

# Green Building Law Update

Environmental Law and Sustainability for Business

## 179D Tax Deduction Brought Back to Life thru 2020

*By Stuart Kaplow on December 22, 2019*  
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This past Friday night while aboard Air Force One the President signed legislation reviving the 179D energy efficient commercial buildings tax deduction, providing an enormous and much needed boost to domestic green building.

Almost as compelling as the fictional undead being created through reanimation of a corpse, except here there were no zombies involved; it was Congress' tax extenders bill bringing back to life \$35 Billion of expired tax provisions and providing short term extensions to other expiring tax provisions. This post will not consider the tax breaks for racehorses and auto racetracks nor the reduction in taxes for domestic beer and spirits, instead it will focus on energy efficient commercial building.

Significantly, the Tax Extender and Disaster Relief Act of 2019 amended the Internal Revenue Code of 1986, providing, ..

**SEC. 131. ENERGY EFFICIENT COMMERCIAL BUILDINGS DEDUCTION.**

IN GENERAL. – Section 179D(h) is amended by striking “December 31, 2017” and inserting “December 31, 2020”.

EFFECTIVE DATES. – The amendment made by subsection (a) shall apply to property placed in service after December 31, 2017.

It is dramatic that this tax deduction was revived back to December 31, 2017 (.. when it last expired) and will remain effective through December 31, 2020.

The 179D commercial buildings energy efficiency tax deduction enables building owners to claim a tax deduction for installing qualifying systems and buildings. Tenants may be eligible if they make construction expenditures. If the system or building is installed on federal, state, or local government property, the 179D tax deduction may be assigned to the businesses primarily responsible for the system’s design or installation.

The 179D tax deduction had been in effect since January 1, 2006, but the systems and buildings must have been placed in service by December 31, 2017, which is when 179D expired, prior to this revival. Deductions are taken in the year in which systems and buildings are placed in service.

A tax deduction of \$1.80 per square foot (i.e., this tax incentive is based on the area of the building not the dollar amount expended) is available to owners of new or existing buildings who install (1) interior lighting; (2) building envelope, or (3) heating, cooling, ventilation, or hot water systems that reduce the building’s total energy and power cost by 50% or more in comparison to a building meeting minimum requirements set by ASHRAE Standard 90.1-2007 for buildings and systems placed in service after January 1, 2017 (before that date ASHRAE 90.1-2001 was used). Energy savings must be calculated using qualified computer software, which program this firm can assist an owner select depending upon building type.

Many if not most new buildings in states where the adopted energy code is the 2015 IECC or later, will meet the required level of performance above the ASHRAE standard. And LEED 2009 as well as 4.0 projects will in the vast majority of instances qualify. This tax deduction also pairs well with many utility based incentives.

“Be clear this tax deduction is broad and deep having application to many more than only building owners. For example, we have worked with sophisticated bidders on public construction projects (from schools and universities to military bases and transportation facilities) that have made their bids more competitive by factoring in the allocation for a designer that may include, “an architect, engineer, contractor, environmental consultant or energy services provider who creates the technical specifications” for a new public building or renovation that incorporates energy efficient upgrades. There are potentially many who are eligible to share in the \$1.80 a square foot incentive.

Deductions of \$0.60 per square foot are available in instances in which individual lighting, building envelope, or heating and cooling systems that partially qualify by meeting certain target levels or through an interim lighting rule issued by the IRS.

It is curious that this extender was not supported by USGBC, AIA and others under the misguided belief that 179D was too generous and easy to qualify for?

In a related matter, the tax extenders of 2019 also will significantly advantage green home construction, reviving an also expired tax code provision,

#### SEC. 129. ENERGY EFFICIENT HOMES CREDIT.

(a) IN GENERAL. – Section 45L(g) is amended by striking “December 31, 2017” and inserting “December 11 31, 2020”.

(b) EFFECTIVE DATE. – The amendment made by this section shall apply to homes acquired after December 31, 2017.

This credit (.. better than a deduction) is equal to \$2,000 per unit for qualified owner occupied or rental dwelling unit meeting specified energy savings standards.

Bringing back to life the dormant 179D tax deduction will not bring about the zombie apocalypse (.. I’m fairly confident?) but it will revive the moribund U.S. green building industrial complex, including finally and decisively jumpstarting the greening of existing buildings.

Moreover, given that buildings use more than 40% of energy in the U.S., this tax incentive can benefit not only an individual building owner, but given the concomitant one-third of all greenhouse gas emissions coming from those buildings (more than any other sector in the economy), also save the planet.

This law firm regularly works with owners, tenants and others in securing green building incentives. If we can assist you with the 179D deduction or otherwise do not hesitate to contact Stuart Kaplow.