BRIEFING

Florida TaxWatch

FLORIDA'S REVENUE OPPORTUNITIES UNDER §179D

October 2013

Note:
Florida TaxWatch addressed this program in the May 2012 Briefing, "Florida Missing Opportunities To Take Advantage of Federal Programs For Energy-Saving Measures."[1] Please see this Briefing for more details regarding the specific uses and calculations involved in Section 179D.

1 Access from: http://floridataxwatch.org/resources/pdf/energyreport.pdf

Florida is eligible to bring in millions of dollars from the federal government for energy efficiency improvements that are already being implemented, yet has forgone a significant majority of the funds.

THE PROGRAM

The Energy Policy Act of 2005 offers (under Section 179D of the Internal Revenue Code) public and private entities the opportunity to receive a federal tax deduction to offset the costs of installing or renovating energy consumption reductions to new or existing facilities (see Note, lower left).

While Section 179D will expire on Dec. 31, 2013, it is not too late to claim deductions retroactively through a "look back" provision in the law. All renovations within three years of completion are eligible for the deduction as long as the renovations are completed and the facility is operational by the end of this year.

This federal program is widely under-utilized nationally; it is estimated by industry experts that 90 percent of qualifying projects do not take advantage of this deduction, and between 2007 and 2010 the use of this deduction decreased from $198 million to $50 million, as reported by the US Energy Information Administration.

FLORIDA LAWS SHOULD PRE-QUALIFY THE STATE

Changes to Chapter 60D-4 of the Florida Administrative Code[2] in 2008, set out certain requirements for the use of energy efficient appliances and architectural features in new or renovated state-owned buildings.[3] While Chapter 60D-4 does not specifically require a minimum level of reductions, many of the projects subject to the Chapter's authority likely qualify for at least a partial deduction under Section 179D.

The positive news is that some of Florida's public entities have made use of the Section 179D incentive and received compensation through the program. Local governments are the primary entities taking advantage

2 Florida statute Section 255.251-258. http://www.flaseia.org/Legislative/SolarLaws/sec255.251.htm
3 As of September 2012, the state of Florida owns 20,368 buildings totaling 220,839,088 ft^2. Department of Management Services. 2012 State Facilities Inventory, Annual Report, 2012.

of this opportunity in Florida, with some use coming from counties and school districts. However, many counties are likely missing this opportunity for additional revenue, along with a significant amount of revenue from state entities, school districts, and the State University and College systems.

Tax Watch research indicates that nearly $4 million in Section 179D savings (over $10 million of actual deductions allocated) have been utilized by Florida's public entities in the last year. Leading Florida's public entities, Miami-Dade County and Public Schools have collected, or are in the process of collecting over $2 million in savings; $760,000 in incentives through Section 179D allocations. The State College System has yet to adopt and implement a 179D allocation process.

This accounts for three out of 67 counties, four out of eleven public universities, and three out of 410 municipalities. Considering that most public facilities in Florida are in compliance with Section 179D efficiency standards through compliance with the Florida building code, significant amounts of federal revenue are likely being uncollected.

CONCLUSION

An analysis should be done to determine the eligibility of Florida's state and local facilities for the Section 179D incentive, and fully pursue all available revenue opportunities.

PROTECTIVE CONTRACT LANGUAGE

Additionally, some Florida public entities that qualify for the deduction are simply signing away the potential revenue instead of going through the process of negotiating a transfer agreement. Without this agreement, the "Designer" could claim the Section 179D deduction without notifying the public entity and entering negotiations.

A public memorandum to the Miami Dade County Department Directors offers contractual language to mitigate this neglectful practice. The language reads as follows:

___ is designated as the Designer/Construction Manager (the "Designer") for the energy efficient improvements incorporated in the Energy Consumption Reduction Project (the "Project") for:

1) The purposes of allocating accelerated depreciation benefits pursuant to Section 179D of the Internal Revenue Code of 1986, as amended (the "Code")

2) If County and the Internal Revenue Service (IRS) determine that ___is eligible and shall receive accelerated depreciation benefits as a "Designer" for the purposes of Section 179D of the Code or that ___ shall otherwise benefit financially from the monetization of the accelerated depreciation benefit, ___ hereby agrees to discount its contract price or provide a cash rebate to County (the determination of rebate versus discount to be determined by County in its sole discretion) in an amount equal to the total financial benefit realized by ___; at the time the financial benefit to ___ becomes ascertainable.

3) County reserves the right to retain a third party consultant (the "Consultant") to manage and administer the process of obtaining and monetizing the accelerated depreciation benefit derived from the Project and to designate the Consultant as the "Designer" of the energy efficient improvements for the purposes of Section 179D of the Code

4)___ agrees to cooperate in all reasonable respects with the Consultant's efforts to obtain and monetize any such benefits derived from the Project on behalf of County.

FLORIDA'S REVENUE FROM §179D

MAY 2012 - PRESENT

COMPLETED

UCF
$103,051

USF
$81,826

FSU
$18,199

CITY OF ORLANDO
$44,465

CITY OF SARASOTA
$25,000

MIAMI-DADE COUNTY
$13,480

PALM BEACH COUNTY
$57,383

IN PROGRESS

UCF
$92,381

USF
$154,188

FSU
$42,840

UF
$240,183

NEW COLLEGE
$25,506

PORT CANAVERAL
$48,493

CITY OF ORLANDO
$100,000

ORANGE COUNTY
$20,000

MIAMI-DADE COUNTY
$2,307,348

MIAMI-DADE PUBLIC SCHOOLS
$250,000

EXAMPLES OF POTENTIAL STATE SAVINGS

DEPARTMENT OF REVENUE BUILDINGS

474,000 FT² X $1.80/FT² X 35% TAX RATE X AVG 40% SAVINGS TO GOVERNMENT = $119,448

1ST DISTRICT COURT OF APPEALS

97.000 FT² X $1.80/FT² X 35% TAX RATE X AVG 40% SAVINGS TO GOVERNMENT = $24.444

ABOUT FLORIDA TAXWATCH

As an independent, nonpartisan, nonprofit taxpayer research institute and government watchdog, it is the mission of Florida TaxWatch to provide the citizens of Florida and public officials with high quality, independent research and analysis of issues related to state and local government taxation, expenditures, policies, and programs. Florida TaxWatch works to improve the productivity and accountability of Florida government. Its research recommends productivity enhancements and explains the statewide impact of fiscal and economic policies and practices on citizens and businesses.

Florida TaxWatch is supported by voluntary, tax-deductible memberships and private grants, and does not accept government funding. Memberships provide a solid, lasting foundation that has enabled Florida TaxWatch to bring about a more effective, responsive government that is accountable to the citizens it serves for the last 34 years.

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The findings in this *Briefing* are based on the data and sources referenced. Florida TaxWatch research is conducted with every reasonable attempt to verify the accuracy and reliability of the data, and the calculations and assumptions made herein. Please feel free to contact us if you feel that this paper is factually inaccurate.

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