

ENGINEERING & CONSTRUCTION Bulletin

Issue No. 2012-04

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Type: Policy

Subject: NAVFAC Implementation of Internal Revenue Code § 179D Tax Policy

References: (a) 26 U.S.C. § 179D, Energy Efficient Commercial Buildings Deduction
(b) DASN (E,I&E) Policy on Energy Efficient Commercial Buildings Tax Deduction, dtd 19 March 2012
(c) The Emergency Economic Stabilization Act of 2008 (P.L. 110-343)
(d) Internal Revenue Bulletin 2008-14, Notice 2008-40, Amplification of Notice 2006-52; Deduction for Energy Efficient Commercial Buildings

Enclosures: (1) 179D Allocation Guidance Letter and 179D Request Form

1. Purpose

Provide policy and guidance on NAVFAC roles and responsibilities for the tax deduction referenced in (a) through (d).

2. Background

26 U.S.C. § 179D allows a tax deduction for energy efficient property installed in buildings after the beneficial occupancy date (BOD). Navy policy for the allocations of the tax deduction is provided in reference (b).

3. Applicability

This ECB is effective immediately and shall be followed when a 179D tax deduction allocation request is received for a DON owned facility.

This ECB applies to energy efficient property placed in service within the United States after 31 December 2005 and prior to 1 January 2018.

The Internal Revenue Code §179D applies to buildings and property within the scope of ASHRAE 90.1-2007, Energy Standards for Buildings Except Low-Rise Residential Buildings. Therefore this ECB does not apply to buildings three stories or less in height above grade that include sleeping accommodations where occupants are primarily permanent in nature (30 days or more).

4. Policy

- a. DASN policy recognizes NAVFAC as the agent to verify the 179D tax deduction requests for DON facilities.

- b. A NAVFAC employee who has knowledge of the project will verify the tax deduction. This individual can be the Project Manager, Design Manager, Construction Manager, FEC PWD, or ROICC Engineer. This person is the “DON Authorized Individual” identified on the 179D Request Form.
- c. Per DASN Policy, only a party with a direct contractual relationship with DON may request a 179D allocation from DON. This party is the “Designer” and can only be the prime contractor awarded the design-build contract/task order, or in the case of design-bid-build, can only be the A/E firm that completed the design.
- d. Upon request from the Designer, NAVFAC will send the Designer the 179D Allocation Guidance Letter (Enclosure (1)) within 30 days. The guidance letter explains the Designer’s requirements for submitting the completed 179D Request Form and necessary supporting documentation to process the request.

Per DASN Policy, NAVFAC is not responsible for review or endorsement of a Designer’s certifying documents or energy savings modeling data. NAVFAC is not responsible for the certification required of a Designer by the Internal Revenue Service. The Designer claiming a deduction is solely responsible for the accuracy of any representations made to the IRS.

- e. Upon receipt of the completed 179D Request Form and supporting documentation, NAVFAC shall:
 - 1) Verify the following prior to signing the 179D Request Form:
 - a) Contract documentation identifies the Designer in accordance with 4.c.
 - b) Block 1: The DON Authorized Individual listed is in accordance with 4.b.
 - c) Block 2: Identifies the Designer in accordance with 4.c, or in the case where the Designer has requested multiple allocations:
 - i) Verify there was a contractual tie between the allocated party and the Designer on the building contract/task order.
 - ii) Verify the percent breakouts total 100%.

If a discrepancy occurs, make adjustments to the percentages as deemed accurate or return the 179D Request Form unsigned to the Designer along with brief explanation.
 - d) Block 3: This is the address of the government owned property where the energy efficient property or component is installed.
 - e) Block 4: Verify the total cost of the energy efficient property or component:
 - i) Does not exceed the total building contract/task order price.
 - ii) Does not exceed the sum of the component costs.
 - iii) That all components listed have a contractual tie to the building contract/task order.

If discrepancies are identified, return the 179D Request Form unsigned to the Designer along with brief explanation.

- f) Block 5: Verify the date matches the BOD acceptance date and it falls between 31 Dec 2005 and 1 Jan 2018.
 - g) Block 6: This must total 100%.
Only one completed 179D Request Form totaling 100% will be accepted per building contract/task order. Partial requests (<100%) will not be accepted.
 - h) Verify the Designer signed the 179D Request Form.
- 2) Sign and return the completed 179D Request Form to the Designer with copies to the contract file and the Public Works Officer. Archive the supporting documentation in the contract file.

Once NAVFAC has signed the 179D Request Form, no further submittals will be accepted for that building contract/task order.

- 5. Point of Contact:** The point of contact for this ECB is Mr. Kevin Hurley, 202-685-9171.

Joseph E. Gott, P.E.
Chief Engineer
Director, Capital Improvements

ECB 2012-04: NAVFAC Implementation of 179D Tax Policy

Enclosure (1) 179D Allocation Guidance Letter

[FEC/ PWD / ROICC]
[FEC/ PWD / ROICC Address]

9 November 2016

[Contractor/AE Name]
[Contractor/AE Address]

SUBJECT: CONTRACT [Number/Task Order], [Title]
[Station Name], [Location]

Contractor requirements for NAVFAC's processing of 26 U.S.C. § 179D, Energy Efficient Commercial Buildings Deduction

REFERENCE: (a) DASN (E,I&E) Policy on Energy Efficient Commercial Buildings Tax Deduction, dtd 19 March 2012

ATTACHMENT: (1) 179D Request Form

In order to process your 179D tax deduction allocation request the following information is required. Complete the 179D Request Form in its entirety. Provide supporting documents necessary to process the request. Failure to provide any of the information below or in the format specified may result in a rejection and require resubmission.

- 1) One complete copy of the 179D Request Form (Attachment (1)). This form can only be signed and submitted by the Prime Contractor (for Design Build) or the AE firm that completed the design contract (for Design-Bid-Build) with NAVFAC. This agent signs the 179D Request Form as the "Designer".
 - a. The second block of the Allocation Request Form shall identify the Designer and include name, address, and telephone number. For multiple allocation requests, include the percentage of the deduction requested next to the party's name.
 - b. Block six, the percentage of the deduction must equal 100% for a subject building contract/task order. NAVFAC will not accept partial submissions.

Note: If the building address (block three) or the date the property is BOD'd (block five) is unknown, request the information from your Contracting Officer.

- 2) Supporting documentation:
 - a. When multiple allocations are requested:
 - i. Proof the party participated in the design of the subject building contract/task order (e.g. copy of the cover page of the designer's contract with the requestor, copy of associated payrolls, or documentation proving services provided by the party on the subject building/task order contract).

- ii. A narrative explaining (not to exceed one paragraph for each party) why the party is receiving the percentage and how the party meets the definition of a designer per Internal Revenue Bulletin 2008-14, Notice 2008-40.

Note: If unable to verify allocations, NAVFAC has the authority to alter allocation percentages depending upon the supporting documentation received or may reject the request (requiring resubmission).

- b. Cost of the property or component: Provide invoice documentation supporting the total cost of the energy efficient property/components and proof the property/components were installed on the subject building contract/task order.

Note: Per ref (a): NAVFAC is not responsible for the certification required of a designer by the Internal Revenue Service in order for that designer to avail itself of a deduction. The designer claiming a deduction is solely responsible for the accuracy of any representations made to the IRS that the installation of the applicable property has resulted in the required energy cost.

- c. In addition to the 179D Request Form signature, the "Designer" shall include a signed statement that the information provided in the supporting documentation is true, correct, and complete.

- 3. Return the 179D Request Form along with the supporting documentation to NAVFAC.

If you have any questions in the processing of your 179D tax deduction allocation request, please contact _____.

Sincerely,

[Title]
[Contact Information]

ALLOCATION OF § 179D ENERGY EFFICIENT GOVERNMENT-OWNED BUILDINGS TAX DEDUCTION

The name, address, and telephone number of an authorized representative of the owner of the government-owned building.	
The name, address, and telephone number of an authorized representative of the designer receiving the allocation of the § 179D deduction.	
The address of the government owned building on or in which the energy efficient property or component is installed.	
The cost of the property or component.	
The date the property or component was placed into service.	
The percentage of the § 179D deduction, if applicable, allocated to the designer.	

DECLARATION OF DON AUTHORIZED INDIVIDUAL: Under penalties of perjury, I declare that I have examined this allocation and to the best of my knowledge and belief, the facts presented in support of this allocation are true, correct, and complete.”

X

DON Authorized Individual

Date

X

Designer

Date