

INTERNAL REVENUE SERVICE
NATIONAL OFFICE TECHNICAL ADVICE MEMORANDUM
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District Director

Taxpayer's Name:
Taxpayer's ID Number:
Taxpayer's Address:

Tax Years Involved:
Date of Conference:

LEGEND:

Taxpayer =
\$a =
\$b =
\$c =
\$d =

ISSUE:

Are amounts expended by Taxpayer to acquire certain equipment for use in his optometry practice eligible access expenditures for purposes of section 44 of the Internal Revenue Code?

CONCLUSION:

The amounts expended by Taxpayer to acquire certain equipment for use in his optometry practice do not qualify as eligible access expenditures for purposes of section 44 of the Code because the equipment was acquired in the normal course of Taxpayer's business rather than to comply with applicable requirements of the Americans With Disabilities Act of 1990.

FACTS:

Taxpayer is an optometrist who examines eyes and prescribes lenses for his patients. Taxpayer conducts his business in two separate office locations.

In 1996 Taxpayer purchased a Humphrey Field Analyzer (HFA) for \$a. The HFA sits on a variable height table and is used to plot the visual field of the patient. Because it sits on a variable height table the HFA can be used to examine patients in wheelchairs. In addition, many tests available with the HFA could not be performed with the equipment previously used by Taxpayer. Information provided to Taxpayer by the selling company indicated that the HFA may be eligible for the disabled access credit provided by section 44 of the Code. Taxpayer claimed a disabled access credit of \$b with respect to the HFA on his 1996 federal income tax return.

In 1997 Taxpayer purchased an EyeSys Vista (EV) hand-held topographer for \$c. The EV is used to make a map of the eye and to screen for irregularities of the eye. It provides information about the cornea not obtainable by any other method. Because the EV is hand-held and controlled by the tester, it can be used to treat any patient. The selling company's brochure for the EV indicates that it is wheelchair accessible. Taxpayer claimed a disabled access credit of \$d with respect to the EV on his 1997 federal income tax return.

LAW AND ANALYSIS

Section 44(a) of the Code provides a disabled access credit (credit) equal to 50 percent of the eligible access expenditures incurred by an eligible small business for any taxable year that exceed \$250 but do not exceed \$10,250. An eligible small business' maximum credit for a taxable year is \$5,000.

Section 44(b) of the Code provides that a business is an eligible small business if, for the preceding taxable year, either its gross receipts did not exceed \$1,000,000 or the number of its full time employees did not exceed 30.

Section 44(c)(1) of the Code provides that eligible access expenditures are expenditures made by an eligible small business in order to enable the business to comply with the applicable requirements of the Americans With Disabilities Act of 1990, Public Law 101-336 (ADA). Section 44(c)(2)(D) provides that eligible access expenditures include amounts paid or incurred to acquire or modify equipment or devices for individuals with disabilities.

The ADA is a national mandate to eliminate discrimination against individuals with disabilities. Section 302 of the ADA provides that no individual may be discriminated against on the basis of disability in the full and equal enjoyment of the goods, services, and facilities of any place of public accommodation by any person who owns or operates a place of public accommodation.

In addition to removing architectural barriers, places of public accommodation must make reasonable modifications to their practices or procedures to accommodate disabled individuals. Under section 301(7)(F) of the ADA the term "public accommodation" includes the professional offices of health care providers.

In the present case Taxpayer's optometry practice is an eligible small business within the meaning of section 44(b) of the Code. The only issue presented for our consideration is whether the amounts expended by Taxpayer to acquire the HFV and the EV qualify as eligible access expenditures under section 44(c).

Section 44 of the Code was enacted to help ease the cost to small businesses of ADA compliance. The legislative history of section 44 shows Congress was concerned that the requirements of the ADA could impose a severe financial burden on certain small businesses. Because of this burden, Congress provided these small businesses with a tax credit for a portion of the costs incurred in complying with the requirements of the ADA. See 136 Cong. Rec. 30541 (1990) (Senate Finance Committee Report). Section 44(c)(1), by limiting eligible access expenditures to expenditures incurred by a business that enable the business to comply with the applicable requirements of the ADA, reflects the Congressional purpose to associate the credit with ADA compliance costs. Accordingly, under the Code, not every expenditure that benefits the disabled is an eligible access expenditure; only expenditures made to comply with ADA requirements are eligible access expenditures.

In the present case it has not been shown that the equipment at issue was designed to address particular concerns of the disabled. This equipment has a general applicability and usefulness to all patients, disabled or non-disabled. The primary benefit of the equipment is to Taxpayer in his practice, although there may be incidental benefits to disabled patients. The equipment is the type that would have been acquired in an optometry practice's normal course of business. Generally, expenditures for equipment of this nature are not made for ADA compliance and, accordingly, do not qualify as eligible access expenditures within the meaning of section 44(c)(1) of the Code.

Taxpayer has noted that a business' architectural modifications can be used by all business customers in the same way as a doctor's medical equipment can be used by all patients, and that the credit is available for the general-use architectural modifications. However, this comparison is not pertinent because, while the ADA requires that architectural modifications providing access to disabled individuals must be

made to places of public accommodation where such access does not already exist, it has not been shown that the ADA requires the acquisition of the specific medical equipment at issue in this case. The ADA requires doctors to make their professional services available to disabled individuals through reasonable modifications to existing practices or procedures if necessary to avoid discrimination. Acquisitions of equipment of general applicability are generally acquisitions of equipment in the normal course of business rather than reasonable modifications of existing practices for ADA compliance.

CAVEAT:

A copy of this technical advice memorandum is to be given to Taxpayer. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent. Temporary or final regulations pertaining to one or more of the issues addressed in this technical advice memorandum have not yet been adopted. Therefore, this memorandum will be modified or revoked by the adoption of temporary or final regulations to the extent the regulations are inconsistent with any conclusion in the memorandum. See section 17.04 of Rev. Proc. 2000-2, 2000-1 I.R.B. 73, 97.

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