



D SQUARED Tax Strategies
Exponentially Creative Policy Services

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Tax Benefits for Energy Efficient Construction

Thank you for your efforts to reform the tax code – and especially the recognition that tax reform needs to benefit all businesses, large and small and cannot be limited to just C Corporations.

alliantgroup has worked with hundreds of architects, engineers and contractors – as well as federal, state and local governments -- to assist them in qualifying for the benefits provided by 179D. These architects, engineers and contractors are overwhelmingly small and medium businesses that are organized as pass-thru entities.

alliantgroup has seen first-hand that 179D has been a real difference maker -- providing significant encouragement and reward for government agencies that seek to build energy efficient buildings. The tax savings transferred by the government entity to the architects, engineers and contractors has been a tremendous assist to these professionals – many of whom are small and medium businesses – during these difficult economic times. Further, the savings in energy costs and reduced construction costs has been significant for local, state and federal agencies.

There is no question that thousands of jobs have been created or maintained thanks to 179D. As is widely recognized, the construction industry is vital to our nation's economic recovery, and 179D by lowering the costs of construction, putting additional dollars in the pockets of those engaged in construction provides a much-needed boost. As the economy seeks to turnaround it is construction that is leading the way. In addition, the benefits to the nation of greater energy efficiency is also of great importance – and it is accomplished in a technology-neutral manner – with the government encouraging energy efficiency but not directing how

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it is accomplished under 179D. The free market is harnessed to obtain the greatest energy efficiency of buildings.

As the Ways and Means Committee reviews energy tax policies and 179D, we would encourage the Committee to consider the following changes:

- 1) Increase the deduction per square foot from \$1.80 per square foot to at least \$3.00 per square foot. This change will encourage more building owners to look to greater energy efficiency. This is particularly the case for privately owned buildings. The current benefit of \$1.80 does not provide enough incentive to encourage the vast majority of private building owners to take advantage of the benefit. In our work, we see the strong majority of building owners taking advantage of 179D are from the government. Increasing the 179D deduction would encourage more commercial/private sector building owners to focus on creating new structures that are energy efficient. Further, an expansion of the deduction would also encourage energy efficiency in smaller buildings across-the-board – both commercial and government. In practice we find that it is only on rare occasions that 179D makes sense for a building smaller than 50,000 square feet. Increasing the deduction from \$1.80 to \$3.00 will provide a real incentive for smaller buildings to also strive for greater energy efficiency – a particular benefit for smaller school districts and local governments in rural areas.
- 2) Make 179D permanent. Section 179D is set to expire at the end of 2013. This expiration coupled with a requirement that the deduction is available only at the time that the building is placed in service adds significant uncertainty to planning and undermines the Congressional policy of encouraging energy efficient buildings.
- 3) Expand 179D to Indian Tribes and Tax-Exempt Organizations. In enacting 179D the Committee recognized the importance of encouraging energy efficiency for both commercial and government buildings. However, 179D does not do anything to encourage and incentive Indian tribes and tax-exempt organizations to create energy efficient buildings. Given the Congressional intent of encouraging energy efficiency buildings it is commonsense that this policy should be expanded to include buildings owned by Indian tribes and tax-exempt entities (and similar to buildings owned by the federal, state and local government – that the tax benefits may be transferred).

Current law has created the anomaly from a tax policy viewpoint that a local government building benefits from 179D but an Indian tribe government building does not. Further, a state university can benefit from 179D but a tax-exempt private college cannot benefit from 179D. To better effectuate Congressional policy of energy efficiency buildings and to have similar treatment of similar entities we encourage Congress to extend 179D benefits to Indian governments and tax-exempt organizations.

- 4) Remove limitations on S-Corporations from benefitting from 179D. In our practice we are seeing more and more situations where an S Corporation is limited in benefitting from 179D. Many architect and engineering (A&E) firms are organized as an S Corporation. The issue is that the deduction for 179D reduces the shareholder's basis in his/her S-Corp shares.

It is common for A&E owners to have a low basis or zero basis in S-Corp shares because they are pulling most of the profit out of the company each year. This reality means that when it comes to 179D there are a great deal of suspended 179D deductions and the ultimate benefit of the 179D deduction is only the difference (20%) between the ordinary income rate (currently the top rate is 35%) and the capital gains rate (currently 15%) instead of the full ordinary income rate (35%) – given it is a distribution to the shareholder in excess of basis. To rectify this, we would encourage the Committee to consider changing the deduction to a credit (not subject to the limitations of Section 38 – as is also the case with Section 48 currently) or alternatively state that for architects and engineers who receive an allocation from 179D, the allocation does not reduce basis.

We think these commonsense changes will continue and expand the important tax policies of encouraging energy efficient commercial buildings that were put in place when 179D was created. These changes will ensure that small and medium businesses are able to better take advantage of 179D and that commercial construction is also properly incentivized to build energy efficient buildings.

We thank you for time and courtesy in considering our proposals and again thank you for your work on reforming the tax code.