TAX INCENTIVES: ASSISTING ACCESSIBILITY

The Americans with Disabilities Act (ADA) will open American society for people with disabilities to interact both as customers and as employees. The ADA mandates that businesses modify their places of business to include people with disabilities.

Barriers currently exist that have kept many potential customers and employees on the outside. Now, thanks to the ADA, places of public accommodation must eliminate all barriers that are easy to remove, and employers must make reasonable accommodations to allow people with disabilities to perform the essential functions of a job.

The federal government has taken steps to encourage American businesses to increase accessibility. The Internal Revenue Code now contains sections that provide tax incentives to comply with the law. Section 44 of the Internal Revenue Code grants eligible small businesses an annual tax credit of up to $5,000 for expenditures incurred “to comply with applicable requirements under the Americans with Disabilities Act of 1990.” Any qualified expenditures made after November 5, 1990, are eligible for the § 44 credit.

Section 190 of the Internal Revenue Code permits any business, regardless of size, to take a business deduction for qualified architectural and transportation barrier-removal expenses. Prior to the 1991 taxable year, this deduction was $35,000; for 1991 and later, it has been reduced to $15,000.

This brochure provides basic information on the tax incentives found in both Sections 44 and 190.

Provisions of Section 44

Under § 44, an eligible small business may elect to take a general business credit of up to $5,000 annually for eligible access expenditures to comply with the requirements of the Americans with Disabilities Act. The amount that may be taken as a credit is 50% of the eligible access expenditures incurred that exceed $250 but do not exceed $10,250 per tax year. For instance, if a business spends $7,500 to provide an interpreter, the credit would be in the amount of $3,625 ($7,500 minus $250 divided by 2). The credit can be carried forward up to 15 years and carried back for three years, though there is no carry-back to a year before 1991. A business may take this credit each year that it makes an accessibility expenditure, be it purchase of equipment, provision of communication assistance or removal of an architectural barrier. This tax credit should be claimed on IRS Form 8826, *Disabled Access Credit.*

Definitions of Major Terms for Section 44

Eligible Small Businesses

A business with gross receipts (for the year preceding the taxable year) of no more than $1 million **or** 30 or fewer full-time (30 hours a week for 20 or more weeks a year) employees.

Eligible Access Expenditures

Reasonable expenditures to comply with the ADA. Included are amounts related to removing architectural, communication, physical or transportation barriers; providing qualified interpreters, readers or similar services; and modifying or acquiring equipment and materials. Expenditures must be reasonable and must meet standards set out in regulations issued by the IRS; however, these regulations have not yet been published. Expenses for new construction or those that are not necessary to accomplish ADA accessibility are not eligible.

Provisions of Section 190

All businesses may elect to treat qualified architectural and transportation barrier-removal expenses that are paid or incurred during each taxable year as expenses that are not chargeable to a capital account. Such expenditures are fully deductible up to a maximum of $15,000 for each taxable year. Qualified expenses include only those expenses specifically attributable to the removal of existing barriers such as steps, narrow doors, inaccessible parking spaces, inaccessible toilet facilities or transportation vehicles. For instance, if a restaurant spends $12,000 installing ramps, restriping the parking lot and widening passageways, the full $12,000 is deductible. Modifications must meet the requirements of standards established under § 190 of the Internal Revenue Code (26 CFR §1.190). Expenses incurred in the construction or comprehensive renovation of a facility or vehicle or in the normal replacement of depreciable property are not included.

Availability

The tax incentives provided in both § 44 and § 190 may be claimed on an annual basis. A business that cannot remove all barriers in one year or provides accommodations on a continuing basis may use these incentives each year an eligible expenditure is made.

In addition, eligible small businesses may take advantage of both incentives in years in which they make qualified expenditures. For instance, if a small business makes expenditures of $24,000 that qualify under both sections, it may take the $5,000 **credit** for the initial $10,250. It may then calculate the proper amount (up to $15,000) for a § 190 deduction by subtracting the amount of **credit received** from the total expenditure. In this example, the business would subtract $5,000 from $24,000 for a resulting $19,000. Section 190 allows a maximum deduction of $15,000; therefore, the business may take a $15,000 **deduction** in addition to the $5,000 tax **credit**.

Total expenditures by eligible small business.............	$24,000
§ 44 credit =	$10,250
	- 250
	10,000
	x .50
	$ 5,000
§ 190 deduction =	$24,000
	- 5,000
	19,000
§ 190 maximum deduction	$15,000

Expenditures that exceed the amount of **credit taken**, as demonstrated above, can be deducted if they qualify under another section. For instance, an expenditure of $10,000 by an eligible small business to renovate bathrooms would be handled in this manner. The business could take a disabled-access credit of $4,875 ($10,000 - 250 x .50), then deduct $5,125 ($10,000 - 4,875) as a § 190 expense. A business may not receive a double benefit for the amount of the credit, i.e., the business may not deduct the entire $10,000 as a § 190 expense after having claimed the $4,875 disabled-access credit.

NOTE: Three distinctions between § 44 and § 190 must be noted.

- *First, § 44 is available only to small businesses as defined above.*
- *Second, § 44 provides a tax credit, § 190 a tax deduction. A tax credit is applied directly to the amount of tax owed, while a deduction is applied to the adjusted gross income.*
- *Third, § 44 is tied to compliance with the ADA. Section 190 may be used for any barrier removal that meets the standards in the regulations.*

Individuals seeking to use either of these tax incentives should check with their local building department to ensure compliance with all local building regulations, including local and state standards for access renovations.

For further information, contact either your local IRS office or Office of Chief Counsel, Internal Revenue Service, 1111 Constitution Ave., N.W., Washington, DC 20224; (202) 622-3110. Toll-free assistance is available for all federal tax questions at 1-800-829-1040; forms and publications may be ordered at 1-800-829-3676. IRS Publication 907 contains tax information for people with disabilities, including a thorough discussion of both these sections.

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This pamphlet contains a general description of the legal rights and responsibilities of individuals and organizations under federal law. It is not an authoritative legal treatise and should not be relied upon as authority for acting or refusing to act.