

LB&I Process Unit

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Process Overview

IRC 179D Energy Efficient Commercial Buildings Deduction

NOTE: This version of the Practice Unit reflects amendments made to IRC 179D by the Taxpayer Certainty and Disaster Relief Act of 2020, a part of the Consolidated Appropriations Act of 2021 (Pub. L. 116-260, December 27, 2020) (the “2020 Act”) which made IRC 179D permanent for tax years beginning after December 31, 2020. This Practice Unit supersedes the December 11, 2018 and June 19, 2020 Practice Units with the same title.

IRC 179D was enacted 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 (“the Designer” or “the Designers”).

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

1. Interior lighting systems (Interior 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 claim the IRC 179D deduction. 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, Computer Modeling, and basis reduction requirements.

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

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 (Pub.L. 109-58, Aug. 8, 2005). The IRS has yet to publish regulations. However, the IRS has published several other items of IRC 179D guidance, including three Internal Revenue Service Notices (Notice 2006-52, Notice 2008-40, and Notice 2012-26, referred to collectively as “the IRS Notices”), a Chief Counsel Advisory (CCA 201451028), and two Chief Counsel Attorney Memoranda (AM 2010-007 and AM 2018-005).

Notice 2006-52 explains how commercial building owners or lessees can qualify for an IRC 179D deduction and establishes a process to certify that the required 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 percent) for property placed in service after December 31, 2005, and before January 1, 2009. The Notice also provides a Partial Deduction under the Interim Lighting Rule for interior lighting systems, which is available for property placed in service after December 31, 2005. Finally, this 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 in conjunction with Notice 2006-52. This Notice addresses the Allocation of the deduction to Designers of Government-Owned Buildings, 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 percent for interior lighting systems, 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 Partial Deductions using the Permanent Rule: 25 percent for Interior 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.

Detailed Explanation of the Process (cont'd)

IRC 179D Energy Efficient Commercial Buildings Deduction

Analysis

Legal Framework (Continued)

AM 2010-007 considers whether partners and shareholders of a Designer are required to reduce the adjusted bases in their partnership interests or S corporation stock by the amount of the IRC 179D deduction. While analyzing several fact scenarios, in this Memorandum the IRS determined that partners or shareholders of a Designer that claim the IRC 179D deduction must reduce the adjusted bases in their partnership interests or S corporation stock by the amount of the deduction.

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 IRS determined 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. The IRC 179D deduction cannot be allocated by entities that are not a governmental entity.

AM 2018-005 addresses several scenarios when a taxpayer involved in a EECBP project may be eligible to claim an allocated deduction as a Designer of EECBP. By analyzing various fact patterns, the IRS concluded that a taxpayer could qualify as a Designer of EECBP if the taxpayer created technical specifications for construction contract documents for the design of the EECBP. This Memorandum also considered whether, if a Designer only designed one system of EECBP in a Government-Owned Building, the Designer could qualify for the maximum IRC 179D deduction. The IRS determined that if a building owner could have qualified for the maximum IRC 179D deduction for the installation of certain EECBP, then the Government Building Owner has discretion to allocate the maximum IRC 179D deduction to the primary Designer of one system of such property or to allocate the maximum IRC 179D deduction among several Designers.

Deduction Limitation

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 slides). The cost of the EECBP is not the cost of the entire project: just the costs of the prescribed building systems: the building envelope; the heating, cooling, ventilation, and hot-water systems; and/or the interior lighting systems.

Detailed Explanation of the Process (cont'd)

IRC 179D Energy Efficient Commercial Buildings Deduction

Analysis

Maximum Amount of the Deduction

The Maximum Amount of Deduction under IRC 179D is up to \$1.80/sf for the entire building. This Maximum Amount of Deduction is for the lifetime of the building and includes the aggregate amount of the IRC 179D deductions allowed with respect to the building for all prior taxable years. For properties placed in service after Dec. 31, 2020, this deduction amount is given a cost-of-living adjustment determined under IRC Section 1(f)(3). (See IRC 179D(g).)

The Maximum Amount of Deduction is only available when the EECBP installation results in total annual energy and power costs that are reduced by at least 50 percent or more in comparison to a Reference Building which meets the minimum requirements of ASHRAE Standard 90.1 using methods of calculation provided in IRC 179D(d)(2). The reduction must be verified by software that performs Computer Modeling (as discussed later in this Practice Unit).

Partial Deduction

If a building is unable to achieve a 50 percent reduction in total annual energy and power costs as a result of the installation of EECBP or solely through installation of interior lighting that is calculated using the Interim Lighting Rule, the building may still qualify for a Partial Deduction based on each separate EECBP System using either the Permanent Rule or the Interim Lighting Rule. The Permanent Rule requires a taxpayer to compute the amount of an IRC 179D deduction based on a reduction in total annual energy and power costs when compared to a Reference Building 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 (as discussed later). The Partial Deduction for each system may be up to \$0.60 per square foot 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).)

Detailed Explanation of the Process (cont'd)

IRC 179D Energy Efficient Commercial Buildings Deduction

Analysis

Partial Deduction (cont'd)

Alternatively, for interior lighting systems, the Interim Lighting Rule allows a taxpayer to compute the IRC 179D 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 systems 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 Dec. 31, 2020. (See IRC 179D(f), (d)(1)(A), and (g).) The Interim Lighting Rule does not require Computer Modeling, but still requires a Certification.

ASHRAE Standard 90.1 or Reference Standard 90.1

The reduction in 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 and the Illuminating Engineering Society of North America (ASHRAE 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. (See ASHRAE home page at www.ashrae.org) 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 after 8/8/2005 and before 1/1/2016, ASHRAE Standard 90.1-2001 must be used. For EECBP placed in service after December 31, 2015, and before January 1, 2021, ASHRAE Standard 90.1-2007 must be used.

Detailed Explanation of the Process (cont'd)

IRC 179D Energy Efficient Commercial Buildings Deduction

Analysis

ASHRAE Standard 90.1 or Reference Standard 90.1 (cont'd)

The 2020 Act updates the energy efficiency standard for the IRC 179D deduction by providing that for EECBP placed in service after December 31, 2020, EECBP means property that is within the scope of "Reference Standard 90.1." Amended IRC 179D(c)(2) provides that "Reference Standard 90.1" means "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 this section not later than the date that is 2 years before the date that construction of such property begins." The Secretary of the Treasury has not yet affirmed a new version of Reference Standard 90.1 for use with the IRC 179D deduction. 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.

Detailed Explanation of the Process (cont'd)

IRC 179D Energy Efficient Commercial Buildings Deduction

Analysis

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 demonstrate that the building's total annual energy and power costs were reduced by 50 percent or more. 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 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 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 plans to install in the subject building. If the Computer Modeling indicates that the Proposed Building's total annual energy and power costs are less than the Reference Building's total annual energy and power costs by 50 percent or more, the taxpayer is eligible for the Maximum Amount of Deduction.

Detailed Explanation of the Process (cont'd)

IRC 179D Energy Efficient Commercial Buildings Deduction

Analysis

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 Permanent Rule) and Notice 2008-40, section 5 (for 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 building 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 state in which the building is located. The Qualified Individual must represent 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. (See Notice 2006-52, section 5.05.)



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

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 primarily responsible for designing the EECBP. A Designer is a person who creates the Technical Specifications for installation of the EECBP.

It is important to note that the Designer creates Technical Specifications for the installation of EECBP in or on 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 that 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 to determine whether the taxpayer is a Designer eligible to receive an allocation of the IRC 179D deduction.

Detailed Explanation of the Process (cont'd)

IRC 179D Energy Efficient Commercial Buildings Deduction

Analysis

Allocation of Deduction to Designer

The Owner of the government building must meet certain requirements to allocate the IRC 179D deduction to the Designer. First, the Allocation must be in writing. Second, the document must contain all 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 penalty of perjury statement signed by the authorized representative of the Government Building Owner attesting 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 Deduction Claimed in Year Placed in Service
Step 5	Obtain Relevant IRC 179D Information
Step 6	Obtain Copy of IRC 179D Certification

Summary of Process Steps (cont'd)

IRC 179D Energy Efficient Commercial Buildings Deduction	
Process Steps	
Step 7	Obtain Copy of IRC 179D Allocation
Step 8	Verify Allocation of Deduction Is to Qualified Designer(s)
Step 9	Interview Representative of Government Building Owner
Step 10	Verify Taxpayer Is the Designer of EECBP
Step 11	Review and Determine Amount of IRC 179D Deduction
Step 12	Verify Accuracy of Computer Modeling
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 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 in service because the Designer does not have a method of accounting in the building in which EECBP is installed. As a result, the Designer cannot depreciate EECBP 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 tax years not barred by statute.</p> <p>Taxpayers under current examination should file a protective or informal claim for the IRC 179D deduction. You should determine if taxpayers have protective or informal 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 IRC 179D Study (including Certification, calculation of claimed deduction, and Allocation if the taxpayer is the Designer). Determine amount and type of IRC 179D Deduction (Maximum Amount of Deduction, Partial Deduction computed using the Permanent Rule, or Partial Deduction computed using the Interim Lighting Rule).

Considerations	Resources
<p>The IRC 179D Study should identify the building (name, location), the building Owner, the date the EECBP was 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 EECBP, the Allocation Letter should be included and the authorized representative of the Government Building Owner should be identified.</p> <p>The IRC 179D Study should include details of the deduction calculation including the types of deductions:</p> <ul style="list-style-type: none"> ▪ Maximum Deduction: Cost of EECBP up to \$1.80/sf; or ▪ Partial Deduction: <ul style="list-style-type: none"> – 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. <p>NOTE: All amounts are adjusted for inflation if placed in service after December 31, 2020.</p>	<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 the 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 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 relevant documentation include construction documents, deeds to the building, 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 to design the EECBP should exist. In general, the Designer should be able to present a 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 Deduction Claimed in Year Placed in Service

IRC 179D Energy Efficient Commercial Buildings Deduction

Step 4

Determine if the IRC179D 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.</p> <p>Issue: Does the tax year for which 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 Relevant IRC 179D Information

IRC 179D Energy Efficient Commercial Buildings Deduction

Step 5

Obtain relevant 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 of the EECBP as opposed to the cost of the entire building or project. Construction cost documentation should include the costs of the EECBP. These details can be found on the final Contractor's Application for Payment (or equivalent documentation). This information may also be found on 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 interior lighting, HVAC/HW, and building envelope systems. An IRS engineer may be needed to derive the costs of the EECBP from the construction documents.</p> <p>Additionally, you should obtain the following:</p> <ul style="list-style-type: none"> ▪ 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 (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 Relevant IRC 179D Information (cont'd)

IRC 179D Energy Efficient Commercial Buildings Deduction

Step 5

Considerations	Resources
<p><u>For Taxpayers Claiming the Deduction as the Designer</u></p> <p>If the taxpayer claims the IRC 179D deduction as the Designer, verify the following 3 items:</p> <ol style="list-style-type: none"> 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 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 show the Designer of Record. While the Designer of Record is not the same as the Designer for IRC 179D purposes, if a taxpayer is a Designer of Record, it is a useful fact to determine if the taxpayer is a Designer for 179D purposes. <p> 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. Shop Drawings are subordinate to the Technical Specifications produced by the architects and engineers who are the Designers of the project.</p> <ol style="list-style-type: none"> 3. The Allocation document from the Government Building Owner should be studied to ensure it contains all the required information. See Step 7. 	<ul style="list-style-type: none"> ▪ IRC 179D ▪ Notice 2006-52 ▪ Notice 2008-40 ▪ Notice 2012-26

Step 6: Obtain Copy of IRC 179D Certification

IRC 179D Energy Efficient Commercial Buildings Deduction

Step 6

Obtain a copy of the Certification. Verify that the Certification has all 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: EECBP<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 total annual energy and power costs has been determined under the rules of Notice 2006-52.	<ul style="list-style-type: none">▪ Notice 2006-52, Section 4

Step 6: Obtain Copy of IRC 179D 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 of the building performed by a Qualified Individual 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 Qualified Individual asserting that the 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; and ii. 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 total annual energy and power costs. The statement must identify the software used. 	<ul style="list-style-type: none"> ▪ Notice 2006-52, Section 4

Step 6: Obtain Copy of IRC 179D Certification (cont'd)

IRC 179D Energy Efficient Commercial Buildings Deduction

[Step 6](#)

Considerations	Resources
<p>8. List of Components of EECBP and Annual Energy Cost Projections</p> <ul style="list-style-type: none">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>9. Penalty of Perjury Statement</p> <ul style="list-style-type: none">a. A declaration, applicable to the Certification and any accompanying documents, signed by the Qualified Individual, 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.”	<ul style="list-style-type: none">▪ Notice 2006-52, Section 4

Step 6: Obtain Copy of IRC 179D Certification (cont'd)

IRC 179D Energy Efficient Commercial Buildings Deduction

[Step 6](#)

Considerations	Resources
<p><u>Interim Lighting Rule</u></p> <p>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.</p> <p>Verify that the Certification is signed and contains all seven (7) 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.	<ul style="list-style-type: none">▪ Notice 2008-40, Section 5

Step 6: Obtain Copy of IRC 179D Certification (cont'd)

IRC 179D Energy Efficient Commercial Buildings Deduction

[Step 6](#)

Considerations	Resources
<p><u>Interim Lighting Rule (Cont'd)</u></p> <p>3. Qualifying Property: Interim Lighting Rule</p> <p>a. A statement by the Qualified Individual that the interior lighting systems that have been, or are planned to be, incorporated into the building.</p> <p>i. Achieve a reduction in lighting power density of at least 25 percent (50 percent 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;</p> <p>ii. Have controls and circuiting that comply fully with the mandatory and prescriptive requirements of the applicable Reference Standard 90.1;</p> <p>iii. Include provision for bi-level switching in all occupancies except hotel and motel guest rooms, storerooms, restrooms, public lobbies, and garages; and</p> <p>iv. Meet the minimum requirements for calculated lighting levels as set forth in the IESNA Lighting Handbook, Performance and Application, Ninth Edition, 2000;</p>	<ul style="list-style-type: none"> ▪ Notice 2008-40, Section 5

Step 6: Obtain Copy of IRC 179D Certification (cont'd)

IRC 179D Energy Efficient Commercial Buildings Deduction

Step 6

Considerations	Resources
<p><u>Interim Lighting Rule (Cont'd)</u></p> <p>4. Post-Installation Verification</p> <ul style="list-style-type: none"> a. Field inspections of the building were performed by a qualified individual 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: <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 Deduction; and ii. Are in effect at the time the certification is given; <p>5. List of Components</p> <ul style="list-style-type: none"> 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; 	<ul style="list-style-type: none"> ▪ Notice 2008-40, Section 5

Step 6: Obtain Copy of IRC 179D Certification (cont'd)

IRC 179D Energy Efficient Commercial Buildings Deduction

[Step 6](#)

Considerations	Resources
<p><u>Interim Lighting Rule (Cont'd)</u></p> <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 lighting power density; <p>7. Penalty of Perjury Statement</p> <ul style="list-style-type: none">a. A declaration, applicable to the certification and any accompanying documents, signed by the qualified individual, 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

IRC 179D Energy Efficient Commercial Buildings Deduction

Step 7

Obtain a copy of IRC 179D 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 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 Government 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 Government 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." 	<ul style="list-style-type: none"> ▪ Notice 2008-40, Section 3.04

Step 7: Obtain Copy of IRC 179D Allocation (cont'd)

IRC 179D Energy Efficient Commercial Buildings Deduction

[Step 7](#)

Considerations	Resources
 CAUTION: The Service has not endorsed a particular Allocation Form or Allocation Letter.	

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

IRC 179D Energy Efficient Commercial Buildings Deduction

Step 8

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

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 provided in section 3.03 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 shall:</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 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.</p>	<ul style="list-style-type: none">▪ Notice 2008-40, Section 3

Step 9: Interview Representative of Government Building Owner

IRC 179D Energy Efficient Commercial Buildings Deduction

Step 9

Interview a 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 the taxpayer is a Designer of EECBP, verify that the 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 an Allocation for IRC 179D deductions 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 Government Building Owner (cont'd)

IRC 179D Energy Efficient Commercial Buildings Deduction

[Step 9](#)

Considerations	Resources
<p>The Taxpayer First Act (Pub.L. 116-25) (TFA) was signed by the President on July 1, 2019. The TFA significantly changed the third-party contact notice procedures. The TFA guidance provided below is effective for any third-party contact made after August 15, 2019.</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 the 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. 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 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 should document the case file with the date of the 3164 letter and the method of delivery. 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"> ▪ <i>Taxpayer First Act</i> ▪ <i>IRM 25.27.1 - Third-Party Contacts, Third-Party Contact Program</i> ▪ <i>IRM 4.11.57.4.2.2 - Third-Party Contacts, Providing a List to the Taxpayer</i> ▪ <i>Letter 3164 - Third-Party Contact, series</i> ▪ <i>Pub 1 - Your Rights as a Taxpayer</i> ▪ <i>Form 12175 - Third-Party Contact Report Form</i> ▪ <i>Form 12175 Instructions</i>

Step 9: Interview Representative of Government 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 Designer of EECBP

IRC 179D Energy Efficient Commercial Buildings Deduction

Step 10

Verify that the taxpayer is the designer of EECBP.

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. 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 EECBP? <ol style="list-style-type: none"> a. Are the taxpayer’s claimed “Technical Specifications” subject to review 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? 	<ul style="list-style-type: none"> ▪ IRC 179D(d)(4) ▪ Notice 2008-40, Section 3

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

IRC 179D Energy Efficient Commercial Buildings Deduction

Step 11

Review and determine the amount of IRC 179D deduction.

Considerations	Resources
<p>Does the calculated IRC 179D deduction exceed the cost of the EECBP or amount of Maximum or Partial Deductions?</p> <p>Deduction is the cost of the EECBP up to either Maximum or Partial Deductions (adjusted for inflation for EECBP placed in service after December 31, 2020):</p> <ul style="list-style-type: none"> ▪ Maximum Amount of Deduction (computed using Permanent Rule) <ul style="list-style-type: none"> – \$1.80/sf for the entire building (IRC 179D(b)); ▪ Partial Deduction computed using Permanent Rule <ul style="list-style-type: none"> – \$0.60/sf per system IRC 179D(d)(1)); or ▪ Partial Deduction using 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 only 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 interior lighting system would qualify for the Partial Deduction of \$0.60/sf of the building.</p> <p>NOTE: Now that the IRC 179D provision is permanent, there is an inflation adjustment for the deduction for property placed in service after December 31, 2020.</p>	<ul style="list-style-type: none">▪ Notice 2006-52, Sections 3▪ 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 tax years.</p>	

Step 13: Verify Basis Reductions Were Properly Made

IRC 179D Energy Efficient Commercial Buildings Deduction

Step 13

Verify basis reductions were properly 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▪ AM 2010-007

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 an underpayment or an excessive refund or credit, consider whether the following penalties apply:</p> <ul style="list-style-type: none"> ▪ Accuracy-Related Penalties (e.g., Negligence Penalty, Substantial Understatement Penalty); ▪ Erroneous Claim for Refund. 	<ul style="list-style-type: none"> ▪ IRM 1.2.1.12 - <i>Servicewide Policy Statements, Policy Statements for Penalties and Interest Activities</i> ▪ IRM 20.1.1.2.3 - <i>Approval Prerequisite to Penalty Assessments</i> ▪ Penalties Practice Network SharePoint ▪ IRC 6662(a) ▪ IRC 6662(c) ▪ IRC 6662(d) ▪ IRC 6676

Definitions

IRC 179D Energy Efficient Commercial Buildings Deduction

Description

- American Institute of Architects (AIA) - 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 aia.org.
- Allocation - Official statement from the authorized representative of Government Building Owner that allocates an IRC 179D deduction from the Government Building Owner to the Designer of EECBP. An Allocation must provide the eight (8) items of information specified by section 3.04 of Notice 2008-40.
- American Society of Heating, Refrigeration, and Air Conditioning Engineers (ASHRAE) - 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 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. Therefore, for EECBP placed in service after 8/8/2005 and before 1/1/2016, ASHRAE Standard 90.1-2001 must be used. For EECBP placed in service after December 31, 2015, and before the Secretary of the Treasury affirms a new version of Reference Standard 90.1 for use with the IRC 179D deduction, ASHRAE Standard 90.1-2007 must be used. For EECBP placed in service after December 31, 2019, the most recent Standard 90.1 not later than the date that is 2 years before the date that construction of such property begins.
- 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).

Definitions (cont'd)

IRC 179D Energy Efficient Commercial Buildings Deduction

Description

- **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 (CO)** - 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 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 Form AIA 201-2007 Section 1.1.1 The Contract Documents.
- **Certification** - The Certification must be provided by a Qualified Individual and contain statements that the property installed is fully or partially Qualifying EECBP, that a Qualified Individual 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 energy and power cost savings.

Definitions (cont'd)

IRC 179D Energy Efficient Commercial Buildings Deduction

Description

- Designer of Government-Owned Buildings (Designer) - 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 Partial 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 Partial Deduction is allowed under IRC 179D). A person who merely installs, repairs, or maintains the property is not a Designer.
- Energy Efficient Commercial Building Property (EECBP) - Property installed on or in any building that is located in the United States and is within the scope of the applicable Reference Standard 90.1. 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.
- Energy Savings Percentage.(ESP) - 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.
- Fully Qualifying Property - Property that meets the 50 percent reduction in total annual energy and power costs required under IRC 179D(c)(1)(D). The Maximum Amount of the IRC 179D 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 – Government Building Owner).
- Heating, Ventilation, Air Conditioning (HVAC) - Also referred to as the heating, cooling, ventilation, and hot water systems or HVAC/P or HVAC/HW when the hot water system is included for purposes of the IRC 179D deduction.

Definitions (cont'd)

IRC 179D Energy Efficient Commercial Buildings Deduction

Description

- 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 systems 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 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 - The study performed for the Taxpayer for the specific taxable year, typically performed by a Section 179D consultant. This 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 Section 179D deduction.
- Maximum Amount of Deduction - The maximum amount deductible under IRC 179D(b) is up to \$1.80/sf for buildings that achieve a 50 percent 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 - A Partial Deduction is prescribed for each separate system if the 50 percent 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).

Definitions (cont'd)

IRC 179D Energy Efficient Commercial Buildings Deduction

Description

- Permanent Rule (used to compute a Partial Deduction) - 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 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 per square foot 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 - 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.
- Performance Rating Method.(PRM) - 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 heating, cooling, ventilation, hot water, and interior lighting systems in comparison to a Reference Building that meets the minimum requirements of the applicable version of Reference Standard 90.1. See Notice 2006-52, section 3.
- Qualified Computer Software - Software approved by the Department of Energy (DOE) for use in calculating total annual energy and power 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 in writing that they have the requisite qualifications to 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 the applicable Reference Standard 90.1.

Definitions (cont'd)

IRC 179D Energy Efficient Commercial Buildings Deduction

Description

- 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 nspe.org Code of Ethics, and 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.
- 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 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 Process Unit, we have adopted the definition from industry sources such as the AIA, ASHRAE and other professional organizations.

Index of Referenced Resources

IRC 179D Energy Efficient Commercial Buildings Deduction

Energy Policy Act of 2005

Taxpayer First Act

Certainty and Disaster Relief Act of 2020

IRC 45(e)(4)

IRC 179D

IRC 6662

IRC 6676

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

Notice 2006-52

Notice 2008-40

Notice 2012-26

CCA 201451028

AM 2010-007

AM 2018-005

IRM 1.2.1.12 - *Servicewide Policy Statements, 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*

Index of Referenced Resources (cont'd)

IRC 179D Energy Efficient Commercial Buildings Deduction

IRM 20.1.1.2.3 - *Approval Prerequisite to Penalty Assessments*

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

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">▪ IRC 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.