

112TH CONGRESS  
2D SESSION

# S. 3591

To amend the Internal Revenue Code of 1986 to improve and extend the deduction for new and existing energy-efficient commercial buildings, and for other purposes.

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## IN THE SENATE OF THE UNITED STATES

SEPTEMBER 20, 2012

Ms. SNOWE (for herself, Mr. BINGAMAN, Mrs. FEINSTEIN, and Mr. CARDIN) introduced the following bill; which was read twice and referred to the Committee on Finance

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## A BILL

To amend the Internal Revenue Code of 1986 to improve and extend the deduction for new and existing energy-efficient commercial buildings, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*  
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE; AMENDMENT OF 1986 CODE;**

4 **TABLE OF CONTENTS.**

5 (a) SHORT TITLE.—This Act may be cited as the  
6 “Commercial Building Modernization Act”.

7 (b) AMENDMENT OF 1986 CODE.—Except as other-  
8 wise expressly provided, whenever in this Act an amend-  
9 ment or repeal is expressed in terms of an amendment

1 to, or repeal of, a section or other provision, the reference  
2 shall be considered to be made to a section or other provi-  
3 sion of the Internal Revenue Code of 1986.

4 **SEC. 2. EXTENSION AND MODIFICATION OF DEDUCTION**  
5 **FOR ENERGY-EFFICIENT COMMERCIAL**  
6 **BUILDINGS.**

7 (a) EXTENSION.—

8 (1) THROUGH 2016.—Subsection (h) of section  
9 179D is amended by striking “December 31, 2013”  
10 and inserting “December 31, 2016”.

11 (2) INCLUSION OF MULTIFAMILY BUILDINGS.—

12 (A) IN GENERAL.—Subparagraph (B) of  
13 section 179D(c)(1) is amended by striking  
14 “building” and inserting “commercial building  
15 or multifamily building”.

16 (B) DEFINITIONS.—Subsection (c) of sec-  
17 tion 179D is amended by adding at the end the  
18 following new paragraphs:

19 “(3) COMMERCIAL BUILDING.—The term ‘com-  
20 mercial building’ means a building with a primary  
21 use or purpose other than as residential housing.

22 “(4) MULTIFAMILY BUILDING.—The term ‘mul-  
23 tifamily building’ means a structure of 5 or more  
24 dwelling units with a primary use as residential  
25 housing, and includes such buildings owned and op-

1 erated as a condominium, cooperative, or other com-  
 2 mon interest community.”.

3 (3) INCLUSION OF PROPERTY LOCATED IN POS-  
 4 SESSIONS OR TERRITORIES.—Clause (i) of section  
 5 179D(c)(1)(B) is amended by inserting “or any pos-  
 6 session or territory thereof” after “United States”.

7 (b) INCREASE IN MAXIMUM AMOUNT OF DEDUC-  
 8 TION.—

9 (1) IN GENERAL.—Subparagraph (A) of section  
 10 179D(b)(1) is amended by striking “\$1.80” and in-  
 11 serting “\$3.00”.

12 (2) PARTIAL ALLOWANCE.—Paragraph (1) of  
 13 section 179D(d) is amended to read as follows:

14 “(1) PARTIAL ALLOWANCE.—

15 “(A) IN GENERAL.—Except as provided in  
 16 subsection (f), if—

17 “(i) the requirement of subsection  
 18 (c)(1)(D) is not met, but

19 “(ii) there is a certification in accord-  
 20 ance with paragraph (6) that—

21 “(I) any system referred to in  
 22 subsection (c)(1)(C) satisfies the en-  
 23 ergy-savings targets established by the  
 24 Secretary under subparagraph (B)  
 25 with respect to such system, or

1                   “(II) the systems referred to in  
2                   subsection (c)(1)(C)(ii) and subsection  
3                   (c)(1)(C)(iii) together satisfy the en-  
4                   ergy-savings targets established by the  
5                   Secretary under subparagraph (B)  
6                   with respect to such systems,  
7                   then the requirement of subsection (c)(1)(D)  
8                   shall be treated as met with respect to such sys-  
9                   tem or systems, and the deduction under sub-  
10                  section (a) shall be allowed with respect to en-  
11                  ergy-efficient commercial building property in-  
12                  stalled as part of such system and as part of  
13                  a plan to meet such targets, except that sub-  
14                  section (b) shall be applied to such property de-  
15                  scribed in clause (ii)(I) by substituting ‘\$1.00’  
16                  for ‘\$3.00’ and to such property described in  
17                  clause (ii)(II) by substituting ‘\$2.20’ for  
18                  ‘\$3.00’.

19                   “(B) REGULATIONS.—

20                   “(i) IN GENERAL.—The Secretary,  
21                   after consultation with the Secretary of  
22                   Energy, shall promulgate regulations es-  
23                   tablishing a target for each system de-  
24                   scribed in subsection (c)(1)(C) which, if  
25                   such targets were met for all such systems,

1 the property would meet the requirements  
2 of subsection (c)(1)(D).

3 “(ii) SAFE HARBOR FOR COMBINED  
4 SYSTEMS.—The Secretary, after consulta-  
5 tion with the Secretary of Energy, and not  
6 later than 6 months after the date of the  
7 enactment of the Commercial Building  
8 Modernization Act, shall promulgate regu-  
9 lations regarding combined envelope and  
10 mechanical system performance that detail  
11 appropriate components, efficiency levels,  
12 or other relevant information for the sys-  
13 tems referred to in subsection (c)(1)(C)(iii)  
14 and subsection (c)(1)(C)(iv) together to be  
15 deemed to have achieved two-thirds of the  
16 requirements of subsection (c)(1)(D).”.

17 (c) DENIAL OF DOUBLE BENEFIT RULES.—

18 (1) IN GENERAL.—Section 179D is amended by  
19 redesignating subsections (g) and (h) as subsections  
20 (h) and (i), respectively, and by inserting after sub-  
21 section (f) the following new subsection:

22 “(g) TAX INCENTIVES NOT AVAILABLE.—Energy-ef-  
23 ficient measures for which a deduction is allowed under  
24 this section shall not be eligible for a deduction under sec-  
25 tion 179F.”.

1           (2) LOW-INCOME HOUSING EXCEPTION TO  
2 BASIS REDUCTION.—Subsection (e) of section 179D  
3 is amended by inserting “(other than property  
4 placed in service in a qualified low-income building  
5 (within the meaning of section 42))” after “building  
6 property”.

7           (d) ALLOCATION OF DEDUCTION.—Section 179D, as  
8 amended by subsection (c)(1), is amended by redesignig-  
9 nating subsection (i) as subsection (j) and by inserting  
10 after subsection (h) the following new subsection:

11           “(i) ALLOCATION OF DEDUCTION.—Not later than  
12 180 days after the date of the enactment of this sub-  
13 section, the Secretary, in consultation with the Secretary  
14 of Energy, shall promulgate a regulation to allow the  
15 owner of a commercial building, including a non-profit, to  
16 allocate any deduction allowed under this section, or a por-  
17 tion thereof, to the person primarily responsible for fund-  
18 ing, financing, designing, leasing, operating, or placing in  
19 service energy-efficient measures. Such person shall be  
20 treated as the taxpayer for purposes of this section and  
21 shall include a building tenant, financier, architect, profes-  
22 sional engineer, licensed contractor, energy services com-  
23 pany, or other building professional. In the case of a com-  
24 mercial building that is owned by a Federal, State, or local  
25 government or a subdivision thereof, Internal Revenue No-

1 tice 2006–52, as amplified by Notice 2008–40, shall apply  
2 to any allocation.”.

3 (e) EARNINGS AND PROFITS CONFORMITY FOR REAL  
4 ESTATE INVESTMENT TRUSTS.—Subparagraph (B) of  
5 section 312(k)(3) is amended—

6 (1) by striking “.—For purposes of” and in-  
7 serting “.—

8 “(i) IN GENERAL.—Except as pro-  
9 vided in clause (ii), for purposes of”, and

10 (2) by adding at the end the following new  
11 clause:

12 “(ii) EARNINGS AND PROFITS CON-  
13 FORMITY FOR REAL ESTATE INVESTMENT  
14 TRUSTS.—

15 “(I) IN GENERAL.—For purposes  
16 of computing the earnings and profits  
17 of a real estate investment trust  
18 (other than a captive real estate in-  
19 vestment trust), the entire amount de-  
20 ductible under section 179D shall be  
21 allowed as deductions in the taxable  
22 years for which such amounts are  
23 claimed under such section.

24 “(II) CAPTIVE REAL ESTATE IN-  
25 VESTMENT TRUST.—The term ‘captive

1 real estate investment trust' means a  
2 real estate investment trust the shares  
3 or beneficial interests of which are not  
4 regularly traded on an established se-  
5 curities market and more than 50 per-  
6 cent of the voting power or value of  
7 the beneficial interests or shares of  
8 which are owned or controlled, directly  
9 or indirectly, or constructively, by a  
10 single entity that is treated as an as-  
11 sociation taxable as a corporation  
12 under this title and is not exempt  
13 from taxation pursuant to the provi-  
14 sions of section 501(a).

15 “(III) RULES OF APPLICATION.—  
16 For purposes of this clause, the con-  
17 structive ownership rules of section  
18 318(a), as modified by section  
19 856(d)(5), shall apply in determining  
20 the ownership of stock, assets, or net  
21 profits of any person, and the fol-  
22 lowing entities are not considered an  
23 association taxable as a corporation:

1           “(aa) Any real estate invest-  
2           ment trust other than a captive  
3           real estate investment trust.

4           “(bb) Any qualified real es-  
5           tate investment trust subsidiary  
6           under section 856, other than a  
7           qualified REIT subsidiary of a  
8           captive real estate investment  
9           trust.

10           “(cc) Any Listed Australian  
11           Property Trust (meaning an Aus-  
12           tralian unit trust registered as a  
13           ‘Managed Investment Scheme’  
14           under the Australian Corpora-  
15           tions Act in which the principal  
16           class of units is listed on a recog-  
17           nized stock exchange in Australia  
18           and is regularly traded on an es-  
19           tablished securities market), or  
20           an entity organized as a trust,  
21           provided that a Listed Australian  
22           Property Trust owns or controls,  
23           directly or indirectly, 75 percent  
24           or more of the voting power or

1 value of the beneficial interests  
2 or shares of such trust.

3 “(dd) Any corporation,  
4 trust, association, or partnership  
5 organized outside the laws of the  
6 United States and which satisfies  
7 the criteria described in sub-  
8 clause (IV).

9 “(IV) CRITERIA.—The criteria  
10 described in this subclause are as fol-  
11 lows:

12 “(aa) At least 75 percent of  
13 the entity’s total asset value at  
14 the close of its taxable year is  
15 represented by real estate assets  
16 (as defined in section  
17 856(c)(5)(B)), cash and cash  
18 equivalents, and United States  
19 Government securities.

20 “(bb) The entity is not sub-  
21 ject to tax on amounts distrib-  
22 uted to its beneficial owners, or  
23 is exempt from entity-level tax-  
24 ation.

1           “(cc) The entity distributes  
2           at least 85 percent of its taxable  
3           income (as computed in the juris-  
4           diction in which it is organized)  
5           to the holders of its shares or  
6           certificates of beneficial interest  
7           on an annual basis.

8           “(dd) Not more than 10  
9           percent of the voting power or  
10          value in such entity is held di-  
11          rectly or indirectly or construc-  
12          tively by a single entity or indi-  
13          vidual, or the shares or beneficial  
14          interests of such entity are regu-  
15          larly traded on an established se-  
16          curities market.

17          “(ee) The entity is organized  
18          in a country which has a tax  
19          treaty with the United States.”.

20          (f) UPDATED STANDARDS.—

21                  (1) INITIAL UPDATE.—

22                          (A) IN GENERAL.—Section 179D is  
23                          amended by striking “90.1-2001” each place it  
24                          appears in subsections (c) and (f) and inserting  
25                          “90.1-2004”.

1 (B) CONFORMING AMENDMENT.—Para-  
2 graph (2) of section 179D(c) is amended by  
3 striking “(as in effect on April 2, 2003)”.

4 (2) SECOND UPDATE.—

5 (A) IN GENERAL.—Section 179D is  
6 amended by striking “90.1-2004” each place it  
7 appears in subsections (c) and (f) and inserting  
8 “90.1-2007”.

9 (B) EFFECTIVE DATE.—The amendments  
10 made by subparagraph (A) shall apply to prop-  
11 erty placed in service after December 31, 2014.

12 (g) TREATMENT OF LIGHTING SYSTEMS.—Section  
13 179D is amended by striking “interior” each place it ap-  
14 pears in subsections (c)(1) and (f)(1).

15 (h) VOLUNTARY REPORTING PROGRAM.—Section  
16 179D, as amended by subsection (d), is amended by redес-  
17 ignating subsection (j) as subsection (k) and by inserting  
18 after subsection (i) the following new subsection:

19 “(i) VOLUNTARY REPORTING PROGRAM.—For pur-  
20 poses of the report required under section 179F(k), the  
21 Secretary, in consultation with the Secretary of Energy,  
22 shall develop a voluntary program to provide energy con-  
23 sumption data from recipients and current tenants of  
24 buildings that received full deductions under this sec-  
25 tion.”.

1 (i) EFFECTIVE DATE.—Except as otherwise pro-  
 2 vided, the amendments made by this section shall apply  
 3 to property placed in service in taxable years beginning  
 4 after the date of the enactment of this Act.

5 **SEC. 3. DEDUCTION FOR RETROFITS OF EXISTING COM-**  
 6 **MERCIAL AND MULTIFAMILY BUILDINGS.**

7 (a) IN GENERAL.—Part VI of subchapter B of chap-  
 8 ter 1 of the Internal Revenue Code of 1986 is amended  
 9 by inserting after section 179E the following new section:

10 **“SEC. 179F. DEDUCTION FOR RETROFITS OF EXISTING**  
 11 **COMMERCIAL AND MULTIFAMILY BUILDINGS.**

12 “(a) ALLOWANCE OF DEDUCTION.—With respect to  
 13 each certified retrofit plan, there shall be allowed as a de-  
 14 duction an amount equal to the lesser of—

15 “(1) the sum of—

16 “(A) the design deduction, and

17 “(B) the realized deduction, or

18 “(2) 50 percent of the total cost to develop and  
 19 implement such certified retrofit plan.

20 “(b) DEDUCTION AMOUNTS.—For purposes of this  
 21 section—

22 “(1) DESIGN DEDUCTION.—A design deduction  
 23 shall be—

1           “(A) based on projected source energy sav-  
2           ings as calculated in accordance with subsection  
3           (c)(3)(B),

4           “(B) correlated to the percent of source  
5           energy savings set forth in the general scale in  
6           paragraph (3)(A) that a certified retrofit plan  
7           is projected to achieve when energy-efficient  
8           measures are placed in service, and

9           “(C) equal to 60 percent of the amount al-  
10          lowed under the general scale.

11         “(2) REALIZED DEDUCTION.—

12           “(A) IN GENERAL.—A realized deduction  
13           shall be—

14           “(i) based on realized source energy  
15           savings as calculated in accordance with  
16           subsection (c)(3)(C),

17           “(ii) correlated to the percent of  
18           source energy savings set forth in the gen-  
19           eral scale in paragraph (3)(A) as realized  
20           by a certified retrofit plan, and

21           “(iii) equal to 40 percent of the  
22           amount allowed under the general scale.

23           “(B) ADJUSTMENT OF SOURCE ENERGY  
24           SAVINGS.—The percent of source energy sav-  
25           ings for purposes of any realized deduction may

1 vary from such savings projected when energy-  
2 efficient measures were placed in service for  
3 purposes of a design deduction under paragraph  
4 (1).

5 “(3) GENERAL SCALE.—

6 “(A) IN GENERAL.—The scale for deduc-  
7 tions allowed under this section shall be—

8 “(i) \$1.00 per square foot of retrofit  
9 floor area for 20 to 24 percent source en-  
10 ergy savings,

11 “(ii) \$1.50 per square foot of retrofit  
12 floor area for 25 to 29 percent source en-  
13 ergy savings,

14 “(iii) \$2.00 per square foot of retrofit  
15 floor area for 30 to 34 percent source en-  
16 ergy savings,

17 “(iv) \$2.50 per square foot of retrofit  
18 floor area for 35 to 39 percent source en-  
19 ergy savings,

20 “(v) \$3.00 per square foot of retrofit  
21 floor area for 40 to 44 percent source en-  
22 ergy savings,

23 “(vi) \$3.50 per square foot of retrofit  
24 floor area for 45 to 49 percent source en-  
25 ergy savings, and

1           “(vii) \$4.00 per square foot of retrofit  
2           floor area for 50 percent or more source  
3           energy savings.

4           “(B) HISTORIC BUILDINGS.—With respect  
5           to energy-efficient measures placed in service as  
6           part of a certified retrofit plan in a commercial  
7           building or multifamily building on or eligible  
8           for the National Register of Historic Places, the  
9           respective dollar amounts set forth in the gen-  
10          eral scale under subparagraph (A) shall each be  
11          increased by 20 percent, for the purposes of cal-  
12          culating any applicable design deduction and re-  
13          alized deduction.

14          “(c) CALCULATION OF ENERGY SAVINGS.—

15                 “(1) IN GENERAL.—For purposes of the design  
16                 deduction and the realized deduction, source energy  
17                 savings shall be calculated with reference to a base-  
18                 line of the annual source energy consumption of the  
19                 commercial or multifamily building before energy-ef-  
20                 ficient measures were placed in service.

21                 “(2) BASELINE BENCHMARK.—The baseline  
22                 under paragraph (1) shall be determined using a  
23                 building energy performance benchmarking tool des-  
24                 ignated by the Administrator of the Environmental  
25                 Protection Agency, and based upon 1 year of source

1 energy consumption data prior to the date upon  
2 which the energy-efficient measures are placed in  
3 service.

4 “(3) DESIGN AND REALIZED SOURCE ENERGY  
5 SAVINGS.—

6 “(A) IN GENERAL.—In certifying a retrofit  
7 plan as a certified retrofit plan, a professional  
8 engineer shall calculate source energy savings  
9 by utilizing the baseline benchmark defined in  
10 paragraph (2) and determining percent im-  
11 provements from such baseline.

12 “(B) DESIGN DEDUCTION.—For purposes  
13 of claiming a design deduction, the regulations  
14 issued under subsection (f)(1) shall prescribe  
15 the standards and process for a professional en-  
16 gineer to calculate and certify source energy  
17 savings projected from the design of a certified  
18 retrofit plan as of the date energy-efficient  
19 measures are placed in service.

20 “(C) REALIZED DEDUCTION.—For pur-  
21 poses of claiming a realized deduction, a profes-  
22 sional engineer shall calculate and certify source  
23 energy savings realized by a certified retrofit  
24 plan 2 years after a design deduction is allowed  
25 by utilizing energy consumption data after en-

1           energy-efficient measures are placed in service,  
2           and adjusting for climate, building occupancy  
3           hours, density, or other factors deemed appro-  
4           priate in the benchmarking tool designated  
5           under paragraph (2).

6           “(d) CERTIFIED RETROFIT PLAN AND OTHER DEFINI-  
7           TIONS.—For purposes of this section—

8                   “(1) CERTIFIED RETROFIT PLAN.—The term  
9           ‘certified retrofit plan’ means a plan that—

10                           “(A) is designed to reduce the annual  
11                           source energy costs of a commercial building, or  
12                           a multifamily building, through the installation  
13                           of energy-efficient measures,

14                           “(B) is certified under penalty of perjury  
15                           by a registered professional engineer, who is not  
16                           a direct employee of the owner of the commer-  
17                           cial building or multifamily building that is the  
18                           subject of the plan, and is licensed in the State  
19                           in which such building is located,

20                           “(C) describes the square footage of ret-  
21                           rofit floor area covered by such a plan,

22                           “(D) specifies that it is designed to achieve  
23                           a final source energy usage intensity after en-  
24                           ergy-efficient measures are placed in service in  
25                           a commercial building or a multifamily building

1 that does not exceed on a square foot basis the  
2 average level of energy usage intensity of other  
3 similar buildings,

4 “(E) requires that after the energy-effi-  
5 cient measures are placed in service, the com-  
6 mercial building or multifamily building meets  
7 the applicable State and local new building code  
8 requirements for the area in which such build-  
9 ing is located,

10 “(F) satisfies the regulations prescribed  
11 under subsection (f), and

12 “(G) is submitted to the Secretary of En-  
13 ergy after energy-efficient measures are placed  
14 in service, for the purpose of informing the re-  
15 port to Congress required by subsection (l).

16 The standard under subparagraph (D) shall be  
17 300,000 British thermal units or less per square  
18 foot unless the Secretary, in consultation with the  
19 Administrator of the Environmental Protection  
20 Agency, develops distinct minimum standards for a  
21 particular category or subcategory of building based  
22 on the best available information used by the EN-  
23 ERGY STAR program.

24 “(2) COMMERCIAL BUILDING.—

1           “(A) IN GENERAL.—The term ‘commercial  
2 building’ means a building located in the United  
3 States or any possession or territory thereof—

4           “(i) that is in existence and occupied  
5 on the date of the enactment of this sec-  
6 tion,

7           “(ii) for which a certificate of occu-  
8 pancy has been issued at least 10 years be-  
9 fore energy efficiency measures are placed  
10 in service, and

11           “(iii) with a primary use or purpose  
12 other than as residential housing.

13           “(B) SHOPPING CENTERS.—In the case of  
14 a retail shopping center, the term ‘commercial  
15 building’ shall include an area within such  
16 building that is—

17           “(i) 50,000 square feet or larger that  
18 is covered by a separate utility grade meter  
19 to record energy consumption in such area,  
20 and

21           “(ii) under the day-to-day manage-  
22 ment and operation of—

23           “(I) the owner of such building  
24 as common space areas, or

1                   “(II) a retail tenant, lessee, or  
2                   other occupant.

3                   “(3) ENERGY-EFFICIENT MEASURES.—The  
4                   term ‘energy-efficient measures’ means a measure,  
5                   or combination of measures, placed in service  
6                   through a certified retrofit plan—

7                   “(A) on or in a commercial building or  
8                   multifamily building,

9                   “(B) as part of—

10                   “(i) the lighting systems,

11                   “(ii) the heating, cooling, ventilation,  
12                   or hot water systems,

13                   “(iii) the building envelope, which  
14                   may include an energy-efficient cool roof,

15                   “(iv) a continuous commissioning con-  
16                   tract, or

17                   “(v) building operations or monitoring  
18                   systems, and

19                   “(C) including equipment, materials, and  
20                   systems within subparagraph (B) with respect  
21                   to which depreciation (or amortization in lieu of  
22                   depreciation) is allowed.

23                   “(4) ENERGY SAVINGS.—The term ‘energy sav-  
24                   ings’ means source energy usage intensity reduced

1 on a per square foot basis through design and imple-  
2 mentation of a certified retrofit plan.

3 “(5) MULTIFAMILY BUILDING.—The term ‘mul-  
4 tifamily building’—

5 “(A) means—

6 “(i) a structure of 5 or more dwelling  
7 units located in the United States or any  
8 possession or territory thereof—

9 “(I) that is in existence and oc-  
10 cupied on the date of the enactment  
11 of this section,

12 “(II) for which a certificate of  
13 occupancy has been issued at least 10  
14 years before energy efficiency meas-  
15 ures are placed in service, and

16 “(III) with a primary use as resi-  
17 dential housing, and

18 “(B) includes such buildings owned and  
19 operated as a condominium, cooperative, or  
20 other common interest community.

21 “(6) SOURCE ENERGY.—The term ‘source en-  
22 ergy’ means the total amount of raw fuel that is re-  
23 quired to operate a commercial building or multi-  
24 family building, and accounts for losses that are in-

1       curred in the generation, storage, transport, and de-  
2       livery of fuel to such a building.

3       “(e) TIMING OF CLAIMING DEDUCTIONS.—Deduc-  
4       tions allowed under this section may be claimed as follows:

5             “(1) DESIGN DEDUCTION.—In the case of a de-  
6       sign deduction, in the taxable year that energy effi-  
7       ciency measures are placed in service.

8             “(2) REALIZED DEDUCTION.—In the case of a  
9       realized deduction, in the second taxable year fol-  
10      lowing the taxable year described in paragraph (1).

11      “(f) REGULATIONS.—

12             “(1) IN GENERAL.—Not later than 180 days  
13      after the date of the enactment of this section, and  
14      after opportunity for public notice and comment, the  
15      Secretary, in consultation with the Secretary of En-  
16      ergy and the Administrator of the Environmental  
17      Protection Agency, shall prescribe regulations—

18             “(A) for the manner and method for a reg-  
19      istered professional engineer to certify retrofit  
20      plans, model projected energy savings, and cal-  
21      culate realized energy savings, and

22             “(B) to provide, as appropriate, for a re-  
23      capture of the deductions allowed under this  
24      section if a retrofit plan is not fully imple-  
25      mented, or a retrofit plan and energy savings

1           are not certified or verified in accordance with  
2           regulations prescribed under this subsection.

3           “(2) RELIANCE ON ESTABLISHED PROTOCOLS,  
4           ETC.—To the maximum extent practicable and avail-  
5           able, such regulations shall rely upon established  
6           protocols and documents used in the ENERGY  
7           STAR program, and industry best practices and ex-  
8           isting guidelines, such as the Building Energy Mod-  
9           eling Guidelines of the Commercial Energy Services  
10          Network (COMNET).

11          “(3) ALLOWANCE OF DEDUCTIONS PENDING  
12          ISSUANCE OF REGULATIONS.—Pending issuance of  
13          the regulations under paragraph (1), the owner of a  
14          commercial building or a multifamily building shall  
15          be allowed to claim or allocate a deduction allowed  
16          under this section.

17          “(g) NOTICE TO OWNER.—Each certification of a  
18          retrofit plan and calculation of energy savings required  
19          under this section shall include an explanation to the  
20          owner of a commercial building or a multifamily building  
21          regarding the energy-efficient measures placed in service  
22          and their projected and realized annual energy costs.

23          “(h) ALLOCATION OF DEDUCTION.—Not later than  
24          180 days after the date of the enactment of this section,  
25          the Secretary, in consultation with the Secretary of En-

1 ergy, shall promulgate a regulation to allow the owner of  
2 a commercial building or a multifamily building, including  
3 a non-profit, to allocate any deduction allowed under this  
4 section, or a portion thereof, to the person primarily re-  
5 sponsible for funding, financing, designing, leasing, oper-  
6 ating, or placing in service energy-efficient measures. Such  
7 person shall be treated as the taxpayer for purposes of  
8 this section and shall include a building tenant, financier,  
9 architect, professional engineer, licensed contractor, en-  
10 ergy services company, or other building professional. In  
11 the case of a commercial building or a multifamily building  
12 that is owned by a Federal, State, or local government  
13 or a subdivision thereof, Internal Revenue Notice 2006-  
14 52, as amplified by Notice 2008-40, shall apply to any  
15 allocation.

16       “(i) BASIS REDUCTION.—For purposes of this sub-  
17 title, if a deduction is allowed under this section with re-  
18 spect to any energy-efficient measures placed in service  
19 under a certified retrofit plan other than in a qualified  
20 low-income building (within the meaning of section 42),  
21 the basis of such measures shall be reduced by the amount  
22 of the deduction so allowed.

23       “(j) TAX INCENTIVES NOT AVAILABLE.—

24               “(1) ENERGY EFFICIENT COMMERCIAL BUILD-  
25       INGS DEDUCTION.—Energy-efficient measures for

1 which a deduction is allowed under this section shall  
2 not be eligible for a deduction under section 179D.

3 “(2) NEW ENERGY EFFICIENT HOME CREDIT.—

4 No deduction shall be allowed under this section  
5 with respect to any building or dwelling unit with re-  
6 spect to which a credit under section 45L was al-  
7 lowed.

8 “(k) REPORT TO CONGRESS.—Biennially, beginning  
9 with the first year after the enactment of this section, the  
10 Secretary of Energy shall submit a report to Congress ex-  
11 plaining the energy saved, the energy-efficient measures  
12 implemented, the realization of energy savings projected,  
13 and the amounts and types of deductions allowed, deter-  
14 mining the number of jobs created as a result of the de-  
15 duction allowed under this section, and how the use of any  
16 deduction allowed under this section may be improved,  
17 based on the information provided to the Secretary of En-  
18 ergy as part of a certified retrofit plan. The Secretary and  
19 the Secretary of Energy shall share such information on  
20 deductions allowed under this section and related reports  
21 submitted, as requested by each agency to fulfill its obliga-  
22 tions under this section, with such redactions as deemed  
23 necessary to protect the personally identifiable financial  
24 information of a taxpayer. In addition, the report will in-  
25 clude recommendations on providing energy-efficient tax

1 incentives for subsections of buildings that operate with  
2 specific utility grade metering. In addition, the Secretary  
3 of Energy shall, to the maximum extent practicable, incor-  
4 porate conclusions of this report into current Department  
5 of Energy’s building performance and energy efficiency  
6 programs and include statutory recommendations to Con-  
7 gress that would reduce energy consumption in new and  
8 existing commercial buildings located in the United States.  
9 Finally, the Secretary of Energy shall, working with stake-  
10 holder groups, provide in such report aggregated data that  
11 is publicly available.

12 “(l) TERMINATION.—This section shall not apply  
13 with respect to property placed in service after December  
14 31, 2016.”.

15 (b) EFFECT ON DEPRECIATION ON EARNINGS AND  
16 PROFITS.—Subparagraph (B) of section 312(k)(3), as  
17 amended by this Act, is amended—

18 (1) by striking “or 179E” both places it ap-  
19 pears in clause (i) and inserting “179E, or 179F”,

20 (2) by striking “OR 179E” in the heading and  
21 inserting “179E, OR 179F”, and

22 (3) by inserting “or 179F” after “section  
23 179D” in clause (ii).

1           (c) CONFORMING AMENDMENT.—The table of sec-  
2 tions for such part is amended by inserting after the item  
3 relating to section 179E the following new item:

“Sec. 179F. Deduction for retrofits of existing commercial and multifamily  
buildings.”.

4           (d) EFFECTIVE DATE.—Except as otherwise pro-  
5 vided, the amendments made by this section shall apply  
6 to property placed in service in taxable years beginning  
7 after the date of the enactment of this Act.

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