



Real Estate Report

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Energy Efficient Investments - What's in it for you?

by: Brenda Jemmott, Tax Manager

Did you know that the U.S. holds less than 5% of the world's population, but produces 25% of the global carbon emissions? Also did you know that the U.S. building sector (materials and operation) consume more energy than any other part of the economy? Three hundred billion square feet of buildings in the U.S. are the single largest contributing factor to global warming. The energy efficiency improvements also help improve your bottom line. On average green buildings have a 50-90% decrease in waste costs, 30-50% decrease in water use savings and 30% decrease in energy savings, just to name a few of the ways they improve the bottom line. These are some of the many reasons why you should consider energy efficient investments in your buildings. But, did you know that the government will help you pay for these investments with a number of credits, deductions and grants?

A tax deduction is available for investments in energy efficient buildings or for energy efficient improvements to existing buildings. The 2005 Energy Policy Act created a significant tax deduction for energy efficient investments, and The American Recovery and Reinvestment Tax Act of 2009 broadened the language of the deduction and extended it until December 31, 2013.

This relatively new legislation allows a tax deduction equal to \$1.80 per square foot for improving the energy efficiency of existing commercial buildings or for the design of high efficiency new buildings. Building owners (and tenants, architects and engineers) are eligible for the full \$1.80 per square foot if they achieve a 50% or greater reduction in energy costs. There is a reduced deduction available of \$0.60 per square foot for which it is much easier to qualify. The owner is

eligible for the reduced deduction if they project the building's annual energy costs of one of the following three categories: 10% energy savings by using a building envelope, 20% energy reduction for lighting or a 20% reduction in heating and cooling costs.

To qualify for the deduction, the building or improvements must be certified by a qualified individual.

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The person who makes the expenditures for construction is generally the recipient of the allowed tax deductions. In the case of HVAC or lighting efficiency projects, it could be the tenant. In the case of government-owned buildings, the deduction may be taken by the building or system designer, such as the architect or engineer.

There are several other new or extended energy credits and grants, such as the Combined Heat and Power Credit (a grant in lieu of a credit is available), the Onsite Renewables Credit (a grant in lieu of a credit available) and a credit for investments in Fuel Cells and Microturbines.

Now is the time to do those energy efficient upgrades, not only is it good for the environment, but it is good for your own bottom line. Please contact RINA if you would like to learn more about these energy efficiency incentives.



Tax Breaks For Renovating

By Ray Evans, Tax Manager

You're allowed a tax credit for the expenses for renovating, restoring, or rehabilitating (but not enlarging or adding new construction to) certain structures. The percentage of expenses you can take as a credit is 10% for buildings originally placed in service before 1936, and 20% for buildings listed in the National Register of Historic Places.

Eligible expenditures must be for nonresidential real property, unless it is a certified historic structure used as a residence. The building must be "substantially rehabilitated;" i.e. the expenses incurred in a 24-month period must be more than the greater of \$5,000 or your adjusted basis in the building. Also, non-certified historic structures must retain at least 50% of existing external walls or 75% of existing internal structural framework of the building in order to qualify.

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Contact Pamela Raumer at 925-274-5740 or praumer@rina.com to let us know.



Renegotiating Lease Terms In Difficult Economic Times

By: Daniel B. Myers, Wendel, Rosen, Black & Dean LLP

In the current economy, many commercial tenants are finding themselves with more space and at higher rents than they need or can afford. If you are a tenant in this situation or are a landlord with such tenants, thinking creatively about potential solutions may help save the landlord/tenant relationship. If the relationship is worth saving, as an alternative to assignment or subletting, the landlord and tenant may wish to restructure lease obligations. Issues to consider may include:

1. Preliminary Considerations Prior to Renegotiating a Lease

- The landlord should request and the tenant should provide detailed financial statements, future projections and a business plan so the landlord can evaluate the tenant's current financial status and future financial viability.
- If the landlord has financing on the property, the landlord should review its loan documents to determine if lender approvals are required for all or certain changes in the tenant's lease and whether there are limitations (e.g., loan covenants or debt service requirements) on the landlord's ability to renegotiate lease economic terms.
- The landlord should require the tenant to sign a confidentiality agreement preventing disclosure of both the renegotiation itself and terms of the lease restructuring.

2. Ways to Restructure Lease

- Reduce base rent or common area maintenance charges, taxes and insurance – this could be for the entire lease term, for a limited period of time, or until specified events occur (tenant's financial situation improves)
- Base rent is abated and deferred for a period of time with the tenant obligated to pay back the abated amounts in the future
 - For retail tenants, modify the percentage rent structure
 - Decrease the size of the premises

3. Quid Pro Quo to Landlord

In exchange, the landlord may require the following types of tenant concessions (the "quid pro quo"):

- The reduced rent amounts can be recouped by the landlord in the event of a tenant default
- The tenant concessions do not apply to an assignee or subtenant in the event tenant assigns the lease or subleases the premises
- Modification or deletion of certain less landlord-friendly lease provisions (tenant exclusive use rights, co-tenancy provisions, tenant options to extend, purchase or expand and rights of first refusal to lease or purchase)
- Inclusion of landlord termination rights (either absolute or triggered by certain events such as gross sales levels or other tenant financial conditions falling below certain thresholds) and other more landlord-friendly provisions (tenant radius restriction, landlord relocation right)
- Additional security from tenant (guaranties, increased security deposits or letters of credit)

If you have a landlord/tenant relationship with financial difficulties, the parties should consider whether renegotiating lease terms can help save the relationship.



Ask the CPA

By: Jim Kohles, Stockholder

Q: My single member LLC has borrowed money from several investors and then loaned the money to my wholly owned S Corporation to develop properties. Are there any special considerations I should be concerned about?

A: An often overlooked result from using a single member LLC as a conduit in this way, is that it can create a nonrecourse situation for you as the owner of both the LLC and the S Corporation. While limited liability is the primary benefit of the LLC, the amounts advanced to the S Corporation by the LLC are nonrecourse to you as the sole shareholder. Therefore, you are not at risk for those loans, and losses incurred by the S Corporation could be limited. The losses may not exceed your own directly invested capital amounts and/or previously taxed but undistributed income, if they do, you would likely not be able to deduct those losses.



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475 14th St., Suite 1200, Oakland, California 94612
(510) 893-6908 / FAX: (510) 834-1522 / 1-800-RINA CPA

3200 Douglas Blvd., Suite 100, Roseville, California 95661
(916) 771-3000 / FAX: (916) 771-3252 / 1-800-570-0272

1220 Oakland Blvd., Suite 300, Walnut Creek, California 94596
(925) 210-2180 / FAX: (925) 210-2199

100 Montgomery St., Suite 2075, San Francisco, California 94104
(415) 777-4488 / FAX: (415) 777-0680

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