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# REAL ESTATE WEEKLY

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## Owners can reduce energy footprint to comply with New York City benchmark deadlines

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With the cost of energy reaching new highs, property owners are looking at numerous ways to reduce their overall energy footprint while finding the means to pay for the improvements. New York City has enacted legislation requiring all buildings over 50,000 square feet to benchmark their energy use and water consumption, if separately water-metered. The first benchmark report is due May 1, 2011, and results must be updated annually thereafter. What is important to property owners is that the building benchmarking scores are to become public information. As a result, building owners will need assistance to understand their current energy performance, assess the strengths and weaknesses of their portfolios, and determine and implement feasible solutions to effectively improve energy performance.

Commercial and mixed-use buildings over 50,000 square feet and residential buildings over 50,000 square feet, or two or more buildings together exceeding 100,000 square feet that either share a tax lot or are held by the same condominium ownership, are required to report under the current benchmarking requirements.

Currently, there is no requirement to spend money to reduce the energy footprint of a building. However, under

current federal tax laws, property owners have a partner that offers incentives to help reduce the cost of becoming energy efficient. This partner is the Federal Government, and it would be wise to use these incentives before potential future federal budgetary restraints could potentially reduce or eliminate these tax incentives. As mentioned in a previous article in the March 30 edition of Real Estate Weekly, building owners can avail themselves of immediate deductions under IRS Section 179D.

If you own a commercial building that was built (or substantially renovated) after January 1, 2006, you have a property that may be a candidate. In addition, if you are a commercial tenant who owns the asset (building, HVAC, lighting) being depreciated, you may also 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 has to go into service (use)

after January 1, 2006 and 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. But in its simplest terms, a 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 this benefit?**

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. The models are compared to see if your building conforms. If it does, you can qualify for \$1.80 per square foot deduction.

### **Can you receive partial deductions?**

Yes. If the building does not meet the 50% standard, each of the systems being reviewed can be qualified separately (HVAC, envelope, lighting) for up to \$1.80 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 requires a third party to verify the existence of the building and that it is built

to the specifications that were modeled for energy efficiency. Though you don't need to file a report with your tax return, an engineering report that substantiates the tax deduction should be kept on file in case of an audit. This report, done properly, can total one hundred pages or more.

### **How do architects and engineers 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 or engineer, or any other party responsible for the energy efficient design.

New York City has begun the process of requiring certain building owners to report their energy footprint with the anticipated next step of mandating reduced energy usage. Smart building owners should act now to take advantage of current incentives to reduce their energy footprint and comply with the new benchmarking laws.