

Ways and Means Committee

Tax Policy Subcommittee

“Post Tax Reform Evaluation of Recently Expired Tax Provisions.”

Testimony Of

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Mr. Chairman:

I thank you and Ranking Member Doggett for calling this hearing on tax extenders. It is important for Congress to review those tax provisions that are subject to expiration – to understand better those provisions and to make informed judgments going forward.

The provision that I address today encourages the building of energy efficient commercial and government buildings. The language is found in Section 179D of the tax code and was first included with bipartisan support in the Energy Policy Act of 2005. Section 179D has since been continuously extended – most recently for 2017 in the recently enacted budget bill. I especially want to note the strong support from Congressmen Reed (R-NY), Reichert (R-WA), and Blumenauer (D-OR) in the House for this commonsense provision – and I also thank Senators Cardin (D-MD) especially Portman (R-OH) for their work.

Why the focus by Congress in the Energy Policy Act of 2005 on encouraging energy efficient buildings? Simple. The Department of Energy found that 36% of all electricity in this country and one-fifth of all energy is consumed by commercial buildings. In addition, costs of electricity are a significant and growing burden on both businesses and government.

Who is the largest landlord in America? Government. And with government, taxpayers are footing the bill. The cost to taxpayers for state and local government energy use is over \$10 billion dollars a year. School districts spend over \$6 billion a year on energy costs.

In short, encouraging energy efficient buildings significantly supports the policy goals of Congress of energy independence and energy efficiency for our nation while at the same time reducing costs for both businesses and taxpayers. Incentivizing the design of energy efficient buildings relieves the burden placed on the environment. And it opens up precious resources for the public sector through lower operating costs for governments that own these buildings, which in turn allows them to invest more in their core missions.

Mr. Chairman, as background, I speak to you today as Senior Vice President of alliantgroup – a tax services firm based in Houston, Texas with 800 professionals. We work nationwide helping businesses qualify for 179D. I'm sharing with you the perspective alliantgroup sees first-hand of the benefits this provision has provided – to businesses, to governments as well as the thousands of architects, engineers and construction firms that design energy efficient commercial buildings. Many of these entities are members of the 179D coalition also speaking today – of which alliantgroup is a member. alliantgroup certainly associates itself with the comments to be made by the 179D coalition and believes that the Committee will benefit from our experience as a tax services provider – seeing first-hand the challenges and opportunities in the tax administration of this part of the tax code.

As a brief background, Section 179D provides a \$1.80 per square foot tax deduction to the owner of a building for an energy efficient building (or retrofit) that surpasses 2007 ASHRAE standards by 50% (Congress recently increased this from 2001 ASHRAE standards which were part of the original 2006 statute). There are three components considered for measuring energy efficiency – building envelope, lighting and HVAC. It is possible for a building to partially qualify – for example, if one of the components individually causes the building to surpass ASHRAE standards by a lower amount.

Important for tax administration, the statute has a “trust-but-verify” element to it – requiring an independent firm with state-licensed professional engineers to model the building as well as conduct an on-site study to confirm the energy savings. This is the work that alliantgroup and a number of other companies conduct – as required by statute – to affirm that a

business is eligible for the 179D deduction. This independent verification protects the fisc and ensures the energy savings are real.

For federal, state and local government buildings (including public schools and colleges) the Congress provided that the tax benefit goes to the designer of the building (the architect, engineer or contractor) – reflecting that the government entity doesn't pay taxes and to encourage the designer to employ cutting-edge energy efficient designs. Congress recognized that the benefit to the government (and ultimately, the taxpayers) from 179D is the significant cost-savings realized from energy savings over the life of the building.

Two key aspects I would highlight to the Committee is that:

First, Section 179D is technology neutral. The provision doesn't dictate how energy efficiency should be realized. There are no bureaucrats dictating or deciding how energy efficiency is to be achieved. Instead, the statute – wisely – adopts a policy of letting designers choose their own path to energy efficiency. We have seen first-hand the positive impact this open policy has had of unleashing the creativity of engineers and designers in providing new and innovative ways to achieve energy efficiency – helping to keep America a leader in the field of energy efficient design.

Second, Section 179D has been of real benefit to the construction sector – a vital part of our nation's economy. There is a reason that the Real Estate Roundtable, the American Institute of Architects, the American Council of Engineering Companies and the Association of General Contractors are all strong supporters of Section 179D. As my colleagues know, I have spent a great deal of my time and energy in the area of housing and construction – Section 179D has been a difference maker for many businesses in this key part of our economy – keeping doors open and creating jobs.

My answer to those who may fairly ask – why do we need a tax break to encourage the building of energy efficient buildings? The answer is threefold: One – the benefits from energy efficiency are a long horizon (often thirty years) that are often not fully captured in making decisions today about costs and funding for buildings. Second – is a recognition that energy efficient design is a benefit to all of us – our nation benefits from greater energy independence and efficiency. This external benefit isn't reflected in the costs of an energy efficient building. Finally, we need to continue to

reward and encourage energy efficient design and maintain our leadership in this field.

Here are the recommendations I would encourage the Committee to consider based on alliantgroup's years of experience and work in this field – and benefitting from the discussions with our partners in this area:

One.

Small businesses – especially architects and engineering firms that are designers of government buildings are too often unable to utilize the benefits of 179D because of basis issues. The statute should be changed to address the basis issues and allow these small business owners to fully benefit from the 179D deduction – this could be accomplished by having the current 179D deduction treated as a credit of equal value as the current deduction. Modifying 179D to be a credit – of the same value as the current deduction – would also encourage for-profit business to further benefit from this incentive.

Two.

An improved benefit for building retrofits. While retrofits are covered under the statute – it can be frustrating that a retrofit of a very old/historic building that significantly improves energy efficiency doesn't see a tax benefit under 179D because it doesn't surpass the 2007 ASHRAE standards. The committee should consider an allowance for a deduction if a retrofit markedly surpasses the prior baseline of energy efficiency for an older building. I would note to the Committee that while the natural focus is on new buildings – the surprising reality is over 50% of construction is actually retrofits. We need to encourage and reward the significant energy efficiency gains of retrofits.

Three.

Expand the provision to benefit designers for charitable buildings and Indian tribes. Currently, designers of government buildings can benefit – but designers of a building for a charity cannot. For example, the designer of a state university building receives the 179D benefit – but a designer for a private college building does not see any benefit. In addition, Indian tribes are not covered within the definition of a government building owner. The

statute should be expanded to allow designers of buildings of charities and Indian government buildings to also receive the benefit.

Four.

Permanency. Permanency will allow businesses to better plan and incorporate the benefits of 179D in their business decisions. Further, permanency will allow government agencies to better incorporate the tax benefits to designers of 179D in their bid-and-acceptance process. Finally, permanency will reinforce to designers that they will be rewarded for continuing to pursue efforts and devote time, energy and resources into ever-improving energy efficient buildings.

Five.

Raise the ASHRAE energy efficiency standards over time. I recognize that the Committee has a never ending stream of asks – but I also put forward today a proposal that will ensure that the goals of energy efficiency continue to be realized and also helps address the issue of costs. The original statute measured energy efficiency based on the ASHRAE 2001 standard. Alliantgroup worked with Congress to raise that standard to 2007 in the PATH Act. The Committee should revisit the 2007 standard, and I would suggest to add in a continuing escalation clause that raises ASHRAE standards year-by-year to ensure that we have in place a policy that is always challenging and rewarding designers to do better.

I realize that these discussions of taxes can often be dry – so I have provided you, Mr. Chairman and the Committee, a few examples Alliantgroup has seen first-hand working this field of the benefits to everyone involved – the owners of the building as well as the designers:

- For example, as a result of the 179D deduction, a small, Texas-based engineering firm was able to save enough in taxes to hire additional licensed engineers into their practice.
- As more companies face competition in the marketplace from foreign corporations, the 179D incentive also allowed an upstate New York architecture firm to more competitively bid and win work with a school district over several foreign competitors. Further, the 179D incentive empowered this architecture firm to implement a new energy efficient geothermal system in the school district and enabled the school district

to save an estimated \$450,000 over the next decade. Using the 179D incentive, the private company was able to implement high efficiency equipment, including: variable frequency drives, thermal storage, and LED lighting.

In the private sector, alliantgroup has worked with many American businesses that upgrade and construct their own facilities – and the 179D deduction has allowed these companies to expand operations, hire new employees, and take on new markets. This incentive is not only sound energy policy, but is vital to the innovative designers, engineers, and contractors that help drive our economy.

Thank you Mr. Chairman and Ranking Member Doggett. I am happy to answer any questions the Committee may have and to assist the Committee in its work.