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How EPAct Building Tax Incentives Support Retrofits

Written By [Charles R. Goulding, CPA; Charles G. Goulding; and Raymond Kumar, CPA Business, Features, Guidance](#)

Now completing their seventh year, Energy Policy Act (EPAct) deductions are used increasingly by retrofiters in the commercial building sector and by designers of government building energy-efficiency measures. We'll explain why EPAct tax benefits are steadily becoming more popular and where most of the tax incentives are utilized.

Section 179D Tax Definitions

Pursuant to EPAct Section 179D, buildings making qualifying energy-reducing investments in their new or existing locations can obtain immediate tax deductions of up to \$1.80 per square foot.

If the project doesn't qualify on a "whole building" basis for the maximum \$1.80 per square foot immediate tax deduction, there are tax deductions of up to 60 cents per square foot for each of the three major building subsystems: lighting, HVAC and envelope. The building envelope is every item on the building's exterior perimeter that touches the outside world, including roof, walls, insulation, doors, windows and foundation.

The following chart illustrates the magnitude of tax benefits available at different square footage breakpoints:

Total Square Footage	Lighting		HVAC	Building Envelope	Total
	Minimum	Maximum	Maximum	Maximum	
	Deduction	Deduction	Deduction	Deduction	
50,000	\$ 15,000	\$ 30,000	\$ 30,000	\$ 30,000	\$ 90,000
100,000	\$ 30,000	\$ 60,000	\$ 60,000	\$ 60,000	\$ 180,000
150,000	\$ 45,000	\$ 90,000	\$ 90,000	\$ 90,000	\$ 270,000
200,000	\$ 60,000	\$ 120,000	\$ 120,000	\$ 120,000	\$ 360,000

Commercial Buildings

In the commercial sector, EAct is now being utilized by virtually all major building categories, including warehouses, industrial, retail, hotels, car dealerships and restaurant chains. Because the tax incentive is based on square footage, the biggest beneficiaries are large buildings and/or property owners with multiple buildings.

In the commercial sector, the building categories that most frequently qualify for the full \$1.80 incentives are warehouses, industrial buildings and hotels. In the past year LED lighting retrofits have become a very popular category. (Our firm has published articles about each of these categories. The articles are available on our [website](#).)

Government Buildings

It may be surprising to know that as many, if not more, government buildings have achieved EAct 179D deductions as compared to commercial buildings. For government projects, the incentive goes to the design party or parties responsible for the energy-efficient design.

Buildings at all levels of government are eligible for designer tax incentives, including federal, state and local. Frequent qualifying projects include:

- Federal – all branches of the U.S. military and all federal departments, including the Veterans Administration
- State – state universities (most common), courthouses and state prisons
- Local – kindergarten through 12th grade public schools (most common), city halls, police departments and public libraries

One of the most common projects impacting all government agencies is parking garages. EAct-eligible government garages include city garages, airport garages, state university garages, community college garages, VA hospital garages, state hospitals, sports stadiums and convention centers.

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Catching Up On Missed Deductions

In January 2011, the Washington, D.C.-based Internal Revenue Service released Rev. Proc. 2011-14, which enables all property owners to catch up on missed EPAct deductions. Conveniently, the deductions can be reported on the current-year tax return without having to amend returns from previous years. The retroactive filing is accomplished by filing tax form 3115 with the building owner's current tax return. This change can be used proactively as a tax-planning tool.

Building owners who missed one or more prior tax deductions can combine the missed project(s) with a new project and secure a much larger combined tax deduction. For example, a warehouse owner installed energy-efficient lighting in a 200,000-square-foot warehouse for \$100,000 in 2006 but missed the EPAct tax deduction. Presume that, in 2012, this same owner has a new project involving natural gas heaters and some roof improvements for \$260,000. Using Rev. Proc. 2011-14, this warehouse owner may be eligible to deduct the entire \$360,000 in 2012 (\$100,000 prior project plus \$260,000 current project).

As of September 2012, the catch-up opportunity is available to building owners only; designers of government buildings may only take current-year EPAct deductions.

Increased EPAct HVAC and Building Envelope Projects

From 2008 to the present, EPAct 179D utilization for HVAC and the building envelope has skyrocketed.

Particularly for HVAC, certain technologies have proven to reliably beat EAct standards, especially once they were lowered slightly in March 2011. These technologies include:

- Geothermal (ground-source heat pumps)
- Thermal storage
- High-efficiency variable refrigerant flow units in rental apartments/dorms/hotels
- Centralized HVAC in rental apartments/dorms/hotels
- Energy recovery ventilation
- Demand control ventilation
- Chillers in buildings less than 150,000 square feet
- Direct-fired heaters in non-air-conditioned industrial spaces
- Variable-air-volume devices in buildings less than 75,000 square feet
- Chilled beam
- Magnetic bearing chillers
- Gas-fired/electric chillers combined with electric chillers to peak shave
- Indirect evaporative cooling, such as Coolorado air-conditioning units

The EAct 179D writers provided the foundation for useful incentives in HVAC and envelope. Thoughtful tweaks and clarifications have evolved the law into a much more useful incentive.

EAct tax incentives have become an important element in retrofit projects. Those lighting, HVAC and building envelope retrofitters who know how to incorporate the incentives into their proposals and designs will reap more projects.

Online Buzz

Are you interested in articles about specific building types that achieve EAct tax incentives? [Visit the authors' website](#) for a collection of articles, providing specific guidance.

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