This article is timely now that we all are looking forward to paying our Federal Income Taxes. Recently, I received a call from my accountant. She called to inquire if I have ever had one of my architect clients attempt to receive a § 179D Deduction for Energy Efficient Commercial Buildings granted under Title 26 of the US Federal Regulations (fondly known as the "IRS Tax Code"). I was unaware of this section of the Code until her call, as none of my clients have ever asked about it or brought it to my attention.

§ 179D, section 3, allows for the energy efficiency deduction to be allocated by the tax exempt public owner to the designer, in our case the architect, who then can use the deduction to lower, or in some cases entirely eliminate, his/her taxable income.

According to the US Government Printing Office, the IRS Tax Code is 13,458 pages long, and is contained in twenty volumes available for purchase at only $974, plus shipping and handling. Section 179D is a very small provision buried within a voluminous document and can easily be missed. I looked up § 179D on the internet and was astounded by what I found. This particular section of the tax code is a must read for all practicing architects and their accountants! As you know, our legislators use the tax code to encourage certain outcomes. One of the current hot issues is energy conservation. If less energy is consumed, less pollution takes place in creating less energy, people save money and the environment is saved as a result. Therefore, the government is encouraging both public and private commercial building owners to provide for energy efficiency in their buildings. Many private building owners and their accountants are already familiar with § 179D, which accelerates the deduction for energy improvements. Many are not aware of this benefit, but should be.

This article will concentrate on publicly owned commercial buildings, because that’s where the architect is really in a position to greatly benefit from this unusual regulation. Since public building owners do not pay income taxes, the deduction is of no benefit to them. In an unusual twist, § 179D, section 3, allows for the energy efficiency deduction to be allocated by the tax exempt public owner to the designer, in our case the architect, who then can use the deduction to lower, or in some cases entirely eliminate, his/her taxable income. Yes, you read this correctly! The architect can lower, or possibly entirely eliminate, his/her taxable income, because of the deduction, if the building meets certain stated energy efficiencies defined in the Code. Basically, the § 179D deduction is equal to the cost of the energy efficient property up to a cap of $1.80/sf of building area. Section 3 of § 179D has been amended and reads as follows:

Section 3. SPECIAL RULE FOR GOVERNMENT-OWNED BUILDINGS

.01 In General. In the case of energy efficient commercial building property (or partially qualifying commercial building property for which a deduction is allowed under § 179D) that is installed on or in property owned by a Federal, State, or local government or a political subdivision thereof, the owner of the property may allocate the § 179D deduction to a designer to the person primarily responsible for designing the property (the designer). If the allocation of a § 179D deduction to a designer satisfies the requirements of this section, the deduction will be allowed only to that designer. The deduction will be allowed to the designer for the taxable year that included the date on which the property is placed in service.

.02 Designer of Government-Owned Buildings. A designer is a person that creates the technical specifications for installation of energy efficient commercial building property (or partially qualifying commercial building property for which a deduction is allowed under § 179D). A designer may include, for example, an architect, engineer, contractor, environmental consultant or energy service provider who creates the technical specifications for a new building or an addition to an existing building that incorporates energy efficient commercial
building property (or partially qualifying commercial building property for which a deduction is allowed under § 179D). A person that merely installs, repairs, or maintains the property is not a designer.

.03 Allocation of the Deduction. If more than one designer is responsible for creating the technical specifications for installation of energy efficient commercial building property (or partially qualifying commercial building property for which a deduction is allowed under § 179D) on or in a government-owned building, the owner of the building shall...

1) 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.

.04 Form of Allocation. An allocation of the § 179D deduction to the designer of a government-owned building must be in writing and will be treated as satisfying the requirements of this section with respect to energy efficient commercial building property (or partially qualifying commercial building property for which a deduction is allowed under § 179D) if the allocation contains all of the following:

1) The name, address and telephone number of an authorized representative of the owner of the government-owned building;
2) The name, address and telephone number of an authorized representative of the designer receiving the allocation of the § 179D deduction;
3) The address of the government-owned building on or in which the property is installed;
4) The cost of the property;
5) The date the property is placed in service;
6) The amount of the § 179D deduction allocated to the designer;
7) The signature of the authorized representatives of both the owner of the government-owned building and the designer or the designer’s authorized representative; and
8) A declaration, applicable to the allocation and any accompanying documents, signed by the authorized representative of the owner of the government-owned building, in the following form:

"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."

.05 Obligations of Designer. Before a designer may claim the § 179D deduction with respect to property installed on or in a government-owned building, the designer must obtain the written allocation described in section 3.04. A designer is not required to attach the allocation to the return on which the deduction is taken. However, § 1.6001-1(a) of the Income Tax Regulations requires that taxpayers maintain such books and records as are sufficient to establish the entitlement to, and amount of, any deduction claimed by the taxpayer. Accordingly, a designer claiming a deduction under § 179D should retain the allocation as part of the taxpayer’s records for purposes of § 1.6001-1(a) of the Income Tax Regulations.

.06 Tax Consequences to Designer of Government-Owned Buildings. The maximum amount of the § 179D deduction to be allocated to the designer is the amount of the costs incurred by the owner of the government-owned building to place the energy efficient commercial building property in service. A partial deduction may be allocated and computed in accordance with the procedures set forth in sections 2 and 3 of Notice 2006-52. The designer does not include any amount in income on account of the § 179D deduction allocated to the designer. In addition, the designer is not required to reduce future deductions by an amount equal to the § 179D deduction allocated to the designer. Although reducing future deductions in this manner would provide equivalent treatment for designers that are allocated a § 179D deduction and building owners that are required to reduce the basis of their energy efficient commercial building property by the amount of the § 179D deduction they claim, § 179D does not provide for any reduction other than reductions to the basis of the energy efficient commercial building property.

.07 Tax Consequences to Owner of Public Building. The owner of the public building is not required to include any amount in income on account of the § 179D deduction allocated to the designer. The owner of the public building is, however, required to reduce the basis of the energy efficient commercial building property (or partially qualifying commercial building property) by the amount of the § 179D deduction allocated. . . . The amount deductible under section 179D may be as much as $1.80/sf of building floor area for buildings that achieve a 50% reduction in energy and power costs. Notice 2006-52 provides that buildings that achieve a reduction in energy and power costs of less than 50% may, nevertheless, qualify for a deduction of 60¢/sf of building floor area if the building achieves a reduction in energy and power costs of 16 2/3%.

Internal Revenue Bulletin: 2008-14
April 7, 2008
Notice 2008-40
Amplification of Notice 2008-52;
Deduction for Energy Efficient Commercial Buildings

Assume that the public owner allocates the energy deduction to the architect. The maximum deduction allowed under other provisions of § 179D is divided into three groupings as follows: (1) $0.60/sf for an energy efficient building envelope; plus (2) $0.60/sf for an energy efficient interior lighting system; plus (3) $0.60/sf for an energy efficient heating, cooling, ventilation & hot water system; for a total maximum deduction of $1.80/sf of building area. As an example, a 200,000 sf building times $1.80/sf equals a total maximum deduction of $360,000. Assume the architect’s taxable income for the year in which the building was placed into service was $250,000, before the allocated energy deduction. The calculated $360,000 energy deduction would eliminate all taxable income for that year, and provide the architect with a carry-over energy deduction in the amount of $110,000 to offset the architect’s taxable income for the next tax year. The law also allows a loss carry-back for three consecutive tax years, or you can elect to carry it forward until it is used or for a maximum of 20 years.

As you can see, this is a very powerful and beneficial provision of the tax code. It is the only provision that I am aware of
that provides the non-building owner, the architect, a financial tax benefit for the architect’s design of an energy efficient commercial building. Other requirements must also be met in order to obtain this tremendous benefit.

I believe that it would be very prudent to discuss § 179D with your accountant or tax lawyer, as to how this section applies to publicly owned commercial building projects that you have designed. Hopefully, you may find that as the architect for the project, you are entitled to receive a substantial deduction from your own taxable income. This is a tax deduction, not a tax credit.

You never know, this information just might make your fiscal year a little better, and you a lot happier! Call your accountant before you send in or amend your tax return for 2009.

**Note:** The preceding article is not legal or accounting advice and should not be relied upon. It is merely the author’s opinion. It is highly recommended that you consult with your own attorney and accountant regarding any IRS Tax Code issues.

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