

## Updated Reference Standard 90.1 for § 179D

### Announcement 2023-1

This announcement notifies taxpayers of the applicable reference standard required to be used to determine the amount of the energy efficient commercial building (EECB) property deduction allowed under § 179D of the Internal Revenue Code (§ 179D deduction) as amended by § 13303 of Public Law 117-169, 136 Stat. 1818, 1947 (August 16, 2022), commonly known as the Inflation Reduction Act of 2022 (IRA).<sup>1</sup> This announcement identifies the existing reference standard, affirms a new reference standard, and clarifies when each of the two reference standards will apply to taxpayers. The effective date of this announcement is January 1, 2023.

The Treasury Department (Treasury) and the Internal Revenue Service (IRS) plan to publish additional guidance to address IRA amendments to § 179D including, but not limited to, procedures for measuring energy use intensity to calculate the alternative deduction for energy efficient building retrofit property.

In general, a taxpayer who owns or leases a commercial building that is both located in the United States and within the scope of the applicable reference standard

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<sup>1</sup> Section 179D was added to Internal Revenue Code by § 1331(a) of the Energy Tax Incentives Act of 2005, Public Law 109-58, 119 Stat. 594, 1020 (August 8, 2005) as a temporary provision and was temporarily extended in 2006, 2008, 2014, 2015, 2018, and 2019. Section 179D was made permanent by § 102(a) of the Taxpayer Certainty and Disaster Tax Relief Act of 2020, enacted as Division EE of the Consolidated Appropriations Act, 2021, Public Law 116-260, 134 Stat. 1182, 3039 (December 27, 2020).

may be allowed a § 179D deduction equal to a portion of the cost of EECB property that the taxpayer places in service during the taxable year. Property with respect to which depreciation (or amortization in lieu of depreciation) is allowable is EECB property if it is certified to be installed on or in the building as part of one or more of three of the building's systems: (1) interior lighting systems, (2) heating, cooling, ventilation, and hot-water systems, and (3) the building's envelope. For the installation of the property on or in the building to be considered certified, the property must be certified in the manner and method prescribed by the Secretary of the Treasury or her delegate (Secretary) as being installed as part of a plan designed to reduce the total annual energy and power costs with respect to the interior lighting systems, heating, cooling, ventilation, and hot water systems of the building by 25 percent (50 percent for taxable years beginning before January 1, 2023) or more, in comparison to a reference building that meets the minimum requirements of the applicable reference standard using certain methods of calculation.

Since § 179D was enacted in 2005, the applicable reference standard for EECB property has been identified in § 179D(c)(2) as a version of Reference Standard 90.1 as published by the American Society of Heating, Refrigerating, and Air Conditioning Engineers (ASHRAE) and the Illuminating Engineering Society of North America (IES) (Reference Standard 90.1). For EECB property placed in service before January 1, 2015, Reference Standard 90.1-2001 applied. For EECB property placed in service after December 31, 2014, and before January 1, 2021, Reference Standard 90.1-2007 applied. For EECB property placed in service after December 31, 2020, § 179D(c)(2), as amended by the Taxpayer Certainty and Disaster Tax Relief Act of 2020, defined

“Reference Standard 90.1” to mean with respect to any property, the most recent Standard 90.1 published by the ASHRAE and the IES that has been affirmed by the Secretary, after consultation with the Secretary of Energy, for purposes of § 179D not later than the date that is 2 years before the date that construction of such property begins. Importantly, this statutory amendment changed the reference date for application of the Reference Standard 90.1 from placed in service to beginning of construction.

Section 13303 of the IRA amended § 179D for taxable years beginning after December 31, 2022. This amendment returned the reference date for application of the Reference Standard 90.1 to the date the property is placed in service. Effective January 1, 2023, § 179D(c)(2) defines the term “Reference Standard 90.1” to mean, with respect to any property, the more recent of:

- (1) Standard 90.1-2007 published by the ASHRAE and the IES, or
- (2) The most recent Standard 90.1 published by the ASHRAE and the IES for which the Department of Energy has issued a final determination and which has been affirmed by the Secretary, after consultation with the Secretary of Energy, not later than the date that is 4 years before the date such property is placed in service.

On July 28, 2021, the Department of Energy determined the updated edition ASHRAE Reference Standard 90.1-2019<sup>2</sup> would improve energy efficiency in commercial buildings. Upon publication of this affirmative determination, each State

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<sup>2</sup> *Final Determination Regarding Energy Efficiency Improvements in ANSI/ ASHRAE/IES Standard 90.1-2019*, 86 FR 40543-44 (July 28, 2021).

was required to review the provisions of their commercial building code regarding energy efficiency, and, as necessary, update their codes to meet or exceed Reference Standard 90.1-2019 not later than 2 years from July 28, 2021.

The Secretary, after consultation with the Secretary of Energy, hereby affirms ASHRAE Reference Standard 90.1-2019 as the applicable Reference Standard 90.1 for purposes of calculating the annual energy and power consumption and costs with respect to the interior lighting systems, heating, cooling, ventilation, and hot water systems of the reference building as follows: In the case of property the construction of which begins after December 31, 2022, ASHRAE 90.1-2019 will be the applicable standard for property that is placed in service after December 31, 2026. Taxpayers who already began or will begin construction by December 31, 2022, or who already placed property in service or will place property in service by December 31, 2026, are not subject to the updated Reference Standard 90.1-2019. For such property, the applicable Reference Standard 90.1 is Reference Standard 90.1-2007. The table below reflects the applicable Reference Standard 90.1.

Date Placed In Service	Applicable Reference Standard 90.1
Before 1/1/2015	Reference Standard 90.1-2001
After 12/31/2014 and before 1/1/2027*	Reference Standard 90.1-2007
After 12/31/2026*	Reference Standard 90.1-2019

\* Taxpayers who begin construction before 1/1/2023 may apply Reference Standard 90.1-2007 regardless of when the building is placed in service.

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