Real Estate Groups Urge 179D Reforms to Incentivize
Private Sector Retrofits for Energy Efficient Building Improvements

August 25, 2017

The Honorable Dave Reichert
U.S. House of Representatives
1127 Longworth House Office Building
Washington, D.C. 20515

The Honorable Earl Blumenauer
U.S. House of Representatives
1111 Longworth House Office Building
Washington, D.C. 20515

The Honorable Tom Reed
U.S. House of Representatives
2437 Rayburn House Office Building
Washington, D.C. 20515

Dear Congressmen Reichert, Blumenauer, and Reed:

Our organizations represent the U.S. real estate industry. Our members are involved in almost every aspect of residential and commercial real estate development, construction, ownership, management, finance, brokerage, contracting, and renovation. Our members provide the apartments, offices, health care facilities, hotels, shopping malls, data centers, and industrial sites where the American people live, work, and play.

We have discussed with your offices on a number of occasions potential reforms to the Section 179D tax deduction for energy efficient commercial and larger multifamily buildings. Thank you for your focus on this important issue by introducing H.R. 3507. However, as currently written, we do not believe the bill includes sufficient reforms to significantly incentivize private sector developers and owners to incur the substantial, extra costs associated with equipment that performs beyond ordinary building code requirements. To make H.R. 3507 even more robust and further the energy policy goals we share, our undersigned organizations continue to suggest the following improvements for meaningful Section 179D reform:

- Encourage efficiency improvements to retrofit the nation's aging building stock, by rewarding reduced energy usage on a sliding scale relative to a building's own energy consumption baseline (rather than solely pegging the incentive to unrealistic improvements over modern energy codes that govern new construction);

- Allow Real Estate Investment Trusts (REITs) to obtain the optimum benefit of the provision, by conforming the REIT's 179D deduction for earnings and profits (E&P) to its corollary deduction for taxable income; and

- Allow private sector building owners to allocate the incentive to a limited group of third parties primarily responsible for energy efficient construction, just as the allocation option is allowed for government building owners (and tribes and non-profits under your bill).

Of the estimated 5.5 million commercial buildings in the U.S., 4.7 million – or 85% of the nation's stock – is non-government owned. Thus, for taxpayers to get the most "bang for the buck" out of the 179D deduction – and to mobilize the incentive to meaningfully boost job and GDP growth – private sector building owners (generally *with* tax liability, who may directly claim a 179D deduction) should be the focus of 179D reform. Yet governments, non-profits, and tribes (generally *without* tax liability, who cannot directly claim the 179D benefit) are the atypical building owners advantaged by H.R. 3057.

Moreover, Congress intended Section 179D to stimulate private sector investment in energy efficient building construction and redevelopment. Real estate owners are the primary beneficiaries of the tax incentive because they are generally the ultimate decision makers for their buildings' capital expenditure budgets, and bear the financial risks associated with the investments they make in their assets. Section 179D reform should chiefly motivate private sector owners and developers to make expensive energy efficiency improvements, by reducing a portion of the higher costs they shoulder associated with big-ticket building components that exceed codes and standards.

Finally, our organizations continue to urge that Congress should enact 179D reforms to encourage retrofits that will modernize and improve the resiliency of our nation's aging building infrastructure. 4.5 million buildings – or 82% of the U.S.'s commercial stock – were built before the year 2000. These structures were designed and built under an outdated energy code, or no energy code at all. New construction meeting current code minimums is inherently more energy efficient, whether or not it exceeds performance by any percentage over the 2007 version of the ASHRAE 90.1 standard (179D's most recent performance baseline before it expired at the end of 2016). Our shared interests in pursuing consequential energy, economic, and jobs policy prompt our continued call for 179D reforms that are meaningful, practicable, and reachable for existing building retrofits.

We look forward to working with your offices to improve H.R. 3507 in the context of tax reform this fall.

International Council of Shopping Centers

National Apartment Association

National Association of Real Estate Investment Trusts

National Multifamily Housing Council

The Real Estate Roundtable