



DEPARTMENT OF THE ARMY
ASSISTANT SECRETARY OF THE ARMY
(INSTALLATIONS, ENERGY AND ENVIRONMENT)
110 ARMY PENTAGON
WASHINGTON, DC 20310-0110

DEC 17 2010

MEMORANDUM FOR SEE DISTRIBUTION

SUBJECT: Building Energy Efficiency Tax Deduction Policy

1. References.

- a. The Energy Policy Act of 2005 (P.L. 109-58)
- b. The Emergency Economic Stabilization Act of 2008 (P.L. 110-343)
- c. 26 U.S.C. § 179D, Energy Efficient Commercial Buildings Deduction
- d. Army Energy Security Implementation Strategy (AESIS), dated January 13, 2009
- e. Internal Revenue Bulletin 2006-26, Notice 2006-52, Deduction for Energy Efficient Commercial Buildings
- f. Internal Revenue Bulletin 2008-14, Notice 2008-40, Amplification of Notice 2006-52; Deduction for Energy Efficient Commercial Buildings
- g. Policy on Allocation of Energy Efficient Tax Deduction to Contractors, U.S. General Services Administration, 15 March 2010
- h. Energy Savings Modeling and Inspection Guidelines for Commercial Building Federal Tax Deductions, NREL/TP-550-40467, Department of Energy, dated May 2007

2. The Army is exploring ways to achieve its energy security and sustainability goals by pursuing energy efficiency and cost savings at our installations. The Army is committed to offer economically viable and flexible opportunities for the private sector to participate in supporting the Army's goals. The Army seeks to derive greatest value from building energy efficiencies developed and implemented by its contractors and expects to see these efficiencies reflected in industry proposals. The Army encourages its installation and industry partners to implement cutting-edge technologies and novel approaches.

3. The Energy Policy Act of 2005 (P.L. 109-58) authorized the Energy Efficient Commercial Buildings Tax Deduction for expenses incurred for qualified energy efficient building investments made by a building owner. The deduction may be taken in the year the energy efficient improvements are placed in service. Such improvements are from the following categories – interior lighting systems; heating, cooling, ventilation, and hot water systems; the building envelope.

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4. In government-owned buildings, the government may allocate this deduction to the person or persons primarily responsible for creating the technical specifications of the qualified improvements (the “designer”). A designer may include for example an architect, engineer, contractor, environmental consultant or energy service provider. A person that merely installs, repairs, or maintains the property is not a designer. The Emergency Economic Stabilization Act of 2008 (P.L. 110-343) extended this deduction through December 31, 2013. The provisions authorizing the deduction are codified at 26 U.S.C. § 179D.
5. As a matter of Army policy, only a prime contractor may request an allocation. An allocation request will be approved by the Army’s authorized government representative (AGR) if appropriate. The prime contractor may request to the Army that the allocation be further distributed between multiple designers if appropriate. Pursuant to Internal Revenue Bulletin 2006-26, Notice 2006-52 and Internal Revenue Bulletin 2008-14, Notice 2008-40 the AGR shall affirm the allocation of the tax deduction by using a standardized 179D Allocation Letter (Attachment A). In addition, contracts released by the Army should indicate to the contractor the Army’s intent to allocate deductions if claimed by the contractor in accordance with 179D.
6. For design-build project or repair and alteration project where the technical requirements are purely in performance terms, the contractor with whom the government has entered an agreement with will determine who the prime contractor is. For a design-build-bridging project, either the bridging architect or the design-build contractor may be recognized as the prime contractor. For a bridging contract designer to be allocated deductions, such contractor would have had to provide the full descriptive specification requiring no further design for installed energy saving feature. The AGR should make this determination based on the allocation of work; the deduction should be allocated to the contractor primarily responsible for the design for which the contractor is claiming the tax deduction. This determination should be clearly stated in the contract(s).
7. The prime contractor may propose an allocation of a full deduction (for a project that involves multiple systems) or a partial deduction (for a project that involves only the interior lighting system; heating, cooling, ventilation, and hot water system; or building envelope). In both cases, the prime contractor may split the allocation among designers, if more than one created the applicable technical specifications.
8. The Army is not responsible for the certification required by the Internal Revenue Service. The Army is responsible for verification of designer’s activity on the project, qualified individual credentials and completed construction. The contractor(s) claiming the deduction are required to certify to the Internal Revenue Service that installation of the applicable property has resulted in the required energy cost reductions. The contractor is solely responsible for the accuracy and substance of the required certification.

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9. Questions regarding this policy should be directed to Mr. Alan King, ASAIEE (E&S), (703) 693-5124 or via email alan.king2@us.army.mil.



Encl

Katherine Hammack

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TEMPLATE

ALLOCATION OF § 179D ENERGY EFFICIENT COMMERCIAL BUILDINGS TAX DEDUCTION

1. The name, address, and telephone number of the authorized government representative:
2. The name, address, and telephone number of an authorized representative of the designer(s) receiving the allocation of the § 179D deduction:
3. The address of the building on or in which the property is installed:
4. The cost of the property and the date the property is placed in service:
5. Total amount certified for the § 179D deduction and the portion(s) of the total amount allocated to the designer(s):
6. Details of the certification including method, entity conducting the certification, copies of credentials for the certifying entity (attach supporting documents):
7. The signatures of the both the authorized government representatives and the designer or the designer's authorized representative affirming that the above information has been submitted to the government and that the energy efficiency improvements called for by the contract have been completed:

Authorized Government Representative

Designer's Authorized Representative

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.

Authorized Government Representative