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of Engineers®**

ENGINEERING AND CONSTRUCTION BULLETIN

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SUBJECT: Renewal of the Building Energy Efficiency Tax Deduction Policy

CATEGORY: Policy and Guidance

1. References:

- a. Energy Policy Act of 2005 (EPAct05) §1331, 8 Aug 2005
- b. 26 U.S.C. §179D, Energy Efficient Commercial Buildings Deduction
- c. DAIM-ZA Memorandum, Implementation of Building Energy Tax Deduction Policy, 5 Apr 2011 (Enclosure 1)
- d. ASA (IE&E) Memorandum, Building Energy Efficiency Tax Deduction Policy, 17 Dec 2010 (Enclosure 1)
- e. ANSI/ASHRAE/IES Standard 90.1-2007 Energy Standard for Buildings except Low-Rise Residential Buildings, 2007
- f. Allocation Template (Enclosure 2)

2. **Purpose.** This Engineering and Construction Bulletin (ECB) reissues and updates the policy in ECB 2013-9, USACE Implementation of Building Energy Efficiency Tax Deduction Policy for Army Programs. It provides guidance on USACE roles and responsibilities in the process of allocating the Energy Efficiency Tax Deduction to eligible contractors, as established in EPAct05 (Reference a) and required by Army implementation of section 179D of the Internal Revenue Code (Reference b). Department of the Army guidance memorandums (References c and d) include detailed guidance and are attached as Enclosure 1.

3. Background.

a. 26 U.S.C. § Section 179D (Reference b) initially provided a tax deduction for certain energy efficient commercial building properties put into service during a limited period. This period was then extended, and in December 2015 Congress passed legislation to renew the deduction through 2016 and updated the referenced standard to ASHRAE Standard 90.1-2007 (Reference e).

b. 26 U.S.C. § Section 179D allows itemized deductions for the cost of energy efficient commercial building property (up to a maximum cumulative amount of \$1.80 per square foot which 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.

c. 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 as currently articulated in ASHRAE Standard 90.1-2007 (Reference e).

4. Procedures. Procedures specific to USACE for the implementation of the aforementioned Army policy described below.

a. In the case of government owned buildings, the building owner may allocate the deduction to an eligible contractor. Army policy identifies the building owner who may make the allocation to be the Authorized Government Representative (AGR). 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 by the ACSIM to delegate AGR authority.

b. Reference c describes 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 USACE, and for the purposes of this ECB, the verification authority should be the USACE PM. The USACE PM will normally have developed the best base of knowledge concerning the project. In the event the current USACE PM is not the best qualified individual to verify the facts of the project, another individual may be delegated to fulfill that duty, but must be a USACE employee who has knowledge of the project—such as the Design Manager, Area Engineer, or Resident Engineer—who can best 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 list of certifications required by Reference c, paragraph 4a (Enclosure 1) and the Allocation Template (Enclosure 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 4a of Enclosure 1. 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. (This is not intended to be a complete list, but rather is illustrative of what the PM's role is as the verification authority.) 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

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assurance review for completeness of the data provided in the certification and allocation template.

e. Solicitations for construction and A-E services will be remain silent respecting the Section 179D tax deduction.

5. **Update.** These requirements will become obsolete with the expiration of the driving tax policy which is currently set to occur at the end of this year. Therefore, there is no plan to incorporate them into permanent doctrine at this time.

6. **Point of Contact.** HQUSACE point of contact for this ECB is Eric Mucklow, CECW-CE, (202) 761-0522.

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JAMES C. DALTON, P.E.
Chief, Engineering and Construction
U.S. Army Corps of Engineers

Encls

Enclosure 1 – Referenced DA Memorandums

Enclosure 2 - Allocation Template



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DAIM-ZA

APR 5 2011

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.

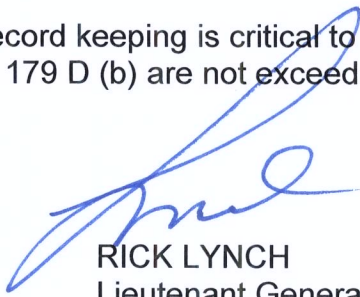
5. The law became effective for tax year 2006 and will expire December 31, 2013. This Army guidance is provided to ensure consistency of implementation of Army policy across all Energy Efficient Commercial Buildings Tax Deduction claims. The AGR will maintain accurate records by-building of all deduction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

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



RICK LYNCH
Lieutenant General, GS
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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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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)