



Energy Tax Savers, Inc.

The EPAct 179D Experts

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SUBMITTED ELECTRONICALLY

Re: Request for Meeting and Comments on OMB Control Number 1545-2004, ICR Reference Number 202210-1545-010, Deduction for Energy Efficient Commercial Buildings

To whom it may concern,

Energy Tax Savers, Inc. assists building owners and designers of government buildings with their paperwork required to qualify for the 179D Tax Deduction. The company was started in the Fall of 2005. We were part of the first industry group to meet in person with Jennifer Bernardini on 3/1/2007 to speak about 179D guidance. We have had multiple interactions with DOE including; early discussions in 2006 & 2007 with Dru Crawley of DOE as he was working on the energy simulation modeling software and technique for 179D. In 2011, Kristen Taddonio of DOE selected us to present at the "U.S. Department of Energy Financial Incentives Webinar" to speak specifically about 179D to the attendees. We were data providers to DOE in 2011 as we worked to change the 20%, 20%, 10% for lighting, HVAC and envelope to the current 25%, 15%, 10%. We were also selected as Beta testers of NREL's Michael Deru's on-line 179D calculator. We are Steering Committee members of The Coalition for Energy Efficient Jobs & Investment (aka 179D Coalition) that has met with IRS and DOE to work on 179D items for the past several years.

Energy Tax Savers, Inc. respectfully submits this request for meeting and these comments. Energy Tax Savers, Inc. would like to meet with individuals at Treasury, IRS, OMB, DOE and NREL to discuss the contents of this letter and practical issues of which

the government should be aware in connection with issuing new forms, regulations and related guidance relating to tax deductions under Section 179D. Please find our comments below as it relates to the following:

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

1. Paper Reduction Act Estimated Burden of 179D compliance

The Paper Reduction Act reporting burden is not properly scoped and it would be beneficial to have a discussion with IRS on the topic. IRS and NREL have created the following burden. Please note these were not directly created by the Law. Most of the law leaves it to the discretion of the Secretary. Therefore, the Secretary has created a procedure requiring the following steps.

- Energy Simulation Model of the Taxpayer's building and 4 energy simulation models of the reference building with the building rotated 4 times(3hrs-40hrs per Building **Est. Avg 6hrs per Building**)
- Inspection of the systems in the Taxpayer's building after the EECBP was placed in service this includes steps like: (1hr-8hrs per Building **Est. Avg 4hrs per Building**)
 - a. Record the IESNA-recommended minimum and the measured illuminance

for each space in Table A-1 (Appendix A) or an equivalent table for the taxpayer's building. Record the average of measurements taken on the working surfaces or at the locations listed by the IESNA handbook (IESNA 2011). The average shall equal or exceed the IESNA recommended minimum illuminance levels. In addition, no more than 2.5% of the measurements may be below one-third of the IESNA-recommended minimum illuminance levels; the latter requirement assumes a normal distribution of data points, with two standard deviations from the measurements equal to one-third of the recommended illuminance level. Measurements need to be completed only once for each unique space and lighting arrangement

- Certification documents must be created and the Qualified Individual Certifies the project(We have automated this. **30 min per building**)
- Government Allocation form is created (We have automated this. **30 min per building**)
- A Representative of the Designer and an Authorized Government Representative sign the allocation form (0.5hrs-10hrs **Est. Avg 1 hr**. Getting the Gov't to sign typically takes multiple conference calls. All due to marketplace confusion of the role the Gov't plays)
- NEW - Fill out form 7205 (**1hr?**)

The real burden that IRS/NREL created, prior to the new 7205 form, takes, on average, 12 hrs per building. This is not reflected anywhere in the guidance.

Right now, IRS has issued the following Paper Reduction Estimates:

From IRS Notice 2006-52

For qualified individuals providing a certification under § 179D, the likely respondents are individuals. The likely number of certifications is 20,000. The estimated burden per certification ranges from 15 to 30 minutes with an estimated **average burden of 22.5 minutes**. The estimated total annual

reporting burden is 7,500 hours

From IRS Notice 2008-40

For qualified individuals providing a certification under § 179D, the likely respondents are individuals. The likely number of certifications is 20,000. The estimated burden per certification ranges from 15 to 30 minutes with an estimated **average burden of 22.5 minutes**. The estimated total annual reporting burden is 7,500 hours

NEW Form 7205

The IRS appears to be estimating it will take **1.03 hours**

NREL/TP-5500-66774

NO ESTIMATED TIME PROVIDED

12 hrs per building is an unacceptable burden and steps need to be taken to reduce the burden dramatically. 3 areas should be addressed to reduce this burden. Each discussed below. 1. Government Allocation, 2. Inspection and 3. Modeling.

2. Government Allocation

There exists confusion in the marketplace on the appropriate role of the “authorized government representative”. Section 179D, in conjunction with IRS Notice 2006-52 and IRS Notice 2008-40 created 3 distinct parties; 1. The Taxpayer, 2. The Certifier and 3. The Authorized Government Representative. Each party has a prescribed role. The Taxpayer is required to obtain both a valid Certification and a valid Government Allocation. Furthermore, they must sign the Government Allocation letter. The Certifier is required under penalties of perjury to provide a valid certification to the taxpayer. The Authorized Government Representative is required to sign under penalties of perjury a valid Government Allocation.

The Government Allocation letter’s designed purpose is to eliminate the chances of double dipping, two parties taking the full amount of the same tax deduction. Often times the Authorized Government Representatives misinterprets the Law and the IRS Notices and believes they are required to attest to the accuracy of the Certification. In many cases this delays the simple signing of the allocation letter and in some cases the Authorized Government Representatives refuses to sign all together. We request the Secretary add guidance to alleviate this misinterpretation. First, we recommend additional instruction language be added to IRS Notice 2008-40 Section 3.03 that clearly states this process is solely needed to avoid double dipping. Additionally, 3.03(6) should be changed to state:

The Authorized Government Representative is aware that the designer(s) listed above in 3.03(2) are taking the following Tax Deduction, \$XXX,XXX.

The Authorized Government Representative is not responsible for confirming the validity of 1. this Tax Deduction Calculation, 2. the Certifiers energy calculations, 3. methodology nor the 4. actual energy savings achieved. The Authorized Government Representative is merely attesting to the 5 items above.

Lastly, the “Penalties of Perjury” statement should remove the “including accompanying documents” statement. This statement is typically the jumping off point creating the confusion regarding the Authorized Government Representatives role.

3. Inspection

The current Inspection guidelines are unwieldy and deviate from the confines of the tax law. They incorrectly adopt the use of Building Code documentation where the law and the spirit of the law are related only to energy efficiency and reducing energy use. For example, for new construction and additions, under the current guidance, the following items need to be met or the project does not qualify for 179D.

- Two-lamp tandem-wired ballasts
- Case lighting has a separate control
- Task lighting has a separate control
- Exit signs larger than 20 W have an efficacy greater than or equal to 35 lumens/W.
- Exterior luminaires greater than 100 W have lamps with minimum efficacy of 60 lumens/W
- Insulation Materials are installed in accordance with manufacturer’s recommendations and in such a manner as to achieve rated R-value of insulation
 - Exception: for metal building roofs or metal building walls. (*Don’t follow manufacturer’s recommendations in this case. Huh?*)
- Roof insulation is not installed over suspended ceiling with removable ceiling panels.
- Entrance doors have vestibules.
- Construction documents require record drawings (§6.2.5.1), manuals (§6.2.5.2), system balancing (§6.2.5.3) and system commissioning

(§6.2.5.4).

- Freeze protection or snow/ice melting systems (if any) have controls to prevent operation in warm weather

These all relate to good practices to meet building code but are irrelevant as it relates to, “is the taxpayers building more energy efficient then a building built to the ASHRAE standards”.

The Inflation Reduction Act’s addition of the Alternative Deduction for Energy Efficient Building Retrofit Property clearly shows Congress’s intent is solely to reduce the use of energy. The EUI technique adopted, merely requires proof that the amount of energy used before the EECBP was installed is greater than after the installation. The building need not meet any building codes whatsoever. We request the Secretary dramatically reduce the 179D Inspection Compliance Burden. We recommend that a Qualified Individual, acting as the Inspector, sign off on a simple list of the Lighting, Lighting Controls, HVAC, HVAC Controls and Building Envelope they determined were fully functional in the building after the building/project was placed in service. This determination can be made visually or through an audit of invoiced and paid for equipment. In the case of retrofits, the inspection need only concern newly installed equipment. Historical documentation for non-retrofitted/retained equipment can be utilized.

After the Inspector signs off on this list of equipment the taxpayer should be required to cosign. Lastly, a mirror signature is made by the Certifier confirming that the equipment presented in the inspection document represents the only equipment reflected in the energy simulation model. We would welcome the opportunity to discuss with IRS these recommended changes to the Inspection process.

These changes would dramatically reduce the burden of 1hr-8hrs per Building
Est. Avg 4hrs per Building.

4. Modeling for Retrofits

The Secretary in conjunction with the Department of Energy should develop a

methodology to model retrofits allowing for the use of ASHRAE reference equipment for both Proposed and Reference models for the portion of projects that were not retrofitted. This would be an alternative offered to the modeler at their discretion, actual retained equipment could be used if known. With retrofit projects it is often very difficult, for example, to determine the appropriate values for the building envelope. This would allow those buildings a way to still be modeled. This would mirror the techniques developed in NREL-TP-5500-66774 for individual measures. Obviously the 25%-50% improvement would still be required.

Thank you for the opportunity to submit these comments. We request the opportunity to meet with Treasury, IRS, OMB, DOE and NREL to discuss these issues in greater detail and to answer any questions that you may have.

Respectfully submitted,

A handwritten signature in blue ink, appearing to read "Charles R. Goulding".

Charles Goulding
President

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A handwritten signature in blue ink, appearing to read "Jacob Goldman".

Jacob Goldman
Vice President

Jacob.goldman@energytaxsavers.com