Small Bus/Self-Employed

Know the Rules Regarding Tax Incentives for Improving Accessibility for the Disabled

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The Internal Revenue Service is seeking to make businesses aware of tax incentives available for certain costs associated with improving accessibility for the disabled. Title I of the Americans with Disabilities Act of 1990 (ADA) prohibits private employers with 15 or more employees from discriminating against a qualified individual with a disability. To implement this prohibition, the ADA requires that employers provide reasonable accommodations to the known physical or mental limitations of a qualified individual with a disability, unless to do so would impose an undue hardship on the operation of an employer's business.

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 adaptations, equipment acquisitions, and services such as sign language interpreters. The second is a tax *deduction* that can be used for architectural and transportation adaptations.

Internal Revenue Code Section 44 creates a disabled access credit to help small businesses cover ADA-related eligible access expenditures. A business that for the previous tax year had either revenues of $1,000,000 or less or 30 or fewer full-time workers may take advantage of this credit. The amount of the tax credit is equal to 50% of the eligible access expenditures in a year that exceed $250 but are not more than $10,250. Thus, the maximum allowable credit is $5,000. The credit can be used to cover a variety of expenditures including barrier removal, providing interpreters, or providing or modifying equipment. However, the expenses must be associated with required adaptations to existing facilities. The credit is not available for costs of new construction. For additional information on required expenditures of the ADA see www.ada.gov.

The tax deduction, established under Section 190 of the Internal Revenue Code allows a business of any size to expense up to a maximum of $15,000 per year of items that normally must be capitalized (depreciated). This deduction may be used for expenses associated with the removal of architectural or transportation barriers in association with a trade or business that complies with applicable accessibility standards. Additional information relating to qualified architectural and transportation barrier removal can be found in Internal Revenue Code Regulation 1.190-2 (PDF).

These two incentives can be used in combination if the expenditures qualify under both Sections 44 and 190. In such a case the deduction is equal to the difference between the total expenditures and the amount of the credit claimed. Both the tax credit and the deduction can be used annually. However, you may not carry over expenses from one year to the next and claim a credit or deduction for a previous year's expense.

When considering these tax incentives you should beware of unscrupulous promoters that wish to entice individuals and businesses to invest in schemes alleging false tax advantages surrounding these incentives. The disabled access credit has recently been used to sell investments in ATM machines, Internet availability, audio yellow pages, and pay phones. The marketers violate the intent of the credit by selling these items to investors not operating a business, selling the equipment at prices far in excess of its value and using non-recourse financing. Even if the equipment is purchased with cash or recourse loans, the promoter generally includes a repurchase clause that allows the buyer to return the equipment at a guaranteed price - usually the acquisition price.

The promoters entice participation in these schemes by alleging tax advantages such as:

Investment qualifies for the maximum disabled access credit.

- Investment qualifies for IRC §179, Election to Expense Certain Depreciable Property.
- Some promoters recommend taxpayers use Roth IRAs to make the investment. After they claim their credit and IRC §179 depreciation, any income generated will be non-taxable since it will be considered proceeds from a Roth IRA.
- Some of the sales persons guarantee a refund of the entire investment after a specified period but recapture is not addressed.

The IRS is actively examining these schemes and will disallow the credit to taxpayers not operating a business or not qualifying as an eligible small business. The IRS will also disallow the credit if the purchase is not for a qualifying expenditure.

For more information about properly claiming this and other tax credits, refer to Publication 334, Tax Guide For Small Business , and Form 8826, Disabled Access Credit . For further information about abusive tax avoidance transactions, visit the Criminal Investigation web site or the IRS web site. If you have specific questions on a tax scheme or wish to report a possible scheme, call 1-866-775-7474 or send an e-mail to: irs.tax.shelter.hotline@irs.gov