

**DESCRIPTION AND TECHNICAL EXPLANATION
OF THE CONFERENCE AGREEMENT
OF H.R. 6, TITLE XIII,
THE “ENERGY TAX INCENTIVES ACT OF 2005”**

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of the
JOINT COMMITTEE ON TAXATION



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13. Energy efficient commercial buildings deduction (sec. 1521 of the Senate amendment sec. 1331 of the conference agreement, and new sec. 179D of the Code)

Present Law

No special deduction is provided for expenses incurred for energy-efficient commercial building property.

House Bill

No provision.

Senate Amendment

In general

The provision provides a deduction equal to energy-efficient commercial building property expenditures made by the taxpayer. Energy-efficient commercial building property expenditures is defined as property (1) which is installed on or in any building located in the United States that is within the scope of Standard 90.1-2001 of the American Society of Heating, Refrigerating, and Air Conditioning Engineers and the Illuminating Engineering Society of North America (“ASHRAE/IESNA”), (2) 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 (3) which is certified 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 Standard 90.1-2001 (as in effect on April 2, 2003). The deduction is limited to an amount equal to \$2.25 per square foot of the property for which such expenditures are made. The deduction is allowed in the year in which the property is placed in service.

Certain certification requirements must be met in order to qualify for the deduction. The Secretary, in consultation with the Secretary of Energy, will promulgate regulations that describe methods of calculating and verifying energy and power costs using qualified computer software based on the provisions of the 2005 California Nonresidential Alternative Calculation Method Approval Manual or, in the case of residential property, the 2005 California Residential Alternative Calculation Method Approval Manual.

The Committee intends that the methods for calculation be fuel neutral, such that the same energy efficiency features qualify a building for the deduction under this provision regardless of whether the heating source is a gas or oil furnace or boiler or an electric heat pump. The Committee also intends that the calculation methods provide appropriate calculated energy savings for design methods and technologies not otherwise credited in either Standard 90.1-2001 or in the 2005 California Nonresidential Alternative Calculation Method Approval Manual, including the following: (i) Natural ventilation (ii) Evaporative cooling (iii) Automatic lighting controls such as occupancy sensors, photocells, and timeclocks (iv) Daylighting (v) Designs utilizing semi-conditioned spaces which maintain adequate comfort conditions without air conditioning or without heating (vi) Improved fan system efficiency, including reductions in static pressure (vii) Advanced unloading mechanisms for mechanical cooling, such as multiple or variable speed compressors (viii) On-site generation of electricity, including combined heat and power systems, fuel cells, and renewable energy generation such as solar energy (ix) Wiring with lower energy losses than wiring satisfying Standard 90.1-2001 requirements for building power distribution systems. The calculation methods may take into account the extent of commissioning in the building, and allow the taxpayer to take into account measured performance which exceeds typical performance

The Secretary shall prescribe procedures for the inspection and testing for compliance of buildings that are comparable, given the difference between commercial and residential buildings, to the requirements in the Mortgage Industry National Accreditation Procedures for Home Energy Rating Systems. Individuals qualified to determine compliance shall only be those recognized by one or more organizations certified by the Secretary for such purposes.

For energy-efficient commercial building property expenditures made by a public entity, such as public schools, the Secretary shall promulgate regulations that allow the deduction to be allocated to the person primarily responsible for designing the property in lieu of the public entity.

If a deduction is allowed under this section, the basis of the property shall be reduced by the amount of the deduction. Additionally, if a deduction is allowed for business energy property under section 1523 of the Senate amendment, or an individual credit for nonbusiness energy property or principal residence is allowed under section 1524 of the Senate amendment, then with respect to property for which a deduction under this provision may be claimed, the annual energy and power costs of the reference building is to be determined assuming the reference building contains the property for which the deduction or credit has been allowed, and any cost of such property taken into account under those other provisions of the bill cannot be taken into account under this provision.

Partial allowance of deduction

In the case of a building that does not meet the overall building requirement of a 50-percent energy savings, a partial deduction is allowed with respect to each separate building system that comprises energy efficient property and which is certified by a qualified professional as meeting or exceeding the applicable system-specific savings targets established by the Secretary of the Treasury. The applicable system-specific savings targets to be established by the Secretary are those that would result in a total annual energy savings with respect to the whole building of 50 percent, if each of the separate systems met the system specific target. The separate building systems are (1) the interior lighting system, (2) the heating, cooling, ventilation and hot water systems, and (3) the building envelope. The maximum allowable deduction is \$0.75 per square foot for each separate system.

In the case of system-specific partial deductions, in general no deduction is allowed until the Secretary establishes system-specific targets. However, in the case of lighting system retrofits, until such time as the Secretary issues final regulations, the system-specific energy savings target for the lighting system is deemed to be met by a reduction in Lighting Power Density of 40 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 of ASHRAE/IESNA Standard 90.1-2001. Also, in the case of a lighting system that reduces lighting power density by 25 percent, a partial deduction of 37.5 cents per square foot is allowed. A pro-rated partial deduction is allowed in the case of a lighting system that reduces lighting power density between 25 percent and 40 percent. Certain lighting level and lighting control requirements must also be met in order to qualify for the partial lighting deductions.

Effective date.—The provision is effective for property placed in service after the date of enactment and prior to January 1, 2010.

Conference Agreement

The conference agreement follows the Senate amendment with modifications. The conference agreement provides that the deduction amount is reduced to \$1.80 per square foot, and that the partial deduction for building subsystems is reduced to \$0.60 per square foot. The conference agreement also modifies the effective date.

Effective date.—The provision is effective for property placed in service after December 31, 2005 and prior to January 1, 2008.