

# **The Tax Opportunities of New Development in Flushing, New York**

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## **Intro:**

Long regarded as an insulated community, known more for its sports facilities than its waterfront properties or major real estate developments, Flushing is now flourishing. Commercial real estate developers recognize a tremendous opportunity to capitalize on a strong market with a booming population, its own distinctive ethnic charm with specialty restaurants and shops, and access to public transportation – the Flushing Main Street stop is the busiest in the city outside Manhattan. As Diane Yu, the Executive Director of the Flushing Business Improvement District, recently reported to the *New York Times*, “On every street and every block, there’s new construction, it’s amazing.”

Since many real estate analysts predict much of New York City’s commercial real estate development in the next few years to be concentrated in Flushing, which is ideally positioned near two major airports, many major roadways, and loads of warehousing and manufacturing facilities, it is crucial that property owners incorporate energy efficient technology and design into new development<sup>1</sup>. Building design teams contemplating new construction in Flushing are going to want to coordinate utility rebates, which may involve NYSERDA, Con Ed and National Grid, in addition to federal tax credits and deductions. By drawing on these tax and financing incentives, Flushing may well become the city’s leading example of forward-thinking development.

## **The EPAct Section 179D Tax Opportunities**

Pursuant to Energy Policy Act (EPAct) Section 179D, commercial property owners in Flushing making qualifying energy-reducing investments in their new or existing locations can obtain immediate tax deductions of up to \$1.80 per square foot.

If the building project doesn't qualify for the maximum EPAct Section 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.

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<sup>1</sup> Charles R. Goulding and Charles G. Goulding, “The EPAct Tax Aspects of the Aerotropolis” *Google Knol* < <http://knol.google.com/k/charles-goulding/the-epact-tax-aspects-of-the/1xedf26uc9hpj/10#>>

## **The New York City Market: Post-Recession and Benchmarking**

Flushing development is happening at just the right time considering the city's macroeconomic climate. New York City and its environs have emerged relatively strong from the 2009 recession, and the constant influx of Chinese and Korean immigrants to the Flushing area provide for increased demand on the local infrastructure. At the same time, New York City is changing its building code to encourage more efficient development.

No later than May 1, 2011 all New York City buildings that exceed 50,000 square feet, or multiple buildings on the same lot that exceed 100,000 square feet, need to be annually benchmarked for energy and water use. The law requires benchmarking by major individual building categories that may be developed in the Flushing market. It will be each property owner's responsibility to gather the information and report it on the online database system provided by the United States Environmental Protection Agency (USEPA). This system, which is organized by what is called ESPM (Energy Star Portfolio Manager), will rate building's energy usage in comparison to other benchmarked buildings in the nation on a percentile scale of 1 to 100 (1 being the least energy efficient building and 100 being the most energy efficient building). After the first year of the collection of energy benchmark for buildings, it is the owner's obligation to continue with mandatory benchmarking rules annually within the month of every January.

Fortunately the benchmark data input process is relatively straightforward and all the information is disclosed to the public, so comparisons can be made and contrasted to other building that are similarly situated within the city. The owner, in order to attract tenants, will be able to refer them to the results of the benchmarking so that tenants know they will have low energy bills.

The following table illustrates the potential EAct tax savings available to the property owners of four major Flushing properties currently in the development stages.

<b>Flushing, Queens Proposed Development Potential EAct Benefits</b>						
Potential Tax Deductions Available for Energy Efficient Building Improvements Under Current Legislation						
Property	Estimated Total Square Footage	Lighting		HVAC	Building Envelope	Total
		Minimum Deduction	Maximum Deduction	Maximum Deduction	Maximum Deduction	
Flushing Commons	1,800,000	\$ 540,000	\$ 1,080,000	\$ 1,080,000	\$ 1,080,000	\$ 3,240,000
Queens Crossing	800,000	\$ 240,000	\$ 480,000	\$ 480,000	\$ 480,000	\$ 1,440,000
RKO Keith's Theatre	389,000	\$ 116,700	\$ 233,400	\$ 233,400	\$ 233,400	\$ 700,200
Sky View Center	377,000	\$ 113,100	\$ 226,200	\$ 226,200	\$ 226,200	\$ 678,600
<b>Totals:</b>	<b>3,366,000</b>	<b>\$ 1,009,800</b>	<b>\$ 2,019,600</b>	<b>\$ 2,019,600</b>	<b>\$ 2,019,600</b>	<b>\$ 6,058,800</b>

## **Integrative Design Approach**

As design teams are becoming more familiar with both the benchmarking rules and more stringent building codes throughout the city, they are more comfortable optimizing building efficiency by making ample use of today's low wattage lighting products. Around the city, existing office buildings and retailers are upgrading to induction, fluorescent and LED lighting, meaning that facilities operators are cooperating with design teams in such a way as to significantly cut back on operational expenses and achieve large tax deduction. This momentum will have to be carried forward in Flushing.

### **Banned Lighting**

Even more importantly, using inefficient lighting is no longer a viable option for new development anywhere, including Flushing.

As of January 1, 2009, probe start metal halides are illegal to manufacture in their most common wattage categories. T-12 magnetic ballasts are now illegal to manufacture as of July 1, 2010. As replacement costs for these banned items increases, Flushing property owners will naturally retrofit to one of the three efficient lighting technologies.

### **Fluorescent Lighting and EAct 179D**

To date, fluorescent lighting, utilizing T-8 and T-5 lamps, has been the most common product selection for energy efficient lighting. With fluorescent lighting conversions, density of fixture layout is critical to minimizing energy use and maximizing EAct tax incentives. Without attention to design, we see some projects that miss tax deduction or only achieve partial tax deduction. Fluorescent installations generally have the lowest installed price point of the three major lighting technologies.

### **LED Lighting and EAct 179D**

LED or Light Emitting Diode lighting is moving quickly into the mainstream commercial real estate market, which is something Flushing developers will want to stay ahead of the curve on. There are many competing vendors and product offerings, and property owners need to research and compare product offerings. Due to the low wattage level, most LED projects qualify for the maximum EAct tax deduction. Some projects are right on the edge of eligibility, however, so it is important to have an EAct-knowledgeable reviewer make the calculation.<sup>2</sup>

### **Induction Lighting and EAct 179D**

In an interesting market development, induction lighting — although available in the U.S. for over ten years — is enjoying high growth in the commercial real estate

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<sup>2</sup> Charles Goulding, Jacob Goldman, and Taylor Goulding, "The Economic, Business, and Tax Aspects of Light Emitting Diode Interior Building Lighting" *Corporate Business Taxation Monthly* (January 2009), at 32.

market albeit from a relatively small installed base. Now that property owners have two distinct product alternatives in fluorescent and LED lighting, they seem to be more open to compare and contrast a third lighting alternative. Induction tends to have a price point in between fluorescent and LED and has its own particular attributes warranting evaluation. Induction lighting is actually fluorescent lighting without electrodes and is sometimes called electrode-less discharge lighting.

### **LEED Design**

In addition to utilizing the most efficient lighting sources, new projects in the Flushing market should strongly consider designed their buildings up to LEED certification standards. The LEED program is the fast-growing marquee standard for sustainable buildings. LEED is the certification system established by U.S. Green Building Council (USGBC). The four certification achievements start at the LEED certified level and proceed to the higher LEED silver, gold and platinum levels.<sup>3</sup>

In order to become LEED certified, buildings need to achieve substantial greenhouse gas emissions reductions and become highly efficient by combining the lighting options above with a mix alternative energy generation, efficient HVAC systems, and efficient building envelope, the same building categories eligible for EPAct 179D savings. The suggested uses of solar P.V., wind energy, or geothermal all make commercial buildings primed for lead certification, and Flushing properties will need to draw on these technologies going forward.

### **Utility Rebates**

It is crucial to understand how different utility rebate processes work with the different lighting technologies. Many utilities offer two types of rebates: prescriptive and custom.

Prescriptive rebates are a fixed amount per product such as \$30 per fluorescent fixture. Prescriptive rebates are common with high volume mature product categories because utilities are thoroughly familiar with the product's energy performance results. Accordingly, most utilities offer fluorescent rebates based on a prescribed amount available from a prescribed table or listing.

Custom rebates are tailored or customized to the product's expected performance and are normally calculated based on the electricity expected to be saved. Hence, custom rebates for electricity-based products are sometimes called kW(kilowatt) rebates. Many utilities are not yet familiar or supportive of LED and induction lighting products, so the exclusive rebate opportunity may be a custom rebate.

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<sup>3</sup> Charles Goulding, Taylor Goulding, and Amelia Aboff, "How LEED 2009 Expands EPAct Tax Savings Opportunities" *Corporate Business Taxation Monthly* (September 2009), at 11.

Since LED and induction lighting is low wattage lighting, a probing into a custom rebate may lead to a dialogue resulting in a much higher overall rebate than the typical prescriptive process.

The Flushing power grid is divided between Con Ed and National Grid, depending on whether the individual proper is north or south of the Grand Central Parkway. Both of these utilities offer rebates for a host of efficient technologies, including refrigeration, lighting, heating and cooling, insulation, and comprehensive building controls.

### **Conclusion**

The Flushing area is going to be thriving throughout the foreseeable future. Commercial real estate developers and owners throughout the neighborhood will need to combine federal and state tax incentives with local utility rebates in order to finance their energy-efficient building improvements, which will help building owners save energy-related operating expenses in the long run while appealing to a growingly energy-aware consumer market.