

Tax Deduction For Energy Efficient Buildings

By Daniel Shirey, Esq., Kitch, Drutchas

The Emergency Economic Stabilization Act signed by President Bush on October 3, 2008, extended the tax deduction available for expenses related to the design and installation of “energy efficient commercial building” systems until December 31, 2013. (Internal Revenue Code section 179D).

The deduction is an incentive to building owners to upgrade their energy systems or to design new buildings to be energy efficient.

The deduction is available if the “energy efficient commercial building property” expenditures reduce the total energy and power costs of the building by 50 percent or more, as compared to a “reference building.”

The deduction is available if the 50 percent or more of total energy or power cost reduction is attributable to one or more of the following systems:

- Interior lighting systems
- Heating, cooling, ventilation, hot water systems, and/or
- Building envelope systems

Energy reductions derived from another source do not qualify for inclusion in the calculation to determine availability of the deduction.

The “reference building” is a building located in the same climate zone as the taxpayer’s building and is otherwise comparable to the taxpayer’s building, which meets the minimum requirement of the American Society of Heating, Refrigeration, and Air Conditioning Engineers, ASHRAE Standard 90.1—2001.

Building owners can claim a tax deduction up to \$1.80 per square foot of building area for the installation of qualifying systems, over the aggregate amount of the deduction with respect to the building for all prior taxable years. The basis of such property shall also be reduced by the amount of the deduction allowed. Lobbying activities seek to increase the deduction to \$2.25 per square foot, but the proposal has not yet obtained congressional approval.

Thus, for example, if a new 100,000-square-foot office building meets the energy reduction requirements, is placed into service, and no prior EECG deductions have been taken in prior years, a deduction is available of up to \$180,000 (\$1.80 x 100,000 square feet). There is no overall per-building dollar limit on the deduction.

Using this formula, commercial building owners may choose to negotiate contracts with energy system designers to include incentives aimed at obtaining the full energy efficiency deduction.

Methods of calculating energy reductions have been promulgated. Certified computer software is also available to per-

form the calculations. Methods for calculating energy efficiencies are fuel neutral. Thus, for example, energy efficiencies will qualify whether the method of heating is gas, oil furnace or boiler, or electrical.

Partial credit may also be available if total energy savings do not meet or exceed the 50 percent requirement.

Application to Public Buildings

A tax deduction is also available on energy savings systems installed in new or existing public buildings. The deduction applies to federal, state or local government buildings. Allocation of the deduction will be to the person primarily responsible for designing the energy efficient system. The allocation is made by the owner of the building. The deduction will be allowed to the designer for the taxable year that includes the date the energy efficient system is placed into service. A designer may be an architect, engineer, contractor, environmental consultant, or energy services provider who creates the technical specifications. If more than one designer is responsible for creating the technical specifications, the owner may allocate the deduction to the designer primarily responsible, or may allocate the deduction among several designers. The maximum amount of the deduction to be allocated is the amount of the costs incurred by the owner to place the energy efficient system into service. The designer does not include in income any amount of the allocated deduction.

Public building owners may thus likewise choose to negotiate contracts with energy system designers to include incentives aimed at obtaining the full energy efficiency deduction. Public building contracts could include allocation of the deduction to the designer.

To claim the deduction, the taxpayer must have a certified document of the energy savings signed by a “qualified individual,” at a minimum an engineer or contractor who is licensed in the jurisdiction where the building is located, and is not related to the taxpayer. The IRS has set forth detailed requirements that must be contained in the certification. Before claiming the deduction, the taxpayer must obtain certification that required energy savings will be achieved. 🏠

IRS Circular 230 Disclosure: To ensure compliance with requirements imposed by the Internal Revenue Service, we inform you that any U.S. federal tax advice contained in this communication (including any attachments) was not intended or written to be used, and cannot be used, by any person for the purpose of (i) avoiding tax-related penalties or (ii) promoting, marketing or recommending another person any transaction or matter addressed in this communication.