



July 19, 2006

The Honorable Eric Solomon
Acting Deputy Assistant Secretary (Tax Policy)
United States Treasury Department
1500 Pennsylvania Avenue, N.W.
Washington, D.C. 20220

The Honorable Donald Korb
Chief Counsel of the Internal Revenue Service
Room 3026
Internal Revenue Service
1111 Constitution Avenue, N.W.
Washington, D.C. 20224

Dear Sirs:

Re: NEMA comments on IRS Notice 2006-52

On June 2, 2006, the IRS issued an advanced copy of Notice 2006-52 (a revised version of the Notice appears in Internal Revenue Bulletin 2006-26 dated June 26, 2006). Notice 2006-52 sets forth interim guidance for taxpayers to certify that their energy-efficient commercial buildings qualify for the deduction provided by Internal Revenue Code (IRC) section 179D, as added by the Energy Policy Act of 2005. The National Electrical Manufacturers Association (NEMA) fully supports and was closely involved in the legislative development of the energy efficient commercial building tax deduction. We appreciate the opportunity to comment on this important Notice as it applies to lighting systems and we commend the efforts of the Department of Energy, the Treasury Department and the Internal Revenue Service in providing this needed guidance.

NEMA is a trade association of approximately 430 member companies, including large, medium, and small businesses that manufacture products used in the generation, transmission and distribution, control, and end-use of electricity. Since 1926 NEMA has provided a forum for the standardization of electrical equipment, enabling consumers to select from a range of safe, effective, and compatible electrical products. The organization has also made numerous contributions to the electrical industry by shaping public policy development and operating as a central confidential agency for gathering, compiling, and analyzing market statistics and economics data.

Lighting systems may qualify for the section 179D deduction in one of three ways:

- (1) A lighting system may qualify for a partial deduction under the interim rule of Notice section 2.03(1)(b);

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- (2) A lighting system may be a component of a commercial building that qualifies for the full deduction as described in Notice section 2.02 (the so-called “whole building method”);
- (3) A lighting system may qualify for a partial deduction under the permanent rule of Notice section 2.03(1)(a) (which is based on the whole building method).

Following are specific observations with respect to the interim lighting rule and the whole building method as it applies to lighting, as well as general comments that are applicable to either methodology.

Comments with Respect to the “Interim Lighting Rule”

NEMA was closely involved in the legislative development of the interim rule for lighting systems of IRC section 179D(f). The requirements for the interim rule were modeled to approximate the energy efficiency and savings that would be achieved by applying the whole building method to a lighting system. The requirements of the interim rule are expressed in terms that are readily understandable by lighting professionals and avoid the complexities inherent calculations required by the whole building method. For these reasons, NEMA recommends retaining the interim rule as a permanent rule in any subsequently published guidance.

IRC section 179D(d)(3) and Notice section 4.07 provide that any calculation of energy power consumption and costs must be prepared by qualified computer software. Unlike the whole building method, the interim rule for lighting does not require the calculation of energy power consumption and costs or the comparison of such consumption and costs to a reference building. Compliance with the prescriptive method of the interim rule is readily determinable without the use of software. Thus, a taxpayer is eligible for a section 179D deduction with respect to a lighting system under the interim rule without demonstrating the use of qualified software. Published guidance should clarify this point.

Similarly, Notice section 4.05 provides that a qualified building must also be inspected to assure the energy efficient lighting systems were installed to meet the requisite energy-saving targets. The requirement of the Notice that this field inspection be performed in accordance with NREL procedures is unnecessary and inappropriate for the interim rule, which is independent of energy-saving targets. Qualified individuals already exist that can inspect an installation to assure that a lighting design that is consistent with the prescriptive requirements of the interim rule has been installed in the building. There is no need for new NREL requirements.

Comments with Respect to the “Whole Building Method”

In materials referring to a “reference building” meeting ASHRAE 90.1-2001 it is only necessary to multiply the 90.1 allowable watts per square foot times the square foot area for each space type and sum up these wattages for the lighting power. There is no need to assume luminaire types for the reference building.

It is not clear if the Performance Rating Method found in Appendix G of Standard 90.1-2004, to which the Guidelines refer, has an existing set of geographical regional reference building models that could be readily adapted for use with the 2001 standard. Although the reference lighting power can be readily calculated, as above, the reference building’s overall energy use would also be needed in order to determine how much the lighting power would have to be reduced to contribute to a 16 2/3% whole building calculation method reduction.

The Notice is silent on the treatment of certain systems that are described in the legislative history of section 179D. Specifically, the legislative history provides the intent of Congress that the calculation methods for energy savings provide appropriate credits for specified systems not otherwise credited in ASHRAE Standard 90.1.¹ In order to alleviate confusion, this list should be added to the IRS guidance.

Other General Comments

Notice section 4 provides that a qualified individual must certify that a building meets the requirements of IRC section 179D(c)(1). Notice section 5.05 defines a “qualified individual” as an engineer or contractor that is properly licensed as a professional engineer or contractor in the jurisdiction in which the building is located. This definition implies a State licensing procedure or arrangement. NEMA recommends that the qualifications be expanded to include professionals recognized by a national certification body, such as the National Council on Qualifications for the Lighting Professions.

IRC section 179D(d)(4) provides that in the case of government buildings, the Secretary of the Treasury is to issue guidance that allows the allocation of the section 179D deduction to the person primarily responsible for designing the energy efficient property. We understand that Treasury and the IRS

¹ See the following language from the Page 78 of the DESCRIPTION AND TECHNICAL EXPLANATION OF THE CONFERENCE AGREEMENT OF H.R. 6, TITLE XIII, “ENERGY TAX INCENTIVES ACT OF 2005” dated July 27, 2005, “The intention is that the calculation be fuel neutral: the same energy efficiency features qualify a building for the deduction, regardless of whether the heating source is a gas or oil furnace, or boiler, or an electric heat pump.

In addition, the calculation methods are to provide appropriate calculated energy savings for design methods and technologies not otherwise credited in either Standard 90.1-2001 or in the 2005 California Nonresidential Alternative Calculation Method Approval Manual, including the following:

Natural ventilation;
Evaporative cooling;
Automatic lighting controls such as occupancy sensors, photocells, and timeclocks;
Daylighting;
Designs utilizing semi-conditioned spaces that maintain adequate comfort conditions without air conditioning or without heating;
Improved fan system efficiency, including reductions in static pressure;
Advanced unloading mechanisms for mechanical cooling, such as multiple or variable speed compressors;
On-site generation of electricity, including combined heat and power systems, fuel cells, and renewable energy generation such as solar energy; or
Wiring with lower energy losses than wiring satisfying Standard 90.1-2001 requirements for building power distribution systems.”

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currently are working on this project. We urge the swift completion of this project and stand ready to assist the staff with any technical questions regarding this important component of IRC section 179D.²

Again, thank you for the opportunity to comment on Notice 2006-52. If you have any questions regarding this submission, do not hesitate to contact me at 703-841-3274 or Joe Mikrut of Capitol Tax Partners (tax counsel to NEMA) at 202-289-8700.

Sincerely,



Kyle Pitsor,
Vice President, Government Relations

cc:

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² See the CBTD Coalition submission of November 18, 2005 for suggestions on how to implement the government building provision.