



DEPARTMENT OF THE TREASURY  
INTERNAL REVENUE SERVICE  
WASHINGTON, D.C. 20224

OFFICE OF THE CHIEF COUNSEL

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Attention:

Dear Senator Snowe:

This letter responds to your letter dated October 20, 2009, from you and Senator Feinstein to Commissioner of the Internal Revenue Service Doug Shulman asking that he issue regulations to improve the effectiveness of the deduction for energy efficient commercial building property (section 179D of the Internal Revenue Code). Your letter was referred to my office for reply because my office has responsibility for drafting guidance concerning section 179D. The Internal Revenue Service works closely with the Department of Treasury regarding guidance under section 179D, and Treasury issued guidance in 2006 and again in 2008 that addressed key issues regarding that provision. Although that guidance took the form of Notices rather than regulations, taxpayers may rely with confidence on the guidance in those notices.

Let me first outline the requirements of section 179D and the prior guidance. Taxpayers who own or lease a commercial building in the United States can claim a deduction for part or all of the cost of energy efficient commercial building property. They must place the property in service after December 31, 2005, and before January 1, 2014, and the property must meet the energy savings requirements under section 179D.

Section 179D(f) provides interim energy-savings targets to allow a partial deduction for lighting systems pending issuance of final regulations. As you noted in your letter, however, section 179D does not provide comparable specific energy-savings targets for computing a partial deduction for property installed as part of the heating, cooling, ventilation, and hot water systems, or the building envelope. Instead, section 179D(d) directs that the Secretary, after consultation with the Secretary of Energy, shall establish energy efficiency targets for those systems, and issue regulations prescribing methods

for calculating and verifying energy consumption and cost based on the 2005 California Nonresidential Alternative Calculation Method Approval Manual.

Your letter asks that we promulgate regulations that outline partial compliance pathways for claiming the deduction under section 179D. In particular, you ask that we address “the appropriate components, efficiency levels and other relevant information for which the required level of saving in each category can be deemed to be achieved. The regulations should also define the reference building that determines the criteria for compliance with the partial deduction for each system.”

Pursuant to section 179D(d), we and Treasury did consult with the Department of Energy regarding establishing energy efficiency targets and methods for calculating and verifying energy and power consumption and cost. On June 26, 2006, Treasury published Notice 2006-52, 2006-1 C.B. 1175. That Notice provides detailed efficiency levels and other relevant information to guide taxpayers on how to qualify for a partial deduction under section 179D with respect to interior lighting, heating, ventilation, cooling and hot water systems and the building envelope. It also defines the reference building that determines the criteria for compliance with the partial deduction for each system. Because section 179D does not specify fuels or technologies that systems must use to qualify for the deduction, however, the guidance does not specify particular components that taxpayers must use to achieve the required level of energy savings.

More specifically, Section 2 of Notice 2006-52 provides that property installed as part of each system must reduce the total annual energy and power costs for combined use of the building’s heating, cooling, ventilation, hot water, and interior lighting systems by 16 $\frac{2}{3}$  percent or more as compared to a reference building that meets the minimum requirements of ANSI/ASHRAE/IESNA Standard 90.1-2001, Energy Standard for Buildings Except Low-Rise Residential Buildings (as in effect on April 2, 2003) (ASHRAE Standard). Section 3.03 of the Notice defines the “reference building” for purposes of the Notice by integrating the methods for calculating and verifying energy consumption provided by the 2005 California Nonresidential Alternative Calculation Method Approval Manual. On April 7, 2008, Treasury published Notice 2008-40, 2008-14 I.R.B. 725, that added guidance on applying section 179D to government owned buildings and also changed the energy-savings targets provided in Notice 2006-52 for projects placed in service after December 31, 2008. In short, although not yet in regulatory form, the Notices that Treasury has already issued appear to provide the guidance requested in your letter, other than the specification of particular components which we did not address for the reason explained above.

This is not to say that we do not take our responsibility under section 179D to issue regulatory guidance seriously. Treasury and the Service have responsibility for issuing regulatory and other forms of guidance with respect to many issues in addition to section 179D. As you know, in the last year we have worked closely with Treasury to promulgate significant amounts of guidance that address the many questions raised by

recent economic stimulus legislation and that address tax questions that have arisen as a result of the current economic situation. We continue to devote significant resources to these issues. While we have not yet issued regulatory guidance under section 179D, the rules promulgated in Notices 2006-52 and 2008-40, reflect significant efforts on the part of our office, Treasury and the Secretary of Energy to create fair and technologically appropriate targets for heating, cooling, ventilation, and hot water systems and for building envelopes to meet the requirements of section 179D.

We believe that the methods prescribed in the Notices to compute the partial deduction for energy efficient building property are appropriate for the technologies used by these systems and that they are consistent with the intent of the legislation.

I hope this information is helpful in addressing your concerns. If you need further assistance on this matter, please call \_\_\_\_\_ at \_\_\_\_\_ .

Sincerely,

Curt G. Wilson  
Associate Chief Counsel  
(Passthroughs & Special Industries)