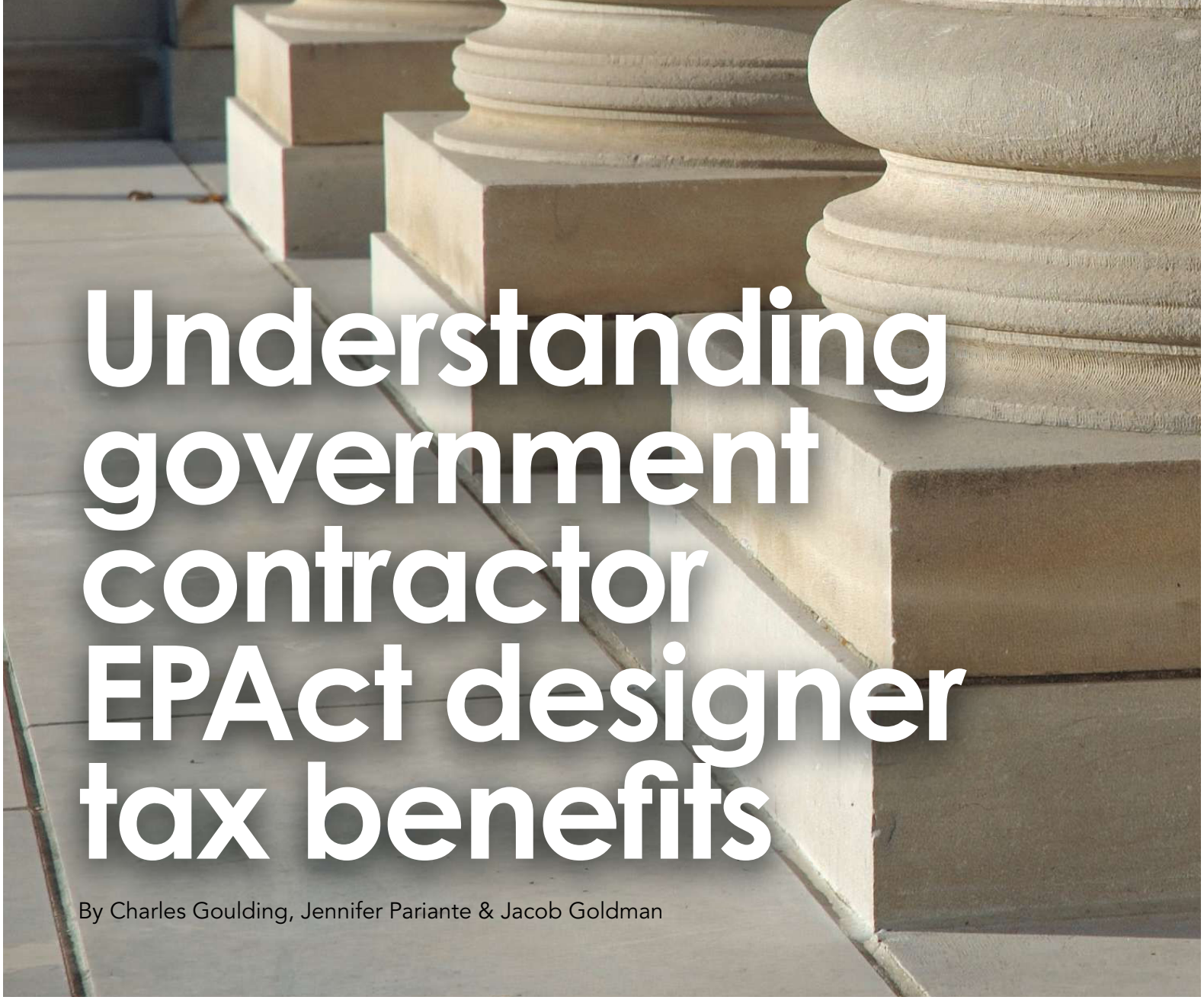

Understanding government contractor EPAct designer tax benefits

By Charles Goulding, Jennifer Pariante & Jacob Goldman

One of the most intriguing aspects of the Section 179D Energy Policy Act (EPAct) tax benefit provisions has been the provision enabling members of the government building design community to achieve a tax incentive for energy efficient design. Heretofore, excluding R & D tax credits and previous foreign sales corporation export tax incentives for export services, it has been rare to find Internal Revenue code tax incentives that reward professional creativity.

The government building designer incentives has become critically important to many design firms – big and small – in an atmosphere where new commercial construction has come to a standstill and the government sector remains one of the few segments where new construction continues.

EPAct Tax Deductions

Pursuant to Energy Policy Act (EPAct) Section 179D, building owners or tenants making qualifying energy-reducing investments can obtain immediate tax deductions of up to $1.80 per square foot.

If the building project doesn't qualify for the maximum $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.

On Dec. 19, 2014, President Obama signed the bill extending the EPAct 179D Tax Credit for the 2014 tax year.

What is a Government Building?

A government building is defined as any:

- Building owned and operated by a government authority or agency thereof, or.
- Building leased by a government authority or agency thereof.
- Eligible government owners include federal, state and local government organizations.

Typical federal buildings would include General Services Administration (GSA) offices, U.S military-owned buildings, Veterans Affairs (VA) hospitals, federal courthouses and virtually all departments of the federal government. Agencies of the federal government would include the U.S. Postal Service.

Typical state building would include state office buildings, state courthouses, state hospitals, state transportation facilities and state universities.

Typical local/municipal government buildings would include city, county, town and village owned buildings, including office buildings, courthouses, public schools, libraries, fire departments and police stations.

From a square footage standpoint, K-12 public schools are the biggest category of government-owned buildings and, in many rural areas, may be the largest buildings in the county. Three of the largest and fastest growing government building categories that often involve government authority ownership are airports owned by

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specially designated government airport authorities, water authorities and sports stadiums.

Many parking garages are government owned and include municipal garages, airport garages, hospital garages, sports stadiums and office buildings.

Who qualifies as a designer?

Many creative professionals get involved with the energy design aspects of buildings, including architects, engineers, lighting designers, HVAC system designers, design and build firms, design and assist firms, and ESCOs (Energy Service Companies).

New building construction generally requires the services of a licensed architect and engineer, and virtually all of the above listed professionals may be involved in the retrofit of an existing building. Many specialized architects and engineers concentrate on specific categories of government buildings including schools, airports, sports stadium, hospitals, courthouses and libraries.

Recognizing the real world team aspects of achieving energy efficient building design, the government designer incentive may be allocated among the design team members based on their design contribution.

Many large ESCOs sometimes focus exclusively on government sector retrofits, including federal buildings, K-12 public schools, state universities and sometimes, entire cities. The 16 largest ESCOs are sometimes referred to as the "Tier 1 ESCOs."

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Experience to date

Our experience to date is that when design community members have their first EPAct project evaluated, their project generally doesn't qualify for the maximum tax incentive because their designs, although efficient, are not sufficiently energy efficient to qualify for the maximum EPAct tax deduction. Sophisticated design firms use this failure to optimize as a learning experience, and typically improve their future designs, making them more energy efficient and eligible for larger tax incentives.

LEED buildings

LEED buildings have a major impact in the government building designer tax incentives area. LEED (Leadership in Energy and Environmental Design) is the fast growing marquee standard for sustainable buildings established by the U.S. Green Building Council (USGBC).

The reason is that virtually all new federal buildings, many state and local government buildings and, in particular, public schools, must be built to LEED standards.

The advantage with LEED buildings is that LEED requires a building energy simulation model and the Section 179D HVAC and building envelope EPAct government building designer tax deductions also require a building energy simulation model. As of 2009, the new LEED system provides for a higher level of energy-related LEED points, making LEED buildings utilizing a greater portion of energy related LEED credits better candidates for higher levels of EPAct tax deductions.

Confusion by government owners & agencies

Notice 2008-40, which was issued March of 2008, requires government projects completed after that date to have a representative of the government building owner or agency acknowledge that the designer(s) has notified them that they are planning on claiming the EPAct deduction.

Government owners are not used to being involved in tax matters. Many government owners mistakenly interpret the post-March 2008 required government allocation sign-off as an assignment that they can potentially withhold as a business negotiation ploy.

However, one cannot assign an economic right that one doesn't own. Moreover, the government owner already is getting the lion's share of the economic benefit, which is the permanent annual energy cost savings. The government designer(s) receive a one-time proportionally lower economic value tax incentive for achieving the required energy efficient design targets.

The government building EPAct designer tax incentives represent innovative tax policy aimed at achieving important policy objectives in the service sector of the U.S. economy. This tax incentive is working and resulting in a design community that is much more cognizant of energy efficient design. Equally important, American citizens are going to benefit from a government and public school sector with much lower ongoing energy related operating costs. CCR

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