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## MEMORANDUM

DATE: February 29, 2012  
TO: File  
FROM: Christine L. Weingart  
RE: Section 179D Energy Tax Deduction

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### **Latest Developments for Energy Efficient Commercial Building Deduction**

Section 179D generally allows a deduction for the cost of all or part of energy efficient commercial building property placed in service during the taxable year. The energy efficient improvements must be placed in service before January 1, 2014.

Of special note for clients in the construction business is the provision providing that, where the energy efficient commercial building property is on or in property owned by a Federal, State or local government, or a political subdivision thereof, the deduction may be allocated to the person primarily responsible for designing the property, as opposed to the tax-exempt owner who could not utilize it. Code § 179D(d)(4). For this purpose, a designer is a person that creates the technical specifications for installation of energy efficient commercial building property. Notice 2008-40. A designer may include, for example, an architect, engineer, contractor, environmental consultant or energy services provider who creates the technical specifications for a new building or an addition to an existing building that incorporates energy efficient commercial building property. Note that a person that merely installs, repairs, or maintains the property is not a designer.

Energy efficient commercial building property is depreciable property which satisfies the following requirements: (1) the property is installed on or in any building that is located in the United States and is within the scope of Standard 90.1-2001; (2) the property is installed as part of the interior lighting systems, the heating, cooling, ventilation, and hot water systems, or the building envelope, and (3) it is certified that the interior lighting systems, heating, cooling, ventilation, and hot water systems, and the building envelope that have been incorporated into the building will reduce the total energy and power costs with respect to the combined usage of

those systems by 50 percent or more as compared to a Reference Building that meets the minimum requirements of Standard 90.1-2001.

The deduction may not exceed the excess of (1) the \$1.80 per square foot of the building, over (2) the aggregate 179D deductions allowed with respect to the building in prior taxable years. If the full 50 percent reduction in total annual energy and power costs is met, there is a potential partial deduction up to \$0.60 per square foot. To qualify for this deduction, the energy saving percentages permitted under IRS rules must be met.

The following table summarizes the energy savings percentages permitted under Notice 2006-52, Notice 2008-40 and Notice 2012-22.

<b>Summary of Energy Savings Percentages Provided by IRS Guidance</b>			
	Energy Savings Percentages permitted under Notice 2006-52	Energy Savings Percentages permitted under Notice 2008-40	Energy Savings Percentages permitted under Notice 2012-22
Interior Lighting Systems	16 $\frac{2}{3}$	20	25
Heating, Cooling, Ventilation, and Hot Water Systems	16 $\frac{2}{3}$	20	15
Building Envelope	16 $\frac{2}{3}$	10	10
Effective for property placed in service	January 1, 2006 – December 31, 2008	January 1, 2006 – December 31, 2013	Effective date of Notice 2012-22 – December 31, 2013; if § 179D is extended beyond December 31, 2013, also effective (except as otherwise provided in an amendment of § 179D or the guidance thereunder) during the period of the extension

Note that the energy saving percentages referenced must be to the total annual energy and power costs with respect to the combined usage of the building's heating, cooling, ventilation, hot water, and interior lighting systems. That is, as of the latest notice, an improvement to the interior lighting systems of property will qualify for the partial deduction only if the annual energy and power costs with respect to the combined systems is at least 25%.