

THE ENERGY EFFICIENT COMMERCIAL BUILDINGS DEDUCTION, “179D”

By Erin Stackley

Energy efficiency is a hot topic in commercial real estate these days. In all types of commercial buildings, from warehouses to apartment complexes, there are options to reduce energy usage, ranging from big changes (new HVAC systems) to smaller ones (energy-efficient lightbulbs). In addition to reducing energy consumption and helping owners and tenants save money on their utility bills, energy-efficiency improvements can increase a property's attractiveness to new tenants, and help it retain value as it ages.

The U.S. tax code has, for over a decade, included a provision incentivizing energy-efficient updates in commercial buildings – Section 179D, the Energy Efficient Commercial Buildings Deduction. Enacted as part of the “Energy Policy Act” of 2005, this provision allows commercial building owners who improve the building's energy-efficiency to receive a deduction of as much as \$1.80 per square foot in the year the upgrade goes into service. These improvements can be via the building envelope, the HVAC system, hot water, or the interior lighting system. Notably, the deduction is for both new construction and retrofits, and does not favor any particular method of conserving or reducing energy use – giving flexibility to building owners.

To ensure that these improvements are actually made, a third-party certification is required to claim the deduction.

Unfortunately, 179D is not a permanent part of the U.S. tax code, but rather falls into the temporary “extenders” category. Extenders are non-permanent tax breaks or deductions that have expiration dates attached to them, which are commonly extended by Congress on a semi-regular basis. Despite being a popular deduction with bipartisan support in Congress, this puts Section 179D at risk; though its benefits are obvious and it has few detractors, the cost of extending it must be “offset” by something, or else it adds to the federal budget deficit. Since 2014, it has been allowed to expire twice, but each time it was then retroactively extended by Congress to keep its coverage continuous. Most recently, it was retroactively extended for two years by the Bipartisan Budget Act of 2018, signed into law in February. This allows building owners to claim the deduction for improvements made in 2017 on their 2018 taxes, but puts the future of the deduction into question.

Complicating matters further is the fact that the 2015 omnibus tax and spending bill made over a third of the tax extenders into permanent law – but not 179D – and

two years later, the Tax Cuts and Jobs Act, a major reform bill, also did not include it. This puts the deduction in a small group of “orphan” extenders whose fate are more uncertain than in previous years, as the appetite in the tax writing committees to reauthorize these provisions, especially in the House Ways and Means Committee, is simply not there.

There is still hope for 179D, though. As mentioned, it is a popular deduction with broad support. A recent “Member Roundtable” by the House Ways and Means Subcommittee on Tax Policy focused exclusively on extenders, and 179D was one of the topics it focused on. As the Committee continues its work, public hearings are expected as well. One possibility is that there will be an extenders package this year, but it will focus on just a few of the provisions, and the rest will be eliminated, so it is important that 179D remains in the forefront of the conversations.

NAR is advocating strongly for 179D, as it is an important deduction for commercial building owners and managers. NAR works closely with other commercial real estate groups to lobby Congress on this provision, and will continue to push for a long-term reauthorization in the 115th Congress. ▽