

# IRA Update: IRS Announces Updated Reference Standard for Energy Efficient Commercial Building Property Deduction Under Section 179D

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On Friday, December 23, 2022, the IRS published [Announcement 2023-1, 2023-1 IRB 1](#) (the “**Announcement**”), which sets forth a new reference standard for energy efficient commercial building (“**EECB**”) property for purposes of the deduction under Section 179D<sup>[1]</sup> and clarifies the application of the existing reference standard following changes made by the Inflation Reduction Act of 2022 (“**IRA**”). The Announcement is effective January 1, 2023.

In general, Section 179D allows taxpayers that own or lease commercial buildings in the United States to deduct a portion of the cost of EECB property placed 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 to provide efficiency upgrades to 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. Certification involves establishing, in the manner and method prescribed by the Secretary of Treasury (the “**Secretary**”), that the property is installed as part of a plan designed to reduce the total annual energy and power costs of the interior lighting, heating, cooling, ventilation, and hot water systems 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 90.1 published by the American Society of Heating, Refrigerating, and Air Conditioning Engineers and the Illuminating Engineering Society of North America (referred to herein as an “**ASHRAE Reference Standard**”) using certain methods of calculation.

The Announcement notifies taxpayers that the Secretary has affirmed ASHRAE Reference Standard 90.1-2019 as the applicable reference standard for purposes of Section 179D for EECB property placed in service after December 31, 2026, other than EECB property for which construction started before January 1, 2023. Existing ASHRAE Reference Standard 90.1-2007 will apply to EECB property placed in service before January 1, 2027, and any EECB property for which construction started before January 1, 2023 (regardless of when placed in service).

The applicable reference standard is determined based on the definition of “Reference Standard 90.1” in Section 179D(c)(2). Prior to the IRA, Reference Standard 90.1 was defined to mean the most recently published Standard 90.1 that was affirmed by the Secretary for use under Section 179D not later than two years prior to starting construction of the EECB property. The IRA revised the definition, effective for taxable years beginning after 2022, to mean the more recent of (i) ASHRAE Reference Standard 90.1-2007 or (ii) the most recently published Reference Standard 90.1 that was affirmed by the Secretary, after consultation with the Secretary of Energy, for use under Section 179D not later than four years before the property is placed in service. The Secretary affirms ASHRAE Reference Standard 90.1-2019 for purposes of Section 179D(c)(2) pursuant to the Announcement, following the Department of Energy’s approval of this reference standard on July 28, 2021.

The Announcement also states that the IRS and Treasury Department intend to publish separate guidance to address other changes to Section 179D made by the IRA, including procedures for measuring energy use intensity to calculate the alternative deduction for energy efficient building retrofit property.

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## Endnotes

<sup>[1]</sup> Unless otherwise stated, capitalized references to “Section” are to the Internal Revenue Code of 1986, as amended (the “Code”).

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