



TELECOPIER TRANSMITTAL

DATE: 02-03-93

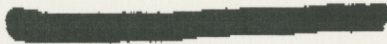
TO: Nina

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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

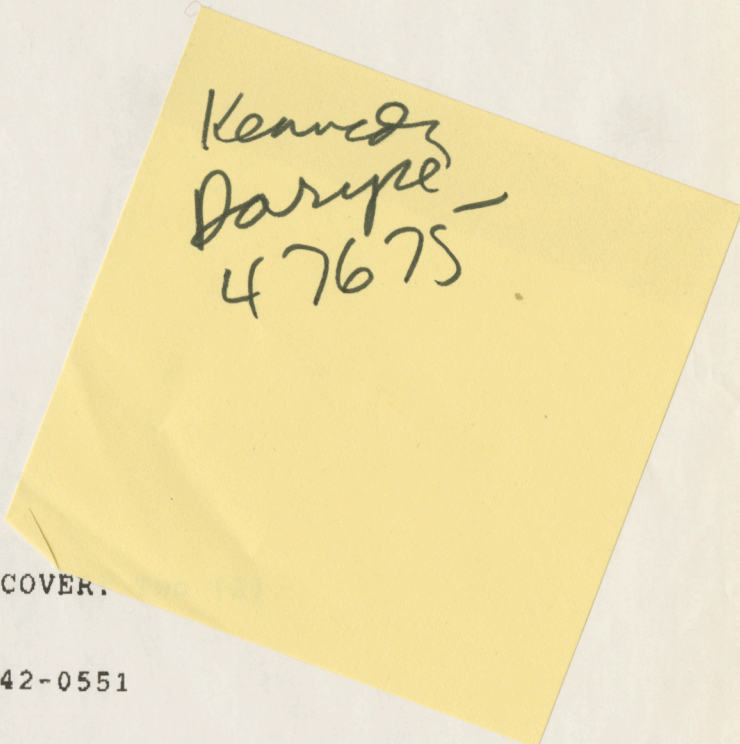
SUBJ: _____

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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.

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 employ persons with disabilities. Small businesses 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 bear 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.

Explanation

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.

[[151] 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

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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

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ent, any restriction that effectively on or partnership to liquidate is ignoring family members if (1) the transferor controls the corporation or partnership, or (2) the transferor or can be re-elected after the transfer or can be re-elected by members of his family, either alone or

are partners in a two-person partnership; the partner provides that the partnership interest is to be divided equally between the partners, Daughter and Son acting in partnership on partnership termination. If the value of Mother's partnership interest is determined without regard to the reduction, the value is adjusted to reflect any appropriate

commercially reasonable restriction on the value of the interest transferred to an individual with an unrelated party or a transferee. The provision also has regulatory authority to disregard the value of the transferred interest which do not ultimately reduce the value of the interest transferred to a transferee.

expenses incurred to make businesses accessible to individuals with disabilities.

Statute Law

may elect to deduct up to \$35,000 of transportation barrier removal expenses which paid or incurred rather than

Bill

Amendment

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

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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 disabilities, and that either (1) had gross receipts for the preceding taxable 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 purpose 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 individual 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 incurred 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 employees 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 expenditures 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 Disabilities 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, communication, 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 orally 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

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.

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