COALITION SUPPORTING 179D TAX DEDUCTION
FOR ENERGY EFFICIENT COMMERCIAL BUILDINGS

January 17, 2014

The Honorable Max Baucus
Chairman
Committee on Finance
U.S. Senate

Re: Cost Recovery and Energy Tax Reform Proposals:
Support for Section 179D Tax Deduction for Energy Efficient Buildings

Dear Chairman Baucus:

Our organizations and companies represent a broad spectrum of the U.S. economy. They include real estate, manufacturing, architecture, contracting, building services, financing, labor, and environmental and energy efficiency advocates. Many of the entities we represent are small businesses that drive and sustain American job growth.

We write concerning the "Cost Recovery and Accounting Tax Reform Discussion Draft" released on November 21, 2013 ("Cost Recovery Draft"), and the "Energy Tax Reform Discussion Draft" released on December 18, 2013 ("Energy Tax Draft"). We commend the Finance Committee for exploring ways to strengthen the effectiveness of the Internal Revenue Code to create jobs and improve the economy. However:

- **We oppose the Cost Recovery Draft's proposed repeal of the section 179D tax deduction for energy efficient commercial and larger multifamily buildings;**
- **We emphasize that taxpayers receive the greatest "bang for the buck" through incentives for energy efficiency, such as the section 179D incentive to save building energy use. Section 179D thus achieves a key policy goal of the Energy Tax Draft, should be included in any subsequent drafts, and inform any comprehensive reform proposals;**
- **Efficiency incentives like 179D should be included in any energy title that may be part of a reformed tax code. However, comprehensive tax reform would likely take many years to achieve, and we urge a more immediate multi-year extension of section 179D (which expired on December 31, 2013); and**
- **Whether made permanent in the code or temporarily extended, section 179D should include targeted refinements based on available bill language that would meaningfully encourage technology-neutral, performance-based "retrofit" projects in existing buildings. Consistent with such refinements and the Committee's reform proposals, section 179D could also be converted into a tax credit rather than continue as a deduction.**

Background on Section 179D

Section 179D provides a tax deduction to assist building owners in recovering some of the costs for high efficiency components and systems (such as windows, roofs, lighting, insulation, and HVAC) in commercial and larger multifamily buildings that meet certain energy savings performance targets. The section 179D deduction is a key incentive to leverage far greater amounts of private sector investment capital in our nation's buildings. It has helped to spur construction and manufacturing jobs through retrofits, save businesses billions of dollars in fuel bills as buildings become more energy efficient, place lower demands on the power grid, move our country closer to energy independence, and reduce carbon emissions. The Administration cited these benefits in its own budget proposal earlier this year, when it endorsed an extended section 179D with reforms along the lines we discuss below.[1]

For a number of years, broad and diverse stakeholder interests have rallied to support section 179D's extension and reform. Attached to these comments are letters dated May 5, 2011, December 3, 2012, and September 17, 2013 – all of which emphasize the important energy policies that 179D vindicates through its inclusion in the tax code.

Section 179D is a Pro-Growth Measure for Jobs and the Economy

The staff summary document (at p. 1) for the Cost Recovery Draft states that the current tax code's complexity "serves as a drag on economic growth and employment." Yet, repealing section 179D would subvert the very goals of job growth and improved economic competitiveness that comprehensive tax reform seeks to achieve.

A June 2011 report from the Political Economy Research Institute (U Mass-Amherst) found that section 179D with modifications to encourage building retrofits would create 77,000 new jobs in the first two years after enactment. These new jobs would ripple across the construction, manufacturing, and service sectors of the U.S. economy. Furthermore, a July 2012 report from the American Council for an Energy-Efficient Economy (ACEEE) estimates that 179D 5-year extension and reform could yield a cumulative lifetime energy savings of 678,000 *gigawatt* hours (GWh) with an average cost to the Treasury of less than $0.124 per million British thermal unit (Btu) saved. After 15 years this would avoid the need for a dozen 500 MW power plants, reduce greenhouse gas emissions as much as taking five million cars off the road, and reduce consumer energy bills by almost five billion dollars a year.

It is clear that extension and reform of section 179D would result in some of the most cost-effective ways for the code to promote the highest levels of energy and dollar savings for U.S. businesses – all with an extremely modest absolute impact on the federal budget.

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[1] *See* Department of the Treasury, "General Explanations of the Administration's Fiscal Year 2014 Revenue Proposals" (April 2013), available at http://www.treasury.gov/resource-center/tax-policy/Documents/General-Explanations-FY2014.pdf, at 21 ("Enhancing the current deduction for energy efficient commercial building property – which is primarily used by taxpayers constructing new buildings – and allowing a new deduction based on the energy savings performance of commercial building property installed in existing buildings would encourage private sector investments in energy efficiency improvements.").

Taxpayers Get More "Bang for the Buck" Through Section 179D and Other Energy Efficiency Incentives.

The Cost Recovery Draft proposes permanent repeal of section 179D, and the Energy Tax Draft excludes efficiency incentives to reflect the Committee's "choice … to target tax incentives on areas that appear to have the largest bang-for-the-buck in reducing air pollution and enhancing energy security …." (Staff Summary for Energy Tax Draft, p. 7.) However, we urge Congress to be mindful that the code's provisions to encourage greater energy *efficiency* are the most cost effective tool to meet our nation's energy demand. Dollar for dollar, it is much cheaper to *avoid using* a kilowatt of energy than to *create* a new one (such as through deployment of fossil fuel or renewable technologies):

Costs of Saving Energy vs. Producing Energy

Technology	Costs (per kilowatt hour)
Energy Efficiency	2-3 cents[2]
Wind	9 cents[3]
Geothermal	10 cents
Advanced Coal	11 cents
Advanced Nuclear	11 cents
Solar PV	21 cents
Offshore Wind	24 cents

While incentives for the production of energy may also play a role in our nation's energy policy, energy efficiency is the least costly way to meet our nation's energy needs and should be looked to first when considering how to allocate taxpayer resources.

As the Energy Tax Draft indicates, a reformed tax code will likely continue to serve as a vehicle to achieve national energy policy. In that context, it is critical to retain incentives for energy efficiency, including section 179D, which offer the biggest "bang for the buck" available.

Legislative Proposals to Improve Section 179D and Extend it Over Multiple Years Should be Included in Comprehensive Tax Reform.

The section 179D deduction unfortunately expired at the end of 2013, along with a number of other provisions. As part of the comprehensive tax reform effort, Congress should extend this important

[2] Costs of saved energy ("CSE") per kilowatt hour ("kWh") for energy efficiency programs range from 2 cents to 3 cents per kWh. See American Council for an Energy Efficient Economy, "Saving Energy Cost-Effectively: A National Review of the Cost of Energy Saved Through Utility-Sector Energy Efficiency Programs" (Sept. 1, 2009), available at http://www.aceee.org/research-report/u092.

[3] Costs for all power generation sources in table provided by U.S. Energy Information Administration, "Levelized Cost of New Generation Resources," Annual Energy Outlook 2011, available at .http://www.eia.gov/oiaf/aeo/electricity_generation.html (provides "Total System Levelized Cost" for various "Plant Type(s)" in dollars per megawatt hour ("MWh")). For purposes of table conversion: MWh / 1000 = kWh.

incentive with reasonable improvements that better facilitate "deep" energy retrofit improvements in buildings.

In this regard, the *Commercial Building Modernization Act* (S. 3591) from last Congress – introduced by Senators Cardin and Feinstein, and former Senators Bingaman and Snowe – is both "performance based" and "technology neutral," as any energy tax incentive should be. Revisions of the sort proposed by S. 3591 would improve the section 179D deduction by providing a sliding scale of incentives that correlate to actual and verifiable improvements in a retrofitted building's energy performance.

The discussion draft warns that the tax code should avoid "picking winners and losers with no discernible policy rationale" and endeavors to ensure "that all energy tax incentives are technology-neutral." (Staff Summary for Energy Tax Draft, p. 1, 2.) The section 179D deduction – particularly as improved by S. 3591 – meets this test because it supports *projects*, not *products*. Neither 179D nor S. 3591's proposed reforms specifies any particular type of equipment or material that must be deployed in an energy efficient new building construction or retrofit. Rather, private sector building owners and their contractors can decide the optimal suite of efficiency measures, provided that they achieve the requisite level of energy efficiency performance to qualify for a deduction.

Furthermore, any 179D reform proposal should ensure that building owners have their own "skin in the game" of a retrofit project – such as S. 3591's specification that the financial benefits of the tax deduction cannot exceed more than half of project costs.

As the Committee takes a broader view of tax reform it might entertain whether to convert the section 179D incentive from a deduction to a credit, in line with the other types of incentives proposed in the Energy Tax Draft. We are open to this approach. Should the Committee pursue this path, we advise careful consideration of how public, private and non-profit commercial and larger multifamily owners might receive the full economic advantage of any tax credit to meaningfully spur energy efficiency building projects. Under section 179D as expired, for example, government building owners (who lack tax liability) are permitted to allocate the incentive to the person primarily responsible for the building's design (who can capture the tax benefit). Similarly, S. 3591 would enable private and non-profit building owners with minimal or no tax liability to also allocate deduction amounts to other parties associated with a retrofit project, such as a designer or building tenant who may benefit from the energy efficient expenditures. In short, the important goals served by the 179D deduction's allocation should be furthered as broadly and effectively under any possible energy efficiency credit that Congress may ultimately authorize.

Whether as part of comprehensive tax reform or a possible extenders package for expired sections, 179D is a crucial provision. With S. 3591 from last Congress, much of the heavy-lifting in terms of legislative drafting and policy analysis has already been completed. S. 3591 has also been reviewed and vetted by a great number of concerned stakeholder groups. That bill is the logical starting point to effectuate ultimate reform of and revisions to section 179D in the coming months.

Conclusion

- Pro-growth tax reform may create jobs, stimulate private sector investment, move our nation closer to energy independence, and minimize the carbon footprint of the built environment.

- We vigorously oppose the Cost Recovery Draft's proposal to permanently repeal section 179D, given its potential to cost effectively achieve all of these significant objectives.

- Efficiency incentives like section 179D should have a permanent place in any energy incentive title a reformed tax code may ultimately include. While comprehensive reform proposals are considered, Congress should enact a more immediate multi-year extension and modification of section 179D given the provision's expiration at the end of 2013. Modifications could include converting the incentive to a tax credit – with provisions to ensure such a credit's allocation to designers and other parties associated with a building energy efficiency project to the extent owners may not be able to avail themselves of tax incentives.

- For purposes of both comprehensive tax reform and extension of expiring provisions, we urge consideration of S. 3591 from last Congress as the foundation for further deliberations and refinements to the section 179D incentive.

Thank you for the opportunity to submit these comments.

cc:
The Honorable Orrin Hatch
The Honorable Benjamin Cardin
The Honorable Dianne Feinstein
Members of the Senate Finance Committee
Members of the Senate Energy & Natural Resources Committee

SUPPORTING ORGANIZATIONS

ABM Industries
Air Barrier Association of America
Air Conditioning Contractors of America
Air-Conditioning, Heating, and Refrigeration Institute
Alliance to Save Energy
American Council for an Energy-Efficient Economy
American Gaming Association
American Gas Association
American Institute of Architects
American Resort Development Association
American Society of Interior Designers
Appraisal Institute
ASHRAE
Big Ass Fans
Building Owners and Managers Association (BOMA) International
CCIM Institute
Concord Energy Strategies, LLC

Consolidated Edison Solutions
Council of North American Insulation Manufacturers
Energy Systems Group
Independent Electrical Contractors
Ingersoll Rand
Insulation Contractors Association of America
Institute for Market Transformation
Institute of Real Estate Management
International Council of Shopping Centers
International Union of Painters and Allied Trades
Johnson Controls, Inc.
Mechanical Contractors Association of America (MCAA)
Metrus Energy, Inc.
NAIOP, the Commercial Real Estate Development Association
National Apartment Association
National Association of Energy Service Companies
National Association of Home Builders
National Association of Real Estate Investment Trusts
National Association of REALTORS®
National Electrical Contractors Association
National Electrical Manufacturers Association (NEMA)
National Multi Housing Council
Natural Resources Defense Council
Owens Corning
Plumbing-Heating-Cooling Contractors—National Association
Polyisocyanurate Insulation Manufacturers Association
Real Estate Board of New York
Sheet Metal and Air Conditioning Contractors' National Association
Sheet Metal Workers' International Association, a division of S.M.A.R.T. (International Association of **S**heet **M**etal, **A**ir, **R**ail & **T**ransportation **W**orkers)
Society of Industrial and Office REALTORS®
The Real Estate Roundtable
U.S. Green Building Council
Window & Door Manufacturers Association