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Building Industry and Environmentalists to Congress: This is How to Encourage Better Buildings

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A few weeks ago USGBC, along with the Natural Resources Defense Council and the Real Estate Roundtable, spearheaded the development of a letter sent to several key Senators on proposed changes to the tax deduction for energy-efficient commercial facilities, as put forth by President Obama as a component of the Better Buildings Initiative. The letter outlines a few key principles uniting an extremely broad stakeholder community around commercial and multifamily energy efficiency, and you can take a look here.

As background, the tax policy, known as Section 179D, was designed to encourage the construction of energy-efficient commercial buildings. The section allows a building owner to take a deduction of up to $1.80 per square foot of space for buildings that are constructed to be 50% better than the 2001 energy code. Enacted in 2005, back before the recession decimated new construction, the policy has been dogged by a lack of clarity on how to document compliance and take the deduction. Multiple requests have been made to DOE and IRS to fix these problems, and it appears that the agencies are finally working to provide some more usable guidance.

Helpful as that will be, 179D was not designed to encourage the large-scale retrofits of existing buildings. Changing times have made encouraging retrofits not only a component of the President's plan to "Win the Future,' but also the focus of stakeholders in the commercial real estate industry.

To illustrate, consider the internationally recognized retrofit of the Empire State Building. Owner Tony Malkin decided to not just renovate and update the iconic building, but also to make it as energy efficient as possible. He assembled a team of the Clinton Climate Initiative, Jones Lang LaSalle, Johnson Controls, and the Rocky Mountain Institute to create a showcase project for efficiency innovation. The retrofit team managed to slash energy consumption by 38%, saving more than $4 million each year. The entire process considered more than 60 different energy efficiency measures and was optimized with eight simple measures executed under a performance guarantee contract. The measures (such as renovating the windows in a pop-up factory on the fifth floor of the building) have maintained the historic character of the facility. The project has been submitted for LEED EB:O&M certification, and according to the project team, targeting the LEED-Gold level. This success story (www.esbsustainability.com) has raised awareness of what is possible in a quantitatively driven energy efficiency retrofit in even the world's most iconic buildings, but this project would not qualify for the existing tax deduction.

Why not? The issue is one of baselines, where the existing policy has a code baseline as used in new construction, where as the Empire State Building cut consumption compared to where it began. Shifting the baseline for an existing building to compare to previous performance is one of the principles that united the industry in support of this proposal.

The principles in a nutshell are:

- **Measure energy savings compared to the existing building baseline.** Rather than requiring existing buildings to meet and exceed the requirements of the energy code for new construction, as is the case currently in 179D, measure improvements in how much energy consumption was reduced compared to where the building started.

- **Link the amount of the incentive to energy savings achieved.** Greater energy savings and deeper retrofits warrant larger incentives to reward innovation and to reflect the larger investments and greater environmental benefit. Energy savings in excess of 50% are possible, and will be encouraged by this approach.

- **Tie a portion of the tax incentive to implementation of efficiency measures and a portion to demonstrated energy savings.** There are good reasons to reward a building owner for implementing energy savings measures, and even better reasons to reward energy savings actually realized on the energy meter. This proposal uniquely does both and maximizes accountability by allowing the building owner to claim 60 percent of the incentive at the time the energy efficiency measures are put into service, and the remaining 40 percent of the incentive after two years of demonstrating the expected savings have occurred.

This last principle would be groundbreaking for energy tax policy. Instead of providing an incentive up front when the measures are installed but not requiring follow up, we are suggesting that 40% of the incentive be held until there is confirmation of success. This unprecedented level of accountability will

encourage the proper operations and maintenance in high performance buildings, an Achilles heel of efficient designs that depend on the operators to live up to their full potential.

In the end, more than 85 organizations representing real estate owners, builders, contractors, building managers, energy service companies, building efficiency manufacturers and suppliers, energy efficiency financiers, environmental advocates, architects, engineers and other stakeholders supported these principles. Stay tuned for updates on our progress as we work to turn these principles into a bill in Congress and then generate support for its consideration.

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