

How to Claw Back and Augment Missed Industrial/Warehouse EAct Tax Deductions

By Charles Goulding and Christopher Winslow

Many property owners of warehouses, industrial buildings, truck distribution centers and self storage facilities missed the opportunity of capturing large economic benefits of \$1.20 to \$1.80 per square foot in EAct tax deductions. A building owner can obtain these incentives through the installation of energy efficient lighting. This incentive has been available since January 1st, 2006. Many tax payers were not aware that they qualified for EAct and missed obtaining their tax incentive. **Recognizing this missed opportunity, the IRS issued Rev. Proc 2011-14, allowing taxpayers to claw back missed EAct tax deductions and file and include them in a current tax return.** More importantly, the IRS announcement enables property owners to use their prior EAct achievements to make increasingly desirable energy reducing investments that many of these same property owners want to make.

EAct Tax Deductions

Pursuant to Energy Policy Act (EAct) 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.

The two major energy reducing investments that numerous property owners want to make are; 1) Upgrading to very efficient natural gas systems and, 2) Roof replacements.

Natural Gas Heater Upgrades

As a result of recent huge natural gas finds in the United States, natural gas is considered a more desirable, clean energy, and lower cost fuel alternative to oil heating systems. Accordingly, throughout the country many property owners are converting existing oil based heating systems to natural gas heaters. Many property owners with old heating systems or less efficient heating systems are using the EAct tax incentives to upgrade to highly energy efficient direct fired natural gas heaters.

Roof Replacement

Property owners are using the tax incentive provided by qualifying lighting projects to replace roofs usually in one of two ways. One way is a simple use to replace worn roofs. The other way is to replace and upgrade roofs in preparation for solar P.V. projects. During the economic downturn, many property owners deferred roof replacements which now have to be addressed. As a result of substantial declines in solar P.V. prices, many property owners in states with incentive rebates including rebates and renewable energy certificate (REC) payments and/or sun intensive states are moving quickly to install solar. In preparation for solar, all worn roofs have to be upgraded and most major roof manufacturers' warranties require specific roof enhancements to maintain roof warranties. Roof construction and repairs are very expensive and it is critical to make certain that roof warranties remain in force with solar P.V. projects. In

fact, it is good practice for anyone making a current roof investment to obtain representation stating that the roof is compatible and will remain eligible for a future solar P.V. installation. In particular, all non-conditioned, meaning non air-conditioned properties have the opportunities to claw back the prior missed tax deductions while augmenting the existing lighting tax deduction by installing energy efficient heaters and making roof improvements in order to qualify for the full \$1.80 per square foot EAct deduction.

Conclusion

IRS issuance of Rev. Proc. 2011-14 opens a huge treasure chest of old and new EAct deductions. Tax advisers should identify all of their clients that already have energy efficient lighting and help them monetize the added EAct tax deduction for natural gas heaters and building envelope improvements including roofs.

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