Beginning with the enactment of the National Energy Policy Act of 2005, Congress has provided several energy tax incentives of interest to multifamily firms. Although the original set of incentives were set to expire on December 31, 2008, subsequent congressional action has extended and, in some cases, expanded their availability.

This guidance document details the three main incentives of interest to apartment firms and offers additional resources for firms interested in taking advantage of these incentives. Additional information is also available on NMHC's website under Energy Efficiency Tax Incentives.

1. **The Energy Efficient Commercial Buildings Tax Deduction (IRC Section 179D):** A $1.80 per square foot tax deduction for properties that exceed the efficiency standards set out in the American Society of Heating, Refrigerating and Air-Conditioning Engineers (ASHRAE) Standard 90.1 by 50 percent. **This deduction is generally available through 2016.** However, the small wind component is phased down for facilities that begin construction before January 1, 2020, and the solar component is effective for solar facilities that begin construction before January 1, 2022.

2. **An Energy Investment Tax Credit (IRC Section 48):** A tax credit is available to offset up to 30 percent of the cost for the purchase of qualifying solar energy systems, combined heat and power systems, small wind energy systems, geothermal heat pumps, fuel cells and microturbine systems. **This credit is available through 2016.**

3. **An Energy Efficient Homes Tax Credit (IRC Section 45L):** Finally, low-rise multifamily properties (three stories or less) may qualify for a $2,000 per unit tax credit for new residences that achieve a 50 percent energy savings for heating and cooling over the 2006 International Energy Conservation Code (IECC) and supplements. **This credit is available through 2016.**

**DEDUCTION FOR ENERGY EFFICIENT COMMERCIAL BUILDINGS (IRC SECTION 179D)**

Through 2016, taxpayers may deduct the cost of certain energy-efficient property installed in commercial buildings, including apartments with four stories or more, (at least three stories above grade) that meet certain requirements. The deduction is available in two ways:

1) A full deduction of up to $1.80 per square foot of building floor area for buildings achieving certain energy savings targets; or

2) A partial deduction of up to $0.60 per square foot for energy-efficient property installed in one of three building subsystems (interior lighting, HVAC, or building envelope) which meet certain energy saving reductions.
To qualify for the full deduction of $1.80 per square foot, the energy-efficient property must produce an energy savings of 50 percent or more (based on ASHRAE 90.1-2007) and be accomplished through energy and power cost reductions for the building’s heating, cooling, ventilation, hot water and interior lighting systems.

To qualify for the partial deduction ($0.60 per square foot), property owners must achieve an energy saving reduction determined by the Department of the Treasury. On February 23, 2012, the IRS changed the energy saving thresholds required to take the deduction (Notice 2012-22 – Note: the IRS in late March 2012 opted to designate Notice 2012-22 as Notice 2012-26.). These new benchmarks apply to properties placed in service on or after March 12, 2012.

<table>
<thead>
<tr>
<th align="center">Percentage Requirements for Energy Savings to Qualify for Partial 179D Deduction</th>
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<tr>
<td align="center"><strong>Interior Lighting</strong></td>
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<tr>
<td align="center"><strong>Heating, Cooling, Ventilation and Hot Water</strong></td>
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<tr>
<td align="center"><strong>Building Envelope</strong></td>
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NMHC/NAA believe that lawmakers should not only extend the Deduction for Energy Efficient Commercial Buildings, but also enact reforms to make it more effective. Efficiency levels that surpass the already rigorous ASHRAE standard in order to qualify for the deduction makes it difficult for retrofits of older construction to qualify for the tax incentive. More than 70 percent of the current apartment stock was constructed before 1990, the era of the modern energy code. Many of these older properties could achieve meaningful reductions in energy usage, but even after making significant financial investments to do so, these older properties often still fail to meet the specific code-based performance benchmark.

We have also encouraged lawmakers to expand the terms of the Section 179D deduction to provide an incentive for more property owners to undertake property rehabs that significantly improve the energy performance of a property relative to a building’s own baseline performance data rather than a specific energy code. A sliding scale of tax incentives could be pegged to certain, well-documented improvements in building performance. In turn, these investments will lead to greater utility cost savings for residents and will help create jobs. According to a June 2011 study, a reformed deduction could generate more than 77,000 jobs in construction, manufacturing and other sectors of the economy.

**Key Resources:**


- **IRS Notice 2008-40** (4/27/2008) updates and clarifies a number of provisions of Notice 2006-52, particularly regarding the certification requirements for the interim lighting rule and the application of the interim lighting rule to unconditioned garage spaces.
• **IRS Notice 2006-52** (6/26/2006) establishes a process to certify the required energy savings in order to claim the deduction, including special “interim rules” that may allow a taxpayer to claim a prorated portion of the $0.60 partial deduction for lighting systems that meet certain requirements. Before claiming a deduction, the taxpayer must generally obtain a certification that the required energy savings will be achieved. The notice prescribes the content of that certification and the qualifications that must be met by the person providing the certification.

**Additional Resources:**

- Tax Incentive Assistance Project ([www.energytaxincentives.org](http://www.energytaxincentives.org))
- Department of Energy Summary of the Energy Tax Credit Extensions ([http://tinyurl.com/EnergyStarSummary](http://tinyurl.com/EnergyStarSummary))
- Energy Star Summary of Federal Tax Credits for Energy Efficiency ([www.doe.gov/additionaltaxbreaks.htm](http://www.doe.gov/additionaltaxbreaks.htm))

**TAX CREDITS FOR QUALIFIED ENERGY INVESTMENTS (IRC SECTION 48)**

Through 2016 (with lengthier effective dates for solar and small wind), tax credits are available for firms that purchase qualifying solar energy systems, combined heat and power systems, small wind energy systems, geothermal heat pumps, fuel cells and microturbine systems.

This energy investment credit is part of the Section 38 General Business Credit contained in the tax code and, as such, is generally subject to the rules of that credit regarding a variety of attributes such as carryback and carryforward and property basis adjustments. Furthermore, the energy credit is generally allowable against the alternative minimum tax (AMT) for the year 2009 and thereafter.

**Solar**

Taxpayers can qualify for a 30 percent tax credit for projects that begin construction prior to 2020. The credit is phased down to 26 percent for facilities that begin construction in 2020 and to 22 percent for facilities that begin construction in 2021. For facilities that begin construction in 2022, but are not placed in service until 2024, the credit is 10 percent. To qualify, the equipment must be used to generate electricity, provide heating and cooling, provide hot water, or illuminate a building using fiber-optic distribution.

More information regarding this credit may be found from a number of sources, including:


**Qualified Fuel Cell and Microturbine Property**

Firms can also take advantage of a 30 percent tax credit for qualified fuel cell property and a 10 percent tax credit for qualified microturbine property. The credit is available through 2016.

In **Notice 2008-68**, the IRS provided guidance for taxpayers regarding the tax credit for qualified fuel cell and microturbine property. The Notice provides that a fuel cell power plant is an integrated system comprised of a fuel cell stack assembly and associated balance of plant components, which converts a fuel into electricity using electrochemical means. To qualify for the 30 percent credit (which is capped at $1,500 for each 0.5 kilowatt of capacity) the property must have a nameplate capacity of at least 0.5 kilowatt of electricity using an electrochemical process and have an electricity-only generation efficiency greater than 30 percent.
The Notice defines qualified microturbine property as a stationary microturbine power plant that has a nameplate capacity of less than 2,000 kilowatts and an electricity-only generation efficiency of not less than 26 percent at International Standards Organization (ISO) conditions. The credit is generally limited to the lesser of 10 percent of the basis of the property or $200 for each kilowatt of capacity.

For additional information visit the Energy Star Summary of the Federal Energy Efficiency Tax Credits with links to applicable IRS forms (http://tinyurl.com/EnergyStarSummary).

**Combined Heat and Power (CHP) Systems**
The energy investment tax credit was expanded in 2008 to include a 10 percent credit for combined heat and power property energy efficiency improvements.

Generally, in order to qualify for the credit, property must meet the following requirements:

1. Has an electrical capacity of 50 megawatts or less;
2. Uses the same energy source for the simultaneous or sequential generation of electrical power, mechanical shaft power, or both, in combination with the generation of steam or other forms of useful thermal energy (including heating and cooling applications);
3. Produces at least 20 percent of its total useful energy in the form of thermal energy that is not used to produce electrical or mechanical power, and produces at least 20 percent of its total useful energy in the form of electrical or mechanical power (or a combination thereof); and
4. The energy efficiency percentage of which exceeds 60 percent.

For additional information visit the U.S. Clean Heat & Power Association (www.uschpa.org/i4a/pages/index.cfm?pageid=1).

**Small Wind Energy**
Tax credits were recently made available to homeowners and firms that install residential small wind turbine systems. The credits are available for systems placed in service from January 1, 2008 to December 31, 2016. The tax credit is for 30 percent of the cost of the system, up to $500 for each half kilowatt of capacity. The credit is phased down (20 percent in 2017, 40 percent in 2018, and 60 percent in 2019) for projects that begin construction between 2017 and prior to 2020.

For additional information visit:
- IRS Notice 2016-31 describes dates by which construction of qualified facilities must begin for purposes of the small wind credit (https://www.irs.gov/pub/irs-drop/n-16-31.pdf);
- IRS Notice 2015-4 describing performance and quality standards that small wind energy property must meet to qualify for the energy credit under Section 48 (http://www.irs.gov/pub/irs-drop/n-15-04.pdf); and
- American Wind Energy Association Small Wind Resource Center (www.awea.org/smallwind/).

**Geothermal Heat Pump Systems**
The energy investment tax credit was expanded in 2008 to include a 10 percent credit for energy property investments in certain geothermal heat pump systems, up to a maximum of $2,000. Equipment that uses the ground or ground water as a thermal energy source to heat a structure or as a thermal energy sink to cool a structure qualifies for the credit. All Energy Star geothermal heat pumps qualify for the credit.
To claim the credit, taxpayers must have a Manufacturer’s Certification, or a signed statement from the manufacturer certifying that the product or component qualifies for the tax credit. The IRS encourages manufacturers to provide these certifications on their web site to facilitate identification of qualified products. Taxpayers must keep a copy of the certification statement for their records, but do not have to submit a copy with their tax return. No additional IRS guidance is available on this credit yet.

For more information visit Energy Star Geothermal Heat Pumps (http://tinyurl.com/EnergyStarHeatPumps)

**TAX CREDITS FOR ENERGY EFFICIENT HOMES (IRC SECTION 45L)**

A $2,000 per-unit tax credit for energy efficient homes is available through 2016. To qualify, properties must be three or fewer stories in height and they must achieve a 50 percent energy savings for heating and cooling over the 2006 International Energy Conservation Code (IECC) and supplements. Multifamily developers wishing to claim the credit must independently certify that each unit meets the required energy savings.

**Key Resources:**

- IRS Notice **2008-35** (3/24/2008) updates and supersedes a prior IRS Notice (2006-27). It also describes the process under which an eligible contractor can obtain certification that a dwelling unit qualifies for the tax credit.