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The Energy Tax Incentives Act of 2005: New Deduction for Commercial Buildings

On August 8, 2005, President Bush signed into law the Energy Tax Incentives Act of 2005, which provides \$2.7 billion in incentives for energy efficiency and conservation, including a deduction for property owners (the "**Commercial Buildings Deduction**") that reduce the total energy and power consumption of commercial buildings by installing energy efficient property as part of the heating, lighting, cooling and/or hot water systems ("**Energy Efficient Property**"). The Commercial Buildings Deduction is effective for Energy Efficient Property installed after December 31, 2005 and before January 1, 2008 and provides a deduction, and in some circumstances, a partial deduction, equal to the expenses incurred in installing Energy Efficient Property, subject to both a cap on the amount of such deduction and a corresponding basis reduction equal to the permitted deduction.

The Commercial Buildings Deduction provides property owners with a deduction equal to the expenses incurred in installing Energy Efficient Property in commercial buildings as part of a plan that reduces the total energy and power costs of such building by fifty percent (50%) or more. The Commercial Buildings Deduction is subject to a cap of \$1.80 per square foot of the building in which the Energy Efficient Property is installed. In the event that the Energy Efficient Property does not result in a fifty percent (50%) reduction in the building's total energy and power costs, a partial deduction may be permitted with respect to each building system that comprises Energy Efficient Property and which is certified by a qualified professional as meeting or exceeding the applicable system-specific savings targets to be established by the Secretary of the Treasury. The partial deduction is subject to a cap of \$0.60 per square foot of the building in which the Energy Efficient Property is installed.

An additional deduction may be allowed for expenses incurred in installing lighting systems that reduce the lighting power density in commercial buildings by at least twenty-five percent (25%). This deduction for lighting power density reductions is subject to a cap of 37.5 cents per square foot of the building in which the lighting system is installed.

In all of the aforementioned cases, the applicable deduction is taken in the first year in which the Energy Efficient Property is placed in service. The property owner's basis in the corresponding commercial building (which may increase as a result of such capital expenditure) must, however, be reduced by the amount of such deduction.

Please feel free to contact John Napoli at jnapoli@seyfarth.com or Jeremy Weinberg at jweinberg@seyfarth.com if you have any questions regarding the Commercial Buildings Deduction.