

The Continued Success of Code Sec. 179D

By Charles Goulding, Spencer Marr and Jennifer Pariante

Charles Goulding, Spencer Marr and Jennifer Pariante provide an overview of how commercial and government building owners in various industries maximize their tax and energy savings by installing energy-efficient fixtures and equipment to decrease operating costs and take advantage of the tax deduction offered by Code Sec. 179D.

Code Sec. 179D, as enacted by the Energy Policy Act of 2005 (EPAcT)¹ is extremely successful tax legislation based on the use of the EPAcT provision by commercial building owners and government building designers. The legislation is essentially self-tax-funded. The required energy-cost reductions result in a measured decrease in operating costs for the commercial property owners and result in reduced operating costs for taxpayer-funded government buildings. Commercial property users end up with increased taxable income from the energy savings. Government organizations can reduce budgets and lower their tax collection requirements.

Code Sec. 179D Tax Opportunities

Pursuant to Code Sec. 179D, commercial property owners making qualifying energy-reducing

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investments in their new or existing locations can obtain immediate tax deductions of up to \$1.80 per square foot. If the building project does not qualify for the maximum Code Sec. 179D \$1.80-per-square-foot immediate tax deduction, there are tax deductions of up to \$0.60 per square foot for each of the three major building subsystems: lighting, HVAC (heating, ventilating and air conditioning) and the building 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.

Most Common Commercial EPAcT Users

Industrial Buildings and Warehouses

Warehouse owners and manufacturers in jurisdictions around the country, particularly in the major distribution center market such as Ohio, Georgia, Illinois, New York, New Jersey, Pennsylvania and Texas, to name a few, have all taken advantage of Code Sec. 179D. Warehouses and manufacturing facilities can reap the benefits of Code Sec. 179D because they are typically simple spaces that can be retrofitted with ease, as they have less compli-

cated energy demands than many other commercial building categories. These are large structures that tend to use the legislation to support energy-efficient lighting and natural gas heaters and roofs, often to prepare the property for solar photovoltaic (Solar P.V.) installations.²

Office Buildings

Office building owners and managers everywhere, from large cities like New York City to smaller metropolitan areas like Charlotte, use Code Sec. 179D to help finance LED lighting projects and energy-efficient HVAC upgrades, including chillers, thermal storage³ and demand control ventilation. While these buildings are more complex than warehouses or manufacturing facilities, the energy savings potential is perhaps greater than any other building category because of the long hours of electrical demand and air conditioning/heating. The enactment of energy benchmarking laws in several key jurisdictions, including New York City, San Francisco and Washington, D.C., has prompted many office building owners to make their properties more energy efficient in order to attract and retain increasingly energy-savvy commercial tenants.⁴

Retail/Supermarkets

National retail and supermarket brands are typically able to obtain chain-wide benefits from qualifying energy reduction strategies that can be replicated on similar store formats.⁵ In the supermarket context, refrigeration and freezers are the biggest energy-cost users, which when combined with frequently specialized lighting demands makes for very high energy bills. Code Sec. 179D provides an opportunity for supermarket owners and operators, who can now use cold-resistant LED lighting to present their merchandise to customers. Even in the nonsupermarket retail context, LED lighting has significantly reduced many stores' energy expenses while giving them optimal lighting to showcase their products.

Hotels

Since the lowest point of the economic downturn, the domestic hotel industry has restructured and is

using the legislation to address deferred upgrades to their buildings' systems.⁶ This restructuring has been spurred on by the industry's favorable tax treatment under EAct, whereby the underlying rule set under Code Sec. 179D gives hotels and motels the maximum tax deduction for merely meeting the current building code requirement for lighting for that building's category. This opportunity has prompted national hotel and motel chains to take advantage of the EAct incentives on a franchise-wide basis.

Car Dealers

Car dealerships use the benefits of Code Sec. 179D to install LED showroom lighting and energy-efficient lighting in the service bays. Dealer numbers have decreased from 32,000 to

18,000 because of the economic downturn, resulting in concentrations of multi-branded, financially stronger dealer networks.⁷

Parking Garages

Parking garages are one the most cost-efficient Code Sec. 179D building categories since nearly all

of their energy expenses derive from their lighting systems. This provision is a very important incentive for garages, which typically operate in high electric-cost-property dense areas. With much less involved planning than almost every other building category, parking garage owners and operators can replace their old, energy-inefficient lighting for new LED, induction, or fluorescent lighting.⁸

Pursuant to Code Sec. 179D, commercial property owners making qualifying energy-reducing investments in their new or existing locations can obtain immediate tax deductions of up to \$1.80 per square foot.

Most Common Government Building Design Categories

K-12 Public Schools

Kindergarten–12th grade public schools represent the single largest Code Sec. 179D category. There is a K-12 public school in every community in the country, and K-12 school energy reduction helps reduce every community's tax burden. At the same time, many school designers, parents and administrators have placed a high emphasis on the role energy-efficient building systems play in the

health and wellness of young children. Typically, there is no out-of-pocket expense to the taxpayers in the community for retrofitting their buildings either. Energy Service Companies (ESCOs) pay for the up-front installation costs and are then reimbursed by the schools' energy savings, making energy retrofits at public schools a win-win for everyone involved.

Federal Buildings

The federal government is the largest building owner and energy user in the country. In recognition of this fact, the federal government has measurable building energy-reduction goals and has created several pieces of legislation mandating that all federal buildings undergo energy retrofits with various deadlines. When it comes to retrofitting federal buildings, the energy-cost saving opportunities are huge.

Military Bases

In the course of supporting multiple wars the military has been making extensive use of forts, naval bases and support facilities in the United States and in U.S. territories. As these facilities are typically some of the largest and most complex of any properties in the country—they often function as cities unto themselves—they present exceedingly large energy and tax saving opportunities.

State Buildings

In addition to the many federal buildings around the country, every state has its own buildings to support administrative, educational, judicial, transportation and infrastructural need. In every state, there are sizable universities, office buildings, transportation hubs and courthouses that have been taking advantage of EAct in order to reduce energy expenses. Of these, the largest EAct beneficiary category has been state universities and community colleges.

Airports

Airports have been major EAct beneficiaries particularly for parking garages and terminals. Development in this category has been guided by the Aerotropolis principle. The term "Aerotropolis" was coined by Dr. John D. Kasarda, Director of the Kenan Institute at the University of North Carolina at Chapel Hill. Dr. Kasarda describes the development as follows: "airports will shape business location and urban development in the 21st century as much as highways did in the 20th century, railroads in the 19th and seaports in the 18th."⁹ According to the Aerotropolis principle, infrastructural growth has been and will continue to center around access to major airports. In other words, where airports are involved, there are potential EAct tax savings available to a host of building categories.¹⁰

ENDNOTES

¹ Energy Policy Act of 2005 (P.L. 109-58).

² Charles Goulding, Jacob Goldman and Joseph Most, *Complete Warehouse Tax-Enhanced Energy-Efficient Design*, CORP. BUS. TAX'N MONTHLY, Aug. 2010, at 11.

³ Charles Goulding, Jacob Goldman and Taylor Goulding, *The Tax Aspects of Thermal Storage and Time-of-Day Pricing*, CORP. BUS. TAX'N MONTHLY, Nov. 2009, at 13.

⁴ Charles Goulding and Daniel Penza, *The Ten Least Energy Efficient Buildings in New York City*, Google Knol, Apr. 1, 2011, available online at <http://knol.google.com/k/charles-goulding/the-ten-least-energy-efficient/1xedf26uc9hpj/15#>.

⁵ Charles Goulding, Raymond Kumar and Daniel Audette, *LED Building Lighting Drives Supermarket EAct Tax Deduction*, CORP. BUS. TAX'N MONTHLY, Jul. 2011, at 13.

⁶ Charles R. Goulding, Jacob Goldman and Taylor Goulding, *Hotels and Motels Most Favored Energy Policy Act Properties*, CORP. BUS. TAX'N MONTHLY, Mar. 2009, at 17.

⁷ Charles Goulding, Jacob Goldman and Joseph Most, *The Energy Tax Aspects of Auto Dealer Re-Imaging Programs*, CORP. BUS. TAX'N MONTHLY, Jan. 2011, at 9.

⁸ Charles Goulding, Jacob Goldman and D. Malcolm Thomas, *Multiple Lighting Technologies Drive Large EAct Tax Deductions*

for Parking Garages, INT'L PARKING INST., Aug. 2010, at 23.

⁹ Charles R. Goulding and Charles G. Goulding, *The EAct Tax Aspects of the Aerotropolis*, Google Knol, April 2011, available online at <http://knol.google.com/k/charles-goulding/the-epact-tax-aspects-of-the/1xedf26uc9hpj/10#>.

¹⁰ Charles Goulding, Amelia Aboff and Taylor Goulding, *The Energy Tax Aspects of Airports*, CORP. BUS. TAX'N MONTHLY, Mar. 2010, at 9, 39.

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