

FIXING QUALIFIED IMPROVEMENT PROPERTY

Key Takeaways

- ▶ Qualified Improvement Property (QIP), formerly leasehold depreciation, has reverted to 39-years from the 15-year period intended by Congress, through a drafting error in TCJA.
- ▶ The Joint Committee on Taxation (JCT) scored TCJA to include 15-year depreciation for QIP. This fix is already paid for.
- ▶ According to the conference committee report, QIP was intended to be depreciated at 15 years, qualifying for bonus depreciation
- ▶ The need for a technical correction is openly acknowledged by both parties and both chambers.

The Issue: The Tax Cuts and Jobs Act (TCJA) of 2017 inadvertently raised the depreciation period of leasehold improvements from 15 years to 39 due to drafting error. The definitions of leasehold, restaurant and retail improvement property were intended to be combined into one property class known as “qualified improvement property” (QIP). Unfortunately, instead of lowering the depreciation rate for these property types, the drafting error increased the depreciation period of leasehold improvements. This resulted in two problems. First, the depreciation for interior improvements has reverted to 39 years, up from 15 years. Second, this error prevents QIP from being fully expensed under the tax bill’s temporary 100% bonus depreciation (until 2022). ***The Restoring Investment in Improvements Act*** (S. 803/H.R. 1869) sponsored by Senators Patrick Toomey (R-PA) and Doug Jones (D-AL) and Representatives Jimmy Panetta (D-CA) and Jackie Walorski (R-IN) would correct this error.

BOMA’s Position: BOMA strongly urges Congress to correct the property life of QIP to 15 years and include QIP as eligible property for 100% bonus depreciation. As building owners negotiate leases with tenants, QIP is considered while determining tenant improvement dollars. Those dollars create jobs in building trades such as painters, carpenters, plumbers and electricians. With less money for tenant improvements, local jobs will suffer.

Specific Ask: Co-sponsor and support ***The Restoring Investment in Improvements Act*** (S. 803/H.R. 1869) to correct the Qualified Improvement Property drafting error and return QIP to a 15-year depreciation period retroactively and grant it temporary 100% bonus depreciation until 2022 as intended.

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ADVANCING ENERGY EFFICIENCY THROUGH BUILDING CODES

Key Takeaways

- ▶ Requires DOE to consider the economic feasibility and upfront costs of achieving proposed efficiency targets.
- ▶ Establishes separate efficiency targets for residential and commercial buildings.
- ▶ Initiates a rulemaking to determine efficiency targets, allowing for input by affected parties, including BOMA members.
- ▶ Considers tenant behavior (plug loads) before creating targets.
- ▶ The efficiency targets are voluntary and not binding for a state, local government, or Indian tribe as a matter of federal law.

The Issue: The Energy Savings and Industrial Competitiveness Act of 2019 represents a dynamic shift in how energy efficiency is established in new building codes. Originally sponsored by Senators Rob Portman (R-OH) and Jeanne Shaheen (D-NH), and Representatives Peter Welch (D-VT) and David McKinley (R-WV), this legislation codifies efficiency targets through a federal rulemaking, balancing the goal of efficiency gains against the upfront cost to building owners and investors. Widely regarded as a bipartisan solution to increased energy efficiency and reduced emissions, the bills have been endorsed by numerous efficiency and environmental groups, as well as many real estate and business interests.

BOMA's Position: As the only commercial real estate association that participates in the national code development process, our members believe that increasing energy efficiency in the built environment is of paramount importance. There is a compelling business case to be made for property owners—saving energy reduces one of the largest controllable operating costs for buildings owners and their tenants. Ensuring that efficiency gains are paired with technical feasibility and economic realities is the right approach to address national sustainability and energy goals.

Specific Ask: Co-sponsor and support *The Energy Savings and Industrial Competitiveness Act of 2019* (S. 2137 & H.R. 3962).

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179D: COMMERCIAL BUILDINGS ENERGY EFFICIENCY TAX DEDUCTION

Key Takeaways

- ▶ Up to 77,000 jobs could be created with a long-term extension of 179D, according to a recent study.*
- ▶ \$7.4 billion could be added to the GDP with a long-term 179D extension and modification.
- ▶ 179D is a deduction, not a credit.
- ▶ 179D requires major building system upgrades to surpass energy codes by an additional 50% to qualify.
- ▶ A 2019 bipartisan Senate Finance Committee report recommended that 179D be made permanent.

The Issue: The Commercial Buildings Energy Efficiency Tax Deduction, commonly referred to as 179D, offers building owners a deduction of up to \$1.80 per square foot for next-level energy efficient improvements made to heating, ventilation and air conditioning (HVAC) systems; the building envelope, including windows; and lighting upgrades that exceed ASHRAE Standard 90.1 (currently version 2007) by 50 percent. Buildings must be independently certified to receive this deduction. The tax deduction helps real estate owners who might not otherwise have the necessary capital to enact energy efficiency retrofits. 179D remains the only federal incentive for commercial buildings to become energy efficient. Since its inception in 2005, 179D has been extended various times, most recently retroactively for 2018 through 2020.

BOMA's Position: BOMA urges Congress make 179D a permanent part of the tax code so that building owners can be able to plan for expensive next-level retrofits in a manner that is currently not possible with short-term and retroactive extensions. The costs associated with advanced energy efficiency retrofits often have long-term paybacks well outside most investment scenarios. 179D will help bridge that gap, lowering energy costs that translates to more money for tenants to invest back into their businesses.

Specific Ask: Support federal legislative efforts to make permanent the Commercial Buildings Energy Efficiency Tax Deduction (179D).

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*Study conducted by Regional Economic Models, Inc. (REMI), "Analysis of Proposals to Enhance and Extend the Section 179D Energy Efficient Commercial Buildings Tax Deduction," May 2017.