

Commercial Casinos: Energy Policy Act Tax Opportunity

By Charles Goulding, Jacob Goldman and Malcolm Thomas

Charles Goulding, Jacob Goldman and Malcolm Thomas discuss the many tax deduction opportunities available to casinos under the Code Sec. 179D provisions of the Energy Policy Act of 2005.

The Casino Environment

Before the recent economic downturn, commercial casinos collected at least \$30 billion in revenues each year from 2005 through 2008.¹ During this period, U.S. casino owners built new facilities and expanded the size of their existing facilities. However, as a result of the economic downturn, new U.S. commercial casino construction has come to a screeching halt and casino operators are now focused on existing facility cost reduction.

Code Sec. 179D Tax Provisions

Increasingly, casino operators are taking advantage of the EAct Code Sec. 179D commercial building energy efficiency tax provisions, which have been extended through 2013.² EAct tax deductions are available for qualifying energy reductions in lighting, HVAC (heating, ventilation and air conditioning) and building envelope.³

The Nature of Casino Properties

Commercial casinos often encompass hotel resorts, which offer attractive packages of services for their

corporate and family customers. Casinos are particularly suited to the EAct opportunities because of their large gaming floors, hotel occupancy rooms, meeting halls and parking garages. Each of these features typically consumes large square footage, and EAct provisions offer a potential of up to 60 cents per square foot for each of the three measures described above. Some of the smallest commercial casinos are about 50,000 square feet while most American casinos are typically over 100,000 square feet. One of the largest ones, the MGM Grand on the Las Vegas Strip, is almost 2 million square feet. Hotels themselves are the most favored of Code Sec. 179D building categories.⁴

It is common to think of commercial casinos as located in two states: Nevada and New Jersey. While it is true that these two states have the largest commercial casino revenues, there are 12 states with commercial casinos in the United States. The following states also have commercial casinos: Colorado, Illinois, Indiana, Iowa, Louisiana, Michigan, Mississippi, Missouri, Pennsylvania and South Dakota. As reported on the website www.americangaming.org, members of the American Gaming Association have publicized some of their commitments to energy reduction. Reporting casinos include Boyd Gaming Corporation, Harrah's Entertainment, Inc. and MGM Mirage. They have projects that include significant energy savings via cogeneration, energy recovery ventilation (ERV), more efficient HVAC units, replacing incandescent lights with energy efficient lighting, windows with energy-efficient day-lighting systems, solar thermal storage and numerous other energy saving initiatives.

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Chart 1

Combined Rebate Example					
Project Type	Project Cost	Single Rebate %	Single Measure Rebate	Combined Measure Enhancement Rebate	Combined Measure Rebate
Lighting	\$ 100,000	30%	\$ 30,000	40%	\$ 40,000
HVAC	\$ 200,000	30%	\$ 60,000	40%	\$ 80,000
Total	\$ 300,000		\$ 90,000		\$ 120,000

Lighting Tax Incentive for Casino and Hotel Spaces

The underlying rule set to qualify for the Code Sec. 179D lighting tax deduction makes casinos and, in particular, casino hotels the most-favored property category for the tax incentive. The rules require at least a 25-percent watts-per-square foot reduction as compared to the 2001 ASHRAE (American Society of Heating Refrigeration and Air Conditioning Engineers) building energy code standard. The full tax deduction is allowed with a 40-percent watts-per-square foot reduction compared to the ASHRAE 2001 standard. The ASHRAE 2004 hotel/motel building code standard requires a 40-percent wattage reduction, which means that any hotel or motel lighting installation that meets that building code requirement will automatically qualify for the maximum EAct tax deduction.

Occupancy Rooms

For most other building categories, the Code Sec. 179D tax provisions require compliance with the bi-level switching requirement. The comparison is always based on wired, rather than plug-in lighting. Casino hotel occupancy rooms have a major advantage in that they often use plug-in lighting, and, because these rooms function as hotel and motel spaces, they are specifically excluded from the tax bi-level switching requirement. Since occupant rooms are usually one of the larger spaces in hotel casinos, casinos are typically able to use energy efficient lighting to generate large EAct tax deductions for the facility.

Back of the House Spaces

Casinos often have large kitchen, storage and laundry (the so called “back of the house”) spaces that have historically used T-12 fluorescent lighting. This lighting is so energy inefficient compared

to today’s lighting products that it will be illegal to manufacture in the United States after July 1, 2010.⁵ Once the manufacture of these prior generation lighting products ceases, the cost of replacing these inefficient bulbs will increase. Simply stated, casinos should consider acting now to replace these lighting fixtures to save both energy and lamp replacement costs. The EAct lighting tax incentive can be used to address the opportunities related to these legally mandated product changes

Ball Rooms, Banquet Rooms and Restaurants

These areas of casinos have historically used designer type lighting that is energy inefficient and often very expensive to maintain and replace. In particular, replacing bulbs and lamps in high ceilings is very costly since expensive mobile hydraulic platform equipment must be rented or purchased to handle the replacements. New lighting products and, in particular, light emitting diode (LED) products, use a fraction of the energy and have a much longer useful life and are now being substituted. The combination of large energy cost reduction, operating cost reductions, utility rebates and EAct tax deductions can greatly improve the economic payback from these more costly lighting upgrades.

Parking Garages

Many casinos have large adjoining parking garages that can save substantial energy costs and generate large tax deductions by upgrading to energy efficient fixtures. In Notice 2008-40,⁶ the IRS announced that parking garages are a property class that is specifically entitled to use the EAct tax deductions. Also, parking garages are excluded from the tax bi-level switching requirement.⁷

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ond highest capacity for energy efficiency through renewable geothermal energy.⁸ Certain categories of very efficient HVAC investments will often qualify for the HVAC EAct tax incentive including geothermal and thermal storage.

LEED Casinos

We expect to see more casinos obtain Leadership in Energy and Environmental Design (LEED) status.⁹ In 2008, The Palazzo Las Vegas Casino became the largest LEED-certified building and one of the first certified LEED casinos in the United States.¹⁰ Casinos and hotels find that certain categories of frequent travelers are very interested in staying in facilities that have clearly demonstrated they are focused on the environment and sustainable design. To become LEED-certified, a casino must have a building energy simulation model created by a qualified engineer. Modeling is also required for the EAct's HVAC and Building Envelope tax deductions. Qualified tax experts who know how to make adjustments to convert LEED computer models to EAct tax deduction models can evaluate LEED models and determine whether large tax deductions are probable. For example, a 500,000-square-foot LEED casino that qualifies for the maximum EAct tax deduction will receive an immediate tax deduction of \$900,000.¹¹ Casino owners who understand the magnitude of these benefits can use the tax savings to help justify the costs related to achieving LEED status.

Conclusion

Casinos, because of their large subspaces are a favored build-

Commercial Casinos

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Slot Machines and Gaming Floors

One of the biggest energy users on hotel gaming floors is slot machines. Although these were early adapters of fluorescent technology, even these energy-efficient bulbs normally have to be changed three times a year because of 24/7 operating hours. Due to the high labor maintenance costs, casino owners are now transitioning to LED technology in their slot machines. LEDs, while they have higher up-front costs, have high energy efficiency and a much longer life cycle, offering significant savings in labor and maintenance costs.

HVAC

Casinos, because of their typical 24-hour occupancy can achieve significant energy cost savings from energy-efficient HVAC systems. In particular, Nevada's hot climate further makes energy-efficient HVAC a very worthwhile investment. Fortunately, Nevada, the state with the highest revenues from casinos, has America's sec-

ing category under the EAct's commercial building tax deduction legislation. Property owners who understand these opportunities can act during the current economic downturn to improve their facilities, reduce operating costs and potentially become LEED-certified facilities.

ENDNOTES

- ¹ www.americangaming.org/Industry/factsheets/statistics_detail.cfv?id=8.
- ² Energy Policy Act of 2005 (P.L. No. 109-58).
- ³ Building envelope consists of the building's foundation, walls, roof, windows and doors, all of which control the flow of energy between the interior and exterior of the building. See, www1.eere.energy.gov/buildings/commercial/envelope.html.
- ⁴ See, Charles R. Goulding, Jacob Goldman and Taylor Goulding, *Hotels and Motels Most Favored Energy Policy Act Tax Properties*, CORP. BUS. TAX'N MONTHLY, Mar. 2009, at 17.
- ⁵ Ballast Energy Efficiency Standards (BEF) included in the Energy Policy Act of 2005.
- ⁶ Notice 2008-40, IRB 2008-14, 725.
- ⁷ For more information on parking garage EAct lighting deduction tax opportunities, see, Charles R. Goulding, Peter Kelly and Taylor Goulding, *EAct Tax Deductions for Parking Garage Lighting Projects Gain Wider Use*, PARKING PROF.—INTL. PARKING INST., Sep. 2008.
- ⁸ <http://energy.state.nv.us/>.
- ⁹ See, Charles R. Goulding, Jacob Goldman and Nicole DiMarino, *LEED Building Tax Opportunities*, CORP. BUS. TAX'N MONTHLY, Jan. 2008, at 17.
- ¹⁰ www.usgbc.org/LEED/Project/Registered-ProjectList.aspx.
- ¹¹ $\$500,000 \times \$1.80 = \$900,000$.