

Notice 2008-40

Amplification of Notice 2006-52; Deduction for Energy Efficient Commercial Buildings

SECTION 5. CERTIFICATION REQUIREMENTS FOR INTERIM LIGHTING RULE

.01 In General.

Section 2.03(1)(b) of Notice 2006-52 provides an interim rule under which partially qualifying property is treated as energy efficient lighting property (the Interim Lighting Rule). Before a taxpayer may claim the § 179D deduction under the Interim Lighting Rule with respect to energy efficient lighting property installed on or in a commercial building, the taxpayer must obtain a certification with respect to the property. The certification must be provided by a qualified individual.

Section 4 of Notice 2006-52 provides that the certification must include a statement that qualified computer software was used to calculate energy and power consumption and costs. That section also provides that the certification must include a statement that the building owner has received an explanation of projected annual energy costs. These requirements are appropriate only in the case of certifications that involve calculations of energy and power consumption and cost.

The Interim Lighting Rule is satisfied by a reduction in lighting power density and such a reduction may be computed using a spreadsheet or other similar software. This computation does not require qualified computer software to model the entire building system or a determination of projected annual energy costs. Accordingly, the requirements of section 4 of Notice 2006-52 do not apply to certifications under the Interim Lighting Rule.

.02 Applicable Requirements.

A taxpayer is not required to attach the certification to the return on which the deduction is taken. However, § 1.6001-1(a) of the Income Tax Regulations requires that taxpayers maintain such books and records as are sufficient to establish the entitlement to, and amount of, any deduction claimed by the taxpayer. Accordingly, a taxpayer claiming a deduction under § 179D should retain the certification as part of the taxpayer's records for purposes of § 1.6001-1(a) of the Income Tax Regulations.

The qualified individual providing a certification under the interim rule must document a reduction in lighting power density in a thorough and consistent manner. A certification under the Interim Lighting Rule will be treated as satisfying the requirements of § 179D(c)(1) if the certification contains **all** of the following:

- (1) The name, address, and telephone number of the qualified individual;

- (2) The address of the building to which the certification applies;
- (3) A statement by the qualified individual that the interior lighting systems that have been, or are planned to be, incorporated into the building—
 - (a) Achieve a reduction in lighting power density of at least 25 percent (50 percent in the case of a warehouse) of the minimum requirements in Table 9.3.1.1 or Table 9.3.1.2 (not including additional interior lighting power allowances) of Standard 90.1-2001;
 - (b) Have controls and circuiting that comply fully with the mandatory and prescriptive requirements of Standard 90.1-2001;
 - (c) Include provision for bi-level switching in all occupancies except hotel and motel guest rooms, store rooms, restrooms, public lobbies, and garages; and
 - (d) Meet the minimum requirements for calculated lighting levels as set forth in the IESNA Lighting Handbook, Performance and Application, Ninth Edition, 2000;
- (4) A statement by the qualified individual that—
 - (a) Field inspections of the building were performed by a qualified individual after the energy efficient lighting property has been placed in service;
 - (b) The field inspections confirmed that the building has met, or will meet, the reduction in lighting power density required by the design plans and specifications; and
 - (c) The field inspections were performed in accordance with inspection and testing procedures that—
 - (i) Have been prescribed by the National Renewable Energy Laboratory (NREL) as Energy Savings Modeling and Inspection Guidelines for Commercial Building Federal Tax Deduction; and
 - (ii) Are in effect at the time the certification is given;
- (5) A list identifying the components of the energy efficient lighting property installed on or in the building, the energy efficiency features of the building, and its projected lighting power density;
- (6) A statement that the building owner has received an explanation of the energy efficiency features of the building and its projected lighting power density;

(7) A declaration, applicable to the certification and any accompanying documents, signed by the qualified individual, in the following form:

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