



## Environmental Newsletter

April 30, 2010

### Local Regulation and Federal Tax Incentives Promote Energy Efficiency in Commercial Buildings

By **Mindy DeYoung**

Energy use in buildings is the second largest source of Seattle's greenhouse gas ("GHG") emissions, behind transportation. Seattle has placed building efficiency at the fore of its efforts to help meet short and long-term efficiency and GHG emission reduction goals. Policies implemented by the city to work towards efficiency goals include: (1) local building energy efficiency benchmarking and disclosure requirements, and (2) federal tax incentives.

#### Mandatory Efficiency Reporting Requirements in the City of Seattle

On February 4, 2010, Mayor Mike McGinn signed Seattle Ordinance Number 123226, which establishes new building energy use and efficiency reporting requirements for owners of nonresidential and multi-family buildings. Nonresidential buildings subject to the reporting requirements are buildings or any portion of a building that is: (1) subject to the provisions of the Seattle Building Code, (2) has a gross area of more than 10,000 square feet, excluding parking, and (3) is any classified occupancy under the Seattle Building Code other than Residential R-2 or R-3.

#### How are reports submitted?

Reports must be consistent with the Environmental Protection Agency's Energy Star Portfolio Manager or a similar rating system, and are to be submitted to the Director of the Department of Planning and Development according to the following schedule:

For nonresidential building owners:

- By April 1, 2011 for buildings larger than 50,000 square feet that have an initial occupancy date prior to January 1, 2010;
- By April 1, 2012 for buildings larger than 10,000 square feet that have an initial occupancy date prior to January 1, 2011;
- By one year after the initial occupancy date for all other buildings with an initial occupancy date of January 1, 2011 or later.

For multi-family building owners:

- By April 1, 2012 for buildings with an initial occupancy date prior to January 1, 2011; and
- By one year after the initial occupancy date for all other buildings with an initial occupancy date of January 2011 or later.

The ordinance provides updating and disclosure requirements as well as penalties. Reports must be updated by April 1 of each subsequent year. The building owner is required to disclose the report within 7 days of a request from a current or prospective tenant, potential buyer, or potential lender.

## What are the penalties for noncompliance?

The Director of the Department of Planning and Development may investigate owners who fail to comply with provisions in the ordinance and may issue citations or notices of violation. For example, a \$150 citation may be issued for failure to prepare an accurate report, and if a report is still not filed 15 days after the date of citation, the City may issue a notice of violation with a penalty of \$150 per day for the first 10 days of noncompliance, then \$500 per day for each subsequent day in violation until compliance is achieved. The building owner may request a mitigation hearing before the County Hearing Examiner.

## Tax Incentives for Increased Energy Efficiency

The federal Energy Policy Act of 2005 ("EPACT") offered tax deductions for the costs of improving the energy efficiency of commercial buildings. The Energy Improvement and Extension Act of 2008 extended the tax deductions in EPACT through December 31, 2013.

### What tax incentives are available for commercial buildings?

Businesses can take a tax deduction for new or renovated commercial buildings by reducing energy costs associated with three building components—lighting system; building envelope; and heating, cooling and water heating equipment. The systems must meet the [ASHRAE Standard 90.1-2001](#) and be placed in service between January 1, 2006, through December 31, 2013.

Commercial buildings that save 50% or more of projected annual energy costs across all three systems are eligible for a tax deduction of \$1.80 per square foot. Partial deductions up to \$.60 per square foot can be taken for efficiency improvements affecting any one of the three building systems: the building envelope (10%), lighting (20%), or heating and cooling system (20%). These deductions are allowed in the year in which the system is placed in service.

Additionally, businesses can take advantage of onsite renewable energy generation incentives. A 30% investment tax credit ("ITC") is available through January 1, 2017 for the installed cost of the system for a qualified solar energy property and through December 31, 2016 for a qualified fuel cell property and a qualified small wind energy property. A 10% ITC is available for combined heat and power systems and geothermal heat pumps.

### What do I need to do to qualify?

A taxpayer will need to know when the building system was placed in service, the square footage of the building, and have a certification from a "qualified individual" that includes a statement about which targets have been met (50% savings for all three systems; 10% for building envelope; 20% for lighting, or 20% for heating and cooling system).

The system must be certified by a qualified individual as meeting the energy cost savings goal according to guidance published in the Internal Revenue Bulletin, [Notice 2006-52](#) and [Notice 2008-40](#). Qualified individuals must be engineers or contractors licensed in the jurisdictions where the building is sited, not be "related" to the taxpayer taking the deduction, and must self-certify that they have the qualifications to provide the certification.

If you have any questions about this newsletter, please contact the author listed above or the Riddell Williams attorney with whom you normally consult.

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