



NATURAL RESOURCES DEFENSE COUNCIL

September 10, 2007

The Honorable Eric Solomon
Assistant Secretary (Tax Policy)
United States Treasury Department
1500 Pennsylvania Avenue NW
Washington DC 20220

The Honorable Donald L. Korb
Chief Counsel
Internal Revenue Service
1111 Constitution Avenue NW, Room 3026
Washington DC 20224

Re: Additional Comments Regarding IRS Notice 2006-52 in the matter of the EPAct 2005
Commercial Buildings Tax Deduction - Submitted by Tax Incentives Assistance Project
Commercial Buildings Subcommittee

Dear Sirs:

On August 21, 2006, the Natural Resources Defense Council (NRDC) commented to IRS concerning serious deficiencies in the Guidance implementing section (d)(2) of EPAct Section 1331. We pointed out actions that the IRS, with the assistance of the Department of Energy, could take in rectifying these deficiencies.

Unfortunately, since that letter, no significant changes have been issued by the IRS to address these problems.

We are writing today to suggest a simple action that IRS could take that would help address one of our (and other stakeholders') concerns. This letter offers a recommendation that can help rectify some of these problems at no cost to the government, and should be construed as additional comments to the IRS on its Guidance, in anticipation of the possibility that the IRS may eventually issue formal regulation.

These comments specifically address the ninth point raised by NRDC in our previous comments: establishing procedures for the certification of individuals qualified to determine compliance as required under Section 1331(d)(6)(B) and (C).

The advice presented in these comments will help achieve important public policy goals in three separate and important ways:

- It will help assure that only taxpayers who are qualified to receive the deduction actually do receive it, by enhancing the quality assurance of the certification and inspection processes that taxpayers will use;

- It will enhance the market acceptance of this tax incentive, thus satisfying the goals for which Congress established the deduction in the first place, namely promoting the commercialization of advanced technologies and design methods for saving energy in commercial buildings; and
- It will enhance revenues collected by the IRS in corporate taxes, since taxpayers who make use of this incentive will save energy cost in their lighting operations, increasing profits--which increase tax revenues.

In our previous comments, NRDC recommended (and continues to recommend) that the IRS establish the written certification procedures based on the Mortgage Industry National Accreditation Procedures for Home Energy Rating Systems, as required in the EPAct legislation. But even if the agency were to initiate this process, with the assistance of the Department of Energy, immediately, it would still take over a year, in our estimate, before such procedures were available.

In the interim, it is important to establish quality control and assurance systems that will both enhance taxpayer confidence that they can claim this deduction in good faith and also assure that the Treasury is only paying for efficiency improvements that meet the intent of EPAct Section 1331.

The current Guidance's Section 4.03(2) and (3) and Section 5.05 – the only sections that deal with this issue – provide inadequate specificity as to what sorts of qualifications are necessary for individuals to have to be qualified according to the Congressionally required criteria. It would be helpful both to the private sector and to the government if more specificity were offered to assure taxpayers of at least one way that they can feel confident they are hiring an individual who is truly qualified.

NRDC recommends with these comments that one, but not the only, way that an individual can demonstrate qualification is by obtaining certification from the inter-National Association of Lighting Management Companies (NALMCO). NRDC recommends that NALMCO Certified Lighting Management Consultant (CLMC) certification qualify an individual to make certifications concerning the lighting system for the Section 1331 deduction, at least during an interim period before final regulations pursuant to Section 1331(d)(6)(B) are issued.

This recommendation is based on our review of the law, the referenced document (Mortgage Industry National Accreditation Procedures for Home Energy Ratings Systems), our review of the NALMCO system for qualifying individuals, and our familiarity with how the reference document is applied by organizations serving the residential builder/taxpayer in the context of the EPAct Section 1332 credit for construction of new energy efficient homes.

Specifically, the referenced document requires that qualified individuals that can certify compliance must themselves receive certification from a system that requires:

- ✓ initial training and continuing professional education,
- ✓ regularly passing a test of competency,
- ✓ having a full range of the relevant professional and technical skills, and

- ✓ following a code of ethics that allows a supervising entity to receive complaints about ethical misconduct and to discipline the individuals should these complaints be justified.

Our review of the NALMCO procedures shows that they meet there criteria.

Therefore, NRDC respectfully requests that NALMCO/CLMC certification be considered one way of demonstrating that an individual is qualified to make certifications that qualify his/her clients for the lighting systems component of the commercial buildings tax deduction for energy efficient buildings.

Sincerely,

A handwritten signature in black ink, appearing to read "D. B. Goldstein", with a long horizontal line extending to the right.

David Goldstein
Energy Program Director

cc: Ed Pollock, US DOE