

SUPPORTING STATEMENT
Internal Revenue Service
Deduction for Energy Efficient Commercial Buildings
OMB# 1545-2004

1. CIRCUMSTANCES NECESSITATING COLLECTION OF INFORMATION

Section 179D of the Internal Revenue Code provides a deduction for an owner of energy efficient commercial building property that is placed in service during the taxable year.

This notice clarifies and amplifies Notice 2006–52, 2006–1 C.B. 1175. Notice 2006–52 provides a process that allows a taxpayer who owns a commercial building and installs property as part of the commercial building’s interior lighting systems, heating, cooling, ventilation, and hot water systems, or building envelope to obtain a certification that the property satisfies the energy efficiency requirements of § 179D(c)(1) and (d) of the Internal Revenue Code. Notice 2006–52 also provides for a public list of software programs that may be used in calculating energy and power consumption for purposes of § 179D.

Taxpayers are required by section 179D (statute) to certify each project for which they claim the 179D deduction. The Service has not added to that burden in Notice 2008-40 but simply provided guidance on how to complete the certification process required by the statute.

2. USE OF DATA

The data will be used by taxpayers (1) to obtain a certification that the energy efficient commercial building project satisfies the requirements of § 179D and (2) to determine which software programs may be used to calculate energy and power consumption and costs for purposes of providing a certification that satisfies the requirements of § 179D.

3. USE OF IMPROVED INFORMATION TECHNOLOGY TO REDUCE BURDEN

IRS Publications, Regulations, Notices and Letters are to be electronically enabled on an as practicable basis in accordance with the IRS Reform and Restructuring Act of 1998. There are no plans to provide electronic filing because electronic filing is not appropriate for the collection of information in this submission due to the requirement to attach the document of record.

4. EFFORTS TO IDENTIFY DUPLICATION

The information obtained through this collection is unique and is not already available for use or adaptation from another source.

5. METHODS TO MINIMIZE BURDEN ON SMALL BUSINESSES OR OTHER

SMALL ENTITIES

Taxpayers are required by section 179D to obtain a certification that verifies that the energy efficient commercial building property for which they are claiming the section 179D deduction satisfies the energy efficiency requirements of § 179D(c)(1) and (d). It has been determined that the regulations related to this form are not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It has also been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations. It is hereby certified that the collection of information in these regulations will not have a significant economic impact on a substantial number of small entities. This certification is based on the fact that most of the material advisors affected by these regulations are not small entities and for those material advisors that are small entities most of the information is already required under the current regulations. Any additional recordkeeping burdens on material advisors that result from this regulation are insubstantial.

6. CONSEQUENCES OF LESS FREQUENT COLLECTION ON FEDERAL PROGRAMS OR POLICY ACTIVITIES

Taxpayers are required by section 179D to obtain a certification that verifies that the energy efficient commercial building property for which they are claiming the section 179D deduction satisfies the energy efficiency requirements of § 179D(c)(1) and (d). This certification must be acquired prior to the taxpayer claiming the deduction on a tax return.

7. SPECIAL CIRCUMSTANCES REQUIRING DATA COLLECTION TO BE INCONSISTENT WITH GUIDELINES IN 5 CFR 1320.5(d)(2)

There are no special circumstances requiring data collection to be inconsistent with Guidelines in 5 CFR 1320.5(d)(2).

8. CONSULTATION WITH INDIVIDUALS OUTSIDE OF THE AGENCY ON AVAILABILITY OF DATA, FREQUENCY OF COLLECTION, CLARITY OF INSTRUCTIONS AND FORMS, AND DATA ELEMENTS

Periodic meetings are held between IRS personnel and representatives of the American Bar Association, the National Society of Public Accountants, the American Institute of Certified Public Accountants, and other professional groups to discuss tax law and tax forms. During these meetings, there is an opportunity for those attending to make comments regarding this collection. This notice was published in the Internal Revenue Bulletin (2008-14 I.R.B. 725).

In response to the Federal register notice dated April 8, 2019 (84 FR 13989), we received two comment letters during the comment period regarding this collection. The comments and copies of the letters were forwarded to the Office of Associate Chief

Counsel (Passthroughs & Special Industries). This office reviewed, based on current law, if there are any potential opportunities to enhance and clarify the timelines or guidance, minimizing the overall burden on the taxpayers.

In the first comment letter, from the American Institute of Architects (AIA), dated June 7, 2019, “the AIA urges the Department of Treasury to extend the period of information collection, received from building owners and/or building designers, if it would better serve IRS staff that are tasked with reviewing such entries. To properly review, process and determine the validity of such entries, it is the opinion of AIA that the Department of Treasury extend their reporting timeline to adequately alleviate any unnecessary staff burdens or backlogs regarding 179D applications.” Additionally, the AIA letter notes that, “[c]onsidering the extent of 179D submission[s] received by IRS staff, AIA recommends the Department of Treasury to promote submission improvements to expedite the process for building owners, designers and IRS staff, so that the process is as seamless as possible for all stakeholders.”

Response: The “reporting timeline” and “submission process” referenced in the AIA letter seem to be describing the certification required by a taxpayer claiming the deduction and the allocation of the deduction to the designer by the government building owner. The certification is performed by a third party and is not submitted to the IRS or the Treasury Department but is required to be kept with the taxpayer’s books and records to substantiate the taxpayer’s claim for the section 179D deduction. The allocation of the section 179D deduction from a government building owner to a designer is a written document. It is not submitted to the IRS or the Treasury Department but is required to be kept with the taxpayer’s books and records to substantiate the taxpayer’s claim for the section 179D deduction.

The only information collections that are required for the section 179D deduction are the certification and the allocation for designers. As a result, there is no application/submission process and no administrative burden for the IRS or Treasury Department. Taxpayers are required to obtain the certification and allocation (for designers) before they claim the deduction on the tax return for the tax year in which the energy efficient building property is placed in service.

A second comment letter, from the alliantgroup, dated June 7, 2019, states “[f]urther definitional clarity which emphasizes the contributions to technical specifications and energy efficiency made by a wide variety of industries is necessary to alleviate this confusion and preserve the intent of the statute.” The writer of the alliantgroup letter also suggests that “[a]dditional guidance is needed to eliminate this confusion that reflects the wide variety of trades and industries which contribute to the creation of technical specifications for the installation of energy efficient commercial building property. In particular, using established construction case law as a guidepost to define technical specifications consistent with the broad nature and spirit of Section 179D would allow for consistent treatment and application of the law.”

Response: The alliantgroup letter seeks a substantive change to the definition of

“designer” as provided in Notice 2008-40. That change, if adopted, would not affect the estimated burden of time for taxpayers to comply with the notice.

9. EXPLANATION OF DECISION TO PROVIDE ANY PAYMENT OR GIFT TO RESPONDENTS

No payment or gift has been provided to any respondents.

10. ASSURANCE OF CONFIDENTIALITY OF RESPONSES

Generally, tax returns and tax return information are confidential as required by 26 USC 6103.

11. JUSTIFICATION OF SENSITIVE QUESTIONS

No personally identifiable information is collected.

12. ESTIMATED BURDEN OF INFORMATION COLLECTION

Section 179D provides that the energy and power consumption and costs of commercial building property shall meet the certification requirements prescribed the Secretary in consultation with the Secretary of Energy.

The likely respondents are two groups: taxpayers claiming the deduction under section 179D (section 3) and software developers seeking software included on the public list created by the Service (section 5).

For taxpayers claiming the deduction under section 179D, the likely respondents are corporations and partnerships. The estimated total annual reporting burden is 3,761 hours. The estimated number of respondents is 21,767.

This collection’s burden includes third-party disclosure, in the following forms:

a) Software designers must provide the taxpayer (building owner) certification (third party disclosure) that verifies that the energy efficient commercial building property for which they are claiming the section 179D deduction satisfies the energy efficiency requirements of section 179D(c)(1) and (d); and

b) Software developers wishing to have their products included on the Department of Energy’s public list of software that may be used to calculate energy and power consumption/costs must submit their information to Energy per section 4 of Notice 2008-40.

The burden estimate is as follows:

| OMB Collection | Authority | Form | Annual Responses | Hours per Response | Total Burden |
|-----------------------|----------------------|-------------|-------------------------|---------------------------|---------------------|
| IRS 1545-2004 | IRC 179D | ---- | 21,767 | .17 | 3,761 |
| | IRS TOTAL | | 21,767 | | 3,761 |

13. ESTIMATED TOTAL ANNUAL COST BURDEN TO RESPONDENTS

As suggested by OMB, our Federal Register notice dated April 8, 2019, requested public comments on estimates of cost burden that are not captured in the estimates of burden hours, i.e., estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information. However, we did not receive any responses from taxpayers on this subject. As a result, estimates of these cost burdens are not available currently.

To ensure more accuracy and consistency across its information collections, IRS is currently in the process of revising the methodology it uses to estimate burden and costs. Once this methodology is complete, IRS will update this information collection to reflect a more precise estimate of burden and costs.

14. ESTIMATED ANNUALIZED COST TO THE FEDERAL GOVERNMENT

There are no known annualized costs to the federal government.

15. REASONS FOR CHANGE IN BURDEN

There are no changes to the burden.

We are submitting this request for renewal purposes only.

16. PLANS FOR TABULATION, STATISTICAL ANALYSIS AND PUBLICATION

There are no plans for tabulation, statistical analysis and publication.

17. REASONS WHY DISPLAYING THE OMB EXPIRATION DATE IS INAPPROPRIATE

IRS believes that displaying the OMB expiration date is inappropriate because it could cause confusion by leading taxpayers to believe that the regulation sunsets as of the expiration date. Taxpayers are not likely to be aware that the Service intends to request renewal of OMB approval and obtain a new expiration date before the old one expires.

18. EXCEPTIONS TO THE CERTIFICATION STATEMENT

There are no exceptions to the certification statement.

Note: The following paragraph applies to all the collections of information in this submission:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.