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Notice 2006-52

Deduction for Energy Efficient Commercial Buildings

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SECTION 1. PURPOSE

This notice sets forth interim guidance, pending the issuance of regulations, relating to the deduction for energy efficient commercial buildings under § 179D of the Internal Revenue Code. Specifically, this notice sets forth a process that allows a taxpayer who owns, or is a lessee of, a commercial building and installs property as part of the commercial building's interior lighting systems, heating, cooling, ventilation, and hot water systems, or building envelope to obtain a certification that the property satisfies the energy efficiency requirements of § 179D(c)(1) and (d). This notice also provides for a public list of software programs that must be used in calculating energy and power consumption for purposes of § 179D. The Internal Revenue Service and the Treasury Department expect that the rules set forth in this notice will be incorporated in regulations.

SECTION 2. BACKGROUND

.01 *In General.* Section 1331 of the Energy Policy Act of 2005, Pub. L. No. 109-58, 119 Stat. 594 (2005), enacted § 179D of the Code, which provides a deduction with respect to energy efficient commercial buildings. Section 179D(a) allows a deduction to a taxpayer for part or all of the cost of energy efficient commercial building property that the taxpayer places in service after December 31, 2005, and before January 1, 2008. (See section 2.02 of this notice.) Sections 179D(d)(1) and 179D(f) allow a deduction to a taxpayer for part or all of the cost of certain partially qualifying commercial building property that the taxpayer places in service after December 31, 2005, and before January 1, 2008. (See sections 2.03, 2.04, and 2.05 of this notice.) For purposes of this notice partially qualifying commercial building property is property that would be energy efficient commercial building property but for the failure to achieve the 50-percent reduction in energy and power costs required under section 2.02(1)(c) of this notice.

.02 *Energy Efficient Commercial Building Property.*

(1) *In General.* Energy efficient commercial building property is depreciable property that satisfies each of the following conditions:

- (a) 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. (See section 5.02 of this notice for the description of buildings within the scope of Standard 90.1-2001 and section 5.06 of this notice for the complete description of Standard 90.1-2001.)
- (b) The property is installed as part of—
- (i) the interior lighting systems,
- (ii) the heating, cooling, ventilation, and hot water systems, or
- (iii) the building envelope.
- (c) It is certified that the interior lighting systems, heating, cooling, ventilation, and hot water systems, and building envelope that have been incorporated into the building, or that the taxpayer plans to incorporate into the building subsequent to the installation of such property, will reduce the total annual energy and power costs with respect to combined usage of the building's heating, cooling, ventilation, hot water, and interior lighting systems by 50 percent or more as compared to a Reference Building that meets the minimum requirements of Standard 90.1-2001. The required 50-percent reduction must be accomplished solely through energy and power cost reductions for the heating, cooling, ventilation, hot water, and interior lighting systems. Reductions in any other energy uses, such as receptacles, process loads, refrigeration, cooking, and elevators, are not taken into account in determining whether the 50-percent reduction is achieved.

(2) *Maximum Amount of Deduction.*

- (a) *In General.* The deduction for the cost of energy efficient commercial building property installed on or in a building shall not exceed the excess (if any) of—
- (i) the product of \$1.80 and the square footage of the building, over
- (ii) the aggregate amount of the § 179D deductions allowed with respect to the building for all prior taxable years.
- (b) *Application to Multiple Taxpayers.* If two or more taxpayers install energy efficient commercial building property on or in the same building, the aggregate amount of the § 179D deductions allowed to all such taxpayers with respect to the

building shall not exceed the amount determined under section 2.02(2)(a) of this notice.

.03 Partially Qualifying Property: Energy Efficient Lighting Property.

(1) *In General.* Energy efficient lighting property is partially qualifying property, within the meaning of section 2.01 of this notice, that is subject to either the permanent rule in section 2.03(1)(a) of this notice or the interim rule in section 2.03(1)(b) of this notice.

(a) *Permanent Rule.* Partially qualifying property is subject to the permanent rule if it is installed as part of the interior lighting systems of a building and it is certified that the interior lighting systems that have been incorporated into the building, or that the taxpayer plans to incorporate into the building subsequent to the installation of such property, will reduce the total annual energy and power costs with respect to combined usage of the building's heating, cooling, ventilation, hot water, and interior lighting systems by $16\frac{2}{3}$ percent or more as compared to a Reference Building that meets the minimum requirements of Standard 90.1-2001. The required $16\frac{2}{3}$ -percent reduction must be accomplished solely through energy and power cost reductions for the heating, cooling, ventilation, hot water, and interior lighting systems. Reductions in any other energy uses, such as receptacles, process loads, refrigeration, cooking, and elevators, are not taken into account in determining whether the $16\frac{2}{3}$ -percent reduction is achieved.

(b) *Interim Rule.* Partially qualifying property, within the meaning of section 2.01 of this notice, is subject to the interim rule if it is not subject to the permanent rule in section 2.03(1)(a) of this notice, if it is installed as part of the interior lighting systems of a building before the date on which final regulations under section 179D are published in the Federal Register, and it is certified that the interior lighting systems that have been incorporated into the building, or that the taxpayer plans to incorporate into the building,—

(i) Achieve a reduction in lighting power density of at least 25 percent (50 percent in the case of a warehouse) of the minimum requirements in Table 9.3.1.1 or Table 9.3.1.2 (not including additional interior lighting power allowances) of Standard 90.1-2001;

(ii) Have controls and circuiting that comply fully with the mandatory and prescriptive requirements of Standard 90.1-2001;

(iii) Include provision for bi-level switching in all occupancies except hotel and motel guest rooms, store rooms, restrooms, and public lobbies; and

(iv) Meet the minimum requirements for calculated lighting levels as set forth in the IESNA Lighting Handbook, Performance and Application, Ninth Edition, 2000.

(2) *Maximum Amount of Deduction.*

(a) *Property subject to the permanent rule.*

(i) *In General.* If the energy efficient lighting property installed on or in a building is subject to the permanent rule in section 2.03(1)(a) of this notice, the deduction for the cost of the property shall not exceed the excess (if any) of—

(A) the product of \$0.60 and the square footage of the building, over

(B) the aggregate amount of the § 179D deductions allowed with respect to energy efficient lighting property installed on or in the building for all prior taxable years.

(ii) *Application to Multiple Taxpayers.* If two or more taxpayers install energy efficient lighting property on or in the same building and the property is subject to the permanent rule in section 2.03(1)(a) of this notice, the aggregate amount of the § 179D deductions allowed to all such taxpayers with respect to the building shall not exceed the amount determined under section 2.03(2)(a)(i) of this notice.

(b) *Property subject to the interim rule.*

(i) *In General.* If the energy efficient lighting property installed on or in a building is subject to the interim rule in section 2.03(1)(b) of this notice, the deduction for the cost of the property is equal to the applicable percentage of the deduction that would be allowed if the property were subject to the permanent rule. In addition, the deduction for the cost of the property shall not exceed the excess (if any) of—

(A) the applicable percentage of the product of \$0.60 and the square footage of the building, over

(B) the aggregate amount of the § 179D deductions allowed with respect to energy efficient lighting property installed on or in the building for all prior taxable years.

(ii) *Applicable percentage.* If the interior lighting systems of the building achieve a reduction in lighting power density of at least 40 percent, the applicable percentage for the building is 100 percent. If the interior lighting systems of the building achieve a reduction in lighting power density of less than 40 percent, the applicable percentage for the building is 100 percent reduced at a rate of $3\frac{1}{3}$ percentage points per percentage point by which 40 percent exceeds the percentage reduction in lighting power density. For example, if the interior lighting systems achieve a reduction in lighting power density of 32.5 percent, the applicable percentage is 75 percent ($100 - (3\frac{1}{3} \times (40 - 32.5))$).

(iii) *Application to Multiple Taxpayers.* If two or more taxpayers install energy efficient lighting property on or in the same building and the property is subject to the interim rule in section 2.03(1)(b) of this notice, the aggregate amount of the § 179D deductions allowed to all such taxpayers with respect to the building shall not exceed the amount determined under section 2.03(2)(b)(i) of this notice.

.04 Partially Qualifying Property: Energy Efficient Heating, Cooling, Ventilation, and Hot Water Property.

(1) *In General.* Energy efficient heating, cooling, ventilation, and hot water property is partially qualifying property, within the meaning of section 2.01 of this notice, that satisfies both of the following conditions:

(a) The property is installed as part of the heating, cooling, ventilation, and hot water systems of a building; and

(b) It is certified that the heating, cooling, ventilation, and hot water systems that have been incorporated into the building.

or that the taxpayer plans to incorporate into the building subsequent to the installation of such property, will reduce the total annual energy and power costs with respect to combined usage of the building's heating, cooling, ventilation, hot water, and interior lighting systems by $16\frac{2}{3}$ percent or more as compared to a Reference Building that meets the minimum requirements of Standard 90.1-2001. The required $16\frac{2}{3}$ -percent reduction must be accomplished solely through energy and power cost reductions for the heating, cooling, ventilation, and hot water systems. Reductions in any other energy uses, such as receptacles, process loads, refrigeration, cooking, and elevators, are not taken into account in determining whether the $16\frac{2}{3}$ -percent reduction is achieved.

(2) *Maximum Amount of Deduction.*

(a) *In General.* The deduction for the cost of energy efficient heating, cooling, ventilation, and hot water property installed on or in a building shall not exceed the excess (if any) of—

(i) the product of \$0.60 and the square footage of the building, over

(ii) the aggregate amount of the § 179D deductions allowed with respect to energy efficient heating, cooling, ventilation, and hot water property installed on or in the building for all prior taxable years.

(b) *Application to Multiple Taxpayers.* If two or more taxpayers install energy efficient heating, cooling, ventilation, and hot water property on or in the same building, the aggregate amount of the § 179D deductions allowed to all such taxpayers with respect to the building shall not exceed the amount determined under section 2.04(2)(a) of this notice.

.05 *Partially Qualifying Property: Energy Efficient Building Envelope Property.*

(1) *In General.* Energy efficient building envelope property is partially qualifying property, within the meaning of section 2.01 of this notice, that satisfies both of the following conditions:

(a) The property is installed as part of the building envelope of a building; and

(b) It is certified that the building envelope that has been incorporated into the building, or that the taxpayer plans to incorporate into the building subsequent to the installation of such property, will reduce the total annual energy and power costs with respect to combined usage of the building's heating, cooling, ventilation, hot water, and interior lighting systems by $16\frac{2}{3}$ percent or more as compared to a Reference Building that meets the minimum requirements of Standard 90.1-2001. The required $16\frac{2}{3}$ -percent reduction must be accomplished solely through energy and power cost reductions for the heating, cooling, ventilation, hot water, and interior lighting systems. Reductions in any other energy uses, such as receptacles, process loads, refrigeration, cooking, and elevators, are not taken into account in determining whether the $16\frac{2}{3}$ -percent reduction is achieved.

(2) *Maximum Amount of Deduction.*

(a) *In General.* The deduction for the cost of energy efficient building envelope property installed on or in a building shall not exceed the excess (if any) of—

(i) the product of \$0.60 and the square footage of the building, over

(ii) the aggregate amount of the § 179D deductions allowed with respect to energy efficient building envelope property installed on or in the building for all prior taxable years.

(b) *Application to Multiple Taxpayers.* If two or more taxpayers install energy efficient building envelope property on or in the same building, the aggregate amount of the § 179D deductions allowed to all such taxpayers with respect to the building shall not exceed the amount determined under section 2.05(2)(a) of this notice.

SECTION 3. METHOD OF COMPUTATION

.01 *In General.* The Performance Rating Method (PRM) must be used to compute the percentage reduction in the total annual energy and power costs with respect to combined usage of a building's heating, cooling, ventilation, hot water, and interior lighting systems as compared to a Reference Building that meets the minimum requirements of Standard 90.1-2001.

.02 *Performance Rating Method (PRM).* For purposes of this notice, the PRM includes the following computations:

(1) Reference Building Energy and Power Costs equal the sum of the energy and power costs for the following components of the Reference Building:

(a) Interior Lighting,

(b) Heating,

(c) Cooling,

(d) Ventilation, and

(e) Hot Water.

(2) Proposed Building Energy and Power Costs equal the sum of the energy and power costs for the same components of the Proposed Building.

(3) Percentage Reduction in Energy and Power Costs is determined by—

(a) Subtracting Proposed Building Energy and Power Costs from Reference Building Energy and Power Costs; and

(b) Expressing the difference as a percentage of Reference Building Energy and Power Costs.

.03 *Reference Building.* For purposes of this notice, the Reference Building is a building that is located in the same climate zone as the taxpayer's building and is otherwise comparable to the taxpayer's building except that its interior lighting systems, heating, cooling, ventilation, and hot water systems, and building envelope meet the minimum requirements of Standard 90.1-2001. The energy performance of the Reference Building shall be determined by following the methods for baseline building performance in the PRM in Appendix G of Standard 90.1-2004. In calculating baseline building performance, the Reference Building shall use the following additional requirements from the 2005 California Title 24 Nonresidential Alternative Calculation Method (ACM) Approval Manual:

- (1) Number of occupants, occupant sensible and latent heat loads, receptacle loads, and hot water loads from ACM Tables N2-2 for whole building values and Table N2-3 for building area values appropriate for mixed use buildings;
- (2) Occupancy, HVAC, fans, infiltration, hot water, lighting, and equipment schedules from ACM Tables N2-4 through N2-9;
- (3) Infiltration modeled following ACM Section 2.4.1.6;
- (4) Luminaire power for interior lighting systems from the 2005 California Title 24 Nonresidential ACM Appendix NB or from manufacturers data.

.04 *Proposed Building.*

(1) *Energy Efficient Commercial Building Property.* In computing energy and power cost savings for purposes of section 2.02 (relating to energy efficient commercial building property), the Proposed Building is a building that contains the interior lighting systems, heating, cooling, ventilation, and hot water systems, and building envelope that have been incorporated, or that the taxpayer plans to incorporate, into the taxpayer's building but that is otherwise identical to the Reference Building.

(2) *Energy Efficient Lighting Property.* In computing energy and power cost savings for purposes of section 2.03 (relating to energy efficient lighting property), the Proposed Building is a building that contains the interior lighting systems that have been incorporated (or that the taxpayer plans to incorporate) into the taxpayer's building but that is otherwise identical to the Reference Building.

(3) *Energy Efficient Heating, Cooling, Ventilation, and Hot Water Property.* In computing energy and power cost savings for purposes of section 2.04 (relating to energy efficient heating, cooling, ventilation, and hot water property), the Proposed Building is a building that contains the heating, cooling, ventilation, and hot water systems that have been incorporated, or that the taxpayer plans to incorporate, into the taxpayer's building but that is otherwise identical to the Reference Building.

(4) *Energy Efficient Building Envelope Property.* In computing energy and power cost savings for purposes of section 2.05 (relating to energy efficient building envelope property), the Proposed Building is a building that contains the building envelope that has been incorporated, or that the taxpayer plans to incorporate, into the taxpayer's building but that is otherwise identical to the Reference Building.

SECTION 4. CERTIFICATION

Before a taxpayer may claim the § 179D deduction with respect to property installed on or in a commercial building, the taxpayer must obtain a certification with respect to the property. The certification must be provided by a qualified individual and satisfy the requirements of § 179D(c)(1). A taxpayer is not required to attach the certification to the return on which the deduction is taken. However, § 1.6001-1(a) of the Income Tax Regulations requires that taxpayers maintain such books and records as are sufficient to establish the entitlement to, and amount of, any deduction claimed by the taxpayer. Accordingly, a taxpayer claiming a deduction under § 179D should retain the certification as part of the taxpayer's records for purposes of § 1.6001-1(a) of the Income Tax Regulations. A certification will be treated as satisfying the requirements of § 179D(c)(1) if the certification contains all of the following:

- .01 The name, address, and telephone number of the qualified individual.
- .02 The address of the building to which the certification applies.
- .03 One of the following statements by the qualified individual:

(1) Statement for energy efficient commercial building property: The interior lighting systems, heating, cooling, ventilation and hot water systems, and building envelope that have been, or are planned to be, incorporated into the building will reduce the total annual energy and power costs with respect to combined usage of the building's heating, cooling, ventilation, hot water, and interior lighting systems by 50 percent or more as compared to a Reference Building that meets the minimum requirements of Standard 90.1-2001.

(2) Statement for energy efficient lighting property that satisfies the requirements of the permanent rule of section 2.03(1)(a) of this notice: The interior lighting systems that have been, or are planned to be, incorporated into the building will reduce the total annual energy and power costs with respect to combined usage of the building's heating, cooling, ventilation, hot water, and interior lighting systems by $16\frac{2}{3}$ percent or more as compared to a Reference Building that meets the minimum requirements of Standard 90.1-2001.

(3) Statement for energy efficient lighting property that satisfies the requirements of the interim rule of section 2.03(1)(b) of this notice: The interior lighting systems that have been, or are planned to be, incorporated into the building satisfy the requirements of the interim rule of section 2.03(1)(b) of Notice 2006-52.

(4) Statement for energy efficient heating, cooling, ventilation, and hot water property: The heating, cooling, ventilation, and hot water systems that have been, or are planned to be, incorporated into the building will reduce the total annual energy and power costs with respect to combined usage of the building's heating, cooling, ventilation, hot water, and interior lighting systems by $16\frac{2}{3}$ percent or more as compared to a Reference Building that meets the minimum requirements of Standard 90.1-2001.

(5) Statement for energy efficient building envelope property: The building envelope that has been, or is planned to be, incorporated into the building will reduce the total annual energy and power costs with respect to combined usage of the building's heating, cooling, ventilation, hot water, and interior lighting systems by $16\frac{2}{3}$ percent or more as compared to a Reference Building that meets the minimum requirements of Standard 90.1-2001.

.04 A statement by the qualified individual that the amount of such reduction has been determined under the rules of Notice 2006-52.

.05 A statement by the qualified individual that field inspections of the building performed by a qualified individual after the property has been placed in service have confirmed that the building has met, or will meet, the energy-saving targets contained in the design plans and specifications, and that the field inspections were performed in accordance with any inspection and testing procedures that (1) have been prescribed by the National Renewable Energy Laboratory (NREL) as Energy Savings Modeling and Inspection Guidelines for Commercial Building Federal Tax Deductions and (2) are in effect at the time the certification is given.

.06 A statement that the building owner has received an explanation of the energy efficiency features of the building and its projected annual energy costs;

.07 A statement that qualified computer software was used to calculate energy and power consumption and costs and identification of the qualified computer software used (see section 6 of this notice).

.08 A list identifying the components of the interior lighting systems, heating, cooling, ventilation, and hot water systems, and building envelope installed on or in the building, the energy efficiency features of the building, and its projected annual energy costs.

.09 A declaration, applicable to the certification and any accompanying documents, signed by the qualified individual, in the following form:

"Under penalties of perjury, I declare that I have examined this certification, including accompanying documents, and to the best of my knowledge and belief, the facts presented in support of this certification are true, correct, and complete."

SECTION 5. DEFINITIONS

The following definitions apply for purposes of this notice:

.01 *Building Square Footage.* The sum of the floor areas of the conditioned spaces within the building, including basements, mezzanine, and intermediate-floored tiers, and penthouses with headroom height of 7.5 feet or greater. Building square footage is measured from the exterior faces of exterior walls or from the centerline of walls separating buildings, but excludes covered walkways, open roofed-over areas, porches and similar spaces, pipe trenches, exterior terraces or steps, chimneys, roof overhangs, and similar features.

.02 *Building within the Scope of Standard 90.1-2001.* A structure that—

(1) Is wholly or partially enclosed within exterior walls, or within exterior and party walls, and a roof, affording shelter to persons, animals, or property; and

(2) Is not a single-family house, a multi-family structure of three stories or fewer above grade, a manufactured house (mobile home), or a manufactured house (modular).

.03 *Conditioned Space.* Any enclosed space within the building qualifying as cooled space, heated space, or indirectly conditioned space defined as follows:

(1) *Cooled Space.* An enclosed space that is cooled by a cooling system whose sensible output capacity exceeds 5 Btu per hour per square foot of floor area.

(2) *Heated Space.* An enclosed space that is heated by a heating system whose output capacity relative to the floor area exceeds 5 Btu per hour per square foot of floor area.

(3) *Indirectly Conditioned Space.* An enclosed space (other than a heated space or a cooled space) that is heated or cooled indirectly by being connected to adjacent space(s) and that satisfies either of the following conditions:

(a) The space's surface area that is adjacent to heated or cooled space multiplied by the weighted average U-factor of such adjacent surface area exceeds the space's surface area adjoining the outdoors, unconditioned spaces, and semi-heated spaces (e.g., corridors) multiplied by the weighted average U-factor of such adjoining surface area; or

(b) The air from heated or cooled spaces is intentionally transferred (naturally or mechanically) into the space at a rate exceeding 3 air changes per hour (ACH).

.04 *Qualified Computer Software.* Software that meets the following requirements:

(1) The software is included (at the time the certification is given) on the Department of Energy's published list of qualified software as described in section 6 of this notice.

(2) The software provides any information that regulations or other guidance require the taxpayer to file in connection with energy efficiency of property and the deduction allowed under § 179D.

(3) The software provides information that allows the user to document the energy efficiency features of the building and its projected annual energy costs.

.05 *Qualified Individual.* An individual that—

(1) Is not related (within the meaning of §45(e)(4)) to the taxpayer claiming the deduction under § 179D;

(2) Is an engineer or contractor that is properly licensed as a professional engineer or contractor in the jurisdiction in which the building is located; and

(3) Has represented in writing to the taxpayer that he or she has the requisite qualifications to provide the certification required under section 4 of this notice (in the case of an individual providing the certification) or to perform the inspection and testing described in section 4.05 of this notice (in the case of an individual performing the inspection).

.06 *Standard 90.1-2001.* ANSI/ASHRAE/IESNA Standard 90.1-2001, Energy Standard for Buildings Except Low-Rise Residential Buildings, developed for the American National Standards Institute by the American Society of Heating, Refrigerating, and Air Conditioning Engineers and the Illuminating Engineering Society of North America (as in effect on

date).

SECTION 6. LIST OF APPROVED SOFTWARE PROGRAMS

.01 *In General.* The Department of Energy will create and maintain a public list of software that may be used to calculate energy and power consumption and costs for purposes of providing a certification under section 4 of this notice. This public list will appear at http://www.eere.energy.gov/buildings/info/tax_credit_2006.html. Software will be included on the list if the software developer submits the following information to the Department of Energy:

- (1) The name, address, and (if applicable) web site of the software developer;
- (2) The name, email address, and telephone number of the person to contact for further information regarding the software;
- (3) The name, version, or other identifier of the software as it will appear on the list;
- (4) All test results, input files, output files, weather data, modeler reports, and the executable version of the software with which the tests were conducted; and
- (5) A declaration by the developer of the software, made under penalties of perjury, that—
 - (a) The software has been tested according to the American National Standards Institute/American Society of Heating, Refrigerating and Air-Conditioning Engineers (ANSI/ASHRAE) Standard 140-2004 Standard Method of Test for the Evaluation of Building Energy Analysis Computer Programs;
 - (b) The software can model explicitly—
 - (i) 8,760 hours per year;
 - (ii) Calculation methodologies for the building components being modeled;
 - (iii) Hourly variations in occupancy, lighting power, miscellaneous equipment power, thermostat setpoints, and HVAC system operation, defined separately for each day of the week and holidays;
 - (iv) Thermal mass effects;
 - (v) Ten or more thermal zones;
 - (vi) Part-load performance curves for mechanical equipment;
 - (vii) Capacity and efficiency correction curves for mechanical heating and cooling equipment; and
 - (viii) Air-side and water-side economizers with integrated control; and
 - (c) The software can—
 - (i) Either directly determine energy and power costs or produce hourly reports of energy use by energy source suitable for determining energy and power costs separately; and
 - (ii) Design load calculations to determine required HVAC equipment capacities and air and water flow rates.

.02 *Addresses.* Submissions under this section must be addressed as follows:

Commercial Software List
 Department of Energy
 Office of Building Technologies,
 EE-2J
 1000 Independence Ave., SW
 Washington, DC 20585-0121

.03 *Original and Updated Lists.* Software will be included on the original list if the software developer's submission is received before July 1, 2006. The list will be updated as necessary to reflect submissions received after June 30, 2006.

.04 *Removal from Published List.* The Department of Energy may, upon examination, determine that software is not sufficiently accurate to justify its use in calculating energy and power consumption and costs for purposes of providing a certification under section 4 of this notice and remove the software from the published list. The Department of Energy may undertake such an examination on its own initiative or in response to a public request supported by appropriate analysis of the software's deficiencies.

.05 *Effect of Removal from Published List.* Software may not be used to calculate energy and power consumption and costs for purposes of providing a certification with respect to property placed in service after the date on which the software is removed from the published list. The removal will not affect the validity of any certification with respect to property placed in service on or before the date on which the software is removed from the published list.

.06 *Public Availability of Information.* The Department of Energy may make all information provided under paragraph .01 of this section available for public review.

SECTION 7. PAPERWORK REDUCTION ACT

The collections of information contained in this notice have been reviewed and approved by the Office of Management and Budget in accordance with the Paperwork Reduction Act (44 U.S.C. 3507) under control number 1545-2004.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number.

The collections of information in this notice are in sections 4 and 6. This information is required to be collected and retained

in order to ensure that energy efficient commercial building property meets the requirements for the deduction under § 179D. This information will be used to determine whether commercial building property for which certifications are provided is property that qualifies for the deduction.

The collection of information is required to obtain a benefit.

The likely respondents are two groups: qualified individuals providing a certification under § 179D (section 4) and software developers seeking to have software included on the public list created by the Department of Energy (section 6).

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.

For software developers seeking to have software included on the public list created by the Department of Energy, the likely respondents are individuals, corporations and partnerships. The estimated total annual reporting burden is 75 hours. The estimated annual burden per respondent varies from 1 to 2 hours, depending on individual circumstances, with an estimated average burden of 1½ hours to complete the submission required to have the software added to the public list. The estimated number of respondents is 50. The estimated frequency of responses is once.

Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any Internal Revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

SECTION 8. DRAFTING INFORMATION

The principal author of this notice is Jennifer C. Bernardini of the Office of Associate Chief Counsel (Passthroughs & Special Industries). For further information regarding this notice, contact Jennifer C. Bernardini at (202) 622-3120 (not a toll-free call).

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