

**Office of Chief Counsel
Internal Revenue Service
memorandum**

Number: **201451028**

Release Date: 12/19/2014

CC:PSI:B06:

POSTS-138691-12

UILC: 179D.00-00

date: December 04, 2012

to: Glenn C. Deloria
Program Manager
(SB/SE: (ATTI) Technical Issues)

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

subject: Allocation of the § 179D Deduction to Designers

The Field has requested that our office provide clarification regarding the types of entities that can allocate the § 179D deduction to the person (the designer) primarily responsible for designing energy efficient commercial building property that meets the requirements under § 179D.

Issue

What entities can allocate the deduction under § 179D of the Internal Revenue Code to the designer of the energy efficient commercial building property that is installed on or in property owned by the entity?

Conclusion

Section 179D(d)(4) provides that a federal, state, or local government or a political subdivision thereof (governmental entity) can allocate the § 179D deduction to a designer of energy efficient commercial building property that is installed on or in property owned by the government entity. The deduction cannot be allocated by entities that are not a governmental entity.

Law and Analysis

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Section 179D(a) allows a deduction to an owner of a commercial building for all or part of the cost of energy efficient commercial building property that is placed in service in a taxable year. The deduction is available based upon the ownership of the building.

Section 179D(d)(4) provides that in a *very* limited circumstance this deduction may be allocated to the person (the designer) primarily responsible for designing the energy efficient commercial building property. This circumstance is that the energy efficient commercial building property is installed on or in property owned by a governmental entity. Notice 2006-52, 2006-1 C. B. 1175, provided interim guidance, pending the issuance of regulations, about the deduction for energy efficient commercial building property under § 179D. Notice 2008-40, 2008-2 C.B. 725, amplified Notice 2006-52 by explaining how, in the case of property owned by a governmental entity, the owner can allocate the § 179D deduction to the designer.

The Service has received many inquiries asking whether schools, colleges, and universities can allocate the § 179D deduction to a designer. Entities other than a governmental entity that own property on or in which energy efficient commercial building property is installed *cannot* allocate the § 179D deduction to the designer. Therefore, only schools, colleges, and universities that are governmental entities can allocate the § 179D deduction to the designer if they own a building on or in which energy efficient commercial building property is installed. In addition, tax-exempt entities and non-profit organizations (such as charities, churches, and hospitals) are not eligible to allocate the § 179D deduction to the designer if they are not governmental entities.

To determine whether a designer is entitled to claim a § 179D deduction for which it has received an allocation, it is important to determine whether the owner of the building on or in which the energy efficient commercial building property is installed is a governmental entity.

If you have any questions on this matter, please call Jennifer Bernardini at (202) 622-3110.