JAN

Job Accommodation Network

Practical Solutions • Workplace Success

Effective Accommodation Practices (EAP) Series

Tax Incentives

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ODEP
Office of Disability Employment Policy

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Tax Incentives

The Job Accommodation Network (JAN) is an international, toll-free, consulting service that provides information regarding job accommodations. This publication summarizes tax incentives related to accessibility and the employment of people with disabilities. If you need further assistance, please contact an accountant or tax attorney. You can also http://AskJAN.org.

For information on specific agencies and organizations, please look in your local area phone directory, specifically in the Blue Pages, for government contacts and the Yellow Pages for other organizations.

The Disabled Access Credit

P.L. 101-508, The Omnibus Budget Reconciliation Act of 1990, (OBRA '90), contains a tax incentive to encourage small businesses to comply with the Americans with Disabilities Act (ADA). The Disabled Tax Credit (DAC) is found in Section 11611 of OBRA '90, which establishes Section 44 of the Internal Revenue Code of 1986. DAC is available to an "eligible small business" and is equal to 50% of the "eligible access expenditures" that do exceed $250, but do not exceed $10,250, for a maximum credit of $5,000 a year. DAC became effective on the date of enactment of the law, November 5, 1990, and applies to expenditures paid or incurred after that date. It is included as part of the General Business Credit and is subject to the rules of current law that limit the amount of General Business Credit that can be used for any taxable year. DAC can be carried forward up to 15 years and back for three years, but not back to a taxable year prior to the date of enactment.

An "eligible small business" is "any person" whose gross receipts did not exceed $1,000,000 for the preceding taxable year, or who employed not more that 30 full-time employees during the preceding year. A full-time employee is defined as one who is employed at least 30 hours per week for 20 or more calendar weeks in the taxable year. In general, all members of a controlled group of corporations are treated as one person for purposes of credit eligibility, and the dollar limitation among the members of any group will be apportioned by regulation. In the case of a partnership, the expenditure limitation requirements will apply to the partnership and to each partner. Similar rules will apply to S corporations (see Internal Revenue Code sections 1361 through 1379, Subchapter S of Chapter 1) and their shareholders. "Eligible access expenditures" are defined as "amounts paid or incurred by an eligible small business for the purpose of enabling small businesses to comply with applicable requirements" of ADA.

Included are expenditures for:

1. Removing architectural, communication, physical or transportation barriers that prevent a business from being accessible to, or usable by, individuals with disabilities;

2. Providing qualified interpreters or other effective methods of making aurally delivered materials available to individuals with hearing impairments;
3. Providing qualified readers, taped texts, and other effective methods of making visually delivered materials available to individuals with visual impairments;
4. Acquiring or modifying equipment or devices for individuals with disabilities; and
5. Providing other similar services, modifications, materials, or equipment.

All expenditures must be "reasonable" and must meet the standards promulgated by the Internal Revenue Service (IRS) with the concurrence of the Architectural and Transportation Barriers Compliance Board. Expenses incurred for new construction are not eligible. For the purposes of DAC, disability is defined exactly as in the ADA.

An eligible small business under Section 44 may deduct the difference between the disabled access credit claimed and the disabled access expenditures incurred, up to $15,000, under Section 190 provided such expenditures are eligible for the Section 190 deduction.

For additional information on the Disabled Access Credit, contact a local IRS office: http://www.irs.gov/businesses or call (800)829-4933 (V) (800)829-4059 (TTY).

Architectural and Transportation Barrier Removal Deduction

In 1986, Congress amended Section 190 of the Tax Reform Act to extend permanently the annual tax deduction for the removal of architectural and transportation barriers. P.L. 101-508, the Omnibus Budget Reconciliation Act of 1990, amended Section 190 and set the deduction to $15,000, effective for tax years after 1990. Under Section 190, businesses may choose to deduct up to $15,000 for making a facility or public transportation vehicle, owned or leased for use in the business, more accessible to and usable by individuals with disabilities. A facility is all or any part of a building, structure, equipment, road, walk, parking lot, or similar property. A public transportation vehicle is a vehicle such as a bus or railroad car that provides transportation service to the public or to customers. The deduction may not be used for expenses incurred for new construction, for a complete renovation of a facility or public transportation vehicle, or for the normal replacement of depreciable property. In the case of a partnership, the $15,000 limit applies to the partnership and to each partner. Amounts in excess of the $15,000 maximum annual deduction can be added to the basis of the property subject to depreciation. In order for expenses to be deductible, accessibility standards established under the Section 190 regulations must be met.

For additional information on Section 190, contact a local IRS office: http://www.irs.gov/businesses or call (800)829-4933 (V) (800)829-4059 (TTY).

Vocational Rehabilitation (VR) Program

The VR Program has a 73-year history of assisting people with disabilities to prepare for and enter the competitive work force. VR is a federal-state program. The Rehabilitation Act of 1973, as amended, authorizes annual funding to state VR agencies so they can achieve the goals of the program.

An on-the-job training program can be set up by VR with an employer for an individual client of VR. VR can share in the payment of the wages for the employee for a limited time on a negotiated schedule. The position must be permanent full time and pay above minimum wage.

VR services vary from state to state, but in general VR can act as a recruiter and consultant for employers, conduct job analyses and provide rehabilitation engineering services for architectural barrier removal and worksite modifications, and conduct awareness training for a company's management and supervisory personnel. For more information, contact your local state vocational rehabilitation agency.

Work Opportunity Tax Credit Program

On May 25, 2007, the President signed into law the Small Business and Work Opportunity Tax Act of 2007 (P.L. 110-28), which authorized the Work Opportunity Tax Credit (WOTC) program. WOTC has now been reauthorized into 2012. The WOTC program is a federal tax credit that encourages employers to hire nine targeted groups of job seekers. It reduces employers' federal income tax liability as much as $2,400 for each new adult hire; $1,200 for each new summer youth hire; $4,800 for each new disabled veteran hire; and $9,000 for each new long-term Temporary Assistance for Needy Families (TANF) recipient hired over a two-year period. The changes created by P.L. 109-432 apply retroactively to individuals who began to work for an employer after December 31, 2005. The changes created by P.L. 110-28 apply retroactively to individuals who began work for an employer after May 25, 2007 and before September 1, 2011. A specific update for veterans includes an expansion of the category of "certain disabled veterans." Furthermore, unemployed veterans who meet certain criteria are also part of the targeted groups of the WOTC program (15 SEC. 1221). This applies to veterans hired after December 31, 2008. For additional information, see http://www.doleta.gov/business/incentives/opptax/, http://www.irs.gov/formspubs/article/0,,id=177948,00.html, and the following section in this document on the Vow to Hire Heroes Act of 2011.

Individuals with disabilities can contact their local state-federal VR office to receive a voucher. This is presented to the employer who completes a small portion and then mails it to the nearest local Employment Service Office. That agency will send back to the employer a certificate that validates the tax credit and which the employer uses when filing federal tax forms. Statements from rehabilitation services are allowable, as is mail in documentation.

Vow to Hire Heroes Act of 2011

On November 21, 2011, the WOTC was modified to expand the definition of the veterans' target group covered. To qualify, the eligible unemployed veteran must begin work on or after November 22, 2011, and before January 1, 2013. To qualify, a veteran must be in ***one*** of the following categories:

- Have a member of the family receiving Supplemental Nutrition Assistance Program (SNAP) (food stamps) assistance for at least a 3-month period during the 15-month period ending on the hiring date.
- Have been unemployed for a total of at least 4 weeks (does not need to be consecutive), but less than 6 months in the 1-year period ending on the hiring date.
- Be entitled to compensation for a service-connected disability and hired not more than 1 year after being discharged or released from active duty in the U.S. Armed Forces.
- Be entitled to compensation for a service-connected disability and unemployed for a total of at least 6 months (does not need to be consecutive) in the 1-year period ending on the hiring date.

For more information, see http://www.doleta.gov/business/Incentives/opptax/

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