

Alternative Deduction for Energy Efficient Building Retrofit Property

*** The information contained in this overview is intended as a general guide to the §179D deduction for informational purposes only and is not intended to constitute legal advice. ***



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26 U.S. Code §179D(f)

Energy Efficient Building Retrofit Property (EEBRP)

means property:

- with respect to which depreciation (or amortization in lieu of depreciation) is allowable,
- which is installed on or in any Qualified Building,
- which is installed as part of:
 - the interior lighting systems,
 - the heating, cooling, ventilation, and hot water systems, or
 - the building envelope, and
- which is certified by a Qualified Professional as meeting the requirements of being EEBRP.

Deduction Amount – With respect to any Qualified Building, there shall be allowed as a deduction in the taxable year which includes the date of the Qualifying Final Certification with respect to the Qualified Retrofit Plan of such building, an amount equal to the lesser of:

- The deduction with respect to any building for any taxable year shall not exceed the excess (if any) of:
 - (The **product** of the **Applicable Dollar Value** versus the square footage of the building) **over** (the aggregate amount of the EECBP (Energy Efficient Commercial Building Property) and EEBRP deductions with respect to the building for the **X** taxable years immediately preceding such taxable year).
 - X = 3 years if a taxable entity-owned building, claimed by building owner.
 - X = 4 years if a government-owned or tax-exempt entity-owned building, who allocates the deduction to a Qualified Professional.
 - the aggregate adjusted basis (determined

after taking into account all adjustments with respect to such taxable year) of EEBRP placed in service pursuant to such Qualified Retrofit Plan.

Applicable Dollar Value

Rate Range without meeting Prevailing Wage and Apprenticeship Requirements - \$0.50/square foot - \$1.00/square foot

- There must be at least a minimum of a 25% reduction in the Energy Use Intensity for the Qualified Building to qualify for the deduction.
- For every 1% in further reduction, there is a \$0.02 increase in the deduction rate until the maximum 50% reduction threshold is reached.

Rate Range if Prevailing Wage and Apprenticeship Requirements are met - \$2.50/square foot - \$5.00/square foot

- For every 1% in reduction beyond the minimum 25% threshold, there becomes a \$0.10 increase in the deduction rate, until the maximum 50% reduction threshold is reached.

The **Special Rules under Section 179D(d)** do not apply to this alternative retrofit calculation except for rules regarding the allocation of the deduction by governments or tax-exempt entities.

- There is no prescribed method for calculating and verifying the energy and power consumption and cost with respect to any EEBRP.
- There is no need to use qualified computer software to calculate the energy and power consumption with respect to any EEBRP.
- There is no need to provide certifications regarding the energy efficiency features and compliance nor a need to provide notices to the Owner that explains the energy efficiency features and costs savings associated with each certification.

Definitions

Building Square Footage

The sum of the floor areas of the **conditioned spaces** within the building, including basements, mezzanine, and intermediate-floored tiers, and **penthouses with headroom height of 7.5 feet or greater**.

- Building square footage is measured from the exterior faces of exterior walls or from the centerline of walls separating buildings, **BUT EXCLUDES** covered walkways, open roofed-over areas, porches and similar spaces, pipe trenches, exterior terraces or steps, chimneys, roof overhangs, and similar features.

Conditioned Spaces

Any enclosed space within a building qualifying as cooled space, heated space, or indirectly conditioned space defined as follows:

Cooled Space. An enclosed space that is cooled by a cooling system whose sensible output capacity exceeds 5 Btu per hour per square foot of floor area.

Heated Space. An enclosed space that is heated by a heating system whose output capacity relative to the floor area exceeds 5 Btu per hour per square foot of floor area.

Indirectly Conditioned Space. An enclosed space (other than a heated space or a cooled space) that is heated or cooled indirectly by being connected to adjacent space(s) and that satisfies either of the following conditions:

- The space's surface area that is adjacent to heated or cooled space multiplied by the weighted average U-factor of such adjacent surface area exceeds the space's surface area adjoining the outdoors, unconditioned spaces, and semi-heated spaces (e.g., corridors) multiplied by the weighted average U-factor of such adjoining surface area; OR
- The air from heated or cooled spaces is intentionally transferred (naturally or mechanically) into the space at a rate exceeding 3 air changes per hour (ACH).

Energy Use Intensity

The annualized, measured site energy use intensity determined in accordance with such regulations or other guidance as the Secretary may provide and measured in British thermal units.

Qualified Building

Any building which is located in the U.S. and was originally placed in service **not less than 5 years before** the establishment of the Qualified Retrofit Plan with respect to such building.

Qualified Professional

Any individual who is a licensed architect or a licensed engineer and meets such other requirements as the Secretary may provide.

Qualified Retrofit Plan

A written plan prepared by a Qualified Professional which specifies modifications to a building which reduce such building's energy use intensity by 25% or more in comparison to the Baseline Energy Use Intensity of such building.

Such plan shall provide for a Qualified Professional to:

- As of any date during the 1-year period ending on the date on which the EEBRP installed pursuant to such plan is placed in service, provide a certification as the energy use intensity of such building as of such date, as adjusted to take into account the weather (the **Baseline Energy Use Intensity**);
- Certify that the property installed pursuant to such retrofit plan meets the requirements of being considered EEBRP, and
- As of any date greater than 1 year after the date on which the EEBRP installed pursuant to such plan is placed in service, provide a **Qualifying Final Certification** that the energy use intensity of such building as of such date is not more than 75% of the Baseline Energy Use Intensity of the building (i.e. certify the reduction in energy use intensity was greater than the minimum 25% threshold).

Prevailing Wage Requirements

Any laborers and mechanics involved **in the installation of such EEBRP** must be paid wages at rates **not less than the Davis-Bacon prevailing rates** for construction, alteration, or repair of a similar character **in the locality** in which such property is located as most recently determined by the Secretary of Labor, in accordance with subchapter IV of chapter 31 of title 40, United States Code.

- There are corrective actions that can be taken if a contractor or subcontractor is found to not have paid prevailing wages that involves make-up payments and interest payments made to the workers along with a penalty paid to the IRS. If the failure to pay prevailing wages is determined to be intentional, those make-up payments and penalty amounts drastically increase.

Apprenticeship Requirements

Labor Hours

Percentage of total labor hours –Not less than the applicable percentage of the total labor hours of the construction, alteration, or repair work (including such work performed by any contractor or subcontractor) with respect to such facility shall be performed by Qualified Apprentices.

- If construction begins on or before December 31, 2023 - **12.5%**
- If construction begins on or after January 1, 2024 – **15%**
- There are certain good-faith exceptions to the Apprenticeship Requirement and, like prevailing wages, there are corrective monetary actions that can be taken to satisfy this requirement.

Labor Hours means:

- The total number of hours devoted to the performance of construction, alteration, or repair work by any individual employed by the taxpayer

or by any contractor or subcontractor;
EXCLUDING

- Any hours worked by foremen, superintendents, owners, or persons employed in a bona fide executive, administrative, or professional capacity.

Apprentice to Journeyworker Ratio

The percentage of total labor hours requirement is subject to ANY applicable requirements for apprentice-to-journey worker ratios of the Department of Labor or the applicable State apprenticeship agency.

Participation

Each taxpayer, contractor, or subcontractor who **employs 4 or more individuals** to perform construction, alteration, or repair work shall employ 1 or more qualified apprentices to perform such work.

Qualified Apprentice

An individual who is employed by the taxpayer or by any contractor or subcontractor and who is participating in a registered apprenticeship program.

Inflation Adjustment

The amounts used to calculate the maximum allowable deduction are increased for inflation each year after taxable year 2022, rounded to the nearest cent, by an amount equal to the eligible dollar/square foot amount, multiplied by “the cost-of-living adjustment determined under Section 1(f)(3) for the calendar year in which the taxable year begins, determined by substituting “calendar year 2021” for “calendar year 2016” in subparagraph (A)(ii) thereof.”

Allocation Rules

EEBRP that is installed on or in property owned by a Federal, State, or local government or a political subdivision thereof, or for any other tax-exempt entity, the owner of the property may allocate the §179D deduction to the person primarily responsible for designing the EEBRP.

- The deduction will be allowed to the designer for the taxable year that includes the date on which the EEBRP is placed in service.
- The designer does not include any amount in income on account of the §179D deduction allocated to the designer.
- The designer is not required to reduce future deductions by an amount equal to the §179D deduction allocated to the designer.

- The name, address, and telephone number of an authorized representative of the designer receiving the allocation of the §179D deduction;
- The address of the building on or in which the EEBRP is installed;
- The cost of the EEBRP;
- The date the EEBRP is placed in service;
- The amount of the § 179D deduction allocated to the designer;
- The signatures of the authorized representatives of both the owner of the government-owned or tax-exempt entity-owned building and the designer or the designer’s authorized representative; and
- A declaration, applicable to the allocation and any accompanying documents, signed by the authorized representative of the owner of the building, in the following form:

The **MAXIMUM AMOUNT** of the §179D deduction able to be allocated to the designer is the **amount of the costs incurred by the owner** of the government-owned or tax-exempt entity-owned building **to place the EEBRP into service.**

“Under penalties of perjury, I declare that I have examined this allocation, including accompanying documents, and to the best of my knowledge and belief, the facts presented in support of this allocation are true, correct, and complete.”

Designer

A person that creates the technical specifications for installation of the EEBRP. A designer can be an architect, engineer, contractor, environmental consultant or energy services provider who creates the technical specifications for a new building or an addition to an existing building that incorporates energy efficient commercial building property. **A person that merely installs, repairs, or maintains the property is not a designer.**

Tax Consequences for the Owner of a Public Building

Allocation of Deduction

If more than one designer is responsible for creating the technical specifications for installation of EEBRP on or in a government-owned or tax-exempt entity-owned building, the owner of the building shall:

The Owner is not required to include any amount in income on account of the §179D deduction allocated to the designer. The owner is required to reduce the basis of the EEBRP by the amount of the §179D deduction allocated.

- Determine which designer is primarily responsible and allocate the full deduction to that designer, OR
- (2) At the owner’s discretion, allocate the deduction among several designers.

Scan the QR code to visit the Bricker Graydon Inflation Reduction Act Resource Center.

Form of Allocation

Must be in writing and contain **all** of the following:

- The name, address, and telephone number of an **authorized representative** of the owner of the government-owned or tax-exempt entity-owned building;

