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Section 179D: Best Tax Provision You've Never Heard of

BY **JIM RAMSTAD**, former U.S. Congressman/Chairman of the IRS Oversight Committee and alliantgroup Senior Advisor, and **RICK LAZIO** former U.S. Congressman and alliantgroup Director

A tax provision with bipartisan support that creates jobs, strengthens energy independence, encourages innovation and reduces the burden on taxpayers—in short, as close to a wonder provision as you can get in the tax code.

What is this cure-all of the tax code? Section 179D - Energy Efficient Commercial Buildings (not to be confused with Section 179 - Expensing for Small Businesses).

Section 179D was first included in the tax code in the Energy Policy Act of 2005, enjoying bipartisan support, and signed into law by President George W. Bush. As part of a policy of encouraging energy efficiency and independence, Congress wanted to incentivize the private and public sectors to build energy-efficient buildings.

Why a policy to encourage energy-efficient buildings? Simple—according to the U.S. Department of Energy approximately 36 percent of electricity in this country is consumed by commercial buildings. While we naturally tend to picture energy consumption in this country as someone pumping gas, the reality is commercial buildings are major users of energy. Improve energy efficiency of commercial buildings and you are a big step forward in greater energy independence for our country. Encouraging conservation is that rare bird on environmental issues where there are areas of agreement between Republicans and Democrats.

How Does 179D Work?

It is straightforward. In the statute Congress incentivized builders who surpassed industry standards for energy efficiency in new construction and renovations. The more energy-efficient the building is, the bigger the deduction (up to \$1.80 per square foot).

The statute and regulations measure energy efficiency in three areas: The building envelope, the HVAC system and the lighting. Congress is, in short, incentivizing building owners who want to lower operating costs and increase operating profits.

A key provision, 179D is technology neutral. Congress didn't direct how energy efficiency should be achieved; 179D just rewards success. This technology neutral outlook of 179D has encouraged significant innovation and new ideas for energy efficiency. In some ways, this is the genius of 179D—the decision-making of realizing and achieving energy efficiency is entrusted to the private sector with no federal bureaucracies dictating the work and no required mandates.

Finally, 179D requires the taxpayer to obtain an independent certification by a licensed engineer to verify the energy savings after the building has been placed in service—protecting the public fisc and ensuring the energy savings are real.

Lifesaver for Construction Industry

A critical part of 179D is that it also encourages federal, state and local governments (and affiliated entities such as a public school or a state university) to build energy-efficient buildings as well. Congress recognized that the governments can't benefit from a tax deduction, and therefore allowed the government entity to transfer the tax deduction to the designer of the building (typically the architect, engineer or design construction).

Over the last few years, with the construction and design industry on the ropes (non-residential construction employment still remains 19.5 percent below its high water mark in 2008); the Section 179D tax benefit has been a lifesaver for many small and medium architect, engineer and construction businesses. We have seen first-hand that the tax deductions of 179D have translated to keeping and creating thousands of good-paying jobs in the construction industry.

It is not a surprise that the American Institute of Architects (AIA), the American Council of Engineering Companies (ACEC), the Associated General Contractors of America (AGC) and the Real Estate Roundtable are all strong supporters of 179D. Their members have directly benefited from being able to keep more of their hard-earned dollars in their pockets and not having to send them to the IRS.

Taxpayers' Benefit

Taxpayers have to dig deep to pay for inefficient energy usage—state and local governments spend approximately \$10 billion a year on energy. (This could be reduced by 30 percent by better efficiency according to the EPA.)

In addition, school districts spend \$6 billion a year on energy (more than textbooks and computers combined). Again, a third of that money is paying for inefficient energy usage.

When schools, along with state and local government, improve energy efficiency that results in real cost savings, 179D is providing relief to the pressure of increased taxes.

179D Today - Extenders

Section 179D, like nearly 60 other provisions in the tax code, expired December 31, 2013. Section 179D had previously been extended in 2006 and 2008.

The Senate Finance Committee in its markup of the extenders legislation included Section 179D, which was supported by Sens. Ben Cardin (D-Md.) and Rob Portman (R-Ohio). The extension of 179D further encourages energy efficiency by raising the energy standards that must be met to receive this tax deduction. As important, thanks to Sen. Cardin's good efforts, 179D was also expanded so that tribal governments and public charities, such as private colleges and universities (not just state colleges and universities as in the law as it was originally written), are also encouraged to build energy-efficient buildings.

The Senate legislation provides important improvements to 179D to make this good law even better.

Now the focus turns to the House, where a number of our former colleagues on both sides of the aisle are looking at introducing legislation that keeps and expands the good benefits of 179D. We encourage our friends in the House to look closely at the benefits of this little-known provision that packs a big benefit, and to talk to the architects, engineers and contractors in their district who can tell them first-hand how 179D has helped keep and create jobs.



Jim Ramstad is a Senior Advisor for alliantgroup as well as a former U.S. Congressman. He is based out of Minnesota where he served as a Member of Congress from Minnesota from 1991 until 2009. He was a Member of the House Ways and Means Committee, and Chairman of the IRS Oversight Committee. Jim also co-chaired the Addiction Treatment and Recovery Caucus, Disabilities Caucus, Law Enforcement Caucus, and Medical Technology Caucus. Former Congressman Ramstad was chief co-sponsor of the landmark Mental Health and Addiction Treatment Parity Act, which became law in 2008. Jim was named "Legislator of the Year" by the National Association of Alcoholism and Drug Addiction Counselors in 1998, by the National Mental Health Association in 1999, and by the National Association of Police Organizations in 1997 and 2000. Ramstad is also the 1998 recipient of the Fulbright Distinguished Public Service Award.



Rick Lazio is an alliantgroup Director and former U.S. Representative from New York serving in Congress from 1993-2001. While there, he became a strong advocate for small businesses by sponsoring the successful Small Business Tax Fairness Act. After Congress, Rick moved to the private sector working for JP Morgan Chase as a Managing Director and then Executive Vice President. Rick is committed to his continued interest and support of small to mid-sized businesses by brokering his insight and experience in the public and private sectors to provide strong incentives for job growth. This interest has extended into his civic and philanthropic work in New York with the Committee for Economic Development and the Association for a Better New York.

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