



# THE AMERICAN INSTITUTE OF ARCHITECTS

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## STATEMENT FOR THE RECORD

### “FEDERAL ENERGY RELATED TAX POLICY AND ITS EFFECTS ON MARKETS, PRICES, AND CONSUMERS.”

House Energy and Commerce Committee  
Energy Subcommittee

March 28, 2017

#### Introduction

AIA, the leading professional membership association for architects since 1857, strongly supports comprehensive tax reform that lowers marginal tax rates for individuals, pass-through entities, and corporations, while broadening the tax base and simplifying the tax code.

We recognize that tax reform is a balancing act. Lowering tax rates will require curtailing or discarding many tax expenditures, while maintaining and improving a limited number of tax policies that support important policy objectives.

AIA believes that energy efficiency in the built environment is a key policy objective that must be preserved within the context of comprehensive tax reform.

Tax reform is an opportunity to provide taxpayers with much-needed certainty, simplicity, and fairness, while at the same time encouraging economic growth and job creation. With simple reforms outlined below, energy efficiency provisions like IRC Section 179D can meet those needs and more.

Our strong hope is that tax reform results in simple, commonsense tax policies for businesses of all sizes, aimed to spur innovative, economically vibrant, sustainable, and resilient buildings and communities. As the Committee and Congress consider tax reform and its impact on energy markets, prices, and consumers, we urge consideration of the following principles:

- Preserve or extend tax policies that support and strengthen the energy efficient design of buildings;
- Consider tax policies that support economically vibrant, innovative, sustainable, and resilient buildings on a district, regional, or building portfolio scale; and
- Ensure energy efficient and renewable energy building technology is adopted through tax incentives that make this technology more accessible to consumers.

This statement discusses these issues in more detail including policies that support a vibrant built environment, particularly IRC Section 179D,

the Energy Efficient Commercial Building Deduction.

## **The American Institute of Architects**

AIA represents more than 90,000 architects, emerging professionals and allied partners nationwide and around the world.

In 2015 alone, the 18,262 architecture firms owned by AIA members grossed billings of over \$40 billion,<sup>i</sup> driving economic activity and job growth in communities across America. Moreover, most architecture firms at which AIA members work are small businesses, with nearly 95 percent of firms having fewer than 50 employees.

Architects work to advance the public's quality of life through their commitment to healthy, safe, resilient and sustainable communities. From designing the next generation of energy-saving buildings to making our communities healthier and more vibrant and from helping neighborhoods rebuild after disasters, to exporting American design know-how to the rest of the world, architects turn dreams and aspirations into reality.

## **Supporting a Vibrant Built Environment**

As tax reform progresses, it is important to consider tax policies that support innovative, economically vibrant, sustainable, and resilient buildings and communities. To that end, we want to highlight the need to continue and improve tax policies aimed at energy efficiency.

AIA has been working with other design and construction, real estate, and energy efficiency industry members in a coalition of over 100 stakeholders in support of IRC section 179D.

The Energy Efficient Commercial Building Deduction, which is contained in section 179D of the tax code, has been an extremely effective tool in increasing the energy efficiency of buildings. Section 179D has leveraged billions of dollars in private capital, resulting in the energy-efficient construction and renovation of thousands of buildings, while creating and preserving thou-

sands of jobs. It is one of the best examples of the tremendous impact tax incentives can have on financing energy-efficient property. Unfortunately, this provision expired at the end of last year, and has yet to be extended by the current Congress.

Section 179D's success demonstrates the strong need to retain an energy efficiency provision in the tax code in some form. In the case section 179D is retained close to its current form, we strongly urge Congress to make permanent and enhance the section 179D deduction by: (1) ensuring the ability of pass-through entities to capture the full value of an allocated deduction in the case of a public owner of a building; (2) allowing non-profit owners of buildings, similar to public owners of buildings, to allocate the deduction; and (3) increasing the value of the deduction.

### Allocating the Section 179D Deduction to a Pass-Through Entity.

Section 179D provides a federal, state, or local government owner of a commercial building an election to allocate the tax deduction to the primary person responsible for designing the energy-efficient enhancements. In December 2010, the Internal Revenue Service (IRS) released a memo that effectively prevents firms organized as partnerships or S corporations from fully realizing the benefit of an allocated section 179D deduction.<sup>ii</sup>

In order for partnerships and S corporations to obtain the intended benefits, it is necessary for partners and S corporation shareholders to obtain a basis in their partnerships and S corporations that is not reduced by an allocated section 179D deduction. This issue could be addressed by a simple statutory modification to expressly require the Department of Treasury to issue regulations that properly determine partnership or S corporation outside basis in the case where section 179D is allocated. Such a clarification would provide certainty and address a widespread concern among many small businesses that design energy-efficient buildings.

### Allocating the Section 179D Deduction in the Case of a Non-Profit Owner of a Building.

In many cases, non-profit entities, such as hospitals, universities, private schools, charities, and foundations, conduct functions similar to state and local governments. Currently, non-profit entities own thousands of properties across the country. Although retrofits to these properties could result in significant energy savings, the non-profit entities do not pay taxes and, consequently, cannot benefit from section 179D.

The section 179D allocation provision should be expanded to provide non-profit owners of buildings, similar to public owners of buildings, with the ability to elect to allocate the deduction to the primary designer of the building. Such a provision would assist non-profits in financing energy-efficient upgrades and would reduce their energy costs in the longer-term.

### Enhancing the Section 179D Deduction.

The maximum section 179D deduction of \$1.80 per square foot has not been increased since the deduction was put in place in 2005 and, as a result, has not kept pace with inflation. Consequently, the impact of section 179D has become diminished over time.

Increasing section 179D from the current maximum allowable amount of \$1.80 per square foot to \$3.00 per square foot for buildings that hit reductions of 50 percent beyond ASHRAE 90.1 2007, would increase the deduction's effectiveness. In the case of individual subsystems, the maximum allowable deduction should be increased from \$0.60 per square foot to \$1.00 per square foot.

Enhancing section 179D would provide an important source of additional capital to stimulate building design, construction, and renovation, driving the creation of well-paying jobs. An enhanced 179D deduction would further incentivize energy efficiency, improve the nation's commercial building stock, and increase energy independence.

### A New Approach to Energy Efficiency Tax Policy

In its current form, the Internal Revenue Code (IRC) contains a number of important tax provisions that impact the energy efficient design and construction of buildings, in addition to Section 179D. These include policies such as the Residential Energy Efficiency Property Credit (IRC § 25D), and the New Energy Efficient Home Credit (IRC § 45L), both of which expired at the end of last year.

Each of these provisions provides important support for the design, construction, and renovation of buildings of different types. However, the complexity of the tax code, inconsistency in the requirements and metrics of differing provisions, and a lack of policy coordination between them often blunts their impact. As AIA's 2010 study [Promoting Livable Communities](#) notes:

*There are hosts of tax policies that impact real estate generally. However, because there was no overarching federal vision for livability at the time of their development, the incentives tend to address single pieces of the larger picture and have a strong focus on individual buildings, making it difficult for communities and developers to use the tax policies to create livable, sustainable patterns of development.*

Tax reform presents the opportunity to review these policies, identify important policy objectives, and develop and improve tax policies that empower building owners and their communities to achieve these objectives. In the case of energy efficiency, there is an opportunity to take all of these provisions and create a single, technology neutral energy efficiency provision that could possibly address efficiency on the district, regional or building portfolio scale.

Instead of a piecemeal approach to reforming these provisions among others, we encourage the committee to view the built environment holistically, and re-envision tax policies that encourage new and existing property improvements benefiting the community and environment at large, on a macro level.

AIA is currently working with members of the House Ways and Means Committee and the Senate Finance Committee to develop technology neutral energy efficiency tax incentive proposals that address the policy goals enumerated above. AIA will keep House Energy and Commerce, Energy Subcommittee members and staff apprised of these developments and will circulate policy drafts among members and staff once completed.

## **Conclusion**

As Congress considers tax reform, we urge the preservation and reform of tax policies that support innovative, smart, energy-efficient, and resilient development. Tax reform following these principles would provide taxpayers with much-needed certainty, simplicity, and fairness, while at the same time encouraging economic growth and job creation.

AIA and its members are ready to serve as a resource to Congress and the Committee on these and other issues.

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<sup>i</sup> AIA, *The Business of Architecture: 2015 AIA Firm Survey Report* (2015).

<sup>ii</sup> I.R.S. Chief Couns. Mem. AM2010-007 (Dec. 23, 2010).