

Section 44 – Disabled Access Credit

General

The Americans with Disabilities Act (ADA) mandates that businesses modify their facilities to include people with disabilities. As a result the Internal Revenue Code contains several 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”.

Under Section 44, an eligible small business may elect to take a general business credit of up to \$5,000 for eligible access expenditures to comply with the ADA. The amount that may be taken is 50% of the eligible access expenditures incurred that exceed \$250 but do not exceed \$10,250 per tax year. The credit can be carried forward up to 15 years and carried back for three years. However, there is no carry back to a year before 1991.

An eligible small business is defined as:

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

Examples of reasonable expenditures to comply with the ADA include (1) cost of removing architectural, communication, physical or transportation barriers; (2) providing qualified interpreters, readers or similar service; and (3) modifying or acquiring equipment and materials.

In the absence of clearly defined IRS regulations, Martin Innovations believes that a disabled access credit may be available to qualified small business practices that purchase a power table to facilitate access by disabled individuals. However, the regulations are clear that if a power table is purchased to replace an existing power table, Section 44 will not apply.

Limitations

- Expenditures must be “reasonable” and must meet standards set out in regulations issued by the IRS; however, these regulations have not been published. As a result, there are no clear guidelines as to what equipment would qualify under the ADA provisions.
- Expenses for new construction or those that are not necessary to accomplish ADA accessibility are not eligible.
- Expenses incurred in renovation of a facility or in the normal replacement of a facility or in the normal replacement of depreciable property are not included.

Advantages

- Section 44 allows for a “tax credit” as opposed to a “tax deduction”. A “tax credit” reduces taxes owed whereas a “tax deduction” reduces “Adjusted Gross Income” which is the basis for determining a taxpayer’s tax liability (i.e. taxes owed).
- Section 44 can be used in conjunction with other tax reduction economic stimulus programs such as IRS Code Section 179 (Election to Expense Certain Depreciable Business Assets) and the Job Creation and Worker Assistance Act of 2002 (“30% Stimulus”).

Cases where it was deemed that expenditures were not “eligible access expenditures”

To date there have been two cases where disabled access credits have been denied. In this connection, there may be other instances where a local IRS office has claimed that a credit taken is not appropriate; however, unless the tax payer/small business has appealed the claim and a ruling was issued, events surrounding these instances would not be disclosed. Summary of the two cases where a credit was denied are shown below:

- A Dentist who was already in compliance with ADA at the time he purchased an intraoral camera system was not entitled to the disabled access credit. He did not discriminate against hearing impaired individuals on the basis of their disability, and he effectively communicated with his patients through the use of handwritten notes (acceptable auxiliary aid under ADA). Moreover, the system was not a replacement or alternative to handwritten notes for purposes of the Code Section 44 credit. As a result, it was deemed that the system did not constitute an eligible access expenditure. **S.T. Fan, 117TC – No.3, Dec. 54,419.**
- An Optometrist’s purchase of a variable height field analyzer, which plots the visual field of a patient, and a hand-held topographer, which makes a map of the eye and screens for irregularities, did not qualify as eligible access expenditures. As a result, his claimed disabled access credit was disallowed. It was deemed that the taxpayer acquired the equipment in the normal course of his business rather than to comply with applicable requirements of the Americans With Disabilities Act of 1990 (ADA). **IRS Letter Ruling 200031001, February 28, 2000.**

The information provides general guidance in applying tax credits and deductions. This should not be construed as providing financial advice, tax advice and/or rendering advice on tax return preparation. Consult your tax advisor to best assess your potential savings and to confirm the code interpretations.