

Office of the State Architect
Policy and Procedure Number _____
Energy Efficient Commercial Building Tax Deduction Allocation

A. Purpose: As required by T.C.A. §4-15-106, to set forth the procedure by which the State Architect or its designee shall allocate the energy efficient tax deduction codified in 26 U.S.C. § 179D to the party primarily responsible for designing the property in accordance with the tax provisions and guidance of the Internal Revenue Service.

B. Policy: The State Architect or its designee (the “State Architect”) shall follow the procedure below in allocating the energy efficient tax deduction (the “Deduction”) codified in 26 U.S.C. § 179D (the “Code”).

1. In order to begin the process of evaluating a request to allocate the Deduction, the State Architect must receive a written request from the party(s) who intends to claim the Deduction (the “Requesting Party”) setting forth the following information:

- (i) a description of the project including the SBC reference number;
- (ii) a copy of the Requesting Party’s contract with the State to provide design services;
- (iii) a written statement setting forth the facts supporting the Requesting Party’s position that it was primarily responsible for designing the energy efficient system(s) and the names of any other party(s) participating in the energy efficient design or with whom such Deduction may be required to be shared, together with an explanation of such party(s) roles in the design and the portion of the Deduction that the Requesting Party believes should be distributed to such party(s); and
- (iv) all other information reasonably requested by the State Architect to evaluate the request.

Such request shall also include (a) the information known by the Requesting Party and required to be included in “declaration” (the form of which is set forth on Exhibit A attached hereto) required by the Internal Revenue Services (“IRS”) that the State must sign, and (b) a separate signed statement in the form set forth on Exhibit B attached hereto. It should be noted that as of the date of adoption of this policy, IRS policies and guidance do not address the issue of whether a portion of the Deduction should be allocated to installers and do not permit installers to make claims for such deductions.

2. The State Architect shall commence a review of the submitted materials within a reasonable period of time after receipt. Contemporaneous with such review, the State Architect shall obtain a written determination from the Department of Finance and Administration, Office of Business and Finance as to whether or not the project for which the Requesting Party provided design services was funded with bonds issued by the State. If the project was funded by bonds, then the Department of Finance and Administration, Office of Business and Finance shall also provide information regarding the percentage of bond funding, the percentage of the property used for purposes not permissible under the bonds, and the other sources of funding for the project.

3. If the State Architect determines in his or her reasonable opinion based on the submission of the Requesting Party that the submitted information evidences the Requesting Party's right to claim the Deduction, then the State Architect shall determine that the full Deduction should be allocated to the Requesting Party, unless the Requesting Party was part of a business arrangement that would result in the Requesting Party being entitled to request only a portion of the total amount of the Deduction possible under the Code. The amount of the Deduction shall be set forth in the declaration in dollars per square foot pursuant to the deduction guidance provided by the IRS.
4. Notwithstanding anything to the contrary in this policy, if the project was financed with bonds issued by the State, the State Architect shall not award the Deduction without the prior written approval of bond counsel. If a project was financed with bonds issued by the State, the State Architect shall promptly, after making the determination set forth in Section 3 above, submit the information provided pursuant to Section 2 above to the Comptroller of the Treasury, Office of State and Local Finance so that it can be provided to bond counsel. If bond counsel approves the Deduction, then such approval shall be kept in the file of the State Architect.
5. Once the State Architect has determined that the Deduction should be allocated to the Requesting Party and approval of bond counsel has been received, if required, then the State Architect shall sign the "declaration" submitted by the Requesting Party (with any changes approved by the State Architect) and return the "declaration" to the Requesting Party. The Requesting Party may then file for the Deduction with the IRS. The Requesting Party must provide a copy of any written information received from the IRS regarding the Deduction to the State Architect and a copy of all information provided to the IRS in support of the Deduction. Additionally, in the event that it is determined that the Requesting Party is not entitled to receive all or any portion of the allocation, the Requesting Party shall so notify the State Architect and return to the State, in writing, all or any portion of the allocation to which it was determined that the Requesting Party was not entitled. The State Architect shall provide a copy of all information that the State Architect receives from the Requesting Party to the Department of Finance and Administration, Division of Accounts; the Comptroller of the Treasury, Office of State and Local Finance, if the project was financed in whole or in part with bonds; and any other organizations or departments of the State upon request.
6. It shall be the responsibility of the Requesting Party to comply with all State and Federal Requirements applicable to the Deduction, including, without limitation, requirements to distribute portions of the Deduction to other parties.

Exhibit A

IRS Required Declaration

To be completed by the State Architect as the authorized representative of the government owned building pursuant to the designer selection and contractor procurement policies of the State Building Commission

- (1) The name, address and telephone number of an authorized representative of the owner of the government owned building;
- (2) The name, address, and telephone number of an authorized representative of the designer receiving the allocation of the 179D deduction;
- (3) The address of the government owned building on or in which the property is installed;
- (4) The cost of the property;
- (5) The date the property was placed in service;
- (6) The amount (in dollars/sf by category) of the section 179D deduction allocated to the designer;
- (7) The signatures of the authorized representatives of both the owner of the government owned building and the designer or the designer's authorized representative; and
- (8) A declaration, applicable to the allocation and any accompanying documents, signed by the authorized representative of the owner of the government owned building , in the following form:

Under penalties of perjury, I declare that I have examined this allocation, including accompanying documents, and to the best of my knowledge and belief, the facts presented in support of this allocation are true, correct and complete.

State of Tennessee

By: _____
State Architect

Exhibit B

Waiver and Indemnity

To the fullest extent permitted by law, _____ (“the Company”) shall indemnify and hold harmless the State of Tennessee (the “State”) and the State’s agents and employees from and against any claims, actions, causes of action, liabilities, penalties, forfeitures, damages, losses or expenses (including attorneys’ fees and costs), arising out of or resulting from the Company’s attempt to obtain or the Company obtaining a tax deduction from the IRS pursuant to 26 U.S.C. § 179D.

Further, the Company shall fully reimburse the State for all costs incurred by the State in connection with any actions that the State takes or is requested to take in connection with the Company’s attempt to obtain or the Company obtaining a tax deduction from the IRS pursuant to 26 U.S.C. § 179D.

[COMPANY LEGAL NAME]

By: _____

Name: _____

Title: _____

Date: _____