



DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
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OFFICE OF
CHIEF COUNSEL

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The Honorable Mike Pence
Member, U.S. House of Representatives
1134 Meridian Plaza
Anderson, IN 46016

Attention:

Dear Congressman Pence:

This letter responds to your inquiry dated May 22, 2007, on behalf of your constituent, . He wrote about section 1331 of the Energy Policy Act of 2005, which enacted section 179D of the Internal Revenue Code (the Code). This section provides a deduction for energy efficient commercial building property.

questioned the benefit of claiming the deduction for energy efficient commercial building property because section 179 of the Code already provides an election to expense certain depreciable business assets. 's issue is specific to lighting projects.

Under section 179D, a taxpayer can claim a deduction for part or all of the cost of energy efficient commercial building property placed in service within a building in the United States after December 31, 2005, and before January 1, 2009, that meets the energy savings requirements under section 179D.

The maximum amount of a section 179D deduction for any building for any taxable year cannot exceed the excess (if any) of:

- (1) The product of \$1.80 times the square footage of the building, over
- (2) The aggregate amount of the deductions under section 179D for the building in all prior taxable years

Section 179D also allows a partial deduction amounting to \$.60 times the square footage of the building, if the taxpayer can prove that one subsystem (the interior lighting systems; the heating, cooling, ventilation, and hot water systems; or the building envelope) reduces the total annual energy and power costs of the building by 16 $\frac{2}{3}$ % or more as compared to a reference building that meets the minimum requirements of the American Society of Heating, Refrigerating, and Air Conditioning Engineers and the

Illuminating Engineering Society of North America (ASHRAE) Standard 90.1-2001. Further, section 179D provides an alternative method of computing the deduction for lighting systems that achieve at least a 25% reduction in lighting power density.

Alternatively, section 179 of the Code allows a taxpayer to elect to expense a portion or the entire cost of the certain depreciable business property for the tax year in which the taxpayer places the property in service. This election is available for tangible personal property, certain types of real property, and off-the-shelf computer software. However, a deduction under section 179 is not available for the costs of a building or its structural components. Structural components include such parts of a building as walls, partitions, floors, and ceilings; all components (whether in, on, or adjacent to the building) of a central air conditioning or heating system, including motors, compressors, pipes, and ducts; plumbing and plumbing fixtures, such as sinks and bathtubs; electric wiring and lighting fixtures; and other components relating to the operation or maintenance of a building. Thus, generally the costs of interior lighting systems of a building that are deductible under section 179D would not be deductible under section 179. If the taxpayer does not deduct the costs of interior lighting systems of a commercial building under section 179D, the taxpayer can depreciate the costs over a 39-year period.

is generally correct that sections 179 and 179D provide similar deductions. However, the two provisions define qualifying property differently, impose different limits on the amount of the deduction, and, under some circumstances, have different rules for recapture of the deduction. Under both provisions, the taxpayer's basis in the qualifying property is reduced by the amount of the deduction.

I hope this information is helpful. Please contact me or _____ at _____, if you need further assistance.

Sincerely,

Charles B. Ramsey
Branch Chief, Branch 6
(Passthroughs & Special Industries)