

Memo - Section 179 D Deduction

To: Designers of Government Owned Buildings
From: Cheryl A. Prout, CPA
Date: June 9, 2010

Code §179D(d)(4) allows a deduction, up to \$1.80 per square foot of building space in buildings installing “**qualified energy efficient commercial building property**”, to be allocated from a government project owner to “the person primarily responsible for designing the property.”

Essentially the design firm takes the tax deduction in lieu of the government project owner, who does not pay taxes. This could provide significant tax benefits to a design firm who has government clients owning “green” building projects, including public universities and K-12 schools.

This deduction applies to qualifying projects placed in service from Jan. 1, 2006 and Dec. 31, 2013. Projects completed in 2006, 2007 and 2008 may therefore qualify designers for tax refunds by amending past years' tax returns.

Who is a designer?

A designer is a person that creates the technical specifications for installation of qualified energy efficient commercial building property (or partially qualifying commercial building property for which a deduction is allowed under §179D).

A designer may include, for example, an architect, engineer, contractor, environmental consultant or energy services provider who creates the technical specifications for a new building or an addition to an existing building that incorporates qualified energy efficient commercial building property (or partially qualifying commercial building property for which a deduction is allowed under §179D). **A person that merely installs, repairs, or maintains the property is not a designer.**

What if more than one designer is involved in a project?

If more than one designer is responsible for creating the technical specifications for installation of qualified energy efficient commercial building property (or partially qualifying commercial building property for which a deduction is allowed under §179D) on or in a government-owned building, the owner of the building shall:

- 1) determine which designer is primarily responsible and allocate the full deduction to that designer, or
- 2) At the owner's discretion, allocate the deduction among several designers.

An allocation of the § 179D deduction to the designer of a government-owned building must be in writing and will be treated as satisfying the requirements if the allocation contains all of the following:

- 1) The name, address, and telephone number of an authorized representative of the owner of the government-owned building;
- 2) The name, address, and telephone number of an authorized representative of the designer receiving the allocation of the § 179D deduction;
- 3) The address of the government-owned building on or in which the property is installed;
- 4) The cost of the property;
- 5) The date the property is placed in service;
- 6) The amount of the § 179D deduction allocated to the designer;
- 7) The signatures of the authorized representatives of both the owner of the government-owned building and the designer or the designer's authorized representative; and
- 8) A declaration, applicable to the allocation and any accompanying documents, signed by the authorized representative of the owner of the government-owned building, in the following form:

“Under penalties of perjury, I declare that I have examined this allocation, including accompanying documents, and to the best of my knowledge and belief, the facts presented in support of this allocation are true, correct, and complete.”

What is a Qualified Energy Efficient Building Company?

Pending issuance of regulations from the IRS establishes a process to certify the required energy savings in order to claim the deduction and prescribes the content of the certification and the qualifications that must be met by the person providing the certification. The Department of Energy creates and maintains a public list of qualified software that may be used to calculate energy and power consumption and costs for purposes of providing a certification. This public list appears at www.eere.energy.gov/buildings/tax_incentives.html

What is the tax benefit to the designer?

The maximum amount of the § 179D deduction to be allocated to the designer is the amount of the costs incurred by the owner of the government owned building to place the qualified energy efficient commercial building property in service, up to a maximum of \$1.80 per square foot.

What is the tax benefit to the building owner?

The owner of the public building is not required to include any amount in income on account of the § 179D deduction allocated to the designer. The owner of the public building is, however, required to reduce the basis of the qualified energy efficient commercial building property (or partially qualifying commercial building property) by the amount of the § 179D deduction allocated.