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# REAL ESTATE WEEKLY

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## Are there millions of dollars hiding in your buildings?

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Are you aware of the hundreds of thousands of dollars you could save as a result of the 179D tax deduction?

Have you been asked by a tax client, “Why didn’t you tell me about this tax deduction?”

I take calls from shocked property owners and architects every day who wonder why they are the last to know about — and are, in some cases, too late to take full advantage of — this deduction.

The next time someone brings up “Section 179D” or “The Energy Policy Act”, take notice. It could have significant impact to your bottom line.

Here’s everything you need to know about the tax deduction that became available under the Energy Policy Act of 2005.

### Who gets it?

If you own a commercial building that was built (or substantially renovated) after January 1, 2006, you’ve got a property that may be a candidate. In addition, if you are a commercial tenant who owns the asset (building, HVAC, lighting) be-



ing depreciated, you may be a candidate. Finally, if you are the architect, engineer or other designer responsible for the design of a building or renovation owned by a government entity, you may be entitled to a large tax deduction.

### What is the benefit?

Up to \$1.80 per square foot, which can equate to a substantial savings. More commonly, buildings are certified in the 60,000 to 120,000 square foot range, resulting in benefits of between \$100,000 and \$200,000 per building.

### What qualifies?

To take advantage of this benefit, your building or renovation not only has to go into service (use) after January 1, 2006, it also has to be energy efficient. The energy efficiency standard is simple to state but describing the process of how it is proven is complicated and best left to experts in the field. Simply stated, your new building or the renovations related to it must be designed to use at least 50% less energy than a 2001 baseline.

### How do you take advantage of it?

In order to obtain the benefits of this tax deduction, you need to obtain the certification of a licensed, third party-

The certifying party must use approved software and demonstrate that the building’s envelope (walls, roof, windows), lighting and HVAC systems are designed to use at least 50% less energy than the 2001 ASHRAE 90.1 standard. This is a standard set forth by the American Society of Heating, Refrigerating and Air-Conditioning Engineers and the software modeling is used to create two models. One model is the building as designed and the other is the building if designed pursuant to the 2001 standard. The models are compared to see if your building makes the grade. If it does, you can qualify for \$1.80 per square foot in deductions.

### Can you get partial deductions?

Yes. If the building does not meet the 50% standard, each of the systems being reviewed can be qualified separately (HVAC, envelope and lighting) for up to \$.60 per square foot. Even more specifically, lighting as a separate qualification can qualify partially for between \$.30 and \$.60 per square foot.

### Is an inspection required?

The IRS does require that a third party verify the existence of the building and that it is built to the specifications that were modeled for energy efficiency.

### Do you need to file a report with your tax return?

No. But the engineering report that substantiates the tax deduction should be

kept on file in case of an audit. If done properly, the report can be a hundred pages or more.

### How do architects qualify?

The tax deductions under the Energy Policy Act are primarily intended to benefit the owner of a commercial property. However, the statute’s intent to incentivize “green” building by providing this tax deduction was not able to be realized in cases where the owner of the property is a federal, state or local government. Because those entities don’t pay federal taxes the deduction is essentially worthless to them. In those cases, the statute allows the deduction to be allocated to the designer of the building instead. The “designer” can be the architect, an engineer or any other party responsible for the energy efficient design.

### When do you claim it?

The tax deduction is taken in the year in which the property is “placed in service” or opens for business.

This is typically the date of a temporary certificate of occupancy but it can vary. For example, a new school that opens in 2010, no matter how long the design or construction process took, would give rise to a tax deduction against 2010 income.

This deduction can be made on your tax return when filing your 2010 tax return, or can be taken through an amended return for up to three tax periods.