



**US Army Corps
of Engineers®**

ENGINEERING AND CONSTRUCTION BULLETIN

No. 2011-8

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Subject: USACE Implementation of Building Energy Efficiency Tax Deduction Policy for Army Programs

Applicability: Guidance

1. References:

- a. DAIM-ZA Memorandum dated April 5, 201, Subject as above (enclosure 1)
- b. Department of the Army Memorandum, "Building Energy Efficiency Tax Deduction Policy," dated 17 December 20110.
- c. Allocation Template (enclosure 2)
- d. 26 U.S.C. § 179D
- e. Section 1331, Energy Policy Act of 2005, Pub. L. 109-58, 119 Stat. 594 (2005).
- f. The Emergency Economic Stabilization Act of 2008, Pub. L. 110-343.
- g. American Society of Heating, Refrigerating, and Air Conditioning Engineers (ASHRAE) and the Illuminating Engineering Society of North America Standard 90.1-2001 (April 2, 2003).

2. The purpose of this ECB is to provide guidance on USACE roles and responsibilities in allocating the Energy Efficiency Tax Deduction to eligible contractors, as required by Army implementation of section 179D of the Internal Revenue Code.

3. Background: Section 179D of the Internal Revenue Code provides a tax deduction for certain energy efficient commercial building properties put into service between December 31, 2005 and December 31, 2013. Refs. 1.d, 1.e, 1.f. Section 179D allows itemized deductions for the cost of energy efficient commercial building property (up to \$1.80 per square foot for any taxable year and may be aggregated for prior taxable years), which may be allocated to the designer of government owned buildings. "Energy efficient commercial building property" is property installed as part of: the interior lighting system; heating, cooling, ventilation and hot water system; or the building envelope. For the designer to be eligible to receive the deduction, the property must be installed in a building located in the United States, and fall within the standards articulated in ASHRAE Standard 90.1-2001.

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Ref. 1.g. For more information about the 179D program please review:

http://www.efficientbuildings.org/about_the_provision.html

4. Procedures:

a. In the case of government owned buildings, the building owner may allocate the deduction to an eligible contractor. Army policy recognizes the Authorized Government Representative (AGR) as the building owner who may make the allocation. The AGR is typically the IMCOM Regional Director for IMCOM-managed installations, the Garrison Commander for non-IMCOM installations, the Commanders of Regional Support Commands for Army Reserve installations, or the U.S. Property and Fiscal Officer of the respective state for Army National Guard installations. These individuals are authorized to delegate AGR authority.

b. Reference 1.a. refers to the Government representative who will perform the verification of the data in the contractor's 179D submission package as the "Project Manager" (PM). On projects managed by USCE, and for the purposes of this ECB, the verification authority *may or may not* be the USACE Project Manager, but must be a USACE employee who has knowledge of the project—such as the Design Manager, Area Engineer, or Resident Engineer—who will assist the PM in its role of providing the verification to the AGR.

c. When a contractor requests that the AGR allocate the deduction, the AGR will contact the USACE District and request assistance in validating the certification information. If the contractor requests the allocation directly from the USACE District, rather than the AGR, the District will contact the appropriate building owner to notify them of the request for the allocation and provide the contractor with the checklist of certifications they must provide in order to receive the allocation (Ref. 1.a, Encl. 2).

d. In order for a contractor to receive the allocation, it must inform the AGR or the PM of its interest in obtaining the deduction and provide certification of items 1-9 in paragraph 4(a) of the attached Army policy. The PM is responsible for reviewing this certification and validating the data. The PM will review the certification with the AGR, and, if the AGR concurs, the AGR may sign the allocation. Validation by the PM consists of confirming: that an independent and qualified engineer performed the requisite inspections; the date the energy efficient commercial building property was placed into service; that all requisite technical data and calculations were provided by the contractor; that qualifying software was used; and that the contractor was responsible to USACE for the design of the qualifying energy efficient commercial building property.¹ Under no circumstances is USACE responsible or liable for the accuracy of the information provided by the contractor. Rather, USACE's role is limited to quality assurance.

¹ This is not intended to be complete list but rather is illustrative of what the PM's role is in as the verification authority.

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5. Non-applicability: The ASHRAE Standard 90.1 is not applicable to low-rise residential buildings. 10 CFR 433.2 (Title 10-Energy Efficiency Standards for the Design and Construction of New Federal Commercial and Multi-Family High-Rise Residential Buildings), defines the term low-rise residential building as “any building three stories or less in height above grade that includes sleeping accommodations where the occupants are primarily permanent in nature (30 days or more).” Therefore, housing, barracks and similar facilities three stories or less above grade do not meet the definition in the statute.
6. Solicitations for construction or A-E Services: Solicitations for construction and A-E services will be silent respecting the Section 179D tax deduction at this time.
7. The point of contact for ECB management is Paul Parsonault, CECW-CE, 202-761-7423.

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Enclosures



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MEMORANDUM FOR SEE DISTRIBUTION

SUBJECT: Implementation of Building Energy Efficiency Tax Deduction Policy

1. References:

- a. The Emergency Economic Stabilization Act of 2008 (P.L. 110-343).
- b. 26 U.S.C. § 179D, Energy Efficient Commercial Buildings Deduction.
- c. IRS Notice 2008-14, Amplification of Notice 2005-52; Energy Efficient Commercial Buildings.
- d. Memorandum, ASA IE&E, 17 December 2010, subject: Building Energy Efficiency Tax Deduction Policy (enclosure 1).

2. Purpose: The purpose of this memorandum is to provide implementation procedures for 26 U.S.C. § 179D, Energy Efficient Commercial Buildings Deduction, and to identify the Authorized Government Representative and the Project Manager

3. Definitions:

a. Authorized Government Representative (AGR): Army policy recognizes the building owner to be the AGR in Energy Efficient Commercial Buildings and the decision maker for allocation of tax deductions for qualified energy efficient building improvements. For active component IMCOM managed installations, the IMCOM Regional Directors are the AGR. For active component non-IMCOM managed installations, the first GO/SES level commander or director is the AGR. For the Army Reserve, the AGRs are the Commanders of the Regional Support Commands. For the Army National Guard, the AGR is the United States Property and Fiscal Officer (USPFO) of the respective states. Further delegation of this AGR authority is authorized.

b. Project Manager: The government construction Project Manager (PM) (a government civilian employee or military officer) is the verification authority for the claimed qualifying energy efficient improvements. If there is no government official who managed the contract or project in the role of PM, the AGR shall coordinate for appointment of a government representative with knowledge of the project to fulfill the

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verification duties. The verification consists of validating the information provided by the contractor, verifying the designer's identity/credentials and corroborating the date the energy efficient building property was placed in service.

4. Procedures: Subject to compliance with all applicable laws and Army policy, the following implementation procedures apply to all military construction and renovation projects executed in the United States, regardless of funding source.

a. The Contractor (the entity with whom the Army has a contractual relationship) identifies its interest in obtaining the allocation of the deduction, to the Project Manager (PM) for the specific building. The Contractor must then provide the Army with a certification, from an independent third party, that the project qualifies for the deduction. The Army will then review the certification to insure it contains the elements contained in (1) thru (9):

(1) A statement that a site inspection, by a qualified individual, has been made confirming that the energy efficient property has been installed. Certification must include credentials regarding qualification of individual conducting inspection. Individual must be appropriately licensed in the jurisdiction in which property is located and must not be related to the taxpayer who is claiming the deduction. The statement must be accompanied by a certificate of compliance. See standard NEMA format at <http://www.lightingtaxdeduction.org/certificationletters.html>.

(2) A statement as to the applicable methodology used in determining the deduction (whole building or space-by-space). Section 179D requires that when the deduction is being claimed for HVAC or building envelope property placed in service (or in conjunction with more than one system), certain software programs must be used to identify energy savings for the purposes of the deduction. The Department of Energy has established a public list of software, which may be viewed at http://apps1.eere.energy.gov/buildings/tools_directory/. When the deduction is being claimed solely for interior lighting systems, efficiency savings can be demonstrated via spreadsheet.

(3) A statement and description of eligible energy efficient property (system counts, descriptions, energy use). May include product cut sheets for: (i) the interior lighting systems, (ii) the heating, cooling, ventilation, and hot water systems, or (iii) the building envelope.

(4) A statement as to why the contractor is the "designer". The deduction for a government-owned building (federal, state or local) can be allocated to the designer of the building. A designer is defined as the person who creates the technical

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specifications for installation of the energy efficiency property and may include architects, engineers, contractors, environmental consultants or energy service providers.

(5) A statement regarding the cost of the system placed into Service. This must prove that the deduction does not exceed the cost of the property placed in service. Cost can include labor, demolition of previous system, project management and materials.

(6) A statement regarding applicable square footage accompanied by drawings showing the applicable building noting the applicable square footage.

(7) A statement and calculation of projected annual energy costs for the energy efficient property placed in service.

(8) A statement and calculation of the amount of deduction requested to be allocated and the entity or entities to whom the allocation is to be made and the distribution between entities.

(9) A draft allocation letter in the form and format provided in the policy template.

b. The Project Manager (may be USACE or whomever the Army has managing the contractual relationship) reviews the certification and validates the data.

c. The AGR reviews the certification with the PM and concurs.

d. The AGR (must be identified) signs off on the allocation of the tax deduction.

e. Copies of the certification letter and allocation letter shall be kept at the garrison level.

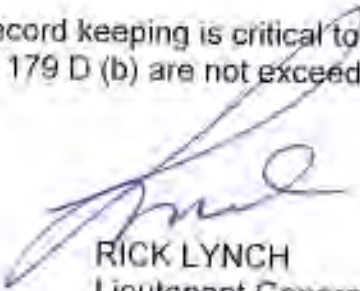
5. The law became effective for tax year 2006 and will expire December 31, 2013. This Army guidance is provided to ensure consistency of implementation of Army policy across all Energy Efficient Commercial Buildings Tax Deduction claims. The AGR will maintain accurate records by-building of all deduction allocations approved for each

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year that they are authorized. This record keeping is critical to insure that the maximum deduction limits described in 26 USC 179 D (b) are not exceeded

- 2 Encls
1. ASA IE&E Memorandum
2. Allocation of §179D Tax Deduction



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Enclosure 1

ALLOCATION OF 26 U.S.C. §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 accompanying documents):
7. The signatures of both the Authorized Government Representative and 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 or
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

(List Accompanying Documents)

Enclosure 2