

BOB DOLE
KANSAS
141 SENATE HART BUILDING
(202) 224-6521

COMMITTEES:
AGRICULTURE, NUTRITION, AND FORESTRY
FINANCE
RULES

United States Senate

WASHINGTON, DC 20510-1601

February 17, 1993

*Anna,
FYI
Mo*

Secretary Bentsen
U.S. Department of the Treasury
1500 Pennsylvania Avenue, N.W.
Washington, D.C. 20220

Dear Secretary Bentsen:

I am writing to request information from the Department of the Treasury relevant to the implementation of the Americans with Disabilities Act (ADA) and have a continuing interest in its successful implementation.

There are three provisions in the Internal Revenue Code which are related to the implementation of the ADA. Information about their utilization by businesses will assist us in better assessing how businesses are implementing the Americans with Disabilities Act.

When Congress enacted the ADA in 1990, there was a clear acknowledgement that some of its requirements would require impact of such expenditures on small businesses, Congress amended the Internal Revenue Code to provide a tax credit to small businesses for expenses incurred in complying with the ADA. Known as "the Access Credit," sections 38 (a) and (b) and Section 44 of the Internal Revenue Code have now been available to small businesses for two full calendar years -- 1991 and 1992.

In addition to the Access Credit, the Internal Revenue Code contains Section 190 which allows deductions to businesses for removing architectural barriers and transportation barriers to persons with disabilities. Available to businesses since 1976, there has never been, to my knowledge, a comprehensive analysis of the utilization of this deduction by businesses.

Finally, the targeted jobs tax credit (TJTC) is available to employers who hire persons with disabilities (Sections 38 (a) and (b) and sections 51 (a) and (b) of the Internal Revenue Code). Enacted originally in 1978, the use and effectiveness of the TJTC has been examined for many eligible groups, but not for persons with disabilities.

Secretary Bensten
February 17, 1993
Page 2

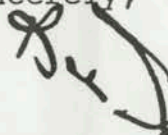
I request the following information about these three provisions in the Internal Revenue Code:

- 1) How many firms have utilized these provisions?
- 2) What is the size, the industry and the geographical distribution of the firms?
- 3) For what particular expense are they claiming the credit or the deduction?
- 4) What amount of money was claimed under the credit or the deduction?

I would like to have this information for years before and after the enactment of the Americans with Disabilities Act.

Thank you for your assistance in this matter. I look forward to hearing from you.

Sincerely,



BOB DOLE
United States Senate

BD/mw

Explanation

53

transfers after

COMMENT: Since these changes are effective for tax years beginning after 12-31-89, base-year expenditures for 1990 fiscal years do not have to be reduced proportionately for the part of the year that falls in calendar 1991.

Act Sec. 11402, extending the credit for increasing research activities, amends IRC §41(h) and makes conforming amendments to '89 OBRA §7110(a) and IRC §28(b)(1)(D), effective for taxable years beginning after 12-31-89.

Under the new subject to the causing an in- the trust and disclosed on a the nature of ould not run regardless of t year.

tive as indicated

requires the is and agree- y and other property for o later than

ITS

nder pre-'90 ied research the preced- rred after y requiring 0-1-90: The year is the tax year as total num- for certain nstitutions, zations was

ntal credit c research ation of re- lit is avail-

applies to straddles ne ratio of number of for a tax- '90 OBRA straddled

[1151] New Small Business Public Accommodations Access Credit. The Americans With Disabilities Act of 1990 requires businesses to make structural changes to facilities to accommodate disabled and handicapped individuals. To help small businesses with the cost of complying with that Act, the new law provides a credit for a portion of the expenditures incurred in making the required changes. At the same time, to help offset the cost of the credit, the new law cuts back on the IRC §190 deduction for removal of barriers to the handicapped.

Background. Under §190, a taxpayer meeting certain requirements may elect to currently deduct certain architectural and transportation barrier removal expenses rather than capitalize them. The maximum deduction for any tax year is \$35,000.

New credit. Under the new law, an eligible small business may elect a credit in an amount equal to 50% of the eligible access expenditures for the tax year that exceed \$250 but do not exceed \$10,250. Thus, the maximum credit in a tax year is \$5,000. The credit is effective for expenditures paid or incurred after 11-5-90.

Eligible small business. An eligible small business is a person (or any predecessor) that, for the preceding tax year, either (1) had gross receipts that did not exceed \$1 million or (2) had no more than 30 full-time employees. For this purpose, an employee is considered full-time if he is employed at least 30 hours a week for at least 20 weeks in the tax year. Also, gross receipts for any tax year are to be reduced by returns or allowances made during the year. The IRS is to make appropriate adjustments to the tests where the relevant tax year (preceding year) is a short year.

Eligible access expenditures. Eligible access expenditures are amounts paid or incurred by an eligible small business for the purpose of enabling the business to comply with applicable requirements of the Americans With Disabilities Act of 1990 (as in effect on 11-5-90). Such expenditures include amounts paid or incurred (1) for the purpose of removing architectural, communication, physical, or transportation barriers that prevent a business from being accessible to, or usable by, individuals with disabilities; (2) to provide qualified interpreters or other effective methods of making aurally delivered materials available to individuals with hearing impairments; (3) to provide qualified readers, taped texts, and other effective methods of making visually delivered materials to individuals with visual impairments; (4) to acquire or modify equipment or devices for individuals with disabilities; or (5) to provide other similar services, modifications, materials, or equipment.

The expenditures must be reasonable and necessary to accomplish these purposes. Also, the taxpayer must establish to the satisfaction of

1151

1140

modify equipment or devices for individuals with disabilities; or (5) to provide other similar services, modifications, materials, or equipment. The expenditures must be reasonable and necessary to accomplish these purposes.

Finally, the disabled access credit is included as a general business credit and, thus, is subject to the rules of present law that limit the amount of the general business credit that may be used for any taxable year. The portion of the unused business credit for any taxable year that is attributable to the disabled access credit is not to be carried back to any taxable year ending before the date of enactment of the credit.

c. Expand election to expense certain depreciable business property

Present Law

Under section 179 of the Code, a taxpayer generally may elect, subject to certain limitations, to deduct the cost of up to \$10,000 of qualifying property for the taxable year in which the property is placed in service, in lieu of depreciating such property. For this purpose, qualifying property is generally defined as depreciable tangible property that is purchased for use in the active conduct of a trade or business.

House Bill

No provision.

Senate Amendment

The Senate amendment amends section 179 to allow taxpayers to elect to deduct the cost of up to \$14,000 of qualifying property for the taxable year in which the property is placed in service, subject to the limitations of present law.

The provision is effective for property placed in service in taxable years beginning after December 31, 1990.

Conference Agreement

The conference agreement does not include the Senate amendment.

d. Review of impact of IRS regulations on small business

Present Law

The Internal Revenue Service (IRS) must submit proposed regulations (after they are published) to the Small Business Administration (SBA) for comment on the impact of those regulations on small business. The SBA must respond within four weeks. Similar rules apply to final regulations that do not supersede proposed regulations.

House Bill

No provision.

No pr

IRS m
publishe
tions on
The IRS
preambl
lations
applies
date of e

e. Requ

There
to publi
dollar co
by the I

No pr

No pr

The c
charts
picting
that re
pared fo

No p
Ways a
forming
the Tec
recently

No p

1138

ld each own general and limited in-
general partnership interest carries
he partnership; the limited partner-
it. The liquidation right associated
interest lapses after ten years. Under
re is a gift at the time of the lapse
ue of Father's partnership interests
ght to liquidate over (2) the value of
he did not hold such right.

ent, any restriction that effectively
on or partnership to liquidate is ig-
ng family members if (1) the trans-
rol the corporation or partnership,
ses after the transfer or can be re-
nbers of his family, either alone or

are partners in a two-person part-
nent provides that the partnership
ies and leaves her partnership in-
partners, Daughter and Son acting
iction on partnership termination.
it, the value of Mother's partner-
ermined without regard to the re-
adjusted to reflect any appropriate

ommercially reasonable restriction
ing with an unrelated party or a
or Federal law. The provision also
regulatory authority to disregard
he value of the transferred inter-
t which do not ultimately reduce
ansferee.

ures incurred to make businesses
abled individuals

it Law

may elect to deduct up to \$35,000
nsportation barrier removal ex-
ch paid or incurred rather than

Bill

endment

an eligible small business that
sion is allowed a nonrefundable
ent of the amount of the eligible

1139

public accommodations access expenditures for any taxable year
that exceed \$250 but do not exceed \$10,250.

An eligible small business is defined for any taxable year as any
person that is engaged in the trade or business of operating a
public accommodation and is required by Federal law to make such
accommodation accessible to, or usable by, individuals with disabili-
ties, and that either (1) had gross receipts for the preceding tax-
able year that did not exceed \$4 million or (2) has fewer than 30
full-time employees during the taxable year.

Eligible public accommodations access expenditures are defined
as amounts paid or incurred by a taxpayer either (1) for the pur-
pose of removing architectural, communication, or transportation
barriers which prevent a public accommodation operated by the
taxpayer from being accessible to, or usable by, an individual with
a disability, or (2) for providing auxiliary aids or services to an indi-
vidual with a disability who is an employee of, or using, a public
accommodation operated by the taxpayer.

The disabled access credit applies to expenditures paid or in-
curred after the date of enactment.

Reduction of amount deductible as architectural and transportation barrier removal expenses

The Senate amendment also reduces the amount of architectural
and transportation barrier removal expenses that may be deducted
for any taxable year to \$15,000.

The reduction in the amount of deductible architectural and
transportation barrier removal expenses applies to taxable years
beginning after the date of enactment.

Conference Agreement

The conference agreement follows the Senate amendment, with
the following modifications.

First, an eligible small business is defined for any taxable year as
a person that had gross receipts for the preceding taxable year that
did not exceed \$1 million or had no more than 30 full-time employ-
ees during the preceding taxable year.

Second, the amount of the credit for any taxable year is equal to
50 percent of the eligible access expenditures for the taxable year
that exceed \$250 but do not exceed \$10,250. Eligible access expendi-
tures are defined as amounts paid or incurred by an eligible small
business for the purpose of enabling such eligible small business to
comply with applicable requirements of the Americans With Dis-
abilities Act of 1990 (as in effect on the date of enactment of the
credit).

Eligible access expenditures generally include amounts paid or
incurred (1) for the purpose of removing architectural, communica-
tion, physical, or transportation barriers which prevent a business
from being accessible to, or usable by, individuals with disabilities;
(2) to provide qualified interpreters or other effective methods of
making aurally delivered materials available to individuals with
hearing impairments; (3) to provide qualified readers, taped texts,
and other effective methods of making visually delivered materials
available to individuals with visual impairments; (4) to acquire or

Example 7.— Father and Child each own general and limited interests in a partnership. The general partnership interest carries with it the right to liquidate the partnership; the limited partnership interest has no such right. The liquidation right associated with the general partnership interest lapses after ten years. Under the conference agreement, there is a gift at the time of the lapse equal to the excess of (1) the value of Father's partnership interests determined as if he held the right to liquidate over (2) the value of such interests determined as if he did not hold such right.

Restrictions

Under the conference agreement, any restriction that effectively limits the ability of a corporation or partnership to liquidate is ignored in valuing a transfer among family members if (1) the transferor and family members control the corporation or partnership, and (2) the restriction either lapses after the transfer or can be removed by the transferor or members of his family, either alone or collectively.

Example 8.—Mother and Son are partners in a two-person partnership. The partnership agreement provides that the partnership cannot be terminated. Mother dies and leaves her partnership interest to Daughter. As the sole partners, Daughter and Son acting together could remove the restriction on partnership termination. Under the conference agreement, the value of Mother's partnership interest in her estate is determined without regard to the restriction. Such value would be adjusted to reflect any appropriate fragmentation discount.

This rule does not apply to a commercially reasonable restriction which arises as part of a financing with an unrelated party or a restriction required under State or Federal law. The provision also grants to the Treasury Secretary regulatory authority to disregard other restrictions which reduce the value of the transferred interest for transfer tax purposes but which do not ultimately reduce the value of the interest to the transferee.

- b. Treatment of certain expenditures incurred to make businesses accessible to disabled individuals

Present Law

Under present law, a taxpayer may elect to deduct up to \$35,000 of certain architectural and transportation barrier removal expenses for the taxable year in which paid or incurred rather than capitalizing such expenses.

House Bill

No provision.

Senate Amendment

Disabled access credit

Under the Senate amendment, an eligible small business that elects the application of the provision is allowed a nonrefundable income tax credit equal to 50 percent of the amount of the eligible

public accommodation that exceeds \$500.

An eligible person that public accommodation, and the able year the full-time employee.

Eligible person as amounts pose of removal barriers which taxpayer from a disability, individual with accommodation.

The disability incurred after

Reduction of barrier

The Senate and transportation for any tax

The reduced transportation beginning at

The conference following

First, an eligible person that did not exceed \$500 during the

Second, the 50 percent of that exceeds \$500 are deductible business for comply with abilities Act credit).

Eligible person incurred (1) action, physical from being a (2) to provide making arrangements hearing impairment and other efforts available to

October 26, 1990

TO: Senator Dole
FROM: Maureen West
SUBJECT: Assistance for Disability-Related Expenditures

The recently enacted Americans with Disabilities Act (ADA) will require businesses and other public facilities to make "reasonable accommodations" for persons with disabilities. In some cases this could mean that a business will be required to make expenditures to adapt a job or service to a person with a disability.

A number of legislative initiatives designed to ease the financial burden placed on businesses by ADA were introduced this session. Outlined below are four programs you sponsored that provide financial and/or technical assistance to businesses for disability-related expenditures: EEOC technical assistance, targeted jobs tax credit (TJTC), Pryor-Kohl disability access tax credit, and Section 190 deductions.

Technical Assistance

You authored a technical assistance amendment to ADA that would assist with its implementation. This amendment directs the Equal Employment Opportunity Commission (EEOC) to clarify and answer questions regarding the rights of persons with disabilities and the obligations of businesses under ADA. This technical assistance amendment was also included in the Commerce, Justice, State, and Judiciary Appropriations Bill. The conference agreement includes \$1 million for the implementation of a technical assistance program as authorized by section 506 of ADA.

Targeted Jobs Tax Credit

The targeted jobs tax credit, which aims to increase the employability of disadvantaged youth and persons with disabilities, has been extended for another 15 months. Many businesses in Kansas have successfully utilized this program to employ people with disabilities. The extension will further ease the burden faced by businesses in accommodating persons with disabilities as required by ADA.

Pryor-Kohl Disability Access Tax Credit

The tax credit is designed to assist the small business community with the cost of ADA compliance. The credit applies to any ADA-related expenditures for the accommodation of persons with disabilities. ADA-related expenditures include the following: removal of architectural, transportation, physical, or

communications barriers; procurement or modification of equipment and/or services; translation of materials for the visually or hearing impaired; personal assistant services; technical support and training for business and employee compliance; auxiliary aids and services. The variety of eligible disability related expenditures will enable businesses to more easily accommodate persons with disabilities.

Small businesses are responsible for the first \$250 of expense to accommodate the disabled. Costs above \$250 are eligible for a 50% non-refundable credit, up to \$10,250. Any ADA-disability related expenditure above \$10,250 is eligible for a more restricted deduction of \$15,000. If the entire access tax credit is not used in one year, it can be accumulated and carried forward to subsequent years or carried back to previous tax years.

Only small businesses are eligible to receive tax credit. A small business is defined as any business with less than \$1 million gross receipts or fewer than 30 full time employees qualify for the credit. Eligibility for the tax credit is narrowly defined for several reasons. Small businesses will be called on most often to accommodate and employee persons with disabilities. Small business have limited resources and, therefore, require the most technical and financial assistance to comply with ADA. In addition, all other businesses qualify for the \$15,000 deduction.

The access tax credit is revenue neutral. The cost of this new credit, however, is offset by lowering the deduction in Section 190 of the Internal Revenue Code to \$15,000.

Section 190

Section 190 of the Internal Revenue Code, which you authored, provides a \$35,000 deduction for disability related expenditures. A disability related expenditure is defined as the removal of architectural and transportation barriers to the disabled and elderly. Given a number of assumptions related to company size and income, large businesses have tended to benefit more from the Section 190 deduction.

The Pryor-Kohl Disability Access Tax Credit (as described above) lowers the deduction to \$15,000. Justification for this change to the Section 190 deduction is based upon two arguments. First, Section 190 does not focus assistance effectively to small businesses. Small businesses, however, will bare the burden of ADA and will most need help. And second, Section 190 deductions for disability related expenditures apply to only a limited class of expenditures.

Consequently, Section 190 provides a \$15,000 deduction for disability related expenditures.



TELECOPIER TRANSMITTAL

DATE: 02-03-93

TO: Nina 4-3163

FROM: MO

Office of Senator Bob Dole
141 Hart Senate Office Building
Washington, D.C. 20510

(202) 224-6521

NUMBER OF PAGES TO FOLLOW: 9

SUBJ: _____

MOSS, McGEE, BRADLEY, KELLY & FOLEY

810 FIRST STREET, N.E.
SUITE 530
WASHINGTON, DC 20002

TEL. (202) 842-4721
TELEFAX (202) 842-0551

HON. FRANK E. MOSS
HON. GALE W. MCGEE
DAVID A. BRADLEY
JOHN P. KELLY, JR.
LEANDER J. FOLEY, III

TELEFAX

TO: Maureen West

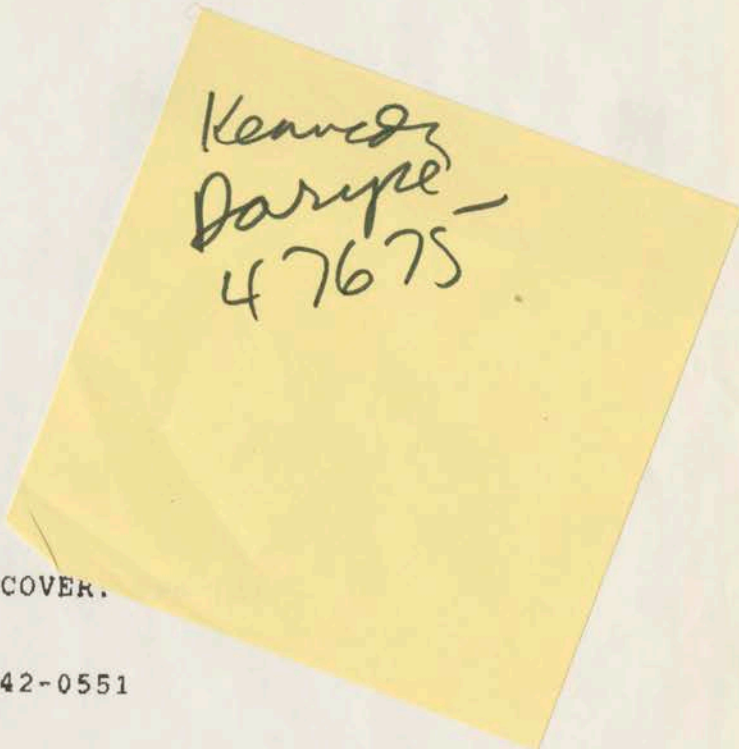
FROM: Lee Foley

DATE: 9/29/92

OF PAGES INCLUDING COVER.

RETURN TELEFAX: 202-842-0551

REMARKS: Mo: Here's my suggestion. I have it on disc if you need any quick changes. thanks!!!



Business Related Credits

The Americans with Disabilities Act amended section 44 of subpart D of part IV of subchapter A of chapter 1 (regarding business related credits) of the Internal Revenue Code to authorize business credits for employer services provided to employees with disabilities. The conferees are aware that there is confusion among some employers with respect to the types of services provided to employees with disabilities that are eligible for credits and with respect to the eligibility of businesses for credits for services provided to employees with disabilities other than physical disabilities. The conferees are agreed that Congress intended that such services include reasonable accommodations provided by employers and that employers who provide such job related services to employees with disabilities (as defined by the Americans with Disabilities Act), including individuals with specific learning disabilities, be eligible for such business credits.