

Part III - Administrative, Procedural, and Miscellaneous

Deduction for Energy Efficient Commercial Buildings

Notice [XXXX-XX]

SECTION 1. PURPOSE

This notice sets forth interim guidance, pending the issuance of regulations, relating to the deduction for energy efficient commercial buildings under § 179D of the Internal Revenue Code. Specifically, this notice sets forth a process that allows the owner of energy efficient commercial building property to certify that the property satisfies the requirements of § 179D(c)(1) and (d). This notice also provides a procedure whereby the developer of computer software may certify to the Internal Revenue Service that the software is acceptable for use in calculating energy and power consumption for purposes of § 179D of the Code. The Service and the Treasury Department expect that the rules set forth in this notice will be incorporated in regulations.

SECTION 2. BACKGROUND

.01 In General. Section 1331 of the Energy Policy Act of 2005, Pub. L. No. 109-58, ___ Stat. ___, (2005), enacted § 179D of the Code, providing a deduction for an owner of energy efficient commercial building property that is placed in service during the taxable year. To qualify as energy efficient commercial building property, the property must:

(1) be installed on or in any building that is located in the United States which is within the scope of Standard 90.1-2001 of the American Society of Heating, Refrigerating, and Air Conditioning Engineers and the Illuminating Engineering Society of North America (ASHRAE/IESNA) (as in effect on April 2 2003) including addenda 90.1a-2003, 90.1b-2002, 90.1c-2002, 90.1d-2002, and 90.1k-2002;

(2) be installed as part of the interior lighting systems, the heating, cooling, ventilation, and hot water systems, or the building envelope;

(3) be certified as being installed as part of a plan to reduce the total annual energy and power costs with respect to the interior lighting systems, heating, cooling, ventilation, and hot water systems by 50 percent or more as compared to a reference building that meets the minimum requirements of Standard 90.1-2001; and

(4) be placed in service after December 31, 2005 and before December 31, 2007.

The required 50 percent reduction must be accomplished solely through energy and power cost reductions for the above listed systems to the exclusion of reductions in any other energy uses, such as receptacles, process loads, refrigeration, cooking, and

elevators.

.02 Amount of Deduction. The deduction shall not exceed the excess (if any) of the product of \$1.80 and the square footage of the building over the aggregate amount of the § 179D deductions taken with respect to the building for all prior taxable years.

.03 Partial Deduction. In the case of a building that does not meet the requirement of a 50 percent or greater energy savings with respect to:

- (1) the interior lighting systems,
- (2) the heating, cooling, ventilation and hot water systems, and
- (3) the building envelope.

The maximum allowable deduction is \$.60 per square foot for each separate system that satisfies the energy-savings target of 16 2/3 percent energy savings with respect to that system.

.04 Interim Rules for Lighting Systems. The lighting system target shall be a reduction in lighting power density of 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.

(1) Reduced deduction. If, with respect to the lighting system of any building other than a warehouse, the reduction in lighting power density of the lighting system is not at least 40 percent, only the applicable percentage of the amount of deduction otherwise allowable with respect to such property shall be allowed.

(2) Applicable percentage. For purposes of subparagraph (1), the applicable percentage is the number of percentage points (not greater than 100) equal

to the sum of—

(i) 50, and

(ii) the amount which bears the same ratio to 50 as the excess of the reduction of lighting power density of the lighting system over 25 percentage points bears to 15.

(3) Exceptions. This rule shall not apply to any system:

(i) the controls and circuiting of which do not comply fully with the mandatory and prescriptive requirements of Standard 90.1-2001 and which do not include provision for bilevel switching in all occupancies except hotel and motel guest rooms, store rooms, restrooms, and public lobbies, or

(ii) which does not meet the minimum requirements for calculated lighting levels as set forth in the Illuminating Engineering Society of North America Lighting Handbook, Performance and Application, Ninth Edition, 2000.

SECTION 3. CERTIFICATION

A taxpayer must obtain the certification required under § 179D(c)(1) with respect to building property from a qualified individual before claiming the § 179D deduction with respect to the building property. A taxpayer is not required to file the certification with the return on which the deduction is taken but must retain the certification as part of the taxpayer's records. The certification will be treated as satisfying the requirements of § 179D(c)(1) if the certification contains the following information:

.01 The name, address, and taxpayer identification number of qualified individual;

.02 A statement by a qualified individual that--

(1) The building property will reduce the total annual energy and power costs with respect to the interior lighting systems, heating, cooling, ventilation, and hot water systems, or the building envelope by 50 percent or more as compared to a reference building in the same climate zone;

(2) Field inspections of the building property performed by a qualified individual after the property has been placed in service have confirmed that the property has met the energy-saving targets contained in the design plans and specifications, and that the field inspections were performed in accordance with procedures for inspection and testing prescribed by the Secretary; and

(3) The building owner has received an explanation of the energy efficiency features of the building and its projected annual energy costs.

.03 Identification of the listed software used to calculate energy and power consumption and costs (see section 5 of this Notice).

.04 A list identifying the components of the interior lighting systems, heating, cooling, ventilation, and hot water systems, or the building envelope installed in the building, the energy efficiency features of the building and its projected annual energy costs.

.05 A declaration, applicable to the request for certification and any accompanying documents, signed by the qualified person, 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.”

SECTION 4. DEFINITIONS

.01 For purposes of this notice, the following terms are defined as follows:

(1) 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 7.5 ft or greater. It is measured from the exterior faces of exterior walls or from the centerline of walls separating buildings, but excluding covered walkways, open roofed-over areas, porches and similar spaces, pipe trenches, exterior terraces or steps, chimneys, roof overhangs, and similar features.

(2) Conditioned space. A cooled space, heated space, or indirectly conditioned space defined as follows.

(i) Cooled space. An enclosed space within a building that is cooled by a cooling system whose sensible output capacity exceeds 5 Btu/h•ft² of floor area.

(ii) Heated space. An enclosed space within a building that is heated by a heating system whose output capacity relative exceeds 5 Btu/h•ft² of floor area

(iii) Indirectly conditioned space. An enclosed space within a building that is not a heated space or a cooled space, which is heated or cooled indirectly by being connected to adjacent space(s) provided:

(a) the product of the U-factor(s) and surface area(s) of the

space adjacent to connected space(s) exceeds the combined sum of the product of the U-factor(s) and surface area(s) of the space adjoining the outdoors, unconditioned spaces, and to or from semiheated spaces (e.g., corridors); or

(b) that air from heated or cooled spaces is intentionally transferred (naturally or mechanically) into the space at a rate exceeding 3 air changes per hour (ACH).

(3) Qualified computer software. Software that meets the following requirements:

(i) a software developer has certified that the software meets all procedures and detailed methods for calculating energy and power consumption and costs and has been tested according to Section 5 of this notice,

(ii) the software provides the forms required to be filed with the Secretary in connection with energy efficiency of property and the deduction allowed under § 179D, and

(iii) the software provides a notice form which documents the energy efficiency features of the building and its projected annual energy costs.

(4) Qualified individual. An individual that is not related (within the meaning of § 45(e)(4)) to the taxpayer claiming the deduction under § 179D and has represented in writing to the taxpayer and the Service that he or she has the requisite qualifications to provide the certification required under section 3 of this notice, including the inspection and testing described in § 179(d)(6)(C) to ensure compliance of buildings with energy-savings plans and targets.

For building projects of 3 stories or fewer in height and less than 6000 ft², any individual that has already been accredited or otherwise authorized to use approved energy performance measurement methods by the Residential Energy Services Network (RESNET), or an equivalent rating network will receive automatic accreditation as an eligible individual under § 179D upon representation thereof to the taxpayer and the Service.

Additionally, the licensed professional engineer of record or licensed contractor of record for the building property, licensed to practice in the location where the building is located will be considered a qualified individual for purposes of § 179D if properly licensed by the jurisdiction in which the building property is being placed in service.

(5) Reference building. A building that meets the minimum standards of Standard 90.1-2001, using methods of calculation for calculating and verifying energy and power consumption and cost, based on the Performance Rating Method in Appendix G of Standard 90.1-2004. The taxpayer claiming the credit will use the Performance Rating Method to compute whether the reduction in the total annual energy and power costs with respect to the interior lighting systems, heating, cooling, ventilation, and hot water systems, and the building envelope, excluding all other energy uses, such as receptacles, process loads, refrigeration, cooking, and elevators, amounts to 50 percent or more when compared to a reference building that meets the minimum requirements of Standard 90.1-2001.

For the purposes of this Notice, the Performance Rating Method includes the

following computations:

Reference Building Energy and Power Costs equal the sum of the energy and power costs for the following components:

- Interior Lighting
- Heating
- Cooling
- Ventilation
- Hot Water

Proposed Building Energy and Power Costs equal the sum of the energy and power costs for the following components:

- Interior Lighting
- Heating
- Cooling
- Ventilation
- Hot Water.

Percentage Reduction in Energy and Power Costs equal the excess of:

- 100 multiplied by;
- Reference Building Energy and Power Costs - Proposed Building Energy and Power Costs; over
- Reference Building Energy and Power Costs.

For the purposes of this Notice, the reference building is the same as the baseline building performance in the Performance Rating Method in Appendix G of Standard 90.1-2004. In addition, the Reference Building shall use the following additional requirements from the 2005 California Title 24 Nonresidential Alternative Calculation Method (ACM) Approval Manual:

- (1) number of occupants, occupant sensible and latent heat loads, receptacle loads, and hot water loads from ACM Tables N2-2 and N2-3;
- (2) occupancy schedule from ACM Tables N2-4 through N2-9;
- (3) cooling tower pipe head multipliers from ACM Table N2-18; and
- (4) illuminance categories and luminaire power from ACM Appendix NB,

where the illuminance categories apply.

SECTION 5. LISTED SOFTWARE PROGRAMS

.01 In General. The Service will create and maintain a public list of software that may be used to calculate energy and power consumption and costs for purposes of providing a certification under section 3 of this Notice. Software will be included on the original list if the software developer submits the following information to the Service and to the Department of Energy:

- (1) The name, address, and taxpayer identification number of the software developer;
- (2) The name, version or other identifier of the software as it will appear on the list;
- (3) All test results, input files, and executable version of the software with which the test were conducted; and
- (4) A declaration by the developer of the software, made under penalties of perjury, that the software has been tested according to ANSI/ASHRAE Standard 140-2004 and shall, as a minimum, have the ability to explicitly model all of the following:
 - (i) 8,760 hours per year;
 - (ii) calculation methodologies for the building components being modeled;
 - (iii) hourly variations in occupancy, lighting power, miscellaneous equipment power, thermostat setpoints, and HVAC system operation, defined separately for each day of the week and holidays;

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- (iv) thermal mass effects;
 - (v) ten or more thermal zones;
 - (vi) part-load performance curves for mechanical equipment;
 - (vii) capacity and efficiency correction curves for mechanical heating and cooling equipment; and
 - (viii) air-side and water-side economizers with integrated control.

In addition, the software must have the ability to perform the following functions:

- (i) either directly determine energy costs or produce hourly reports of energy use by energy source suitable for determining energy costs separately; and
- (ii) design load calculations to determine required HVAC equipment capacities and air and water flow rates.

.02 Addresses. Submissions under this section must be addressed as follows:

Submissions to the Service:	Program Administrator IRS MS5009ALB RAC 5338 Montgomery Blvd., NE Albuquerque, NM 87109
Submissions to the Department of Energy:	Commercial Software List Department of Energy Office of Building Technologies, EE-2J 1000 Independence Ave., SW Washington, DC 20585-0121

.03 Original and Updated Lists. Software will be included on the original list if the software developer's submission is received before February 1, 2006. The list will be updated as necessary to reflect submissions received after January 31, 2006.

.04 Removal from Published List. The Service may, upon examination (and

after appropriate consultation with the ¹₂ Department of Energy), determine that software is not sufficiently accurate to justify its use in calculating energy and power consumption and costs for purposes of providing a certification under section 3 of this Notice and remove the software from the published list. The Service may undertake such an examination on its own initiative or in response to a public request supported by appropriate analysis of the software's deficiencies.

.05 Effect of Removal from Published List. Software may not be used to calculate energy and power consumption and costs for a certification with respect to building property placed in service after the date on which the software is removed from the published list. The removal will not affect the validity of any certification with respect to building property placed in service on or before the date on which the software is removed from the published list.

.06 Public Availability of Information. The Department of Energy may make all information provided under paragraph .01 of this section available for public review.

SECTION 6. PAPERWORK REDUCTION ACT

The collections of information contained in this notice have been reviewed and approved by the Office of Management and Budget in accordance with the Paperwork Reduction Act (44 U.S.C. 3507) under control number **1545 - ____**.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number.

The collections of information in this notice are in sections 3 and 5. This

information is required to be collected and ¹/₃ retained in order to ensure that energy efficient commercial building property meets the requirements for the deduction under § 179D. This information will be used to determine whether commercial building property for which certifications are provided is property that qualifies for the deduction. The collection of information is required to obtain the benefit.

The likely respondents are two groups: taxpayers claiming the deduction under § 179D (section 3) and software developers seeking to have software included on the public list created by the Service (section 5).

For taxpayers claiming the deduction under § 179D, the likely respondents are corporations and partnerships. The estimated total annual reporting burden is 10,833 hours. The estimated annual burden per respondent varies from 5-15 minutes, depending on individual circumstances, with an estimated average burden of 10 minutes to include the deduction on the appropriate tax form. The estimated number of respondents is 65,000. The estimated frequency of responses is once.

For software developers seeking to have software included on the public list created by the Service, the likely respondents are individuals, corporations and partnerships. The estimated total annual reporting burden is 450 hours. The estimated annual burden per respondent varies from 1 to 2 hours, depending on individual circumstances, with an estimated average burden of 1½ hours to complete the submission required to have the software added to the public list. The estimated number of respondents is 300. The estimated frequency of responses is once.

Books or records relating to a collection of information must be retained as long

as their contents may become material in ¹₄ the administration of any Internal Revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

SECTION 7. DRAFTING INFORMATION

The principal author of this notice is Jennifer C. Bernardini of the Office of Associate Chief Counsel (Passthroughs & Special Industries). For further information regarding this notice contact Jennifer C. Bernardini at (202) 622-3120 (not a toll-free call).