

BOMA International

2019 Priority Issues

Thank you for your support of the commercial real estate industry's issues. BOMA International members respectfully ask you to:

- **Qualified Improvement Property (QIP)**, formerly leasehold depreciation, has reverted to 39-year depreciation from the 15-year period intended by Congress, through a drafting error TCJA. The fix is free.
- A long-term extension and modification of **179D** would create up to 77,000 jobs and add \$7.4 billion to GDP annually, according to a recent study.*
- BOMA believes that federal legislation is needed to address the explosion of **ADA Title III** lawsuits and allow owners to direct resources towards compliance measures and not attorney's fees.
- Support any efforts to return **Qualified Improvement Property** to a 15-year depreciation period retroactively and grant it temporary 100% bonus depreciation until 2022 as intended.
- Support retroactively **extending or making permanent 179D**, The Energy Efficiency Commercial Buildings Tax Deduction, the only federal incentive designed for increasing energy efficiency in commercial buildings. The incentive is historically included in tax extenders legislation.
- Support federal legislative efforts that would allow business owners an opportunity to address and correct accessibility issues without threat of extortive demand letters.

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* Study conducted by Regional Economic Models, Inc. (REMI), "Analysis of Proposals to Enhance and Extend the Section 179D Energy Efficient Commercial Buildings Tax Deduction," May 2017.

Fixing Qualified Improvement Property

The Issue: The Tax Cuts and Jobs Act (TCJA) of 2017 combined the definitions of leasehold, restaurant and retail improvement property into “qualified improvement property” (QIP), but the language granting those property types a permanent 15-year depreciation period, as intended by Congress, were accidentally left out of the final bill. This resulted in two problems. First, the depreciation for interior improvements has reverted to 39 years, up from 15 years. Second, the tax bill also allowed for temporary 100% depreciation (until 2022) of property with a class life of 20 years or less, but this error prevents QIP from being fully expensed.

- Qualified Improvement Property (QIP), formerly leasehold depreciation, has reverted to 39-year depreciation from the 15-year period intended by Congress, through a drafting error TCJA.
- The need for a technical correction is openly acknowledged by both parties and both chambers.
- Both the Internal Revenue Service and Department of the Treasury await Congressional action to correct this error.
- The Joint Committee on Taxation (JCT) scored TCJA to include 15-year depreciation for QIP. This fix is already paid for.

BOMA’s Position: BOMA strongly urges Congress to correct the property life of QIP to 15 years and include QIP as eligible property for 100% bonus depreciation. As building owners negotiate leases with tenants, QIP is considered while determining tenant improvement dollars. Those dollars bring in building trades such as painters, carpenters, plumbers and electricians. With less money for tenant improvements, local jobs will suffer. According to the conference committee, QIP was intended to be depreciated at 15 years, qualifying for bonus depreciation.

Specific Ask: Support any efforts to correct the Qualified Improvement Property drafting error and return QIP to a 15-year depreciation period retroactively and grant it temporary 100% bonus depreciation until 2022 as intended.

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179D: Energy Efficient Commercial Building Tax Deduction

The Issue: The Energy Efficient Commercial Buildings Tax Deduction, commonly referred to as 179D, offers building owners a deduction of up to \$1.80 per square foot for next-level energy-efficient improvements made to heating, ventilation and air conditioning (HVAC) systems; the building envelope, including windows; and lighting upgrades that exceed ASHRAE Standard 90.1 (currently version 2007) by 50 percent. Buildings must be independently certified to receive this deduction. The tax deduction helps real estate owners who might not otherwise have the necessary capital make the decision to design, retrofit and operate energy-efficient structures. Despite sweeping changes to the tax code in 2017, 179D remains the only federal incentive for commercial buildings to become energy efficient. Since its inception in 2005, 179D has been extended various times, most recently retroactively for 2017. The provision is now expired.

- Up to 77,000 jobs could be created with a long-term extension of 179D, according to a recent study.*
- \$7.4 billion could be added to the annually GDP with a long-term 179D extension and modification.
- 179D is a deduction, not a credit.
- 179D requires major building system upgrades to surpass energy codes by an extra 50% to qualify.

BOMA's Position: BOMA urges Congress make 179D a permanent part of the tax code so that building owners can be able to plan for expensive next-level retrofits in a manner that is currently not possible with short-term and retroactive extensions. Advanced energy efficiency retrofits are often more expensive than a building's return on investment can tolerate. 179D is the only tax provision that incentivizes commercial buildings to be more energy efficient. Lower energy bills translate to more money for tenants to invest back into their businesses.

Specific Ask: Support federal legislative efforts to extend or make permanent the Energy Efficient Commercial Buildings Tax Deduction (179D).

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ADA Lawsuit Reform

The Issue: The Americans with Disabilities Act (ADA), signed into law in 1990, greatly increased the protection and advancement of the rights of Americans with disabilities. Because of this landmark law, accessibility has dramatically improved in buildings around the country over the past three decades. Unfortunately, some attorneys are undermining the spirit of the ADA by subverting the intent of the law for profit without improving accessibility. While there are legitimate violations, often many of these lawsuits are overly technical, easily correctable accessibility violations, pressuring business owners into paying large settlements consisting principally of attorney's fees. This defeats the spirit of the law.

- ADA lawsuits ballooned by more than 33% in 2018 over 2017 totaling more than 10,000.*
- Since 2013 the number of these suits has tripled.
- Many of these lawsuits do not serve the interests of accessibility and are disruptive and costly to small businesses.
- BOMA believes that common sense reform will lead to improved compliance with Title III of the ADA, as it directs resources towards compliance and not attorney's fees.
- While many states have passed state laws to curb ADA lawsuit abuse, a fix is needed in the federal statutes to remedy this growing nationwide problem.

BOMA's Position: BOMA believes that people with disabilities should have the same access to our members' properties as everyone else, and the obligation to ensure that buildings are fully compliant with ADA regulations is one we take seriously. To help our members with compliance issues, we authored the *ADA Compliance Guidebook*. We believe that there should be safeguards built into the law to protect property owners from legal threats that do not allow them to first identify the ADA violation and then have a chance to remedy the problem before a financial settlement. This will ensure that disability access remains the primary driver of ADA lawsuits.

Specific Ask: Support federal legislative efforts that would allow business owners an opportunity to address and correct the accessibility issue without threat of extortive demand letters.

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*Analysis of 2018 federal court filings conducted by Minh Vu, Esq. et al, Seyfarth Shaw LLP, 2019.

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Safeguarding ENERGY STAR for Commercial Buildings

The Issue: Established in 1992, under the George H.W. Bush Administration, ENERGY STAR® is a voluntary program that is currently used by over 450,000 commercial buildings, representing over 40 billion square feet of property, to track and improve a building's energy use, water consumption, and waste output. The program and its related tool, Portfolio Manager®, is ingrained in today's real estate business models and operational practices. While ENERGY STAR typically receives widespread bipartisan support, President Trump has proposed changing the program into a user-fee program in the FY20 budget. Much of the debate around ENERGY STAR has been centered around the appliance application, but the commercial building recognition and performance tools are a large component of the program's focus and utility.

- EPA's data shows that 85% of consumers recognize ENERGY STAR as a trustworthy brand. More than 7,400 partner organizations, including 57% of the Fortune 100® participate in the ENERGY STAR program.
- An estimated 2.2 million jobs are attributed to employment in the energy efficiency field.
- In 2015 alone, U.S. businesses cumulatively saved \$3.4 billion on utility bills through the ENERGY STAR buildings program. Families and businesses have saved more than \$430 billion dollars in utility bills since the program's start.

BOMA's Position: BOMA, an 11-time ENERGY STAR Partner of the Year award winner, strongly supports the ENERGY STAR buildings program. ENERGY STAR is an example of how the private sector can leverage EPA's tools to increase energy efficiency and reduce building operating costs. BOMA is currently using the program as the basis of utility calculations for our Water and Waste Challenge. This important private sector challenge supports commercial real estate practitioners to benchmark their water and waste consumption and related costs with the goal of improving operational practices in the built environment. ENERGY STAR fosters high performance in U.S. buildings, helps create jobs in the energy efficiency field, improves the nation's energy security—and saves money for families and businesses.

Specific Ask: We urge Congress to maintain the program's funding at its historic levels in the FY20 budget.

For more information please contact:

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