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October 31, 2022

VIA ELECTRONIC DELIVERY

Internal Revenue Service
Attn: Andres Garcia
Room 6256
1111 Constitution Avenue NW
Washington, DC 20224

Re: Comment Request Concerning Deduction for Energy Efficient Commercial Buildings, OMB Number 1545-2004

Dear Mr. Garcia:

Pursuant to the Request for Comments contained in FR Doc. 2022-18827, alliantgroup, L.P. respectfully submits the following recommendations regarding Form 7205 to be used in claiming the Sec. 179D deduction for energy efficient commercial building property. alliantgroup is a national tax consulting services firm that works with CPA firms and their clients, generally in the small and mid-size business areas. In particular, alliantgroup works with both owners of energy efficient commercial building property and designers of government-owned buildings receiving allocations of the Sec. 179D deduction. We welcome the idea of a standard form for claiming the deduction as an opportunity to provide greater clarity to taxpayers and greater transparency to the Internal Revenue Service with respect to a complex provision. We have several recommendations for the form with some recommendations applying to all deductions for energy efficient commercial building property and others applying only to deductions allocated under Sec. 179D(d). We believe that these recommendations will enhance compliance by increasing the quality, utility, and clarity of the information collected. We look forward to working with the IRS on these and other matters and stand ready to discuss them.

I. Recommendations for all Energy Efficient Commercial Building Property Deductions

Section 179D allows taxpayers to deduct the cost of energy efficient commercial building property ("EECBP") placed in service during the taxable year. For tax years beginning prior to 1/1/2023, the maximum deduction is $1.80 per square foot, as adjusted for inflation. For property placed in service during tax years beginning after 1/1/2023, the Inflation Reduction Act, P.L. 117-169, Sec. 13303 makes several changes to the maximum amount of the deduction available depending on whether certain criteria are met.

EECBP is defined, prior to the Inflation Reduction Act, as property with respect to which depreciation or amortization is allowable, which is installed on or in any building within the scope of ASHRAE Standard 90.1 located in the United States as part of the interior lighting, HVAC, or

hot water systems of such building, which is certified as being installed as part of a plan designed to reduce the total annual energy and power costs with respect to those systems by 50 percent or more in comparison to a reference building.[1] Deductions are also available, with a smaller square footage cap, for partially qualifying property installed prior to the effective date of the Inflation Reduction Act provisions.[2] Post-Inflation Reduction Act, the minimum required energy reduction is reduced to 25 percent and the deduction for partially qualifying property is eliminated.

For each building on or in which energy efficient commercial building property is installed, Form 7205 should require the taxpayer to specify the following:

- The address of the building on or in which the property is installed;
- The date(s) the property was placed in service;
- The specific EECBP included in the deduction and for which the taxpayer's basis was reduced;
- The cost of the EECBP;
- The square footage of the building on or in which the EECBP was installed;
- The ASHRAE standard used in measuring the baseline building;
- The percentage of energy savings achieved; and
- For property placed in service prior to 2023, if a deduction is claimed for partially qualifying property, the building system in which the EECBP was included.

For each building on or in which energy efficient commercial building is installed on or after January 1st 2023, Form 7205 should also require the taxpayer to specify the following:

- If the property is installed as part of a qualified retrofit plan, the energy use intensity reduction, the dates on which the required certifications were performed, and the date on which the building was originally placed into service; and
- For taxpayers claiming the increased deduction amount under Sec. 179D(b)(3), statements certifying that the taxpayer has met the wage and apprenticeship requirements.

II. <u>Recommendations for Allocated Energy Efficient Commercial Building Property Deductions</u>

Section 179D allows certain entities to allocate the deduction, through a process outlined in IRS Notice 2008-40, to one or more designers of the energy efficient commercial building property.[3] A designer "is a person that creates the technical specifications for the energy efficient commercial building property… A designer may include, for example, an architect, engineer, contractor, environmental consultant or energy services provider who creates the technical specifications…"[4] Prior to 2023, the entities able to allocate the deduction included Federal,

[1] § 179D(c)(1) in effect prior to the enactment of P.L. 117-169.
[2] *See Id.* at § 179D(d)(1).
[3] *See* § 179D(d)(4) in effect prior to the enactment of P.L. 117-169; § 179D(d)(3) as enacted by P.L. 117-169; and Notice 2008-40, § 3.03.
[4] Notice 2008-40, §3.02.

State, and local governments and political subdivisions thereof.[5] For property placed in service in taxable years beginning after December 31, 2022, the entities able to allocate the deduction is expanded to include all government instrumentalities, Indian tribal governments and Alaska Native Corporations, and other organizations exempt from federal income tax.[6] Though the provision of an allocation letter to a qualifying designer "should be a simple administrative act[,]"[7] some government entities have made a practice of requiring designers to remit payments in exchange for the deduction, which may create questionable incentives in the selection of who is deemed qualified for the allocation.[8]

In addition to the abovementioned items, taxpayers claiming an allocated deduction on Form 7205 should also include the following:

- The name of entity making the allocation;
- The name of the authorized representative or who signed the allocation letter and their title;
- The portion of the deduction allocated and the amount of the total deduction available for the building; and
- A description of the way in which the taxpayer created technical specifications for the installation of the energy efficient commercial building property; and
- A certification that the taxpayer has not been required to make a payment to the allocating entity in exchange for the receipt of the allocation.

Conclusion

Thank you for the opportunity to comment on items to be included in Form 7205. We welcome the chance to meet to discuss the above comments in greater detail or to answer any questions that you may have.

[5] § 179D(d)(4) in effect prior to the enactment of P.L. 117-169

[6] § 179D(d)(3)(B) as enacted by P.L. 117-169.

[7] Letter from David J. Kautter to Sen. Benjamin Cardin, December 19, 2019.

[8] Letter from Sen. Ben Cardin to Sec. Jacob Lew and Sec. Julian Castro, August 8, 2016 (2016 TNT 154-16).