

About Section 179D

The Section 179D federal tax incentive is intended to promote the design and construction of energy efficient commercial buildings.

The Energy Policy Act of 2005 (“EPAAct”) enacted Section 179D which provides for a special tax incentive for qualifying energy efficient projects incorporated into commercial buildings.

The amount of the incentive is determined by the efficiency measure installed and the amount of the projected energy savings achieved.

The following Q&A’s provide additional information about this valuable tax incentive:

1. What is the 179D Incentive?

Section 179D provides for the immediate expensing of \$0.30 to \$1.80 per square foot for qualifying energy efficient projects in commercial buildings. This provides an immediate tax benefit to building owners who must otherwise deduct these costs over 39 years.

2. What Are the Effective Dates for Claiming the Incentive?

The provision is effective for private property (new or retrofit) placed in service between 1/1/2006 and 12/31/2016, and for local, state, or federal public buildings (new or retrofit) placed in service in the last 3 open tax years.

3. How is the 179D Incentive Calculated?

In order to qualify for the maximum incentive, the new construction or renovation project must reduce a building’s energy costs by 50% or more compared to a “baseline” reference building based on 2001 energy efficiency and technology standards (ASHRAE Standards 90.1-2001). If the energy efficient project reduces the building’s energy cost by 50%, it then qualifies for an immediate expensing of the project’s capital cost, up to a maximum of \$1.80 per sq. ft.

4. Are Partial Incentives Allowed when Energy Savings are less than 50%?

Yes. If the 50% energy cost savings threshold under the general rule cannot be met, a \$0.60 per sq. ft. deduction is allowed for any of the three major subsystems that meet a lower energy cost savings standard:

- a) Interior lighting;
- b) Heating, cooling, ventilation, and hot water; or
- c) Building envelope (roof, roof coatings, doors, windows, window film, etc.)

The percentage of energy savings required for partially qualifying property ranges from 16.67% to 25% depending on the subsystem installed and the date the property is placed in service. In the case of interior lighting, there is an additional option known as the “Interim Lighting Rule” which is based on savings in Lighting Power Density (LPD). LPD improvements of 25% to 40% (over ASHRAE Standard 90.1-2001) qualify for a 179D deduction of \$0.30 to \$0.60 per sq. ft.

5. What Type of Buildings are Eligible for the 179D Incentive?

All commercial buildings, parking garages, and multi-family residential buildings (greater than three stories), whether privately or government owned, qualify for the deduction. The property must be located within the United States.

Buildings eligible for the 179D incentive include commercial office buildings, warehouses, distribution centers, retail stores, nursing homes, hotels, motels, apartment buildings (greater than three stories), schools, universities, dormitories, federal and state office buildings, courthouses, post office buildings, military bases, airports, etc.

6. Can portions of buildings be retrofitted and still qualify for a deduction; for example, the common area versus tenant spaces, or a portion of the common area?

Portions can be retrofitted and the associated square footage areas considered. A minimum square footage of at least 50,000 sf at one or more combined locations for retrofit projects or 30,000 square feet for new construction projections will be considered by CSSI.

7. Will there be site visits of buildings to determine compliance?

Yes. The site visit is a required part of the Section 179D energy study that will be completed.

IRS Notice 2006-52 requires that a third-party professional perform a site visit to document the project. The Engineer or Contractor must be licensed in the jurisdictions where the building is sited. Certifiers must use guidelines of the National Renewable Engineering Laboratory.

8. Who Can Claim the Incentive?

The tax incentive can be claimed by a building owner, tenant or ESCO, depending on who pays for and owns the energy efficient commercial property.

For government-owned buildings, the incentive can be claimed by the architect, engineer, contractor, environmental consultant, sales engineer or energy services provider responsible for the design of the energy-efficient system.

At the present time, non-profit entities (e.g., not-for-profit hospitals) are not eligible for the incentive.

Although REITs are technically eligible for the incentive, they are generally unable to benefit from Section 179D due to the intricacies of REIT taxation.

9. How do I Claim the Deduction?

In order to claim the deduction, a Section 179D compliance study ("a Section 179D Certification") must be performed by an independent firm or individual to verify the deduction.

The energy savings projected for the measure installed must be confirmed through energy modeling based on specific standards outlined by the IRS.

The deduction is then claimed on the "Other Deductions" line of the taxpayer's federal tax return. IRS Revenue Procedure 2011-14 now makes it possible to take the Section 179D tax deduction for qualifying projects already installed between 2006-2014 by way of an automatic "change of accounting" method on the next regular tax filing, without amending prior year tax returns. Previously, taxpayers either had to take the deduction in the current tax year, or for properties placed "in service" in prior years, it required filing an amended tax return.

10. I Have Several Projects that were Completed in Prior Years. Can I Still Claim the Incentive?

Yes. If you are the owner of the commercial building or the energy efficient property, you can claim the incentive retroactively for all eligible projects from January 1, 2006. Amended tax returns can be filed for all open tax years and the IRS has made provisions for incentives applicable to closed tax years to be claimed on your current tax return.

Contact us today for a complimentary feasibility assessment of your planned or existing Section 179D opportunity.