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Going Green: How Condominiums and Cooperatives can Benefit from the Obama Tax Credits

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In February of 2009, President Obama signed the American Recovery and Reinvestment Act[1] in order to help stimulate the economy. Part of this new law provides additional tax credits to homeowners who choose to make energy-efficient improvements to their homes.[2] Even though the statute appears, at first glance, to have been created in reference to owners of traditional single-family homes, the tax credit also applies to both condominium projects and cooperative housing corporations. This is good news to any condominium association or cooperative whose board of directors may be contemplating the replacement of roofs, windows, or exterior doors on any multi-unit dwelling.

What types of improvements qualify?

The tax credit will apply to four different types of building improvements: insulation material or systems, exterior windows (including skylights), exterior doors, and roofs.[3] In order for the insulation material or system to qualify, it must be specifically and primarily designed to reduce heat loss or gain and meet the criteria listed in the 2009 International Energy

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[1] Pub.L. 111-5 (February 17, 2009).
[2] *See* Pub. L. 115-5 § 1121.
[3] 26 U.S.C. § 25C(c)(2)(A)-(D).

Conservation Code. Any exterior doors, windows or skylights must have a "U factor" (which relates to the rate of heat loss) of or below 0.30, and an SHGC rating (which relates to the solar radiation allowed to pass through a fixture) of or below 0.30. Any metal roof will qualify for the tax credit, as will any asphalt roof with appropriate pigmented coatings or cooling granules specifically and primarily designed to reduce the heat gain of a building.

Additionally, the credit will apply only to improvements expected to last at least five years. The IRS has said that a two-year warranty is sufficient to evidence this longevity. For a more detailed list of these qualifications (including frequently asked questions and answers on the specific requirements), one should visit the Energy Star website.[4]

How much money in tax credits can a taxpayer receive?

The new law increases the maximum refund from 10% to 30% of the amount paid or incurred by the taxpayer during the year for qualified energy efficient improvements.[5] However, the law also provides that the amount of the credit shall not exceed $1,500 per homeowner.[6] These percentages apply to **the cost of the materials** for the energy-saving improvements only, and not to any installation and/or labor costs.

It is important to note that this is a tax **credit** and not a tax **deduction**. Crudely speaking, deductions will adjust an individual's taxable income level **before** the appropriate tax percentage bracket is applied to calculate total tax liability. A tax credit, by comparison, directly reduces an individual's total, "bottom-line" tax liability. In other words, a tax credit gives an individual a "dollar for dollar" reduction in his or her total tax liability by the full amount of the credit.

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[4] http://www.energystar.gov/index.cfm?c=tax_credits.tx_index
[5] 26 U.S.C. § 25C(a).
[6] 26 U.S.C. § 25C(a)(2).

How does the credit apply to multi-unit dwellings?

The law directly states that no dwelling will be disqualified simply because it is divided into two or more units.[7] In the case of multi-unit dwellings (such as condominium projects or cooperatives), the taxpayer is treated as having paid his or her proportionate share of any costs of the materials that are incurred by the condominium association or cooperative for the improvements.[8] This means if each co-owner is assessed a portion of the costs (regardless of whether the costs relate to his or her specific unit or building), then that co-owner will be able to claim the tax credit.

To illustrate, let's imagine that a condominium complex wishes to replace the roof on a building that contains four units. The board of directors does some research and learns that a metal roof will not only last over fifty years, but is also Class-A fire-resistant, resists dirt and aging, and will lower energy costs. A local reputable roofing company quotes the association $10,000 to replace the roof, plus $5,000 for labor and installation.

The tax credit percentage in the above scenario only applies to the cost of the materials for the improvement, and does not apply to labor and installation costs. Thus, the amount used for calculating the tax credit would be $10,000. Since the building in this example contains four units that will benefit from the roof, each unit is treated as having contributed $2,500 (or one-fourth of $10,000) to the cost of the materials for the new roof. Of the $2,500 attributable to each unit, the co-owner of each of those units will be able to claim 30% of this amount as a tax credit, or $750 (the entire $750 is allowed to the homeowner as a tax credit, since the amount is safely below the maximum credit per homeowner of $1,500).

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[7] 26 U.S.C. § 25C(e)(1)(A).
[8] *See* I.R.S. Form 5695 (2009) General Instructions.

Let's alter the above scenario slightly to imagine a condominium complex that has a total of ten buildings, only one of which is having its roof replaced. The condominium documents state that roofs are a common element of the project. In accordance with the bylaws, the Board of Directors imposes an additional assessment of $250 per unit to cover the expenses. Regardless of whether an individual co-owner lives in the building with the new roof, each unit will be able to claim the tax credit. This is because each co-owner is treated as having contributed to the new roof pursuant to the bylaws.

When can the credit be used?

Currently, the credit will apply to amounts actually paid for projects in the year 2010. It should be noted that the credit existed in 2005, but at that time only 10% of the costs could be claimed in the credit calculation and the maximum credit per homeowner was $500.[9] This initial tax credit was extended in 2008.[10]

Although there is no current proposed legislation to extend the tax credit again, there is still time to take advantage of the credit for 2010. Moreover, President Obama continues to stress environmental conservation and has already extended many of the provisions in the stimulus package that would have otherwise expired.[11] The President's actions thus far make it likely that this tax credit eventually will be extended as well.

Of course, the installation of energy-efficient improvements will have other benefits to condominium associations and cooperatives besides just the tax credits. These improvements

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[9] The Energy Policy Act of 2005, Pub. L. 109-58 (August 8, 2005).
[10] Energy Improvement and Extension Act, Pub. L. 110-343 (October 3, 2008).
[11] For example, The Worker, Homeownership, and Business Assistance Act of 2009 extended the homebuyer tax credit by an additional five months. Pub. L. 111-92 (November 6, 2009).

will provide the association with another (long-term) monetary benefit in the form of savings on heating and cooling bills. Also, many of the newer more energy-efficient products on the market are safer, more durable, and last longer than their older, cheaper, and less-energy efficient counterparts. In sum, the installation of more energy-efficient roofs, windows, doors and/or insulation materials or systems in multi-unit dwellings may well be a tremendously wise investment for many condominium associations and cooperatives.