

**Office of the State Architect**  
**Effective Date November 21, 2017**  
**Energy Efficient Commercial Building Tax Deduction (Revision)**

- A. Purpose:** As required by T.C.A. §4-15-106, this document sets forth the procedure by which the State Architect or its designee (the “State Architect”) shall allocate the energy efficient commercial building tax deduction codified in 26 U.S.C. § 179D to the party primarily responsible for designing the property in accordance with the tax provisions and guidance of the Internal Revenue Service.

Pursuant to Internal Revenue Service (“IRS”) Notice 2008-40 Section 3, the creation of technical specifications for the installation of energy efficient commercial building property into a newly constructed building, or a renovation or an addition to an existing building shall be considered design. Furthermore as provided in IRS Notice 2008-40, a designer may include, for example, an architect, engineer, contractor, environmental consultant, or energy services provider.

- B. Policy:** The State Architect shall follow the procedure below in allocating the energy efficient tax deduction codified in 26 U.S.C. § 179D (the “Deduction”).

1. In order to begin the process of evaluating a request to allocate the Deduction, the State Architect must receive a written request from the party(s) who intend(s) to claim the Deduction (the “Requesting Party”) together with the following information, where applicable.
  - (i) Appendix A – Signed form stating that the Requesting Party performed reasonable due diligence to determine whether any other eligible taxpayers are interested in pursuing the allocation. Proof of either declination or proof of attempts to contact other eligible taxpayers will be required to be submitted with Appendix A;
  - (ii) Appendix B – A signed Hold Harmless Agreement must be submitted by each taxpayer requesting an allocation;
  - (iii) Appendix C – A signed statement that the Requesting Party has met the eligibility requirements under 26 U.S.C. § 179D and IRS Notice 2008-40. A written summary describing the requesting party’s scope of work must be provided along with Appendix C setting forth the facts supporting the Requesting Party’s position it was primarily responsible for designing the energy efficient system(s);
  - (iv) Appendix D – If multiple taxpayers are interested in requesting an allocation for the same property, a Shared Allocation Form must be signed by all interested parties; and
  - (v) Appendix E - Allocation of Deduction meeting the requirements of Notice 2008-40 completely filled out with the Requesting Party’s signature must be submitted.

Separate forms must be provided for each eligible taxpayer requesting an allocation.

It should be noted that as of the date of adoption of this policy, IRS policies and guidance do not permit parties merely installing energy efficient commercial building property to claim the Deduction.

2. The State Architect shall commence a review of the submitted materials within a reasonable period of time after receipt. Contemporaneous with such review, the State Architect shall obtain a written determination from the Department of Finance and Administration, Office of Business and Finance as to whether or not the project for which the Requesting Party provided design services was funded with bonds issued by the State. If the project was funded by bonds, then the Department of Finance and Administration, Office of Business and Finance shall also provide information regarding the percentage of bond funding, the percentage of the property used for purposes not permissible under the bonds, and the other sources of funding for the project.
3. If the State Architect determines in his or her reasonable opinion based on the submission of the Requesting Party that the submitted information evidences the Requesting Party's right to claim the Deduction, then the State Architect shall determine that the full Deduction should be allocated to the Requesting Party, unless the Requesting Party was part of an agreement, referenced in the Shared Allocation Form, that would result in the Requesting Party being entitled to request only a portion of the total amount of the Deduction available per the Code. The amount of the Deduction shall be set forth in the allocation as a percentage of the available Deduction amount.
4. Notwithstanding anything to the contrary in this policy, if the project was financed with bonds issued by the State, the State Architect shall not award the Deduction without the prior written approval of bond counsel. If a project was financed with bonds issued by the State, the State Architect shall promptly, after making the determination set forth in Section 3 above, submit the information provided pursuant to Section 2 above to the Comptroller of the Treasury, Office of State and Local Finance so that it can be provided to bond counsel. If bond counsel approves the Deduction, then such approval shall be kept in the file of the State Architect.
5. Once the State Architect has determined that the Deduction should be allocated to the Requesting Party and approval of bond counsel has been received, if required, then the State Architect shall sign Appendix E (with any changes approved by the State Architect) and return the signed form to the Requesting Party. The Requesting Party may then file for the Deduction with the IRS. The Requesting Party shall provide to the State Architect a copy of any building certifications for which the Requesting Party is claiming a Deduction on and the associated energy analysis. Additionally, in the event that it is determined that

the Requesting Party is not entitled to receive all or any portion of the allocation, the Requesting Party shall so notify the State Architect in writing. The State Architect shall provide a copy of all information that the State Architect receives from the Requesting Party to the Department of Finance and Administration, Division of Accounts; the Comptroller of the Treasury, Office of State and Local Finance, if the project was financed in whole or in part with bonds; and any other organizations or departments of the State upon request.

6. It shall be the responsibility of the Requesting Party to comply with all State and Federal Requirements applicable to the Deduction, including, without limitation, requirements to distribute portions of the Deduction to other parties. Please note that it is the responsibility of any parties requesting an allocation of the Deduction to procure the services of a qualified individual to complete the field inspection and certification required by IRS Notice 2006-52.

For additional information, refer to Internal Revenue Service (IRS) guidance on the allocation of the Energy Efficient Commercial Building Tax Deduction for government-owned buildings set forth in Notice 2008-40, Internal Revenue Bulletin 2008-14, "Amplification of Notice 2006-52; Deduction for Energy Efficient Commercial Buildings." Notice 2008-40 can be found at: [http://www.irs.gov/irb/2008-14\\_IRB/ar12.html](http://www.irs.gov/irb/2008-14_IRB/ar12.html).

SBC Project No. \_\_\_\_\_

**APPENDIX A**

**26 USC §179D  
ENERGY EFFICIENT COMMERCIAL BUILDINGS TAX DEDUCTION CERTIFICATION  
CONSULTATION WITH PARTICIPANTS  
STATE OF TENNESSEE**

I hereby certify that an authorized representative of \_\_\_\_\_ (the  
“Architect/Engineer/Contractor”) has:

Consulted with all known architects, engineers, and contractors that created the technical specifications for the installation of the energy efficient commercial building property for which the Architect/Engineer/Contractor is seeking the attached Energy Efficient Commercial Buildings Tax Deduction (“CBTD”) allocation and all such architects, engineers, and contractors have agreed to share a portion of the allocation of the CBTD from the State of Tennessee, or have expressed no interest to pursue the allocation, or no response has been received after attempts to contact occurred.

Signature: \_\_\_\_\_ Date: \_\_\_\_\_

Name:

Title:

SBC Project No. \_\_\_\_\_

**APPENDIX B**

**26 USC §179D**

**STATE OF TENNESSEE AGREEMENT TO HOLD HARMLESS**

Please accept this as confirmation of \_\_\_\_\_'s (Company Name) agreement to hold harmless the State of Tennessee from any claim by any third party as relating to the allocation of the IRC Sec. 179D deduction for the \_\_\_\_\_ (Property Name). This hold harmless agreement is intended to be broad in nature as to any claims presented against The State of Tennessee in relation to the allocation of the aforementioned deduction to \_\_\_\_\_ (Company Name).

However, such agreement specifically includes, but is not limited to, any claim presented by any third party relating to the State of Tennessee's sole discretion in issuing the allocation letter, and/or any issue raised in regards to \_\_\_\_\_'s (3<sup>rd</sup> Party Services Provider) assessment of the facilities as presented in the section 179D study and deduction claimed by \_\_\_\_\_ (Company Name).

\_\_\_\_\_  
Authorized Representative Signature

\_\_\_\_\_  
Date

Name:

Title:

SBC Project No. \_\_\_\_\_

**APPENDIX C**

**26 USC §179D  
ENERGY EFFICIENT COMMERCIAL BUILDING TAX DEDUCTION  
QUALIFICATION STATEMENT**

I, \_\_\_\_\_ (Company Representative), hereby certify that  
\_\_\_\_\_ (Company) has created technical specifications for installation of  
energy efficient commercial building property (or partially qualifying commercial building property) for  
which a deduction is allowed under IRC Sec. 179D.

\_\_\_\_\_  
Authorized Representative Signature

\_\_\_\_\_  
Date Signed

\*Please include an accompanying written statement setting forth the facts supporting the Requesting  
Party's position that eligibility requirements under 26 USC §179D and Notice 2008-40 have been met.



**APPENDIX E**

**26 USC §179D  
ENERGY EFFICIENT COMMERCIAL BUILDINGS TAX DEDUCTION  
ALLOCATION FORM**

1. The name, address, and telephone number of the State of Tennessee's Authorized Representative:
  
2. The name, address, and telephone number of an authorized representative of the contractor receiving the allocation of the Energy Efficient Commercial Buildings Tax Deduction:
  
3. The address of the building on or in which the energy efficient property is installed:
  
4. The cost of the energy efficient property:
  
5. The date the energy efficient property was placed in service:
  
6. The percentage of the Energy Efficient Commercial Buildings Tax Deduction allocated to the contractor:

Under penalties of perjury, I declare that I have examined this allocation, including accompanying documents, and to the best of my knowledge and belief, the facts presented in support of this allocation are true, correct, and complete.

\_\_\_\_\_  
State of Tennessee Authorized Representative

\_\_\_\_\_  
Company Authorized Representative

\_\_\_\_\_  
Date Signed

\_\_\_\_\_  
Date Signed