

(2) Special rule for sale-leasebacks

For purposes of paragraph (1)(A), if property is—

(A) originally placed in service after the date of the enactment of this section by a person, and

(B) sold and leased back by such person within 3 months after the date such property was originally placed in service,

such property shall be treated as originally placed in service not earlier than the date on which such property is used under the lease-back referred to in subparagraph (B).

(3) Effect of waiver under Clean Air Act

A waiver under the Clean Air Act shall not be taken into account in determining whether the requirements of paragraph (1)(D) are met.

(d) Qualified refinery

For purposes of this section, the term “qualified refinery” means any refinery located in the United States which is designed to serve the primary purpose of processing liquid fuel from crude oil or qualified fuels (as defined in section 45K(c)), or directly from shale or tar sands.

(e) Production capacity

The requirements of this subsection are met if the portion of the qualified refinery—

(1) enables the existing qualified refinery to increase total volume output (determined without regard to asphalt or lube oil) by 5 percent or more on an average daily basis, or

(2) enables the existing qualified refinery to process shale, tar sands, or qualified fuels (as defined in section 45K(c)) at a rate which is equal to or greater than 25 percent of the total throughput of such qualified refinery on an average daily basis.

(f) Ineligible refinery property

No deduction shall be allowed under subsection (a) for any qualified refinery property—

(1) the primary purpose of which is for use as a topping plant, asphalt plant, lube oil facility, crude or product terminal, or blending facility, or

(2) which is built solely to comply with consent decrees or projects mandated by Federal, State, or local governments.

(g) Election to allocate deduction to cooperative owner**(1) In general**

If—

(A) a taxpayer to which subsection (a) applies is an organization to which part I of subchapter T applies, and

(B) one or more persons directly holding an ownership interest in the taxpayer are organizations to which part I of subchapter T apply,

the taxpayer may elect to allocate all or a portion of the deduction allowable under subsection (a) to such persons. Such allocation shall be equal to the person's ratable share of the total amount allocated, determined on the basis of the person's ownership interest in the taxpayer. The taxable income of the taxpayer shall not be reduced under section 1382 by rea-

son of any amount to which the preceding sentence applies.

(2) Form and effect of election

An election under paragraph (1) for any taxable year shall be made on a timely filed return for such year. Such election, once made, shall be irrevocable for such taxable year.

(3) Written notice to owners

If any portion of the deduction available under subsection (a) is allocated to owners under paragraph (1), the cooperative shall provide any owner receiving an allocation written notice of the amount of the allocation. Such notice shall be provided before the date on which the return described in paragraph (2) is due.

(h) Reporting

No deduction shall be allowed under subsection (a) to any taxpayer for any taxable year unless such taxpayer files with the Secretary a report containing such information with respect to the operation of the refineries of the taxpayer as the Secretary shall require.

(Added Pub. L. 109-58, title XIII, §1323(a), Aug. 8, 2005, 119 Stat. 1013; amended Pub. L. 110-343, div. B, title II, §209(a), (b), Oct. 3, 2008, 122 Stat. 3840.)

REFERENCES IN TEXT

The date of the enactment of this section, referred to in subsec. (c)(1)(B), (2)(A), is the date of enactment of Pub. L. 109-58, which was approved Aug. 8, 2005.

The Clean Air Act, referred to in subsec. (c)(3), is act July 14, 1955, ch. 360, 69 Stat. 322, as amended, which is classified generally to chapter 85 (§7401 et seq.) of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see Short Title note set out under section 7401 of Title 42 and Tables.

AMENDMENTS

2008—Subsec. (c)(1)(B). Pub. L. 110-343, §209(a)(1), substituted “January 1, 2014” for “January 1, 2012”.

Subsec. (c)(1)(F). Pub. L. 110-343, §209(a)(2), substituted “January 1, 2010” for “January 1, 2008” wherever appearing.

Subsec. (d). Pub. L. 110-343, §209(b)(1), inserted “, or directly from shale or tar sands” after “(as defined in section 45K(c))”.

Subsec. (e)(2). Pub. L. 110-343, §209(b)(2), inserted “shale, tar sands, or” before “qualified fuels”.

EFFECTIVE DATE OF 2008 AMENDMENT

Pub. L. 110-343, div. B, title II, §209(c), Oct. 3, 2008, 122 Stat. 3840, provided that: “The amendments made by this section [amending this section] shall apply to property placed in service after the date of the enactment of this Act [Oct. 3, 2008].”

EFFECTIVE DATE

Pub. L. 109-58, title XIII, §1323(c), Aug. 8, 2005, 119 Stat. 1015, provided that: “The amendments made by this section [enacting this section and amending sections 263, 312, and 1245 of this title] shall apply to properties placed in service after the date of the enactment of this Act [Aug. 8, 2005].”

§ 179D. Energy efficient commercial buildings deduction**(a) In general**

There shall be allowed as a deduction an amount equal to the cost of energy efficient commercial building property placed in service during the taxable year.

(b) Maximum amount of deduction

The deduction under subsection (a) with respect to any building for any taxable year shall not exceed the excess (if any) of—

- (1) the product of—
 - (A) \$1.80, and
 - (B) the square footage of the building, over
- (2) the aggregate amount of the deductions under subsection (a) with respect to the building for all prior taxable years.

(c) Definitions

For purposes of this section—

(1) Energy efficient commercial building property

The term “energy efficient commercial building property” means property—

- (A) with respect to which depreciation (or amortization in lieu of depreciation) is allowable,
- (B) which is installed on or in any building which is—
 - (i) located in the United States, and
 - (ii) within the scope of Reference Standard 90.1,
- (C) which is installed as part of—
 - (i) the interior lighting systems,
 - (ii) the heating, cooling, ventilation, and hot water systems, or
 - (iii) the building envelope, and

(D) which is certified in accordance with subsection (d)(6) as being installed as part of a plan designed to reduce the total annual energy and power costs with respect to the interior lighting systems, heating, cooling, ventilation, and hot water systems of the building by 50 percent or more in comparison to a reference building which meets the minimum requirements of Reference Standard 90.1 using methods of calculation under subsection (d)(2).

(2) Reference Standard 90.1

The term “Reference Standard 90.1” means, with respect to any property, the most recent Standard 90.1 published by the American Society of Heating, Refrigerating, and Air Conditioning Engineers and the Illuminating Engineering Society of North America which has been affirmed by the Secretary, after consultation with the Secretary of Energy, for purposes of this section not later than the date that is 2 years before the date that construction of such property begins.

(d) Special rules**(1) Partial allowance****(A) In general**

Except as provided in subsection (f), if—

- (i) the requirement of subsection (c)(1)(D) is not met, but
- (ii) there is a certification in accordance with paragraph (6) that any system referred to in subsection (c)(1)(C) satisfies the energy-savings targets established by the Secretary under subparagraph (B) with respect to such system,

then the requirement of subsection (c)(1)(D) shall be treated as met with respect to such

system, and the deduction under subsection (a) shall be allowed with respect to energy efficient commercial building property installed as part of such system and as part of a plan to meet such targets, except that subsection (b) shall be applied to such property by substituting “\$.60” for “\$1.80”.

(B) Regulations

The Secretary, after consultation with the Secretary of Energy, shall establish a target for each system described in subsection (c)(1)(C) such that, if such targets were met for all such systems, the building would meet the requirements of subsection (c)(1)(D).

(2) Methods of calculation

The Secretary, after consultation with the Secretary of Energy, shall promulgate regulations which describe in detail methods for calculating and verifying energy and power consumption and cost with respect to any property, based on the provisions of the most recent California Nonresidential Alternative Calculation Method Approval Manual which has been affirmed by the Secretary, after consultation with the Secretary of Energy, for purposes of this section not later than the date that is 2 years before the date that construction of such property begins.

(3) Computer software**(A) In general**

Any calculation under paragraph (2) shall be prepared by qualified computer software.

(B) Qualified computer software

For purposes of this paragraph, the term “qualified computer software” means software—

- (i) for which the software designer has certified that the software meets all procedures and detailed methods for calculating energy and power consumption and costs as required by the Secretary,
- (ii) which provides such forms as required to be filed by the Secretary in connection with energy efficiency of property and the deduction allowed under this section, and
- (iii) which provides a notice form which documents the energy efficiency features of the building and its projected annual energy costs.

(4) Allocation of deduction for public property

In the case of energy efficient commercial building property installed on or in property owned by a Federal, State, or local government or a political subdivision thereof, the Secretary shall promulgate a regulation to allow the allocation of the deduction to the person primarily responsible for designing the property in lieu of the owner of such property. Such person shall be treated as the taxpayer for purposes of this section.

(5) Notice to owner

Each certification required under this section shall include an explanation to the building owner regarding the energy efficiency features of the building and its projected annual

energy costs as provided in the notice under paragraph (3)(B)(iii).

(6) Certification

(A) In general

The Secretary shall prescribe the manner and method for the making of certifications under this section.

(B) Procedures

The Secretary shall include as part of the certification process procedures for inspection and testing by qualified individuals described in subparagraph (C) to ensure compliance of buildings with energy-savings plans and targets. Such procedures shall be comparable, given the difference between commercial and residential buildings, to the requirements in the Mortgage Industry National Accreditation Procedures for Home Energy Rating Systems.

(C) Qualified individuals

Individuals qualified to determine compliance shall be only those individuals who are recognized by an organization certified by the Secretary for such purposes.

(e) Basis reduction

For purposes of this subtitle, if a deduction is allowed under this section with respect to any energy efficient commercial building property, the basis of such property shall be reduced by the amount of the deduction so allowed.

(f) Interim rules for lighting systems

Until such time as the Secretary issues final regulations under subsection (d)(1)(B) with respect to property which is part of a lighting system—

(1) In general

The lighting system target under subsection (d)(1)(A)(ii) shall be a reduction in lighting power density of 25 percent (50 percent in the case of a warehouse) of the minimum requirements in Table 9.5.1 or Table 9.6.1 (not including additional interior lighting power allowances) of Standard 90.1-2007.

(2) Reduction in deduction if reduction less than 40 percent

(A) In general

If, with respect to the lighting system of any building other than a warehouse, the reduction in lighting power density of the lighting system is not at least 40 percent, only the applicable percentage of the amount of deduction otherwise allowable under this section with respect to such property shall be allowed.

(B) Applicable percentage

For purposes of subparagraph (A), the applicable percentage is the number of percentage points (not greater than 100) equal to the sum of—

- (i) 50, and
- (ii) the amount which bears the same ratio to 50 as the excess of the reduction of lighting power density of the lighting system over 25 percentage points bears to 15.

(C) Exceptions

This subsection shall not apply to any system—

(i) the controls and circuiting of which do not comply fully with the mandatory and prescriptive requirements of Standard 90.1-2007 and which do not include provision for bilevel switching in all occupancies except hotel and motel guest rooms, store rooms, restrooms, and public lobbies, or

(ii) which does not meet the minimum requirements for calculated lighting levels as set forth in the Illuminating Engineering Society of North America Lighting Handbook, Performance and Application, Ninth Edition, 2000.

(g) Inflation adjustment

In the case of a taxable year beginning after 2020, each dollar amount in subsection (b) or subsection (d)(1)(A) shall be increased by an amount equal to—

- (1) such dollar amount, multiplied by
- (2) the cost-of-living adjustment determined under section 1(f)(3) for the calendar year in which the taxable year begins, determined by substituting “calendar year 2019” for “calendar year 2016” in subparagraph (A)(ii) thereof.

Any increase determined under the preceding sentence which is not a multiple of 1 cent shall be rounded to the nearest cent.

(h) Regulations

The Secretary shall promulgate such regulations as necessary—

- (1) to take into account new technologies regarding energy efficiency and renewable energy for purposes of determining energy efficiency and savings under this section, and
- (2) to provide for a recapture of the deduction allowed under this section if the plan described in subsection (c)(1)(D) or (d)(1)(A) is not fully implemented.

(Added Pub. L. 109-58, title XIII, §1331(a), Aug. 8, 2005, 119 Stat. 1020; amended Pub. L. 109-432, div. A, title II, §204, Dec. 20, 2006, 120 Stat. 2945; Pub. L. 110-343, div. B, title III, §303, Oct. 3, 2008, 122 Stat. 3845; Pub. L. 113-295, div. A, title I, §158(a), Dec. 19, 2014, 128 Stat. 4022; Pub. L. 114-113, div. Q, title I, §190(a), title III, §341(a), (b), Dec. 18, 2015, 129 Stat. 3075, 3113; Pub. L. 115-123, div. D, title I, §40413(a), Feb. 9, 2018, 132 Stat. 151; Pub. L. 115-141, div. U, title IV, §401(a)(54), Mar. 23, 2018, 132 Stat. 1186; Pub. L. 116-94, div. Q, title I, §131(a), Dec. 20, 2019, 133 Stat. 3232; Pub. L. 116-260, div. EE, title I, §102(a)-(c), Dec. 27, 2020, 134 Stat. 3039, 3040.)

AMENDMENTS

2020—Subsec. (c)(1)(B)(ii), (D). Pub. L. 116-260, §102(c)(1)(A), substituted “Reference Standard 90.1” for “Standard 90.1-2007”.

Subsec. (c)(2). Pub. L. 116-260, §102(c)(1)(B), amended par. (2) generally. Prior to amendment, text read as follows: “The term ‘Standard 90.1-2007’ means Standard 90.1-2007 of the American Society of Heating, Refrigerating, and Air Conditioning Engineers and the Illuminating Engineering Society of North America (as in effect on the day before the date of the adoption of Standard 90.1-2010 of such Societies).”

Subsec. (d)(2). Pub. L. 116-260, §102(c)(2), substituted “with respect to any property, based on the provisions of the most recent California Nonresidential Alter-

native Calculation Method Approval Manual which has been affirmed by the Secretary, after consultation with the Secretary of Energy, for purposes of this section not later than the date that is 2 years before the date that construction of such property begins” for “, based on the provisions of the 2005 California Nonresidential Alternative Calculation Method Approval Manual”.

Subsecs. (g), (h). Pub. L. 116-260, §102(a), (b), added subsec. (g), redesignated former subsec. (g) as (h), and struck out former subsec. (h). Prior to amendment, text of subsec. (h) read as follows: “This section shall not apply with respect to property placed in service after December 31, 2020.”

2019—Subsec. (h). Pub. L. 116-94 substituted “December 31, 2020” for “December 31, 2017”.

2018—Subsec. (d)(1)(B). Pub. L. 115-141 substituted “such that” for “which”.

Subsec. (h). Pub. L. 115-123 substituted “December 31, 2017” for “December 31, 2016”.

2015—Subsec. (c)(1)(B)(ii), (D). Pub. L. 114-113, §341(a), substituted “Standard 90.1-2007” for “Standard 90.1-2001”.

Subsec. (c)(2). Pub. L. 114-113, §341(b)(1), amended par. (2) generally. Prior to amendment, text read as follows: “The term ‘Standard 90.1-2001’ means Standard 90.1-2001 of the American Society of Heating, Refrigerating, and Air Conditioning Engineers and the Illuminating Engineering Society of North America (as in effect on April 2, 2003).”

Subsec. (f)(1). Pub. L. 114-113, §341(b)(2), (3), substituted “Table 9.5.1” for “Table 9.3.1.1”, “Table 9.6.1” for “Table 9.3.1.2”, and “Standard 90.1-2007” for “Standard 90.1-2001”.

Subsec. (f)(2)(C)(i). Pub. L. 114-113, §341(b)(2), substituted “Standard 90.1-2007” for “Standard 90.1-2001”.

Subsec. (h). Pub. L. 114-113, §190(a), substituted “December 31, 2016” for “December 31, 2014”.

2014—Subsec. (h). Pub. L. 113-295 substituted “December 31, 2014” for “December 31, 2013”.

2008—Subsec. (h). Pub. L. 110-343 substituted “December 31, 2013” for “December 31, 2008”.

2006—Subsec. (h). Pub. L. 109-432 substituted “2008” for “2007”.

EFFECTIVE DATE OF 2020 AMENDMENT

Pub. L. 116-260, div. EE, title I, §102(d), Dec. 27, 2020, 134 Stat. 3040, provided that: “The amendments made by this section [amending this section] shall apply to property placed in service after December 31, 2020.”

EFFECTIVE DATE OF 2019 AMENDMENT

Pub. L. 116-94, div. Q, title I, §131(b), Dec. 20, 2019, 133 Stat. 3232, provided that: “The amendment made by subsection (a) [amending this section] shall apply to property placed in service after December 31, 2017.”

EFFECTIVE DATE OF 2018 AMENDMENT

Pub. L. 115-123, div. D, title I, §40413(b), Feb. 9, 2018, 132 Stat. 151, provided that: “The amendment made by this section [amending this section] shall apply to property placed in service after December 31, 2016.”

EFFECTIVE DATE OF 2015 AMENDMENT

Pub. L. 114-113, div. Q, title I, §190(b), Dec. 18, 2015, 129 Stat. 3075, provided that: “The amendment made by subsection (a) [amending this section] shall apply to property placed in service after December 31, 2014.”

Pub. L. 114-113, div. Q, title III, §341(c), Dec. 18, 2015, 129 Stat. 3113, provided that: “The amendments made by this subsection [probably means this section, amending this section] shall apply to property placed in service after December 31, 2015.”

EFFECTIVE DATE OF 2014 AMENDMENT

Pub. L. 113-295, div. A, title I, §158(b), Dec. 19, 2014, 128 Stat. 4022, provided that: “The amendment made by this section [amending this section] shall apply to property placed in service after December 31, 2013.”

EFFECTIVE DATE

Pub. L. 109-58, title XIII, §1331(d), Aug. 8, 2005, 119 Stat. 1024, provided that: “The amendments made by

this section [enacting this section and amending sections 263, 312, 1016, 1245, and 1250 of this title] shall apply to property placed in service after December 31, 2005.”

§ 179E. Election to expense advanced mine safety equipment

(a) Treatment as expenses

A taxpayer may elect to treat 50 percent of the cost of any qualified advanced mine safety equipment property as an expense which is not chargeable to capital account. Any cost so treated shall be allowed as a deduction for the taxable year in which the qualified advanced mine safety equipment property is placed in service.

(b) Election

(1) In general

An election under this section for any taxable year shall be made on the taxpayer’s return of the tax imposed by this chapter for the taxable year. Such election shall specify the advanced mine safety equipment property to which the election applies and shall be made in such manner as the Secretary may by regulations prescribe.

(2) Election irrevocable

Any election made under this section may not be revoked except with the consent of the Secretary.

(c) Qualified advanced mine safety equipment property

For purposes of this section, the term “qualified advanced mine safety equipment property” means any advanced mine safety equipment property for use in any underground mine located in the United States—

- (1) the original use of which commences with the taxpayer, and
- (2) which is placed in service by the taxpayer after the date of the enactment of this section.

(d) Advanced mine safety equipment property

For purposes of this section, the term “advanced mine safety equipment property” means any of the following:

- (1) Emergency communication technology or device which is used to allow a miner to maintain constant communication with an individual who is not in the mine.
- (2) Electronic identification and location device which allows an individual who is not in the mine to track at all times the movements and location of miners working in or at the mine.
- (3) Emergency oxygen-generating, self-rescue device which provides oxygen for at least 90 minutes.
- (4) Pre-positioned supplies of oxygen which (in combination with self-rescue devices) can be used to provide each miner on a shift, in the event of an accident or other event which traps the miner in the mine or otherwise necessitates the use of such a self-rescue device, the ability to survive for at least 48 hours.
- (5) Comprehensive atmospheric monitoring system which monitors the levels of carbon monoxide, methane, and oxygen that are present in all areas of the mine and which can detect smoke in the case of a fire in a mine.