



November 3, 2022

Internal Revenue Service
CC:PA:LPD:PR (Notice 2022-48), Room 5203
P.O. Box 7604, Ben Franklin Station
Washington, DC 20044

Submitted electronically via www.regulations.gov

Re: Notice 2022-48

On behalf of the 3,500 members of the International Institute of Building Enclosure Consultants (IIBEC) please accept these comments on the Energy Efficient Commercial Building Deductions (179D).

IIBEC is an association of design professionals who specialize in building enclosure projects. IIBEC members design, investigate, and manage roofing, exterior wall, and waterproofing systems and projects. IIBEC members act as advocates for the building on behalf of the owner or manager and ensure the building enclosure or roofing projects meet standards, codes, warranty requirements, and performance requirements. IIBEC members are perfectly positioned to inform owners and managers about the benefits of energy efficiency improvements when designing or retrofitting a building.

.04 Energy Efficient Commercial Buildings Deduction (§ 179D):

(1) Section 179D(d)(3)(A) provides that in the case of EECBP installed on or in property owned by a specified tax-exempt entity, the Secretary is to promulgate regulations or guidance to allow the allocation of the deduction “to the person primarily responsible for designing the property in lieu of the owner of such property.” What criteria should the Treasury Department and the IRS consider in providing rules to determine the person that is “primarily responsible for designing the property” under § 179D(3)(A)?

One of the concerns that helped convince Congress to expand and revise Section 179(D) was that the tax credit was underused and in order to achieve nationwide energy efficiency goals, the provisions needed to be more flexible and accessible. This objective led to the inclusion of the provision allowing a tax credit to be assigned to another party that could benefit from the tax provision. We estimate there are millions of tax-exempt properties owned by a wide variety of organizations with vastly different organizational structures, missions, and benefactors who could benefit from this provision and leading to a variety of different circumstances as to what entity could benefit from the tax provisions. It is entirely conceivable that a single firm may design and oversee the retrofit of a property to meet the requirements of 179(D), and equally conceivable that a different corporate entity may take the lead and contract with an architect, engineer, or design firm, to design and build, or design and let another entity perform the work, but in this case the tax benefit is intended to be used by the original firm, not necessarily the primarily responsible firm.

Therefore, IIBEC recommends that to avoid confusion the IRS should request the property owner, the intended recipient of the tax benefit, and the entity that will take the lead on retrofit project, to sign a legal document that provides an overview of the plan of work and who shall receive the tax benefit to ensure clarity for all parties, including the IRS.

(2) Section 179D(f)(7)(A) provides that for purposes of § 179D(f), the term “energy use intensity” means the annualized, measured site energy use intensity determined in accordance with such regulations or other guidance as the Secretary provides and measured in British thermal units.

(a) What criteria should the Treasury Department and the IRS consider in developing regulations or other guidance addressing this determination?

If the goal is to encourage as many property owners as possible to use the tax credit to offset the expenses associated with an energy efficiency project that can meet the requirements of the 179(D), then flexibility in how the baseline energy use intensity is measured should be the guide. Currently, there are numerous systems that are used to determine energy use intensity, so the regulation should strive to allow the property owner to make that determination. As long as the energy use reductions meet the requirements, the method to determine the reductions, if widely used and verifiable, should be acceptable to the Department.

(b) How should the instruction in § 179D(h)(1) requiring that new technologies regarding renewable energy be taken into account in determining energy efficiency and savings be taken into account in determining energy use intensity?

Congress has provided numerous tax benefits for purchasers of new technologies that incorporate renewable energy sources. To provide an additional benefit for their use under Sec 179(D) would be duplicative and reduce the effectiveness of the tax provision.

(3) Section 179D(f)(2) provides detail on a “qualified retrofit plan.” Is guidance providing additional definitions or other guidance regarding qualified retrofit plans needed?

Full building retrofits (also known as deep retrofits), where multiple systems are upgraded simultaneously (enclosure, windows, insulation, HVAC, electricity, lighting, etc.), have shown to reduce a building’s energy use by up to 40% - a significant reduction compared to energy saved by upgrading a single building component. For this reason, IIBEC urges that a qualified retrofit should include significant upgrades to the building enclosure (envelope) including the roof, walls, and window components in order to meet the objective of Section 179(D).

(4) Section 179D(f)(7)(B) provides that the term “qualified professional” means an individual who is a licensed architect or a licensed engineer and meets such other requirements as the Secretary provides. Is any guidance providing other requirements that licensed architects or licensed engineers must satisfy needed?

IIBEC urges the Department to recognize all qualified professionals in the industry who can design and oversee the construction of a building’s enclosure, and not limit these professionals to a licensed architect or licensed engineer. Depending on the local

regulations and complexity of work being performed, an architect or engineer may be required to approve a plan, however, a specialized building enclosure professional who is IIBEC credentialed and has proven themselves ethically sound and professionally adept through examination, character reference, documented experience, and required continuing education hours is also qualified to design and/or oversee the construction of a building enclosure.

IIBEC credentials represent the pinnacle of roofing, waterproofing, exterior wall, and building enclosure commissioning professionalism. The Registered Building Enclosure Consultant (RBEC®), Registered Roof Consultant (RRC®), Registered Waterproofing Consultant (RWC®), Registered Exterior Wall Consultant (REWC®), and Certified Building Enclosure Commissioning Provider (CBECxP®) programs distinguish professionals with proven standards of education, experience, and ethics. The requirements for attaining these designations are stringent and take considerable time and effort to fulfill. These programs have proven beneficial to society by distinguishing between those who have attained a qualifying level of competence from those that have not and provides credibility, recognition, continuing education, job satisfaction, and often increased earning power and/or enhanced prospects for employment to the credential holder.

For these reasons, IIBEC requests the Department consider adding IIBEC credentialed individuals, including Registered Building Enclosure Consultant (RBEC®), Registered Roof Consultant (RRC®), Registered Exterior Wall Consultant (REWC®), and Certified Building Enclosure Commissioning Provider (CBECxP®) professionals to the guidance of who can perform these tasks.

Thank you for the opportunity to comment on the proposed regulation.

Respectfully,

A handwritten signature in black ink, appearing to read "Brian", written in a cursive style.

Brian Pallasch, CAE
CEO/EVP