

October 31, 2022

Submitted via e-mail

Mr. Andres Garcia
Internal Revenue Service
Room 6526
1111 Constitution Avenue NW
Washington, DC 20224

Subject: Deduction for Energy Efficient Commercial Buildings (OMB No. 1545-2004)

Dear Mr. Garcia,

The Coalition for Energy Efficient Jobs & Investment (“the Coalition”) appreciates the opportunity to submit comments with respect to the creation of Form 7205 “to standardize the procedures for claiming the deduction for energy efficient commercial building[s]” announced in the Notice & Comment (OMB No. 1545-2004) request issued by the Internal Revenue Service (“IRS”). Our Coalition represents a broad spectrum of stakeholders that have used Section 179D since its inception and have tremendous depth of knowledge with respect to its use, including real estate, manufacturing, architecture, contracting, engineering, building services, financing, labor, education, environmental and energy efficiency advocates. The Coalition appreciates the IRS’s ongoing work to ensure that Section 179D remains a catalyst for energy efficient upgrades to commercial and multi-family buildings that result in critical energy savings that benefit the environment, building owners and tenants as well as reducing carbon footprints. Importantly, investments in such upgrades will result in economic and job growth across a broad range of industries.

Comments on Creation of Form 7205

Many of our Coalition members work on hundreds of Section 179D projects in any given year. Under the current recordkeeping process outlined in IRS Notices 2006-52 and 2008-40 (“Notices”), a taxpayer must undertake a certification in support of the deduction, though the “taxpayer is not required to attach the certification to the return on which the deduction is taken.” These certifications must include a variety of information about the building, including acknowledgment of various statements with respect to the project. The Notices also require that taxpayers “maintain such books and records as are sufficient to establish the entitlement to, and amount of, any deduction claimed by the taxpayer.” Since the issuance of these Notices in 2006 and 2008, this recordkeeping system has worked well.

We are concerned that the creation of Form 7205 will unnecessarily increase administrative requirements on taxpayers utilizing Section 179D, as well as increase the amount of time spent by the IRS reviewing such information. It is difficult to determine the exact time burden for taxpayers without knowing what information may be requested on Form 7205. However, if the reporting requirement shifts from the aggregate total of the deduction for all buildings to a form

requiring building-specific information for example, such as the building name, address, city, state and deduction amount, it will result in a significant administrative burden on the taxpayer and duplicate information that is already found in the certifications issued for each project. For example, if a taxpayer has 100 buildings it certified during the year and it takes 15 minutes to fill out the information for each building on a potential Form 7205, that is approximately 1,500 minutes (or 25 hours) spent assessing each building's basic information, in addition to the substantial amount of time it already takes to complete the existing building certification process (approximately 12 hours per building). In order to minimize the burden of the collection of information on taxpayers, we strongly urge the IRS to continue the current practice utilized by taxpayers taking the Section 179D deduction that requires certifications to be maintained by the taxpayer but not submitted to the IRS.

Should the IRS decide to move forward with the creation of Form 7205, we strongly encourage the IRS to minimize the amount of information required to be reported on a per building basis. As we noted above, an individual taxpayer may work on hundreds of buildings that qualify for the Section 179D deduction in a given tax year. Consequently, we strongly encourage the IRS to allow taxpayers to submit information on multiple buildings in aggregate rather than requiring extensive information on a per-building basis. Please find below a proposed sample Form 7205 designed to represent the taxpayer's aggregate Section 179D buildings utilizing the deduction in a given tax year.

Sample Form 7205:

1. Please insert the total deduction amount being claimed by the taxpayer for all buildings qualifying for the Section 179D deduction in the current tax year in Line 1.
2. For each building qualifying for the deduction, did you utilize the lesser of the qualified tax deduction or eligible project cost?
 - a. YES
 - b. NO
3. Did you receive a signed certification from a qualified individual in the manner described in IRS Notices 2006-52 and 2008-40 for all buildings qualifying for the Section 179D deduction?
 - a. YES
 - b. NO
4. Are any of the qualifying buildings owned by a tax-exempt entity? YES or NO
 - a. If YES, did you receive a signed allocation from an authorized representative of the tax-exempt building owner(s) in the manner described in IRS Notice 2008-40 for all tax-exempt buildings qualifying for the Section 179D deduction?
 - i. YES
 - ii. NO
 - b. If NO, did you reduce the basis of the energy efficient property by the amount of the Section 179D deduction for all buildings qualifying for the deduction?
 - i. YES
 - ii. NO

If you answered NO to Line 2 or 3 or 4a or 4b above, the taxpayer is ineligible for the Section 179D deduction.

If you answered YES to Line 2 and Line 3 and (Line 4a or 4b), please insert the amount from Line 1 on the “Other Deduction” Line on the first page of the tax return with the description “Section 179D.”

Conclusion

The Coalition requests that the IRS continue to utilize the current requirements under IRS Notices 2006-52 and 2008-40 with respect to taking the Section 179D deduction that require taxpayers to maintain certifications for each building utilizing the Section 179D deduction. In the event the IRS decides to move forward with creation of Form 7205, we strongly encourage you to allow taxpayers to provide information in aggregate given the hundreds of projects an individual taxpayer may be seeking a deduction on. We would appreciate consideration of the sample Form 7205 language included above.

The Coalition is happy to serve as a resource to the IRS as you work on Form 7205 and would appreciate the opportunity to meet to discuss Form 7205. Please contact Karishma Page, Partner, K&L Gates to arrange a meeting (Karishma.Page@klgates.com).

Thank you for your consideration.

Sincerely,
The Coalition for Energy Efficient Jobs & Investment