

ADA AUDIO

Conference

ADA NATIONAL NETWORK

ADA Audio Conference Series October 16, 2012

This session is scheduled to begin at
2:00pm Eastern Time

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Access Means Business: Tax Incentives Supporting the ADA

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Overview

- Disability Stats/Trends & Why It Matters to Business
- Disability and the Marketplace - the Impact \$\$
- Tax Incentives

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Disability and the Marketplace:



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Statistics and Trends:

Know the Business Case for Inclusion and Diversity
which includes
Persons with Disabilities



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Statistics and Trends:

- 20% of Americans have a disability.
- **Disability does not discriminate!**
- The largest percentage (70%) of disabilities are those that are hidden.
- In New Mexico, 1 in 5 working age adults (18-64) has a disability.



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Statistics and Trends:

- Disability is the largest minority group with more than 58 million members who, many times, are an untapped consumer market.
- An untapped consumer market with over \$200 billion per year in disposable income (twice the teen market)
If families of people with disabilities are included then this number is 1 trillion dollars. (National Organization on Disability)
- Approximately 71.5 million baby boomers will be over age 65 by the year 2030 and will be demanding products, services, and environments that meet their age-related physical and mental needs.

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Tax Incentives and the ADA



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GAO - Employer Usage Study - 2002

- GAO Report – “Business Tax Incentives: Incentives to Employ Workers with Disabilities Receive Limited Use and Have an Uncertain Impact”
- The study found that in 1999 – 1 in 686 corporations and 1 in 1,570 individuals with a business affiliation used the credit.
- Providers of healthcare and social assistance services accounted for approximately \$31 million of the total credits of \$59 million.
- One of the primary conclusions was that businesses were often unaware of these incentives.

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Federal Tax Incentives: Overview

Provisions Assisting with Physical Access:

- Section 44 – “Expenditures to provide access to disabled individuals” (Access Credit)
 - Non-refundable Tax Credit
 - Part of the General Business Credit
- Section 190 – “Expenditures to remove architectural and transportation barriers to the handicapped and elderly” (Access Deduction)
 - Tax Deduction

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Federal Tax Incentives: Access Credit

Congress expanded Federal tax incentives to ease compliance with the ADA:

“The committee is concerned that the requirements contained in the Americans With Disabilities Act of 1990 may impose a severe financial burden on certain small businesses. Consequently, the committee believes that it is appropriate to provide these small businesses with a nonrefundable income tax credit for a portion of the expenditures that are incurred in complying with the requirements of the Americans With Disabilities Act of 1990.”

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Federal Tax Incentives: Access Credit



- 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 “eligible access expenditures”
 - Credit = $(\$10,250 - \$250) * .50 = \$5,000$

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Federal Tax Incentives: Access 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.



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Federal Tax Incentives: Access Credit

- “Eligible access expenditures” means amounts paid or incurred for the purpose of enabling the business to comply with applicable requirements under the Americans With Disabilities Act of 1990.
- Expenditures in an area where the business is already in compliance with the ADA do not qualify for the credit.



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Federal Tax Incentives: Access Credit

Eligible Access Expenditures:

(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,



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Federal Tax Incentives: Access Credit

Eligible Access Expenditures:

- (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.



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Access Credit: Capital Expenditure Example

Ex. Joe's flower shop incurs \$20,000 in building 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 ($(\$10,250 - \$250) \cdot .5$). In addition, the business can deduct \$10,000 as an access deduction ($\$15,000 - \$5,000$). The remaining amount can be capitalized and depreciated.

Potential Tax Benefit (assuming 30% tax rate):

Credit	\$5,000
Deduction	3,000
Depreciation	300



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Access Credit: Current Expense Example

Ex. Tom's Car Lot pays \$1,250 to hire a sign language interpreter to assist in finalizing sales with customers with a hearing impairment. This amount qualifies as an "eligible access expenditure". The business is allowed a credit of \$500 for this expense $((\$1,250 - \$250) \cdot .5)$. In addition, the business can deduct \$750 as a current period business expense.



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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.

Ex. Joe's Flower Shop has a General Business Credit of \$13,000 (\$6,000 Access Credit and \$7,000 Work Opportunity 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 $(\$30,000 - 1,250 ((\$30,000 - \$25,000)) \cdot .25)$.

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Access Credit Expenditures must be for Compliance with the ADA

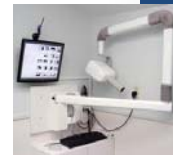
The IRS has taken a fairly restrictive view of “to acquire or modify equipment or devices for individuals with disabilities”.

- The reason for this restrictive view is the requirement 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.
- IRS outlines its approach at 2004 in Chief Council Advice Memorandum 200411042

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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.
- A feature of the equipment was that it 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.
- He was already using hand-written notes, as needed, with his patients.
- The IRS disallowed the credit stating the dentist was already in compliance the ADA via the hand-written notes.



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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 provides 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.



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Access Credit Expenditures must be for Compliance with the ADA

The IRS in Chief Council Advice Memorandum 200411042 took the position that Website expenditures do not qualify for purposes of the ADA.

- Service held that the language of the ADA referred to a physical environment
- Therefore, web-based expenditures were not eligible for either the Access Credit.
- In this analysis the IRS reiterated that the DOJ promulgates the regulations interpreting the Act.

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Department of Justice Regulations Regarding Website Accessibility

DOJ broadened its interpretation of the ADA to websites:

“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. “



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Department of Justice Regulations Regarding Website Accessibility

- Based on the Department of Justice’s regulations and the IRS’s deference to these rules, there is a strong argument that costs incurred to enable website accessibility qualify for the credit.
- Section 508 Federal Standards
- Job Accomodation Network (JAN) provides tips on designing an accessible website :
 - <http://askjan.org/media/webpages.html>

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Federal Tax Incentives: Access Deduction

- This provision is an exception to the general rule of capitalization and depreciation.
- Applies to businesses of all sizes
- It is limited to \$15,000
 - The amount was reduced in 1990 to offset enactment of the Section 44 Credit

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Federal Tax Incentives: Access Deduction

- “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.”

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Federal Tax Incentives: Access 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 trade or business more accessible to, and usable by, handicapped and elderly individuals.”

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Federal Tax Incentives: Access Deduction

“Qualified architectural and transportation barrier removal expense”:

- Removal expense with respect to which the taxpayer establishes that the resulting removal of any such barrier meets the standards ...of the Architectural and Transportation Barriers Compliance Board...

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Federal Tax Incentives: Access Deduction

- **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.



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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 when it is “readily achievable” to do so; in other words, when barrier removal is “easily accomplishable and able to be carried out without much difficulty or expense.”

Department of Justice’s ADA Title III regulations [28 CFR Part 36.304](#).



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Architectural Barrier Removal Requirements & Availability of Tax Incentives

- **Readily Achievable** Barrier Removal

Tax Incentive Implications – Once the barrier removal becomes readily achievable it is required under the ADA.

- “Qualifying Expense” for the Section 44 Credit
- “Qualifying Expense” for the Section 190 Deduction



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Architectural Barrier Removal Requirements & Availability of Tax Incentives

- **1991 ADA Standards for Accessible Design (1991 Standards)**

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.

Tax Incentive Implications –

- **NOT** a “Qualifying Expense” for the Section 44 Credit
- “Qualifying Expense” for the Section 190 Deduction



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Architectural Barrier Removal Requirements & Availability of Tax Incentives

2010 ADA Standards

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

Tax Incentive Implications –

- **New Construction NOT** a “Qualifying Expense” for the Section 44 Credit
- **Alteration (likely)** a “Qualifying Expense” for the Section 44 Credit
- “Qualifying Expense” for the Section 190 Deduction



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Federal Tax Incentives: Examples of Potential “Alterations”

- Accessible Parking Spaces
- Parking Access Aisles
- Counters
- Self-Service Drink Dispensers
- Accessible Tables



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Architectural Barrier Removal Requirements & Availability of Tax Incentives

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 must remove architectural barriers to these items when it is readily achievable to do so.

Tax Incentive Implications –

- “Qualifying Expense” for the Section 44 Credit
- “Qualifying Expense” for the Section 190 Deduction



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Architectural Barrier Removal Requirements & Availability of Tax Incentives

New Elements in the 2010 ADA Standards

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.

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



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Questions?

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Thank you for participating in today's
ADA-Audio Conference Session

The next scheduled session is:
"ADA Case Law Update"
November 13, 2012*

Register at: www.ada-audio.org or call 877-232-1990 V/TTY

*Note: Date moved up due to holiday

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