



OFFICE OF
CHIEF COUNSEL

DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224
October 18, 2001

CC:DOM:P&SI:7 [REDACTED]
GENIN-150084-01

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Re: Tax Incentives for Improving Accessibility
Americans with Disabilities Act

Dear Mr. [REDACTED]:

We received your letter dated September 15, 2001, in which you requested information about the tax incentives for improving accessibility to the disabled in accordance with the Americans with Disabilities Act (ADA). The following information is provided to you pursuant to section 2.04 of Revenue Procedure 2001-1, 2001-1 I.R.B.1 (January 2, 2001). This information letter is advisory only and has no binding effect on the Internal Revenue Service (IRS).

In general, two tax incentives are available to businesses to help cover the cost of making access improvements. The first is a tax credit that can be used for architectural adaptation, equipment acquisitions, and services such as sign language interpreters. The second is a tax deduction that can be used for architectural or transportation adaptations.

Disabled Access Tax Credit under Section 44

Section 44 of the Internal Revenue Code (Code) provides that an "eligible small business" that pays or incurs certain expenditures after November 5, 1990, to enable the business to comply with the ADA can claim a disabled access credit (DAC). Section 44(b) defines an eligible small business as any person that for the previous tax year had either revenues not exceeding \$1,000,000, or 30 or fewer full-time workers. The amount of the tax credit is equal to 50 percent of the eligible access expenditures for the tax year as exceed \$250 but do not exceed \$10,250. The maximum tax credit, therefore, is \$5,000.

GENIN-150084-01

Section 44(c)(2) provides that “eligible access expenditures” include amounts paid:

(A) for the purpose of removing architectural, communication, physical, or transportation barriers which prevent a business from being accessible to, or usable by, individuals with disabilities,

(B) to provide qualified interpreters or other effective methods of making aurally delivered materials available to individuals with hearing impairments,

(C) to provide qualified readers, taped texts, and other effective methods of making visually delivered materials available to individuals with visual impairments,

(D) to acquire or modify equipment or devices for individuals with disabilities, or

(E) to provide other similar services, modifications, materials, or equipment.

The credit cannot be used for the costs of new construction which are paid or incurred in connection with any facility first placed in service after November 5, 1990, and may be used only for adaptations to existing facilities that are required to comply with the ADA.

Eligible small businesses may use Form 8826 and/or Form 3800 to claim the disabled access credit. Any excess credit can be carried back one tax year by filing an amended income tax return (Form 1040X, 1120X, or other amended return) for the prior tax year or an application for tentative refund (Form 1045, Application for Tentative Refund, or Form 1139, Corporation Application for Tentative Refund). Any unused credit after carrying it back, may be carried forward to each of the 20 tax years after the year of the credit. The portion of the unused disabled access credit cannot be carried back to any tax year ending before November 5, 1990.

Tax Deduction under Section 190

Section 190 of the Code provides a deduction for “qualified architectural and transportation barrier removal expenses,” which are defined as amounts paid or incurred to make any facility or public transportation vehicle owned or leased by the taxpayer for use in connection with his trade or business more accessible to, and usable by, handicapped and elderly individuals. The maximum amount of qualified expenditures deductible each year is \$15,000, and may be claimed on the income tax return for the tax year the expenses were paid or incurred.

GENIN-150084-01

The regulations promulgated under section 190 describe many types of barrier removals that may generate qualified architectural and transportation barrier removal expenditures and contain requirements that must be satisfied before a deduction can be claimed. The deduction is not available for any costs that were paid or incurred to completely renovate or build a new facility or public transportation vehicle, or to replace depreciable property in the normal course of business.

For sections 44 and 190 purposes, a taxpayer may not carryover expenses from one year to the next and claim a credit or deduction for the portion that exceeds the expenditure limit the previous year. Furthermore, if a taxpayer uses both the tax credit and tax deduction, then the amount of deduction should be reduced by the amount of the credit taken. Section 44(d)(7).

For your information we are enclosing copies of sections 44 and 190 of the Code, as well as the section 190 regulations. We note that no regulations have been issued under section 44. We are also enclosing Publication 535, Form 3800, and Form 8826. We direct your attention to pages 27 through 29 of Publication 535.

If you would like a ruling on whether your particular expenses qualify for the tax credit or the tax deduction, you may request, for a fee, a private letter ruling from the IRS. We have enclosed Revenue Procedure 2001-1, 2001-1 I.R.B. 1, which contains instructions on how to request a private letter ruling.

This letter should not be regarded as a private letter ruling, nor relied upon as such. If you have any questions, you may contact Jaime C. Park at (202) 622-3120.

Sincerely,

Leslie Finlow
Chief, Branch 7
Associate Chief Counsel
(Passthroughs & Special Industries)

Enclosures (7)

cc (without enclosures): [REDACTED]