECBP systems. In addition, for the Partial Deduction allowed for the lighting system, there is the “Interim Lighting Rule” explained in Notice 2006-52, section 2.03.

Maximum Amount of the Deduction

The Maximum Amount of Deduction under IRC 179D may be as much as \$1.80/sf for the entire building (which includes all three systems). The Maximum Amount of Deduction is only available when the EECBP installation results in a 50 percent or greater reduction in energy and power costs. The reduction must be verified by Computer Modeling software unless the reduction is only from the interior lighting system and is computed under the Interim Lighting Rule.

This limit of \$1.80/sf is for the lifetime of the building. It includes the aggregate amount of the IRC 179D deductions allowed with respect to the building for all prior taxable years.

Detailed Explanation of the Process (cont'd)

IRC 179D Energy Efficient Commercial Buildings Deduction

Analysis

Partial Deduction

As discussed previously, a building is eligible for the Maximum Amount of Deduction, if total energy and power costs are reduced by at least 50 percent. If this is not possible, the building may still qualify for a Partial Deduction based on each separate EECBP System. Each System must satisfy targets established in the Notices and this must be documented in a Certification. The partial allowance for each System is a limited to \$0.60 per square foot of building floor area (\$0.60/sf). IRC 179D(d)(1)(A).

The Interim Lighting Rule is for the interior lighting system only. The partial allowance for Lighting using the Interim Lighting Rule ranges from \$0.30 to \$0.60/sf. IRC 179D(f). Under the Interim Lighting Rule, the 179D deduction is 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 90.1-2001 or ASHRAE Standard 90.1-2007). The Interim Lighting Rule does not require Computer Modeling, but still requires a Certification.

American Society of Heating, Refrigerating, and Air Conditioning Engineers (ASHRAE) Standard 90.1

The energy and cost savings required by the IRC 179D deduction is set out and defined by the American Society of Heating, Refrigerating, and Air Conditioning Engineers (ASHRAE) Standard 90.1-2001. ASHRAE is a global professional association seeking to advance heating, ventilation, air conditioning and refrigeration systems design and construction. The purpose of the Standard 90.1 is to provide minimum requirements for the energy efficient design of commercial buildings except for low-rise residential buildings. This Standard is cited in IRC Section 179D(c) and throughout each of the IRS Notices. The ASHRAE Standard 90.1 is periodically updated. For EECBP placed in service after December 31, 2015, ASHRAE Standard 90.1-2007 must be used.

Computer Modeling

Computer Modeling is used to determine if a building is eligible for the IRC 179D deduction. As previously stated, the Maximum Amount of Deduction is only available to taxpayers who can demonstrate that the building's energy and power costs were reduced by 50 percent or more. The Computer Modeling must be performed using Department of Energy (DOE) approved software. The software must have the features described in Section 6 of Notice 2006-52 and Section 4 of Notice 2008-40. As noted above, the Interim Lighting Rule does not require Computer Modeling, but still requires a Certification.

Detailed Explanation of the Process (cont'd)

IRC 179D Energy Efficient Commercial Buildings Deduction

Analysis

Computer Modeling (Continued)

The Computer Modeling compares two virtual buildings. The first virtual building is the “reference” building. The Reference Building is one that is comparable to the taxpayer’s building except that the interior lighting systems; heating, cooling, ventilation, hot water systems; and building envelope just meet the minimum requirements of the ASHRAE Standard 90.1-2001 (or ASHRAE Standard 90.1-2007 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 planned EECBP. If the Computer Modeling indicates that the Proposed Building’s energy and power costs are less than the Reference Building’s energy and power costs by 50 percent or more, the taxpayer is eligible for the Maximum Amount of Deduction.

Certification

Before claiming the 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 5.05, which includes the name and contact information of the Qualified Individual, the address of the building being certified, a pre-determined qualifying statement meeting the ASHRAE standard, and various statements and declarations that the building meets the requirements of IRC Section 179D.

A Qualified Individual is an individual not related to the taxpayer (within the meaning of IRC 45(e)(4)) and is an engineer or contractor licensed in the state where the building is located. The Qualified Individual must be able to provide the Certification or perform inspection and testing required for the Certification.



CAUTION: Before claiming the deduction, the taxpayer must obtain a Certification which verifies that the property installed satisfied the requirements of IRC 179D. The Certification must be issued by an engineer or contractor licensed in the state in which the building is located.

Detailed Explanation of the Process (cont'd)

IRC 179D Energy Efficient Commercial Buildings Deduction

Analysis

Government Buildings and Designers

IRC 179D(d)(4) allows the owner of government buildings to allocate the IRC 179D deduction to the person (a “Designer”) primarily responsible for designing the EECBP. A Designer is a person who creates the Technical Specifications for installation of the EECBP. For example, a Designer may be an architect, engineer, contractor, environmental consultant, or energy services provider.

It is important to note that the Designer creates EECBP Technical Specifications for a new building or an addition to an existing building rather than merely installing, repairing, or maintaining the EECBP. 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 which specifies responsibilities. Typically, general contractors and Designers contract with the building owner. However, 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.

IRC 179D Allocation of Deduction to Designer

The Owner of the government building must meet certain requirements in order to allocate the IRC 179D deduction to the Designer. First, the Allocation must be in writing. Second, the document must contain all of the information specified in Notice 2008-40, section 3.04. That information includes the contact information for the authorized representatives of both the Owner of the government building and the Designer, the address of the government-owned building, the costs of the EECBP, the date the EECBP was placed in service, the dollar amount of the deduction allocated to the Designer, the signatures of the Authorized Representatives, and a declaration that the facts presented are true, correct, and complete.

 **CAUTION:** Tax-exempt entities and non-profit organizations, 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 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.

Summary of Process Steps

IRC 179D Energy Efficient Commercial Buildings Deduction

Process Steps

Summary of process steps, details of steps follow this section.

Step 1	Determine If IRC 179D Deduction Was Claimed
Step 2	Obtain IRC 179D Study
Step 3	Determine If Taxpayer Is Building Owner or Lessee
Step 4	Determine If 179D Claimed in Year Placed in Service

Summary of Process Steps (cont'd)

IRC 179D Energy Efficient Commercial Buildings Deduction

Process Steps

Continuation of summary of process steps. Details of steps follow this section.

Step 5	Obtain Pertinent IRC 179D Information
Step 6	Obtain Copy of Certification
Step 7	Obtain Copy of Allocation
Step 8	Verify Allocation Deduction Is to Qualified Designers

Summary of Process Steps (cont'd)

IRC 179D Energy Efficient Commercial Buildings Deduction

Process Steps

Continuation of summary of process steps. Details of steps follow this section.

Step 9	Interview Representative of Building Owner
Step 10	Verify Taxpayer Is the EECBP Designer
Step 11	Review and Determine Amount of Deduction
Step 12	Verify Accuracy of Computer Modeling

Summary of Process Steps (cont'd)

IRC 179D Energy Efficient Commercial Buildings Deduction

Process Steps

Continuation of summary of process steps. Details of steps follow this section.

Step 13	Verify Basis Reductions Were Properly Made
Step 14	Consider If Penalty Assertion Is Appropriate

Step 1: Determine If IRC 179D Deduction Was Claimed

IRC 179D Energy Efficient Commercial Buildings Deduction

[Step 1](#)

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

Considerations	Resources
<p><u>Where to Find the IRC 179D Deduction on the Return</u></p> <p>The IRC 179D deduction is typically included on the “Other Deductions” line of the return. 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.</p> <p><u>Unclaimed Deduction for EECBP Placed in Service in a Prior Year</u></p> <p>Taxpayers claiming the deduction as the building Owner should file a Form 3115 to claim the IRC 179D deduction for EECBP placed in service in prior tax year(s). However, a taxpayer claiming the deduction as a Designer must file an amended return for the prior year the EECBP was placed into service because the Designer does not have a method of accounting in the EECBP. You should request and review the appropriate information and workpapers when the IRC 179D deduction is claimed for prior tax years not barred by statute.</p> <p>Taxpayers under current examination should file a protective or informal claim for the deduction. You should determine if taxpayers have informal or protective claims for this issue and request supporting documentation.</p>	<ul style="list-style-type: none"> ▪ IRC 179D ▪ Form 1120 Instructions ▪ Form 1120S Instructions ▪ Form 1065 Instructions ▪ IRM 4.19.16 - <i>Examining Process, Liability Determination, Claims</i> ▪ Form 3115 - <i>Application for Change in Accounting Method</i> ▪ Form 3115 Instructions

Step 2: Obtain IRC 179D Study

IRC 179D Energy Efficient Commercial Buildings Deduction

Step 2

Obtain the IRC 179D study (including Certification, calculation of claimed deduction, and Allocation if taxpayer is the Designer). Determine amount and type of deduction (Maximum Amount of Deduction, Partial Deduction, or Interim Lighting Rule).

Considerations	Resources
<p>The IRC 179D study should identify the building (name, location), the building Owner, the date placed in service, and the EECBP 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.</p> <p>The Certification should be attached to or included in the IRC 179D study. If the taxpayer is claiming the deduction as the Designer of the EECBP, the Allocation Letter should be included and the Authorized Representative of the Government Building Owner should be identified.</p> <p>The study should include details of the calculation including the types of deductions:</p> <ul style="list-style-type: none"> ▪ Cost of EECBP up to the Maximum Amount of Deduction of \$1.80/sf; or ▪ Partially qualifying property: <ul style="list-style-type: none"> - Partial Deduction <ul style="list-style-type: none"> ▪ Cost of EECBP system up to \$0.60/sf for the system; or - Interim Lighting Rule Partial Deduction <ul style="list-style-type: none"> ▪ Cost of EECBP up to a range of \$0.30 to \$0.60/sf. 	<ul style="list-style-type: none"> ▪ Notice 2006-52 ▪ Notice 2008-40 ▪ Notice 2012-26

Step 3: Determine If Taxpayer Is Building Owner or Lessee

IRC 179D Energy Efficient Commercial Buildings Deduction

Step 3

Determine if taxpayer is the building Owner (or Lessee) or the Designer of EECBP for a government-owned building. (Steps 7 through 10 only apply to taxpayers who are Designers of EECBP for government-owned buildings.)

Considerations	Resources
<p>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 EECBP Designer for a government building.</p> <p>An Owner's or a Lessee's depreciation schedule generally reflects the building including the EECBP. Extensive documentation should reflect the identity of the building's Owner. Examples of documentation includes construction documents, deed to the property, local real estate ownership records, tax records, and certificate of occupancy.</p> <p>If the taxpayer claims the deduction as the Designer, extensive documentation showing the work performed on the project should exist. In general, the Designer should have the contract with the Owner of the government building, the Technical Specifications for the EECBP, and additional documentation establishing Designer status.</p> <p> CAUTION: If the taxpayer is the building Owner, or the Lessee of the EECBP, you may skip steps 7 through 10. However if the taxpayer claims to be the Designer, all steps through step 14 must be performed.</p>	<ul style="list-style-type: none">▪ CCA 201451028

Step 4: Determine If 179D Claimed in Year Placed in Service

IRC 179D Energy Efficient Commercial Buildings Deduction

Step 4

Determine if the IRC 179D deduction was claimed in the year the EECBP was placed in service.

Considerations	Resources
<p>You must determine both the placed-in-service date of EECBP as well as the tax year the IRC 179D deduction was claimed. Does the tax year the IRC 179D deduction was claimed correspond to the date the EECBP was placed in service? If not, why? The taxpayer could have a fiscal-year tax year.</p> <p><u>Example</u></p> <p>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 tax year (not in 201706).</p> <p>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.</p>	<ul style="list-style-type: none">▪ IRC 179D(a)▪ See <i>generally</i> Treas. Reg. 1.167(a)-10(b)

Step 5: Obtain Pertinent IRC 179D Information

IRC 179D Energy Efficient Commercial Buildings Deduction

Step 5

Obtain pertinent IRC 179D deduction information for each building.

Considerations	Resources
<p>The IRC 179D Study should contain most of the information that is needed for the deduction. For instance, it should reflect the calculation of the IRC 179D deduction claimed on the return and the square footage of the building. However, this information should be verified through other sources.</p> <p>The cost of the EECBP should be verified. Determine whether the IRC 179D study provided the cost for EECBP as opposed to the cost of the entire building or project. Construction cost documentation should include the costs of the EECBP. The detail can be found on the Contractor's Application for Payment - American Institute of Architects (AIA) forms G702 and G703 for detail of the costs for Lighting, HVAC, and Building Envelope Systems. An IRS engineer may be needed to derive the costs of the EECBP from the construction documents in a way similar to cost segregation for the specific building assets.</p> <p>Additionally, you should obtain the following:</p> <ul style="list-style-type: none"> ▪ The square footage of the building (used in the calculation); ▪ The architectural drawings used to determine the square footage of the building; ▪ The date placed in service (Certificate of Occupancy (CO) or equivalent); and ▪ Computer Modeling – Energy model input and output files. 	<ul style="list-style-type: none"> ▪ IRC 179D ▪ Notice 2006-52 ▪ Notice 2008-40 ▪ Notice 2012-26 ▪ AIA Form G702 - <i>Contractor's Application and Certificate for Payment</i> ▪ AIA Form G703 - <i>Contractor's Application and Certificate for Payment Continuation Sheet</i>

Step 5: Obtain Pertinent IRC 179D Information (cont'd)

IRC 179D Energy Efficient Commercial Buildings Deduction

[Step 5](#)

Considerations	Resources
<p data-bbox="84 504 861 536"><u>For Taxpayers Claiming the Deduction as the Designer</u></p> <p data-bbox="84 579 1290 651">If the taxpayer claims the IRC 179D deduction as the Designer, you need to verify the following three items:</p> <ol data-bbox="84 682 1390 1325" style="list-style-type: none"><li data-bbox="84 682 1390 793">1. The contract(s) for design and/or contract(s) for work performed on EECBP that should describe the taxpayer's responsibilities and the scope of work on the project. Any design responsibilities should be spelled out in the contract.<li data-bbox="84 825 1390 936">2. The Technical Specifications and Drawings produced by taxpayer. These documents should show the architect or engineer of record for the project. The Title Block of the Drawings typically show the Designer of Record. <p data-bbox="84 968 1390 1193"> CAUTION: Many trade sub-contractors (HVAC, Lighting, Electrical) 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. Shop Drawings are subordinate to the Technical Specifications produced by the architects and engineers who are the Designers of the project.</p> <ol data-bbox="84 1225 1390 1325" style="list-style-type: none"><li data-bbox="84 1225 1390 1325">3. The Allocation document from the Government Building Owner should be studied to ensure it contains all the required information. See Step 7. Verify the Allocation amounts are in dollar amounts and not percentages of the deduction.	<ul data-bbox="1421 504 1674 651" style="list-style-type: none"><li data-bbox="1421 504 1597 536">▪ IRC 179D<li data-bbox="1421 539 1674 572">▪ Notice 2006-52<li data-bbox="1421 575 1674 608">▪ Notice 2008-40<li data-bbox="1421 611 1674 644">▪ Notice 2012-26

Step 6: Obtain Copy of Certification

IRC 179D Energy Efficient Commercial Buildings Deduction

Step 6

Obtain a copy of the Certification. Verify that Certification has all prescribed information required in Section 4 of Notice 2006-52. See also Section 5 of Notice 2008-40 for Certification Requirements for the Interim Lighting Rule.

Considerations	Resources
<p>Verify that the Certification is signed and contains all nine (9) required information items:</p> <ol style="list-style-type: none">1. Qualified Individual<ol style="list-style-type: none">a. Name, address, and telephone number of the Qualified Individual.2. Building Address<ol style="list-style-type: none">a. Address of the building to which the Certification applies.3. Qualifying Property<ol style="list-style-type: none">a. One of the applicable statements by the Qualified Individual describing the EECBP.4. Amount of Reduction<ol style="list-style-type: none">a. A statement by the Qualified Individual that the reduction in energy and power costs has been determined under the rules of Notice 2006-52.	<ul style="list-style-type: none">▪ Notice 2006-52, Sections 4, 6

Step 6: Obtain Copy of Certification (cont'd)

IRC 179D Energy Efficient Commercial Buildings Deduction

[Step 6](#)

Considerations	Resources
<p>5. Post-Installation Verification</p> <ul style="list-style-type: none">a. A statement by the Qualified Individual asserting that field inspections were performed in accordance with any inspection and testing procedures that:<ul style="list-style-type: none">i. Have been prescribed by the National Renewable Energy Laboratory (NREL) as Energy Savings Modeling and Inspection Guidelines for Commercial Building Federal Tax Deductions; andii. Are in effect at the time the Certification is given. <p>6. Owner Notification</p> <ul style="list-style-type: none">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. <p>7. Qualified Computer Software</p> <ul style="list-style-type: none">a. A statement that Qualified Computer Software was used to calculate energy and power costs. The statement must identify the software used.	<ul style="list-style-type: none">▪ Notice 2006-52, Sections 4, 6

Step 6: Obtain Copy of Certification (cont'd)

IRC 179D Energy Efficient Commercial Buildings Deduction

[Step 6](#)

Considerations	Resources
<p>8. List of Components of EECBP and Cost Projections</p> <p>a. A list identifying the components of the interior lighting systems; heating, cooling, ventilation, and hot water systems; and building envelope installed on or in the building; the energy efficiency features of the building; and its projected annual energy costs.</p> <p>9. Declaration</p> <p>a. A declaration, applicable to the Certification and any accompanying documents, signed by the Qualified Individual, in the following form:</p> <p>“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.”</p>	<p>▪ Notice 2006-52, Sections 4, 6</p>

Step 7: Obtain Copy of Allocation

IRC 179D Energy Efficient Commercial Buildings Deduction

Step 7

Obtain a copy of the Allocation.

Considerations	Resources
<p>Verify that the Allocation is signed and contains all eight (8) required information items:</p> <ol style="list-style-type: none">1. The name, address, and telephone number of an Authorized Representative of the Government 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 government-owned building on or in which the EECBP is installed;4. The cost of the EECBP, not 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;7. The signatures of the Authorized Representatives of both the Government Building Owner and the Designer or the Designer's authorized representative; and	<ul style="list-style-type: none">▪ Notice 2008-40, Section 3.04

Step 7: Obtain Copy of Allocation (cont'd)

IRC 179D Energy Efficient Commercial Buildings Deduction

[Step 7](#)

Considerations	Resources
<p>8. A declaration, applicable to the Allocation and any accompanying documents, signed by the Authorized Representative of the Government Building Owner, in the following form:</p> <p>“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.”</p> <p> CAUTION: The Service has not endorsed a particular Allocation Form or Allocation Letter.</p>	<ul style="list-style-type: none">▪ Notice 2008-40, Section 3.04

Step 8: Verify Allocation Deduction Is to Qualified Designers

IRC 179D Energy Efficient Commercial Buildings Deduction

Step 8

Verify if the IRC 179D deduction is allocated to one or more Designers.

Considerations	Resources
<p>Once the deduction is calculated, the Government Building Owner has the option to allocate the IRC 179D deduction. The Allocation can be made to one or more Designers as defined in Section 3.02 of Notice 2008-40.</p> <p>If more than one Designer is responsible for creating the Technical Specifications for installation of the EECBP on or in a government-owned building, the Owner of the building must:</p> <ol style="list-style-type: none">1. Determine which Designer is primarily responsible and allocate the full deduction to that Designer, or2. At the Owner's discretion, allocate the deduction among several Designers. <p>The amounts or proportions of the IRC 179D deduction allocated to each Designer is at the discretion of the Government Building Owner.</p> <p> CAUTION: This provision does not grant the building Owner the authority to determine that a non-qualified taxpayer is the Designer, if the individual does not otherwise meet the requirements of the definition of a Designer in Notice 2008-40.</p>	<ul style="list-style-type: none">▪ Notice 2008-40, Section 3

Step 9: Interview Representative of Building Owner

IRC 179D Energy Efficient Commercial Buildings Deduction

Step 9

Interview the Authorized Representative of the Government Building Owner.

Considerations	Resources
<p>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 government-owned building.</p> <p>The following steps can be used:</p> <ol style="list-style-type: none"> 1. 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. See CCA 201451028 for additional details. 2. If uncertain whether taxpayer is a Designer of EECBP, verify that taxpayer would be considered a Designer of EECBP under the requirements of Section 3.02 of Notice 2008-40. 3. Verify that the person who signed the Allocation has the authority within the government organization to do so. Within the government agency, what is the signor's job description and title? Has this individual signed the Allocation on other projects? Does the government entity in question have a policy on allocating tax benefits to non-government parties? 	<ul style="list-style-type: none"> ▪ IRM 4.11.57 - <i>Examining Officers Guide (EOG), Third Party Contacts</i> ▪ IRM 25.27.1 - <i>Third Party Contacts, Third Party Contact Program</i> ▪ CCA 201451028 ▪ Notice 2008-40

Step 9: Interview Representative of Building Owner (cont'd)

IRC 179D Energy Efficient Commercial Buildings Deduction

[Step 9](#)

Considerations	Resources
<p>The Taxpayer First Act was signed by the President on July 1, 2019, and significantly changed the third party contact notice procedures. The guidance below is effective for any contact with a third party made after 8/15/19.</p> <ol style="list-style-type: none"> 1. Document the case file to support the need to verify information already provided (or the need to obtain requested information that taxpayer did not provide). 2. Issue the appropriate Letter 3164 to the taxpayer by regular mail or personal delivery. <ol style="list-style-type: none"> 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. 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 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 Pub 1 and a discussion during the initial interview satisfies this requirement. <p>NOTE: Examiners must document the case file with the date and fact of mailing, or personal delivery of the Pub 1, to the taxpayer. This allows the Service to demonstrate that IRC provisions have been observed.</p>	<ul style="list-style-type: none"> ▪ IRM 25.27.1 - <i>Third Party Contacts, Third Party Contact Program</i> ▪ IRM 4.11.57.4.2.2 - <i>Third Party Contacts, Providing a List to the Taxpayer</i> ▪ Letter 3164 - <i>Third Party Contact</i> ▪ Pub 1 - <i>Your Rights as a Taxpayer</i> ▪ Form 12175 - <i>Third Party Contact Report Form</i> ▪ Form 12175 Instructions

Step 9: Interview Representative of Building Owner (cont'd)

IRC 179D Energy Efficient Commercial Buildings Deduction

[Step 9](#)

Considerations	Resources
5. Forward any request by the taxpayer for a list of contacts to the designated Third Party Contact Coordinator immediately upon receipt.	

Step 10: Verify Taxpayer Is the EECBP Designer

IRC 179D Energy Efficient Commercial Buildings Deduction

Step 10

Verify the taxpayer is the EECBP Designer.

Considerations	Resources
<p>Consider the following when determining if the taxpayer is the Designer, rather than the installer, of the EECBP.</p> <ol style="list-style-type: none">1. The contract should be reviewed to determine whether 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 plan 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 EECBP?<ol style="list-style-type: none">a. Are the claimed "Technical Specifications" subject to review by the architects or engineers of the project?b. Are the Drawings and Technical Specifications used to verify that the requirements of the Project Drawings and Specifications are met?	<ul style="list-style-type: none">▪ IRC 179D(d)(4)▪ Notice 2008-40, Section 3

Step 11: Review and Determine Amount of Deduction

IRC 179D Energy Efficient Commercial Buildings Deduction

Step 11

Review the computation and determine the proper amount of IRC 179D deduction.

Considerations	Resources
<p>Does the calculated IRC 179D deduction exceed the cost of the EECBP or prescribed limits?</p> <p>Deduction is the cost of the EECBP up to a prescribed limit – which is:</p> <ul style="list-style-type: none"> ▪ Maximum Amount of Deduction <ul style="list-style-type: none"> – \$1.80/sf for the entire building (IRC 179D(b)); ▪ Partially Qualifying Property <ul style="list-style-type: none"> – \$0.60/sf per system IRC 179D(d)(1)); or ▪ Partially Qualifying Property <ul style="list-style-type: none"> – Interim Lighting Rule <ul style="list-style-type: none"> ▪ Up to a calculated limit that ranges from \$0.30 to \$0.60/sf (IRC 179D(f)) 	<ul style="list-style-type: none"> • IRC 179D(b) • IRC 179D(d)(1) • IRC 179D(f) • Notice 2006-52, Section 2

Step 12: Verify Accuracy of Computer Modeling

IRC 179D Energy Efficient Commercial Buildings Deduction

Step 12

Verify the accuracy of the Computer Modeling.

Considerations	Resources
<p>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.</p> <p>Recall that the taxpayer is eligible for the Maximum Amount of Deduction, if the Energy Savings Percentage (ESP) is greater than 50 percent. However, if the ESP is less than 50 percent, the taxpayer may still qualify for a Partial Deduction. Property can still be considered partially qualifying EECBP, if the ESP is 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 a new interior lighting system is placed in service in January 2016 and produces an ESP of 30 percent, then the lighting system would qualify for the Partial Deduction of \$0.60/sf of the building.</p>	<ul style="list-style-type: none">▪ Notice 2006-52, Sections 3, 6▪ Notice 2008-40, Section 4▪ Notice 2012-26, Section 3

Step 12: Verify Accuracy of Computer Modeling (cont'd)

IRC 179D Energy Efficient Commercial Buildings Deduction

[Step 12](#)

Considerations	Resources
<p>You should obtain the input and output files for both the Reference and Proposed Building Models. You should verify that the output files were correctly used by the taxpayer to calculate the ESP. The difference between the input files for the Reference and Proposed Building Model determines the ESP. By definition, the only differences between the Building Models should be the replacement of ASHRAE compliant property used in the Baseline Model with potentially qualifying EECBP in the Proposed Model. You should analyze the differences between the Reference and Proposed Building Model input files to verify that these differences are only for potentially qualifying EECBP and not for property placed in service in prior years.</p>	

Step 13: Verify Basis Reductions Were Properly Made

IRC 179D Energy Efficient Commercial Buildings Deduction

[Step 13](#)

Verify proper basis reductions were made. If the Designer is an S corporation or partnership, its ownership interest should be reduced by the amount of the deduction.

Considerations	Resources
<p><u>Building Owner</u></p> <p>The building property's basis must be reduced by the amount of the allowed IRC 179D deduction.</p> <p><u>Designer</u></p> <p>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.</p>	<ul style="list-style-type: none">▪ IRC 179D(e)▪ Notice 2008-40, Section 3.05 ▪ AM2010-007

Step 14: Consider If Penalty Assertion Is Appropriate

IRC 179D Energy Efficient Commercial Buildings Deduction

Step 14

Consider penalties if adjustments warrant them.

Considerations	Resources
<p>If the adjustment to the IRC 179D deduction results in a tax deficiency, consider whether the following penalties apply:</p> <ul style="list-style-type: none"> ▪ Accuracy-Related Penalties ▪ Negligence Penalty ▪ Substantial Understatement Penalty ▪ Erroneous Claim For Refund ▪ Frivolous Tax Returns 	<ul style="list-style-type: none"> ▪ IRM 1.2.20 - <i>Servicewide Policies and Authorities, Policy Statements for Penalties and Interest Activities</i> ▪ IRM 20.1.1.2.3 - <i>Managerial Approval for Penalty Assessments</i> ▪ Penalties Practice Network SharePoint ▪ IRC 6662(a) ▪ IRC 6662(c) ▪ IRC 6662(d) ▪ IRC 6676 ▪ IRC 6702(a)

Definitions

IRC 179D Energy Efficient Commercial Buildings Deduction

Description

- AIA - The American Institute of Architects is 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.
- Allocation - Official statement from the Authorized Representative of Government Building Owner providing the name of the Designer, the amount of the allocated IRC 179D deduction, and calculation of the deduction.
- ASHRAE - American Society of Heating, Refrigeration, and Air Conditioning Engineers is a global society advancing human well-being 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.
- Building within the Scope of ASHRAE Standard 90.1-2001 or Standard 90.1-2007 - A structure that 1) 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 2) 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. It separates the interior conditioned space from the weather or outside elements. The term typically defines the environmentally controlled space and has a pre-determined 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 7.5ft 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.
- 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.

Definitions (cont'd)

IRC 179D Energy Efficient Commercial Buildings Deduction

Description

- **Certification** - The Certification must be provided by a Qualified Individual and contain statements that the property installed is Fully or Partially Qualifying EECBP (see below and on the next slide), that a Qualified Individual performed field inspection and testing to verify installation of EECBP, and that Qualified Computer Software (except for the Interim Lighting Rule) was used to determine the total energy and power cost savings.
- **Designer of Government-Owned Buildings** - A Designer is the person primarily responsible for designing the EECBP and who creates the Technical Specifications for EECBP installation (or Partially Qualifying EECBP for which a deduction is allowed under IRC 179D). 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 (or Partially Qualifying EECBP for which a deduction is allowed under IRC 179D). A person who merely installs, repairs, or maintains the property is not a Designer.
- **EECBP - Energy Efficient Commercial Building Property.** This property is installed on or in any building that is located in the United States and is within the scope of Standard 90.1-2001 (Standard 90.1-2007 for EECBP placed in service after December 31, 2015) (see Building within the Scope of ASHRAE Standard 90.1-2001 or Standard 90.1-2007 on the previous slide). The property must be installed as part of the interior lighting systems; the heating, cooling, ventilation, and hot water systems; or the building's envelope. Fully Qualifying Property and Partially Qualifying Property are both considered EECBP.
- **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 energy and power costs for the Reference and Proposed Building Models divided by the energy and power costs for the Reference Building Model."
- **Fully Qualifying Property** - Property that meets the 50 percent reduction in energy and power costs required under IRC 179D(c)(1)(D). The Maximum Amount of Deduction is \$1.80/sf.
- **Government-Owned Building** - A building owned by a federal, state, or local government or a political subdivision thereof (governmental entity).

Definitions (cont'd)

IRC 179D Energy Efficient Commercial Buildings Deduction

Description

- HVAC - Heating, Ventilation, Air Conditioning is an Industry term. For purposes of IRC 179D, the system is referred to as the heating, cooling, ventilation, and hot water systems. Also referred to as HVAC/P or HVAC/HW, which includes the hot water system for this deduction.
- Maximum Amount of Deduction - "Maximum Amount of Deduction" as referred to by Notice 2006-52 Section 2.02. The maximum amount deductible under IRC 179D may be as much as \$1.80/sf for buildings that achieve a 50 percent reduction in energy and power costs in comparison to a Reference Building. The Performance Rating Method ("PRM") is used to determine the reduction in energy and power costs.
- 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 Allowance also Partially Qualifying Property - See the requirements of "Partially Qualifying Property" as prescribed in Notice 2006-52, section 2. A Partial Allowance is prescribed for each separate system if the 50 percent reduction in 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 Allowance must be \$0.60/sf for each system. The Partial Allowance under the Interim Rule for Lighting, which can apply under certain circumstances, ranges between \$0.30 to \$0.60/sf.
- Proposed Building - Building that contains the property being considered 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 combined usage of a building's heating, cooling, ventilation, hot water, and interior lighting systems as compared to a Reference Building that meets the minimum requirements of Standard 90.1-2001. See Notice 2006-52, section 3.

Definitions (cont'd)

IRC 179D Energy Efficient Commercial Buildings Deduction

Description

- **Qualified Computer Software** - Software approved by the Department of Energy (DOE) to calculate energy costs for the Reference and Proposed Building Models. Software must have the features described in Section 6 of Notice 2006-52 and Section 4 of Notice 2008-40.
- **Qualified Individual** - An individual not related to the taxpayer (within the meaning of IRC 45(e)(4)) that is an engineer or contractor licensed in the state where the building is located. The Qualified Individual must represent that they can provide the Certification or perform inspection and testing required for the Certification.
- **Reference Building** - Building that is comparable to the taxpayer's building except that the interior lighting systems; heating, cooling, ventilation, and hot water systems; and building envelope located in the building merely meet the MINIMUM requirements of Standard 90.1-2001 (or Standard 90.1-2007 for property placed in service after December 31, 2015).
- **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.
- **Standard 90.1-2001 and Standard 90.1-2007** - ASHRAE Standard 90.1-2001 developed by the American Society of Heating, Refrigerating, and Air Conditioning Engineers (ASHRAE). For property placed in service after December 31, 2015 an updated ASHRAE Standard 90.1-2007 must be used.

Definitions (cont'd)

IRC 179D Energy Efficient Commercial Buildings Deduction

Description

- 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 energy efficient commercial building property (or partially qualifying commercial building property for which a deduction is allowed under 179D).

Index of Referenced Resources

IRC 179D Energy Efficient Commercial Buildings Deduction

Energy Policy Act of 2005

IRC 45(e)(4)

IRC 179D

IRC 6662

IRC 6676

IRC 6702(a)

Treas. Reg. 1.167(a)-10(b)

Notice 2006-52

Notice 2008-40

Notice 2012-26

CCA 201451028

AM2010-007

IRM 1.2.20 - *Servicewide Policies and Authorities, Policy Statements for Penalties and Interest Activities*

IRM 4.11.57 - *Examining Officers Guide (EOG), Third Party Contacts*

IRM 4.19.16 - *Examining Process, Liability Determination, Claims*

IRM 20.1.1.2.3 - *Managerial Approval for Penalty Assessments*

IRM 25.27.1 - *Third Party Contacts, Third Party Contact Program*

Index of Referenced Resources

IRC 179D Energy Efficient Commercial Buildings Deduction

Pub 1 - *Your Rights as a Taxpayer*

Form 3115 - *Application for Change in Accounting Method*

Form 12175 - *Third Party Contact Report Form*

Form 1065 Instructions

Form 1120 Instructions

Form 1120S Instructions

Form 3115 Instructions

Form 12175 Instructions

Penalties Practice Network SharePoint

AIA Form G702 - *Contractor's Application and Certificate for Payment*

AIA Form G703 - *Contractor's Application and Certificate for Payment Continuation Sheet*

ASHRAE Standard 90.1

Training and Additional Resources

IRC 179D Energy Efficient Commercial Buildings Deduction	
Type of Resource	Description(s)
Issue Toolkits	<ul style="list-style-type: none">▪ 179D Toolkit
Databases / Research Tools	<ul style="list-style-type: none">▪ American Institute of Architects Website▪ Department of Energy (DOE) Website▪ Illuminating Engineering Society of North America Website
Reference Materials	<ul style="list-style-type: none">▪ Technical Specifications Versus Shop Drawings Job Aid

Glossary of Terms and Acronyms

Term/Acronym	Definition
AIA	American Institute of Architects
AM	Advice Memorandum
ASHRAE	American Society of Heating, Refrigeration, and Air Conditioning Engineers
CCA	Chief Counsel Advice
CO	Certificate of Occupancy
DCN	Document Control Number
DOE	Department of Energy
EECBP	Energy Efficient Commercial Building Property
ENV	Envelope
ESP	Energy Savings Percentage
HVAC	Heating, Ventilation, Air Conditioning
HVAC/HW	Heating, Ventilation, Air Conditioning and Hot Water
HVAC/P	Heating, Ventilation, Air Conditioning and Plumbing
LB&I	Large Business and International
IRC	Internal Revenue Code
IRM	Internal Revenue Manual
NREL	National Renewable Energy Laboratory

Glossary of Terms and Acronyms (cont'd)

Term/Acronym	Definition
NREL	National Renewable Energy Laboratory
PRM	Performance Rating Method
SF	Square Feet

Index of Related Practice Units

Associated UIL(s)	Related Practice Unit
	None at this time.