Overview of the 179D Deduction

The information contained in this overview is intended as a general guide to the 179D deduction for informational purposes only and is not intended to constitute legal advice.

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There shall be allowed as a deduction, an amount equal to the cost of energy efficient commercial building property (EECBP) placed in service during the taxable year.

Maximum amount of deduction: the product of the applicable base-rate's dollar value multiplied by the square footage of the building.

Initial Base Rate - $0.50/square foot - $1.00/square foot

- There must be at least a minimum of a 25% reduction in energy consumption compared to the current ASHRAE standards to qualify for the deduction
- For every % in further reduction, there is a $0.02 increase in the deduction rate until the maximum 50% reduction threshold is reached

Base Rate if Prevailing Wage and Apprenticeship Requirements are met - $2.50/square foot - $5.00/square foot

- For every % in further reduction, there is now a $0.10 increase in the deduction rate, until the maximum 50% reduction threshold is reached.

Prevailing Wage Requirements

Any laborers and mechanics involved **in the installation of such EECBP** must be paid wages at rates **not less than the Davis-Bacon prevailing rates** for construction, alteration, or repair of a similar character **in the locality** in which such property is located as most recently determined by the Secretary of Labor, in accordance with subchapter IV of chapter 31 of title 40, United States Code.

- There are corrective actions that can be taken if a subcontractor is found to not pay prevailing wages that involves make-up payments and interest payments made to the workers and a penalty paid to the IRS.

Apprenticeship Requirements

Labor Hours - Percentage of total labor hours –Not less than the applicable percentage of the total labor hours of the construction, alteration, or repair work (including such work performed by any contractor or subcontractor) with respect to such facility shall be performed by qualified apprentices.

- If construction begins after December 31, 2022 – **12.5%**
- If construction begins after December 31, 2023 – **15%**
- There are certain good-faith exceptions to the Apprenticeship Requirement and also corrective monetary actions that can be taken to satisfy this requirement.

Labor Hours means:

- The total number of hours devoted to the performance of construction, alteration, or repair work by any individual employed by the taxpayer or by any contractor or subcontractor; EXCLUDING
- Any hours worked by foremen, superintendents, owners, or persons employed in a bona fide executive, administrative, or professional capacity (within the meaning of those terms in part 541 of title 29, Code of Federal Regulations).

Apprentice to Journeyworker Ratio - The percentage of total labor hours requirement is subject to **ANY** applicable requirements for apprentice-to-journey worker ratios of the Department of Labor or the applicable State apprenticeship agency.

Participation - Each taxpayer, contractor, or subcontractor who **employs 4 or more individuals** to perform construction, alteration, or repair work shall employ 1 or more qualified apprentices to perform such work.

Qualified Apprentice - an individual who is employed by the taxpayer or by any contractor or subcontractor and who is participating in a registered apprenticeship program.

Types of Property

Types of property with respect to which depreciation (or amortization in lieu of depreciation) is allowable is EECB property if it is:

- Installed in a building located in the U.S.
- Within the scope of the current Standard 90.1
- Certified to be installed on or in the building as part of one or more of three of the building's systems:
  - interior lighting systems,
  - heating, cooling, ventilation, and hot water systems, OR
  - the building's envelope.

There must be a certification made that the EECBP is being installed as part of a plan which is designed to reduce the total annual energy and power costs with respect to combined usage of the building's heating, cooling, ventilation, hot water, and interior lighting systems by 25% or more as compared to a Reference Building that meets the minimum requirements of Standard 90.1-2007 or the requirements of the current Reference Standard 90.1 that is in effect.

- The reduction **must be accomplished solely** through energy and power cost reductions for the heating, cooling, ventilation, hot water, and interior lighting systems.
- Reductions in any other energy uses, such as receptacles, process loads, refrigeration, cooking, and elevators, are not taken into account in determining whether the minimum 25% reduction is achieved.
- Each certification required under Section 179D **shall include an explanation to the building owner** regarding the energy efficiency features of the building and its projected annual energy costs as provided in the notice required to be provided by the Qualified Computer Software (see below).

Date Placed In Service Applicable Reference Standard 90.1:

- After 12/31/2014 and before 1/1/2027 - Reference Standard 90.1-2007
- After 12/31/2026 - Reference Standard 90.1-2019

Method of Computation

Performance Rating Method (PRM) must be used to compute the % reduction in the total annual energy and power costs with respect to combined usage of a building's heating, cooling, ventilation, hot water, and interior lighting systems as compared to the Reference Building.

PRM includes the following computations

Reference Building Energy and Power Costs equal the sum of the energy and power costs for the following components of a Reference Building located in the same climate zone and otherwise comparable to the Proposed Building:

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

Proposed Building Energy and Power Costs equal the sum of the energy and power costs for the same components of the Proposed Building.

Percentage Reduction in Energy and Power Costs is determined by:

- Subtracting Proposed Building Energy and Power Costs from Reference Building Energy and Power Costs; and
- Expressing the difference as a percentage of Reference Building Energy and Power Costs.

The energy performance of the Reference Building must be determined by following the methods for baseline building performance in the PRM in Appendix G of Standard 90.1-2004.

In calculating baseline building performance, the Reference Building shall use the following additional requirements from the 2005 California Title 24 Nonresidential Alternative Calculation Method (ACM) Approval Manual:

- Number of occupants, occupant sensible and latent heat loads, receptacle loads, and hot water loads from ACM Tables N2-2 for whole building values and Table N2-3 for building area values appropriate for mixed use buildings;

- Occupancy, HVAC, fans, infiltration, hot water, lighting, and equipment schedules from ACM Tables N2-4 through N2-9;
- Infiltration modeled following ACM Section 2.4.1.6;
- Luminaire power for interior lighting systems from the 2005 California Title 24 Nonresidential ACM Appendix NB or from manufacturers data.

Certification

There is a certification that must be given from a qualified individual with respect to the EECBP, which will be satisfactory if it contains:

1. Name, address, and telephone number of the qualified individual.
2. Address of the building to which the certification applies.
3. A statement by the qualified individual stating that the interior lighting systems, heating, cooling, ventilation and hot water systems, and building envelope that have been, or are planned to be, incorporated into the building will reduce the total annual energy and power costs with respect to combined usage of the building's heating, cooling, ventilation, hot water, and interior lighting systems by at least 25% or more as compared to a Reference Building that meets the minimum requirements of Standard 90.1-2007.
4. A statement by the qualified individual that the amount of such reduction has been determined under the rules of Notice 2006-52.
5. A statement by the qualified individual that field inspections of the building performed by a qualified individual after the property has been placed in service have confirmed that the building has met, or will meet, the energy-saving targets contained in the design plans and specifications, and that the field inspections were performed in accordance with any inspection and testing procedures that:
    a. Have been prescribed by the National Renewable Energy Laboratory (NREL) as Energy Savings Modeling and Inspection Guidelines for Commercial Building Federal Tax Deductions; AND
    b. Are in effect at the time the certification is given.
6. A statement that the building owner has received an explanation of the energy efficiency features of the building and its projected annual energy costs.
7. A statement that qualified computer software was used to calculate energy and power consumption and costs and identification of the qualified computer software used.
8. 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.
    a. A specific declaration that is signed by the qualified individual.

Definitions

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 feet 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.

Building within the Scope of Standard 90.1-2007

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).

Conditioned Spaces

Any enclosed space within a building qualifying as cooled space, heated space, or indirectly conditioned space defined as follows:

Cooled Space. An enclosed space that is cooled by a cooling system whose sensible output capacity exceeds 5 Btu per hour per square foot of floor area.

Heated Space. An enclosed space that is heated by a heating system whose output capacity relative to the floor area exceeds 5 Btu per hour per square foot of floor area.

Indirectly Conditioned Space. An enclosed space (other than a heated space or a cooled space) that is heated or cooled indirectly by being connected to adjacent space(s) and that satisfies either of the following conditions:

- The space's surface area that is adjacent to heated or cooled space multiplied by the weighted average U-factor of such adjacent surface area exceeds the space's surface area adjoining the outdoors, unconditioned spaces, and semi-heated spaces (e.g., corridors) multiplied by the weighted average U-factor of such adjoining surface area; OR
- The 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).

Qualified Computer Software

Software that meets the following requirements:

1. The software is included (at the time the certification is given) on the Department of Energy's published list of qualified software.
2. The software provides any information that regulations or other guidance require the taxpayer to file in connection with energy efficiency of property and the deduction allowed under §179D.
3. The software provides information that allows the user to document the energy efficiency features of the building and its projected annual energy costs.
4. The software designer has certified that the software meets all procedures and detailed methods for calculating energy and power consumption and costs as required by the Secretary.
5. The software provides such forms as required to be filed by the Secretary in connection with energy efficiency of property and the deduction allowed under Section 179D.
6. The software provides a notice form which documents the energy efficiency features of the building and its projected annual energy costs.

Qualified Individual

An individual that:

1. Is not related to the entity/taxpayer claiming the deduction;
2. (2) Is an engineer or contractor that is properly licensed as a professional engineer or contractor in the jurisdiction in which the building is located; and
3. (3) Has represented in writing that he/she has the requisite qualifications to provide the required certification or to perform the inspection and testing described.

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