

Application of Certain Energy Tax Deductions To Local Units of Government

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The nation's energy concerns have helped drive federal tax policy in recent years. Green building initiatives, such as LEED certification, have encouraged energy conservation and efficiency through various incentives including generous tax benefits. One such tax benefit is the tax deduction for the design and construction of energy efficient buildings and retro-fitting inefficient buildings with energy-savings features. Because federal, state and local governments are tax exempt, these tax breaks do not benefit them as owners of government buildings. Accordingly, the tax advantages of green building are ignored as inapplicable. But there are potential advantages to knowing such tax deductions exist. Under certain circumstances, the tax deduction may be assigned to the building's architect, designer, engineer or contractor in exchange for a substantial reduction in design or construction costs to the unit of government.

Here's how it works. Section 179D of the Internal Revenue Code was created as part of the Energy Policy Act of 2005. The Emergency Economic Stabilization Act of 2008, signed on October 3, 2008, extends the benefits through December 31, 2013. It provides a maximum deduction of \$1.80 per square foot to the owners of energy-efficient commercial buildings for the year in which the qualifying property is placed in service. This deduction may be passed on to the design professional responsible for the energy-efficient improvements. For example, a designer of a 100,000 square foot government facility could receive a tax deduction of \$180,000.

Partial deductions of \$.60 per square foot can be taken for improvements to one of the building components that can help save energy -interior lighting, heating, cooling, ventilation, hot water, and building envelope.

Design professionals of public schools, airports, libraries, public universities, courthouses, jails, municipal parking garages, maintenance garages, or any other public building can reap substantial tax benefits from this deduction. Those savings can be passed on to the governmental owner in whole or in part. The properties must be completed or renovated after December 31, 2005 and before December 31, 2013. To claim the deduction the designer should have received a written allocation from the building's owner allocating the deduction to the designer. Amended tax returns can be filed to the extent certification was not provided prior to the original return filing.

The designer for purposes of the law is the person that creates the technical specifications for construction or installation of energy-efficient features of the building. The term may include an architect, engineer, contractor, environmental consultant or energy services provider. In the case of the general contractor performing design functions, the contractor may qualify, but a person who merely installs, repairs, or maintains the property is not considered a designer.

The energy savings design may be a collaborative effort. If more than one designer is responsible for creating the technical energy savings features, the owner of the building may allocate the deduction from among several professionals. Before

claiming the deduction the designer must obtain a written allocation from the property owner. A word of caution: The allocation must be signed under penalty of perjury.

The energy-savings features must also be certified by an independent energy auditor; but the fee for the certification may itself be deductible. Accordingly, the governmental entity should assure that the designer takes all the steps necessary to qualify for the deduction, including the certification and preparation of the allocation.

By addressing this opportunity at the outset of project planning, the governmental entity can provide for the tax deduction in the contract documents. The owner of the public building and the design professional can then negotiate an appropriate reduction in the design costs of the building.

In summary, substantial tax benefits available to designers of commercial buildings constructed for federal, state and local governments are being ignored. An opportunity exists for public building owners to realize some of the benefits the tax code has to offer in the green building arena. Those who may have qualified for this deduction for completed projects may be able to complete the documentation and file amended tax returns. To gain the building owner's cooperation, some consideration should be given to the governmental entity by the design professional.

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