



EPACT 2005

FAQ

What is Standard 90.1?

ASHRAE/IES 90.1, *Energy Standard for Buildings Except Low-Rise Residential Buildings*, is an energy standard by the American Society of Heating, Refrigerating and Air-Conditioning Engineers (ASHRAE) and the Illuminating Engineering Society of North America (IESNA).

The 1999 version of the Standard is currently the national energy standard for all commercial construction in the United States, with most states having adopted an energy code at least as stringent as this version, which in terms of lighting is largely the same as the 2001 version. However, because building codes are traditionally a state responsibility, some states have not efficiency standards at all.

Standard 90.1 is also the standard for all Federal building construction, and was adopted for the 2001 version of the International Energy Conservation Code (IECC).

What is the difference between a tax deduction and a tax credit?

The Commercial Building is a tax deduction, not a tax credit. A tax credit is a direct dollar-for-dollar reduction of tax liability. A tax deduction is a cost subtracted from adjusted gross income when calculating taxable income; therefore, tax liability is not reduced dollar for dollar, but in proportion to the taxpayer's tax bracket.

Many lighting projects result in tax deductions. Under current law, the cost of the new lighting must be capitalized and depreciated over time. Under the lighting rules in the Commercial Building Deduction, the owner can write off the entire expense of the new lighting, capped at \$0.60/sq.ft., in the taxable year that the lighting is placed in service. So it is an accelerated tax deduction.

How is the deduction claimed by the owner?

EPAct 2005 instructs the Secretary of Treasury to modify its tax forms so that the Commercial Buildings Deduction can be implemented.

Building owners and managers, and electrical and lighting professionals, are encouraged to seek the consultation of a tax expert.



FAQ

Some regulations have not been issued. What is missing, and when will they be issued?

Internal Revenue Bulletin 2005-26, June 26, 2006 (CBTD begins on page 1175 of the IRB) is the latest version of IRS guidance. Final regulation have not, as of August 28, 2006, been issued.

Issues addressed or to be addressed include:

1. Infrastructure-tax forms, etc. for tax professionals so that there is a process by which the tax deduction can be claimed at tax time (not in current guidance). The Bulletin does say that supporting information for the deduction is not to be submitted with return, but must be kept by the taxpayer;
2. partial deductions by individual building system-each system (lighting, HVAC/water heating, and building envelope) has a 16.7% share of the overall 50% energy savings using the whole building calculation method. As an option, lighting may use the interim provision until final regulations are published, which is not anticipated for some time. NEMA has requested that the interim lighting rule be made permanent;
3. public buildings-how the lighting system's designer can claim the tax deduction in place of the owner in the case of publicly owned buildings will be in a future Notice, and
4. certification-how projects will be certified and who will certify them is in the June 26 Bulletin. Licensed engineers or contractors in the building's jurisdiction may be used.

It is not known when Treasury will issue the final regulations.

Will there be inspections of buildings to determine compliance? Who will do them?

The inspector must be an engineer or contractor licensed in the jurisdiction at the building.

Field inspection and testing must meet National Renewable Energy Laboratory requirements.



FAQ

Where is bi-level switching required?

Bi-level switching must be installed in all occupancies except hotel and motel guest rooms, store rooms, restrooms and public lobbies.

Bi-level switching can be as simple as a split-ballasting system with the lighting assigned to two circuits, each controllable from a separate wall switch that is accessible to occupants (unless remote access is required for safety or security). However, there are a number of ways to achieve bi-level switching. For example, the control can be sensor instead of a wall switch. Another option is to install dimming ballasts. Some dimming ballasts require the installation of an additional control wire, others do not.

What if my project cost exceeds the cap of \$0.60/sq.ft.? How is the remaining cost treated tax-wise?

The remaining costs can be depreciated and claimed normally.

So a qualifying project in a 100,000-sq.ft. building with a cost of \$100,000 and 40% lighting power density savings could be eligible to deduct \$60,000 in the taxable year the lighting is placed in service. The remaining \$40,000 could then be claimed normally (i.e., capitalized and depreciated).

Are exit signs included in the program, and if so, can they be retrofits versus new signs?

No. ASHRAE 90.1-2001 specifically exempts exit signs from interior lighting power allowance determinations. The Standard does have mandatory exit sign requirements, but these are not in turn required by Commercial Building Deduction, only the controls provisions are.

Can Portions of buildings be retrofitted and still qualify for a deduction-for example, the common area versus tenant spaces, or a portion of the common area?

Portions of a building can be retrofitted and the associated square footage areas considered.



FAQ

What if a commercial building tenant performs a retrofit that would meet the energy savings, would they get the deduction? Is the deduction for privately owned buildings restricted to the owner, or can a management company or a tenant in a leased space take advantage of the deduction?

Unfortunately, as in many matters of tax law, the answer is not necessarily clear. The person who gets the Commercial Buildings Deduction is the person who owns the property for tax purposes.

Although in many, if not most instances, a tenant improvement will revert to the landlord at the end of a lease, the property is not necessarily owned by the landlord for tax purposes. It is a question of fact, and the determination depends on the arrangements between the parties. If the tenant pays for the investment, constructs it according to its specifications, and there are no concessions in the lease or from the landlord, it is likely that the tenant will be the owner of the improvements for tax purposes and eligible to claim the Commercial Building Deduction.

Fortunately, this is a question that arose under the tax law before the enactment of the Commercial Buildings Deduction provision. In the case of tenant improvements, the tenant and landlord would have to determine who the tax owner is for purposes of claiming depreciation deductions in any event. The Commercial Buildings Deduction does not change that determination. The Commercial Buildings Deduction simply provides a more beneficial deduction that is normally provided by determination.

The analysis is the same regarding improvements in government buildings. If the contractor is the owner for tax purposes, it can claim the Commercial Building Deduction. Whether a private person can be an owner of property with the respect to a government building under the applicable local law is a factor that would have to be taken into account in determining who the owner is for tax purposes.

Is this like many utility rebate programs, where there is a limited amount of funding that can run out as it is tapped?

No, there is no limited to the amount money available for this incentive.