

## New IRS Chief Counsel Memo Provides Clarification as to Eligible “Designer” for §179D Energy Efficient Commercial Building Deduction on Public Projects



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On December 7, 2018, the IRS Office of Chief Counsel released AM 2018-005, which is a memorandum explaining the eligibility for allocation of the §179D Energy Efficient Commercial Building Property Deduction (§179D Deduction) for “designers” of public projects.

### BACKGROUND

The §179D Deduction is a Federal tax incentive designed to promote taxpayers to construct energy efficient buildings as well as encourage building owners to make improvements to existing structures that reduce energy and power costs. The §179D incentive provides a maximum deduction of up to \$1.80 per square foot of the building’s floor area and applies to interior lighting systems, heating, cooling, ventilation, hot water systems or building envelope.

A special rule under §179D provides that architects, engineers, contractors, environmental consultants or energy services providers may also be eligible for the incentive on public projects. On a public project, only a “designer” is eligible to take the incentive, as defined below:

A designer is a person that creates the technical specifications for installation of energy efficient commercial building property (or partially qualifying commercial building property for which a deduction is allowed under §179D). 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 (or partially qualifying commercial building property for which a deduction is allowed under § 179D). A person that merely installs, repairs, or maintains the property is not a designer.

### MEMORANDUM 2018-005

The Chief Counsel Memorandum clarifies ambiguity as to whom is eligible to take the §179D Deduction and for how much. While the Memorandum cannot be cited as precedent, it provides taxpayers guidance by providing eight scenarios, as summarized below:

**Scenario 1:** During preconstruction of a government warehouse involving an architect/engineering team and a separate general contractor, the general contractor suggested changes to the placement of roof-top HVAC/hot water units and corresponding electrical conduit and ductwork to avoid interference with the roof support structure. Absent other design responsibilities, the general contractor is ineligible for the §179D Deduction.

**Scenario 2:** An architect entered into a contract with a government building owner solely to design the exterior shell of a building and no other systems. This contract was one of several contracts the owner entered with firms to design the government building. Even though the architect neither designed the HVAC/hot water nor the lighting systems, the architect may be eligible to claim the full \$1.80 per square foot §179D Deduction.

**Scenario 3:** A construction manager that neither had a contractual relationship with the various trades that designed and installed the energy efficiency commercial building property nor created technical specifications for a project is ineligible for the §179D Deduction.

**Scenario 4:** A contractor who installed a replacement HVAC/hot water system in a government-owned building designed by a separate engineer is ineligible for the §179D Deduction.

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**Scenario 5:** Same as Scenario 4, whereby subcontractor hired by contractor to provide required HVAC/hot water system controls as well as related shop drawings was not eligible for §179D Deduction because subcontractor did not meet requirements of a designer.

**Scenario 6:** Same as Scenario 4, whereby contractor sized ductwork and provided shop drawings was ineligible for §179D Deduction, as shop drawings are not considered technical specifications.

**Scenario 7:** Lighting firm created design specifications for the building’s lighting system but did not design the building envelope or HVAC/hot water systems was eligible for full \$1.80 §179D Deduction.

**Scenario 8:** A mechanical engineer on a design team hired a specialty subcontractor to design and install control systems for the HVAC/hot water systems, interior lighting, elevator, escalator, automatic door, back-up power and several other building systems that use power (i.e., energy management system) may be eligible for §179D Deduction.

Click [here](#) for the full text of Memorandum 2018-005.

### HOW WE CAN HELP

With a team that includes CPAs, attorneys, and professional engineers, ICS provides free analyses to determine if the §179D Deduction is feasible, and if so, provide the necessary third-party certifications and other assistance to benefit from it. For a free consultation, please contact Steve Ruda at 605-929-6942 or [stever@ics-tax.com](mailto:stever@ics-tax.com).

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