

Coalition Comments on and Exceptions to TIAP CBTD Recommendations

The National Electrical Manufacturers Association convened a broad stakeholder coalition representing building owners, designers, manufacturers, distributors, installation contractors, efficiency advocates, and government to work together to ensure success of the tax deduction. The Coalition for the Commercial Buildings Tax Deduction generally endorses the Tax Incentives Assistance Project November 14, 2005 recommendations, with the following additions or exceptions. A list of current participants in the Coalition is attached.

Partial Allowances for Building Systems

We appreciate TIAP's efforts to address the question of "fair shares" of energy cost savings for the system \$0.60 per square foot Partial Allowances. We endorse this approach for the mechanical systems and building envelope. However, for lighting we recommend making permanent the interim Partial Allowance rules, as detailed below.

For lighting we recommend that the EAct 2005 Section 1331 interim partial allowance provision be incorporated into the final rule. Compared to the TIAP proposal for lighting, this approach would typically save more energy, would maintain quality lighting levels, and reduce the confusion in the marketplace that would come from changing the rules. The requirement to satisfy minimum calculated lighting levels as set forth in the Illuminating Engineering Society of North America Lighting Handbook, Performance and Application, Ninth Edition, 2000, should be retained for the final \$0.60 system Partial Allowance rule and added to the whole building requirements for the \$1.80 deduction, as well. Reducing lighting below Handbook levels should not be a means to satisfy the tax deduction requirements.

A sliding scale for mechanical systems and building envelope should be added for these system partial allowances. EAct 2005 does not preclude nor prohibit this and the interim lighting provision already includes a sliding scale for system deductions below \$0.60 per square foot. Adding this for other building systems would increase national energy savings.

We believe the Treasury Department has enough discretion and latitude in promulgating implementation rules for the partial tax deductions to allow a prorated partial deduction similar to the interim rules for lighting systems (Sec. 179D (f).) for mechanical systems and building envelope. Therefore we recommend that Treasury allow a sliding scale approach that provides the full \$0.60 per square foot deduction for a 50 percent reduction with respect to the custom building subsystem target down to \$0.30 per square foot for a 25 percent reduction. Reductions of less than 25 percent would not qualify for a partial deduction.

The formula for determining the applicable prorated deduction percentage under this sliding scale would be:

Equation 1: Applicable percentage = 50% + [50% x ((% reduction of energy costs - 25%) / 25%)]

Comments on TIAP Report

1. The phrase "placed in service" is used in several places in the TIAP document (pp. 2, 11, 12). "Placed in service" is a tax concept and it is between the IRS and the building owner to determine when the property is placed in service. The independent inspectors and certifiers are not qualified to, nor does the statute require them to, determine when property is placed in service. All the independent inspectors and certifiers should determine is whether or not the requisite property has been "installed."
2. There needs to be some clarification of the discussion on Page 3 regarding energy cost savings. In addition to the systems in ASHRAE 90.1 to be considered towards achieving the 50% below ASHRAE 90.1-2001 performance and \$1.80 per square foot deduction, the *DESCRIPTION AND TECHNICAL EXPLANATION OF THE CONFERENCE AGREEMENT OF H.R. 6, TITLE XIII, "ENERGY TAX INCENTIVES ACT OF 2005"* dated July 27, 2005 allows energy cost reductions resulting from additional systems (see discussion in the last paragraph on page 78 of the referenced document) to be included. The deduction is capped at \$1.80 or the cost of the ASHRAE 90.1 scope systems TIAP refers to, but the calculation of energy savings can include savings from the additional systems Congress refers to in the *TECHNICAL EXPLANATION*.
3. Some participants believe that the TIAP document contains statements on pages 5 and 6 that are *non sequiturs* and that are inconsistent with the recognition that it is not practical to expect that a 50% reduction in the energy use of building mechanical systems can be achieved with current technology. It is one thing to say that because building mechanical systems account for a much greater percentage of overall building energy consumption than do lighting and envelope, any reduction in the energy use of mechanical systems is likely to have a greater effect on overall building energy use than will reductions in the amount of energy used by lighting and envelope systems. But it is illogical and a *non sequitur* to conclude that it is therefore much easier to reach any default target in the mechanical systems than in the lighting and envelope systems. No factual basis is provided for the statement on page 5 that "on a practical basis there is a much larger potential to meet 'default' targets in mechanical systems than there is for lighting," or for the statement on page 6 that "the 'default' one-third allocation requiring 16.7 percent reductions is challenging to meet for envelope and lighting systems, and not so difficult for mechanical systems."
4. Qualifications of certified energy analysts--one of the qualifications appears to be that the analyst be experienced in computer modeling (page 10, item #2). However, the interim lighting rules do not require computer analysis (see page 14, item #1) and we are proposing that the interim lighting rules be made permanent. The qualification rules should clarify that computer expertise is required only as necessary.

Government Buildings

An area not addressed by TIAP is special rules for public buildings. The following should be added to the final rules to handle this building ownership.

Administrative guidance with respect to the deduction applicable to energy efficient commercial building property placed in service in a governmental building

Background

Internal Revenue Code Section 179D, as added by the Energy Policy Act of 2005, allows a taxpayer to immediately expense and deduct costs incurred for energy efficient commercial building property placed in service during the taxable year in lieu of capitalizing and recovering such costs over time through allowances for depreciation. In the case of energy efficient commercial building property installed on or in property owned by a Federal, State, or local government (or a political subdivision thereof) (i.e., a “governmental body”), the Secretary of the Treasury shall promulgate a regulation to allow the allocation of the deduction to the person primarily responsible for designing the property in lieu of the owner of the property.

The purpose of the governmental body flow-thru provision is to provide a benefit to public agencies (roughly parallel to the tax benefit to private building owners) as an incentive for them to invest in energy efficiency in new public buildings and energy-efficient improvements in existing public buildings.

Allocation to “Person Primarily Responsible”

Treasury regulations should define the “person primarily responsible for designing the property” as the person who provides qualified energy services to the governmental body. In the case of new building construction or major renovation, such person generally would include an architect or engineer of record or design-build firm that provides qualified energy services. In the case of a retrofit of an existing building, such person generally may also include be an energy services company, utility company or licensed professional providing qualified energy services.

Qualified energy services include designing, specifying, installing, or assuring the performance of the energy efficient commercial building property associated with the expected energy savings. Examples of such services include: additional energy-saving design or engineering services associated with the energy saving targets, post-construction building performance commissioning services.

Energy efficient commercial building property generally will affect three different subsystems of a building—lighting, HVAC and the envelope. In some instances, more than one person will be responsible for providing qualified energy savings to a governmental body with respect to a specific project. In addition, an energy-saving plan may involve design, implementation and monitoring services, each provided by a different person. Thus, Treasury regulation should allow a governmental body to allocate the tax deduction among such persons, in proportion to their contribution to the project

producing the energy savings. An allocation may not act to subsidize work performed that is not related to the energy efficiency.

Treatment by “Person Primarily Responsible”

The person or persons to whom the deduction is allocated shall be entitled to the deduction in the year in which the energy efficient commercial building property is placed in service. A person entitled to the deduction shall reduce the adjusted tax basis of depreciable property used in his or her trade or business and, to the extent of the amount of any deduction in excess of such basis, shall include the amount of such excess in gross income ratably over 15 years.

Reporting Requirements

Treasury regulations shall provide the manner, if any, in which governmental bodies shall report to responsible persons the amount of deduction allowed the person and the taxable year in which the deduction is allowed. Similarly, the regulations shall provide how the responsible person reports the deduction on its tax return as well as reduces the basis of depreciable property and/or includes amounts in income.

Company/Organization

ACCA - Air Conditioning Contractors of America

AIA - The American Institute of Architects

Air Conditioning Contractors of America

ARI - Air-Conditioning & Refrigeration Institute

Alliance to Save Energy

American Standard

ASHRAE – American Society of Heating, Refrigerating and Air-Conditioning Engineers

AEE - Association of Energy Engineers

BOMA - Building Owners & Managers Association International

Capitol Tax Partners

Construction Industry Technology, Inc.

EEI - Edison Electric Institute

GAMA- Association of Appliance & Equipment Manufacturers

Honeywell, Inc.

IESNA - Illuminating Engineering Society of North America

Imark Group

IMT – Institute for Market Transformation

ICAA - Insulation Contractors Association of America

ICSC - International Council of Shopping Center

Johnson Controls, Inc.

MCAA - Mechanical Contractors Association of America

NAIMA - North American Insulation Manufacturers Association

NASEO - National Association of State Energy Officials

NAED - National Association of Electrical Distributors

NECA - National Electrical Contractors Association

NRDC - Natural Resources Defense Council

NCCASHRAE – National Capital Chapter American Society of Refrigerating Engineers

NECA - National Electrical Contractors Association

NEMA – National Electrical Manufacturers Association

NRCA - National Roofing Contractors Association

PHCC – Plumbing Heating Cooling Contractors Association

PIMA - Polyisocyanurate Insulation Manufacturers Association

SMACNA - Sheet Metal and Air-conditioning Contractors' National Association

The Real Estate Roundtable