

The Energy Tax Incentives Act of 2005 Contains Some Timely Creative Thinking

By Charles Goulding and Jacob Goldman

The Energy Tax Incentives Act ("Energy Act")¹ contains some creative concepts despite the firestorm of criticism for some controversial provisions in this massive piece of legislation. Some of this creativity includes the following:

- Commercial building energy reduction saving incentives are based on U.S. Department of Energy goals, reflecting good science.
- Architects and engineers are encouraged to provide expert energy reduction design advice to municipal governments and schools by allowing these architects and engineers tax benefits.
- A meaningful increase in the commercial solar benefits is achieved by raising the solar credits from 10 percent to 30 percent per year with no annual cap.

Commercial Building Incentives

This new commercial building incentive can be as high as an extra \$1.80 per square foot tax deduction with a 50-percent energy reduction as compared to a 2001 standard.² As a result of the technology improvements described below, this incentive may not be as daunting a challenge as one might think. The legislation seeks comprehensive investment, but if the investment isn't comprehensive enough to achieve the 50-percent reduction standard, there are 60 cent per square foot incentives for achieving specific energy reductions. The incentives are for major systems categories including lighting, HVAC and the building envelope. We have included the U.S. governments commercial building survey results for 2003 to provide some idea of the

potential universe of buildings that could benefit from these incentives on Table A1 below.

Table A1. Summary Table for All Buildings (Including Malls), 2003

	Number of Buildings (thousand)	Total Floor-space (million square feet)	Mean Square Feet per Building (thousand)	Median Square Feet per Building (thousand)
All Buildings	4,859	71,658	14.7	5.0
Principal Building Activity				
Education	386	9,874	25.6	7.0
Food Sales	226	1,255	5.6	2.8
Food Service	297	1,654	5.6	3.5
Health Care	129	3,163	24.6	6.0
Inpatient	8	1,905	241.4	106.0
Outpatient	121	1,258	10.4	6.0
Lodging	142	5,096	35.8	12.5
Mercantile	657	11,192	17.0	6.9
Retail (Other Than Mall)	443	4,317	9.7	4.8
Enclosed and Strip Malls	213	6,875	32.2	12.3
Office	824	12,208	14.8	4.0
Public Assembly	277	3,939	14.2	6.7
Public Order and Safety	71	1,090	15.5	5.0
Religious Worship	370	3,754	10.1	6.0
Service	622	4,050	6.5	2.8
Warehouse and Storage	597	10,078	16.9	5.2
Other	79	1,738	21.9	4.6
Vacant	182	2,567	14.1	3.7

Source: Energy Information Administration, 2003 Commercial Buildings Energy Consumption Survey

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Architect and Engineer Incentives

Since municipalities aren't taxpayers, the new law provides that the primary designer (typically architects and engineers) may obtain the incentive benefits based on an allocation process to be provided in the regulations.³ Some commentators believe that heretofore some municipalities have been foreclosed from accessing expert energy reduction advice since budget constraints have forced municipalities simply to engage in basic building. School districts with deeper pockets use advanced technology school buildings with solar devices and alternative energy systems as teaching laboratories.

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Large Increase in Solar Benefits

An increase in the commercial federal solar credit from 10 percent to 30 percent⁴ speaks for itself. Combine this benefit with state credit benefits, low cost financing and potential energy rebates, and solar investment starts to get intriguing. Some rebate-reimbursement-financing benefits may cause a reduction in some incentives so you might need to consult a knowledgeable tax advisor.

Timing is always critical with the enactment of legislation aimed at altering behavior. The Energy Act was signed right before Hurricanes Katrina and Rita jolted the nation into confronting the reality of our nation's energy challenge. The Energy Act was intended to help cope with higher energy prices that were already on the rise from a stronger global economy, particularly from large emerging economies like China and India. At the time of enactment, the United States still seemed to be committed to conspicuous consumption in a very visible Hummer-McMansion-oriented society.

However, beneath the high-energy consumption level of society, a lot of environmentally concerned people throughout the world have been making major strides in developing solutions for high-energy consumption.

Some of the more apparent and interesting developments include the following:

- Major improvements in solar panel technology and solar panel manufacturing capacity. Improvement in solar panel technology is enabling the production of thinner and less expensive panels. New roofing, shingles and windows are pre-embedded with solar membranes and solar modules. The potential market is attracting both major companies such as General Electric, Shell Solar, BP, Sharp and Sanyo along with fast growing smaller cap companies such as Evergreen Solar, PowerLight, SunPower and Stirling Energy Systems.
- **Widespread acceptance of Leadership in Energy and Environmental Design (LEED) building standards.** LEED has upward of 60 specific rating points with accomplishment levels, enabling a building owner to be awarded in ascending order Certified, Silver, Gold or Platinum status. Many leading companies such as Johnson & Johnson, Federal Express, Citigroup, New York Times and Bank of America have built large buildings achieving LEED status. In October, New York City's Mayor Bloomberg announced that prospectively all city municipal buildings must be built to at least a LEED silver status.
- **The public's willingness to pay more for hybrid automobiles.** America's traditional auto manufacturers seemed to be astonished to learn that environmentally concerned U.S. consumer auto purchasers were willing to pay a premium for hybrid cars. The American auto manufacturers operated with a belief set that the only vehicles they could manufacture with an acceptable profit margin were SUVs. The Energy Act contains a range of incentives for hybrid vehicles based on performance ratings.
- **Major improvements in the energy consumption level of appliances and power devices.** Recent appliance purchasers are all familiar with energy star appliance ratings and energy power device reduction technology is the current focus of computer and device manufacturers. The Energy Act adds a new credit for the manufacturers of energy efficient appliances limited to dishwashers, clothes washers and refrigerators.

- **Major improvements in lighting fixtures and lighting control devices.** Here the new or more widely accepted technologies include compact fluorescents where rapidly declining price points are speeding introduction. Light emitting diodes (LEDs) and a variety of motion and heat sensors greatly reduce electricity when rooms are unoccupied.
- The existence of huge big box retail distribution organizations searching for growth. BP and Home Depot have announced a solar product joint venture supported by professional solar installers. Distribution networks of this scale

have the potential to rapidly increase market penetration.

The majority of the new energy tax incentives provided in the Energy Act sunset as of December 31, 2007. These provisions, then, are essentially a two-year experiment. Hopefully, American taxpayers take good advantage of these new provisions, and it will become apparent we need even more creative thinking.

ENDNOTES

- ¹ Energy Tax Incentives Act of 2005 (P.L. 109-58).
- ² Code Sec. 179D(a), as created by the Energy Act .
- ³ Code Sec. 179D(d)(4), as created by the Energy Act.
- ⁴ Code Sec. 48(a)(2)(A), as amended by the Energy Act.

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