Internal Revenue Service

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Washington, DC 20224

Person To Contact:

, ID No.

Telephone Number:

In Re: Refer Reply To:

CC:PSI:B07 - GENIN-104027-04

Date:

February 25, 2004

Dear :

This letter responds to your letter dated December 17, 2003, in which you requested information about the disabled access credit under section 44 of the Internal Revenue Code (Code) and the architectural and transportation barrier removal deduction under section 190 of the Code. The following general information is provided to you pursuant to section 2.04 of Rev. Proc. 2004-4, 2004-1 I.R.B. 1, 7. This information is advisory only and has no binding effect on the Internal Revenue Service.

Disabled Access Credit

In 1990, Congress passed the Americans with Disabilities Act (ADA). 42 U.S.C. § 12101. The ADA is a remedial statute designed to eliminate discrimination against the disabled at places of public accommodation, such as restaurants, hotels, and offices of accountants or lawyers. The ADA provides that A[n]o individual shall be discriminated against on the basis of disability in the full and equal enjoyment of the goods, services, facilities, privileges, advantages, or accommodations of any place of public accommodation by a person who owns, leases (or leases to), or operates a place of public accommodation. Discrimination by the owner of a place of public accommodation includes Aa failure to remove architectural barriers, and communication barriers that are structural in nature, in existing facilities, and transportation barriers in existing vehicles ... where such removal is readily achievable. 42 U.S.C. 12182.

In passing the ADA, Congress was concerned that the ADA=s requirements would impose a severe financial burden on small businesses. The disabled access credit under section 44 was enacted to help ease the cost to certain small businesses of complying with the ADA.

Section 44(a) of the Code provides that an eligible small business may claim a credit equal to 50 percent of the eligible access expenditures for the taxable year that exceed \$250 but do not exceed \$10,250. Therefore, the maximum credit allowed to an eligible small business for a taxable year is \$5,000. Section 44(b) defines Aeligible small business® as any person if either (A) the gross receipts of such person for the preceding taxable year did not exceed \$1,000,000, or (B) such person employed not more than 30 full-time employees during the preceding taxable year. Section 44(c) generally defines Aeligible access expenditures® as amounts paid or incurred by an eligible small business for the purpose of enabling such eligible small business to comply with the applicable requirements under the ADA. We have enclosed a copy of section 44 for your information.

Architectural and Transportation Barrier Removal Deduction

Section 190(a)(1) provides that a taxpayer may elect to treat qualified architectural and transportation barrier removal expenses that are paid or incurred during the taxable year as expenses which are not chargeable to capital account. The expenditures so treated shall be allowed as a deduction. The maximum deduction allowed to a taxpayer for any taxable year is \$15,000. Section 190(c). Section 190(b) defines the term Aarchitectural and transportation barrier removal expenses® as 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. Section 1.190-2(b) of the Income Tax Regulations provides a detailed definition of Aqualified architectural and transportation barrier removal expense.® No deduction under section 190 is allowed for the amount of the disabled access credit determined under section 44. Section 44(d)(7). We have enclosed a copy of section 190 and its underlying regulations for your information.

We hope that this information is helpful to you. If you have any additional questions, you may contact me

Sincerely,

Is/
Leslie H. Finlow
Chief, Branch 7
Associate Chief Counsel
(Passthroughs and Special Industries)