Southwest ADA Center

A Program of ILRU at TIRR Memorial Hermann

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More than fifty million Americans with disabilities make up a huge, nearly untapped market for businesses of all types and sizes. To help businesses welcome customers with disabilities, the IRS offers two tax incentives to remove access barriers.

Access Means Business

Tax Incentives

Supporting the Americans with Disabilities Act of 1990

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Why Become Inclusive? Statistics You Should Know!

18 to 20 percent of Americans have a disability (over 58 million adults). It is estimated that by the year 2020 half of the U.S. population will have at least one chronic condition and one-quarter will be living with multiple chronic conditions *(Center on an Aging Society, Georgetown University, Issue Brief: http://ihcrp.georgetown.edu/agingsociety/pdfs/workplace.pdf)*.

These Americans are a rich source of potential customers and employees that can help make businesses successful. They are an untapped consumer market with over $200 billion per year in disposable income. If families of people with disabilities are included then this number is one trillion dollars *(National Organization on Disability at www.nod.org)*.

Approximately 71.5 million baby boomers will be over the age of 65 by the year 2030 and have more than 50% of the total U.S. discretionary income. This group will be demanding products, services, and environments that meet their age-related physical and mental needs (*AOA, U.S. Dept. of Health & Human Services: www.aoa.gov/Aging_Statistics/ and Expanding Your Market; Accessibility Benefits Older Adult Customers at www.ada.gov/olderaccess.htm*).

Given these trends, employers and business must become creative in meeting their workforce and market needs. Attracting and retaining a diverse workforce, including people with disabilities and existing employees who, through their life cycle of the aging process, are involved with the natural occurrence of acquiring disability, is a good start. Businesses who are accessible and market to people with disabilities can reach as many as four in every 10 customers (*America's Largest Untapped Market: who they are, the potential they represent By: Patricia Digh, Real Real Work FORTUNE magazine, March 1998*).

Accessibility

Federal Tax Incentives Available to Businesses to Help Cover the Cost of Making Access Improvements

<u>Section 44</u> – "**Expenditures to provide access to disabled individuals**" (**Access Credit**) is a Non-refundable Tax Credit and a part of the General Business Credit.
(TITLE 26 - Internal Revenue Code: Subtitle A - Income Taxes, Chapter 1 - Normal Taxes And Surtaxes, Subchapter A - Determination of Tax Liability, Part IV - Credits Against Tax, Subpart D - Business Related Credits)

<u>Section 190</u> – "**Expenditures to remove architectural and transportation barriers to the handicapped and elderly**" (**Access Deduction**) is a Tax Deduction.
(TITLE 26 - Internal Revenue Code: Subtitle A - Income Taxes, CHAPTER 1 - Normal Taxes And Surtaxes, Subchapter B - Computation of Taxable Income, Part VI - Itemized Deductions For Individuals And Corporations)

It is important to note that businesses may not take a deduction and a tax credit on the same expenditure.

The Access Credit (Section 44)

Congress expanded the Federal tax incentives to ease compliance with the **Americans with Disabilities Act of 1990 (ADA)** by providing small businesses with a nonrefundable income tax credit for a portion of the expenditures that are incurred in complying with the requirements of the ADA.

The provisions state that for an "eligible small business" an amount equal to 50 percent of so much of the "eligible access expenditures" for the taxable year as exceed $250 but do not exceed $10,250. **Example:** $12,000 of the "eligible access expenditures" = ($10,250 - $250) X .50 = $5,000 credit.

"**Eligible small business**" means any business if gross receipts of the business for the preceding taxable year did not exceed $1,000,000, or the business employed not more than 30 full-time employees during the preceding taxable year. "**Eligible access expenditures**" means amounts paid or incurred for the purpose of enabling the business to comply with applicable requirements under the ADA.

****Note:** Expenditures in an area where the business is already in compliance with the ADA do not qualify for the credit.

What Are Eligible Access Expenditures?

- removing architectural, communication, physical, or transportation barriers which prevent a business from being accessible to, or usable by, individuals with disabilities,
- providing qualified interpreters or other effective methods of making aurally delivered materials available to individuals with hearing impairments,
- providing qualified readers, taped texts, and other effective methods of making visually delivered materials available to individuals with visual impairments,
- acquiring or modify equipment or devices for individuals with disabilities, or
- providing other similar services, modifications, materials, or equipment.

The Access Credit: Capital Expenditure Examples
"*Holly's Flower Shop and Accessories*" incurs $20,000 in modifications of creating parking lot accessible spaces, putting in a sidewalk curb cut and entrance ramp, and bathroom modifications to meet ADA requirements. This amount qualifies as an "eligible access expenditure." The business is allowed a credit of $5,000 for these expenses ($10,250 - $250) X .5). In addition, the business can deduct $10,000 as a Section 190 access deduction ($15,000 - $5,000). The remaining amount can be capitalized and depreciated. The potential tax benefit (assuming 30% tax rate): Credit = $5,000, Deduction = 3,000 and Depreciation = 300.

Example: "*You Could Use a Pre-Owed Vehicle*" company pays $1,250 to hire sign language interpreters to assist in finalizing car sales with several customers who are Deaf. This amount qualifies as an "eligible access expenditure." The business is allowed a credit of $500 for this expense (($1,250 - $250) X .5). In addition, the business can deduct $750 as a current period business expense.

General Business Credit Limit
An overall limitation is applied to the use of the credits. The use of the credit is limited to the lesser of the following:
- The excess of regular tax over tentative minimum tax, or
- Regular tax exceeding 25% of regular tax exceeding $25,000

Example: *"Josephine's Mechanic Shop"* has a General Business Credit of $13,000 ($6,000 Access Credit and $7,000 Work Opportunity Tax Credit). The business has a regular tax liability of $30,000 and a tentative minimum tax of $24,000. The limitation on the use of the General Business Credit is the lesser of $6,000 ($30,000 - $24,000) or $28,750 ($30,000 – 1,250 ($30,000 - $25,000) X .25).
For more information on the Work Opportunity Tax Credit: www.irs.gov/Businesses/Small-Businesses-&-Self-Employed/Work-Opportunity-Tax-Credit-1

Access Credit Expenditures must be for Compliance with the ADA
The IRS has taken a fairly restrictive view of "to acquire or modify equipment or devices for individuals with disabilities." The requirement is that the expenditures must be for compliance with the ADA. If the taxpayer is already in compliance, even at a minimal level, the expenditures cannot be treated as qualifying for credit. The IRS outlines its approach at 2004 in Chief Council Advice Memorandum 200411042 (www.irs.gov/pub/irs-wd/0411042.pdf).

Court Case: *Fan v. Commissioner*, 117 T.C. 32
Taxpayer (a dentist) claimed a credit for expenditure for a piece of sophisticated x-ray imaging equipment that had a feature which allowed for on-screen communication and highlighting of issues with patients. The doctor asserted that this capability allowed him to communicate more effectively with deaf patients replacing the use of hand-written notes, as needed, with his patients. The IRS disallowed the credit stating the dentist was already in compliance under the ADA via the hand-written notes.

Court Case: *Hubbard v. Commissioner*, *T.C. Memo*. 2003-245
The taxpayer (an optometrist) claimed a credit for an automatic refractor system. The system took measurements of the patient's eyes and provided an estimate of the corrective prescription. This piece of equipment took the place of the manual approach of reading charts from a distance. Prior to the purchase of this equipment, the optometrist was unable to treat many disabled patients due to the physical

constraints of the manual system. The Tax Court held that the optometrist purchased the equipment to provide better access to his disabled patients and to come fully into compliance with the ADA.

Website Accessibility

The commercial importance of the Internet was not envisioned at the time of the passage of the ADA in 1990. The growth and development has brought questions regarding the applicability of the Act to the Web. Court cases have come down on both sides of the disputes.

The IRS has followed suit with its implementation of the tax law in this area. In CCA 200411042, the IRS held that the language of the ADA referred to a physical environment. Therefore, web-based expenditures were not eligible for the Access Credit. However, in this analysis the IRS reiterated that the Department of Justice (DOJ) promulgates the regulations interpreting the Act. Following the writing of the CCA, the DOJ broadened its interpretation of the ADA to websites stating "The Department has consistently interpreted the ADA to cover Web sites that are operated by public accommodations and stated that such sites must provide their services in an accessible manner or provide an accessible alternative to the Web site that is available 24 hours a day, seven days a week. The final rule, therefore, does not impose any new obligation in this area."

Strong Argument for Credit

Based on the DOJ's regulations and the IRS's deferral to these rules, there is a strong argument that costs incurred to enable website accessibility qualify for the credit. Money spent to make a website accessible could technically fall under Section 44 (c) (2) (A), (B), (C), and (E) of the tax code.

Architecture and Barrier Removal

Access Deduction (Section 190)

This provision is an exception to the general rule of capitalization and depreciation and applies to businesses of all sizes. The deduction is limited to $15,000.
"A taxpayer may elect to treat "qualified architectural and transportation barrier removal expenses" which are paid or incurred by him during the taxable year as expenses which are not chargeable to a capital account. The expenditures so treated shall be allowed as a deduction."

Architectural And Transportation Barrier Removal Expenses

The term "architectural and transportation barrier removal expenses" means an expenditure for the purpose of making any facility or public transportation vehicle owned or leased by the taxpayer for use in connection with his/her trade or business more accessible to, and usable by, persons with disabilities and elderly individuals.

Qualified Architectural And Transportation Barrier Removal Expense

Barrier removal expenses must meet the standards of the U.S. Access Board (www.access-board.gov).

Eligible Individuals

Any individual who has a physical or mental disability (including, but not limited to, blindness or deafness) which …results in a functional limitation to employment, or who has any physical or mental impairment (including, but not limited to, a sight or hearing impairment) which substantially limits one or more major life activities of such individual.

Architectural Barrier Removal Requirements & Availability of Tax Incentives

Readily Achievable Barrier Removal
Businesses and non-profit organizations that serve the public are to remove architectural barriers including physical communication barriers (flashing alarms, signage, pictograms, etc.) in existing facilities (that were built before 1992) when it is readily achievable. This means in doing so it would be easily accomplishable and able to be carried out without much difficulty or expense. This requirement is an ongoing obligation to continually assess and do barrier removal *(DOJ ADA Title III reg. 28 CFR Part 36.304).* Measures taken to remove barriers must comply with the **2010 ADA Standards for Accessible Design,** if compliance is readily achievable. If compliance is not readily achievable, barrier removal measures may be taken that do not fully comply with the 2010 Standards with exception of measures that would pose a significant risk to the safety of individuals with disabilities or others.

Allowable Tax Incentives
"Qualifying Expense" for the Section 44 Credit
"Qualifying Expense" for the Section 190 Deduction

1991 ADA Standards for Accessible Design (1991 Standards)
Facilities built between 1992 and March 15, 2012 should meet this standard with no need to modify to the DOJ 2010 Access Standards unless those elements are altered on or after March 15, 2012. Elements in facilities built or altered before March 15, 2012 that comply with the 1991 Standards are not required to be modified to specifications in the 2010 Standards. If alterations occur, see the below section **2010 ADA Standards for Accessible Design** to learn how the Credit and Deduction would apply.

Allowable Tax Incentives
"Qualifying Expense" for the Section 190 Deduction
NOT a "Qualifying Expense" for the Section 44 Credit

2010 ADA Standards for Accessible Design
Elements in facilities built or altered on or after March 15, 2012 are required to meet specifications in the 2010 Standards.

Allowable Tax Incentives
Alteration (likely) a "Qualifying Expense" for the Section 44 Credit and a "Qualifying Expense" for the Section 190 Deduction
New Construction **NOT** a "Qualifying Expense" for the Section 44 Credit

New Elements in the 2010 ADA Standards
The 2010 Standards contain elements that are not in the 1991 Standards. Because these elements were not included in the 1991 Standards, they are not subject to the safe harbor exemption. Public accommodations (businesses and non-profits) must remove architectural barriers to these items when it is readily achievable to do so or when doing renovations.

These elements include recreation facilities such as swimming pools, team or player seating, accessible routes in court sports facilities, saunas and steam rooms, fishing piers, play areas, exercise machines, golf facilities, miniature golf facilities, amusement rides, shooting facilities with firing positions, and recreational boating facilities.

Allowable Tax Incentives
A "Qualifying Expense" for the Section 44 Credit
A "Qualifying Expense" for the Section 190 Deduction

Example: "A readily achievable" modification to a swimming pool is made by installing a permanent lift. This cost should qualify for the credit and deduction purposes.

Resources

The Application of Federal Tax Incentives Supporting the Americans with Disabilities Act
Southwest ADA Center Publication: **www.southwestada.org/html/publications/general/taxincentives.html**
Southwest ADA Center Webcast: **www.southwestada.org/html/Training/archives.html**

2010 Standards ADA Checklist for Readily Achievable Barrier Removal: **www.adachecklist.org.**

Department of Justice: **www.ada.gov**
Technical assistance publications regarding businesses' ADA obligations for barrier removal and effective communication.

Building an Accessible Website: **www.section508.gov** (Standards apply to the Federal Government but are the best standards to use to build a fully accessible website) and the **Job Accommodation Network** (JAN) provides tips on designing an accessible website: **www.askjan.org/media/webpages.html**

Publication 535, Business Expenses: **http://www.irs.gov/uac/Publication-535,-Business-Expenses-1**
This publication discusses common business expenses and explains what is and is not deductible. The chapters cover general rules for deducting business expenses and specific expenses.

For additional information and questions, contact your Regional ADA Center at 1-800-949-4232 (voice/TTY)

A program of ILRU at TIRR Memorial Hermann

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The Southwest ADA Center is a program of ILRU (Independent Living Research Utilization) at TIRR Memorial Hermann. The Southwest ADA Center is part of a national network of ten regional ADA Centers that provide up-to-date information, referrals, resources, and training on the Americans with Disabilities Act (ADA). The centers serve a variety of audiences, including businesses, employers, government entities, and individuals with disabilities. Call 1-800-949-4232 v/tty to reach the center that serves your region or visit **http://www.adata.org.**

The information herein is intended solely as informal guidance and is neither a determination of your legal rights or responsibilities, nor binding on any agency with enforcement responsibility under the ADA or IRS Tax Code.