



AEC DEDUCTION JUNCTION: WHAT'S THE FUNCTION OF 179D?

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Course#: 0003

AIA CES Provider#: 404108815

Learning Units: 1.0 LU/RIBA

AIA
Continuing
Education
Provider


BRAYN
Consulting LLC



BRADY BRYAN, CEO

- 10 years in O&G prior to law school
- Deloitte alum
- J.D. – *Southwestern Law School*
- BBA, Management – *Sam Houston State University*
- *Lives in Las Vegas with wife, 3 kids, and 3 French bull dogs*

COURSE DESCRIPTION

Architecture 2030 issued the 2030 Challenge in 2006, the same year congress passed into law The Energy Efficient Commercial Building Deduction, also known as 179D. This federal tax benefit incentivizes architects and engineers to design and invest in sustainable buildings. The value of the incentive is \$1.80 per square foot of an energy efficient building and available to architecture and engineering firms that design government buildings such as K- 12 schools, state university buildings, airports, penitentiaries, courthouses, and more. This course will provide an overview of the program, cover eligibility and qualification requirements, review case studies, and reference recent court cases that provide encouraging guidance for architecture and engineering firms.

LEARNING OBJECTIVES

- Participants will learn how architecture and engineering firms are eligible for the 179D Energy Efficient Commercial Building Tax Deduction
- Participants will be able to identify 179D eligible projects, and understand the process for claiming the 179D incentive
- Participants will be able to explain the 179D government building allocation process
- Participants will be able to effectuate necessary changes in future tax incentive claims to better position company and owners in case of audit
- Participants will be able to celebrate a few positive outcomes for the architecture and engineering industry from recent court cases and IRS guidance

179D Energy Efficient Commercial Building Deduction



Extended 12/20/2019 for 2018 – 2020 Tax Years

IMPLICATIONS OF CARES ACT

- **Nothing specific on 179D, R&D Tax Credits**
- **2018-2020 changes for Net Operating Loss (NOL)**
- **IMPORTANT NOL interplay with 179D & R&D Tax Credits**

179D ENERGY EFFICIENT INCENTIVE BASICS

FEDERAL TAX DEDUCTION	
FOR BUILDINGS CONSTRUCTED	2006 through 2020
VALUE	<i>Up to \$1.80 per square foot federal tax deduction</i>
QUALIFICATION	Designers / Builders of Govt Owned Buildings
ELIGIBLE QUALIFIED PROPERTY	<ul style="list-style-type: none">• HVAC / Hot Water• Interior Lighting• Building Envelope• New Construction• Renovation• Addition
NOTES	<ul style="list-style-type: none">• Subject to federal statute of limitations• Typically available for projects completed prior 3 years• Requires certification by 3rd party Professional Engineer

179D FOR DESIGNERS & BUILDERS

- Architect
- Mechanical Engineer
- Electrical Engineer
- MEP Engineer
- General Contractor
- Mechanical Subcontractor
- Electrical Subcontractor
- Controls Companies
- Specialty Designers/Contractors

**Government
Owned
Buildings**

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K-12 Schools
State University Buildings
City, Town, County
Prisons
Airports, Port Authority
State/County Hospitals
Military
General Services Admin (GSA)

CASE STUDY – MEP ENGINEERING FIRM

- 15+ Projects per Year
- New Construction
- Renovations
- Corporate Campuses
- Office
- Universities
- K-12 Schools

Tax Years	Taxable Income	Tax Before CARES Act	Tax After CARES Act
2013-2017	1,000,000	350,000	85,000
2018	(750,000)	-	-
2019	700,000	40,000	210,000
	TOTAL TAX	390,000	295,000

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179D Tax Deductions

Completed 2018	Size (SF)	Allocation	Qualification	Tax Deductions
University Bldg	150,000	100%	\$1.80/SF	\$270,000
Middle School	120,000	50%	\$1.80/SF	\$108,000
University Garage	250,000	100%	\$0.60/SF	\$150,000
2018 179D Tax Deductions				\$ 528,000

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R&D Tax Credits

Tax Years	FTEs	R&D Tax Credits
2013-2017	25/year	\$170,000
2018	50	\$90,000
2019	60	\$100,000
2013 – 2019 R&D Tax Credits		\$ 360,000

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* \$135,000 R&D Tax Credits carry forward

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CARES ACT + TAX INCENTIVES > \$500,000 SAVINGS

NEW OPPORTUNITIES

179D Tax Deductions

- Architects, Engineers, & Contractors biggest beneficiary
- Recently extended for projects completed 2018 – 2020

R&D Tax Credits

- Available to many industries
- Payroll of \$1M+ or potential QREs of at least \$500k

Recent TCJA, CARES Act, NOL changes



US vs. Quebe

CASE FACTS

Quebe Holdings, Inc., Electrical Contractor, S-Corp, Defendant

- 4/2013 – Claimed R&D Tax Credits & 179D Deductions on amended 2009 return
 - \$150k R&D Tax Credits
 - \$270k 179D Deductions
 - Refunded 8/2013 (except for carryback)
- 12/2013 – Claimed R&D Tax Credits & 179D Deductions on amended 2010 return
 - \$150k R&D Tax Credits
 - \$60k 179D Deductions
 - Refunded 4/2014
- 2/2014 – IRS Examination
- 8/2015 – US brought civil suite per sec. 7405 to recover allegedly erroneous refunds
- 1/2019 – Summary Judgment Southern District of Ohio in favor of government

NOTE: Quebe was not a client of BRAYN, and BRAYN was not involved in this case

US VS. QUEBE

AIR FORCE BASE BUILDINGS *

Quebe claimed 179D deductions in 2009 for projects completed in 2011

Quebe claimed 179D deductions for buildings it did not work on

Quebe claimed 179D deductions for buildings they admittedly only installed lighting fixtures

SCHOOLS

Quebe obtained allocation letter from custodial staff after school already allocated to AE firms

*** IRS & COURT AGREED QUEBE WAS ELIGIBLE FOR 179D ON THE AFB BUILDINGS THEY WORKED ON**

ALLOCATION LETTERS

- DESIGNER
- AUTHORIZED REPRESENTATIVE
- PLACED IN SERVICE DATE (CO, CERT. COMPLETION, ETC.)
- IRS & THIRD-PARTY CONTACTS

ALLOCATION LETTERS ARE CRITICAL PATH



179D TAX CONTROVERSY

- [LB&I Compliance Campaign](#) 11/03/2017 – issue-based examinations
- [IRS Office of Chief Council Memo](#) 11/28/2018 – eligibility of designers and builders, with particular scrutiny on contractors
- [LB&I Practice Unit](#) 12/18/2018 - addressing taxpayer requirements
- [US vs. Quebe](#) 01/25/2019 – electrical contractor claimed 179D for lighting work on government buildings. Informative for implications based on placed in service dates, eligibility as designer, and allocation letter process

CASE STUDY – PERFORMANCE CONTRACTOR


Study Highlights

- Combined w/ R&D Study
- Leveraged ERP to ID projects
- Received allocations on 80%+ of projects pursued
- **100% fully sustained under audit without requiring appeals process**

East Coast

Multi-Year Study	Number Allocated	Avg. Qual. Rate	Tax Deductions
Elementary Schools	8	\$1.80/SF	\$900,000
Middle Schools	5	\$1.80/SF	\$550,000
High Schools	5	\$1.80/SF	\$2,600,000
Misc. School Buildings	2	\$1.80/SF	\$150,000
		Total Tax Deductions	\$ 4,200,000

2020 TAKEAWAYS

- Allocation Letters are Critical Path 
- CARES Act & NOL changes offer additional opportunities
- Address 179D IRS internal review processes
- Leverage internal ERP and documentation for substantiation
- Recent taxpayer friendly positions on 179D from IRS & courts



Q&A



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