

# CRS Report for Congress

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## Business Tax Provisions That Benefit Persons with Disabilities

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### Summary

This report describes tax provisions designed to either help businesses in making their facilities available to the disabled or to promote the hiring of disabled persons. Federal tax law provides four Internal Revenue Code provisions of special significance to disabled individuals. The first three provisions discussed in this report are employer based: the work opportunity tax credit, the deduction for architectural and transportation barrier removal, and the tax credit for public accommodations expenditures for disabled individuals. A fourth provision, a deduction for employee business expenses, is available to a disabled employee. Analysis of the tax provisions suggests that few corporate and individual taxpayers use the tax provisions designed to encourage the hiring, retention, and accommodation of disabled workers.<sup>1</sup>

For additional information on tax provisions available to disabled taxpayers see the Internal Revenue Service's publication 907, entitled *Tax Highlights for Persons with Disabilities*.<sup>2</sup>

This report will be updated in future years to reflect statutory changes.

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<sup>1</sup> U.S. General Accounting Office, *Business Tax Incentives: Incentives to Employ Workers with Disabilities Receive Limited Use and Have an Uncertain Impact*, GAO report GAO-03-39 (Washington: December 11, 2002); [<http://www.gao.gov/atext/d0339.txt>], visited May 24, 2005.

<sup>2</sup> U.S. Dept. of the Treasury, Internal Revenue Service, *Tax Highlights for Persons with Disabilities*, Publication 907 (Washington: 2003); [<http://www.irs.gov/pub/irs-pdf/p907.pdf>], visited May 26, 2005.

## Work Opportunity Tax Credit<sup>3</sup>

A work opportunity tax credit for disabled individuals undergoing vocational training is available to employers.<sup>4</sup> The credit is equal to 40% of the first \$6,000 of wages paid to newly hired employees during their first year of employment when retained for at least 400 work hours. As such, the maximum credit per employee is \$2,400 but may be less dependent on the employer's tax bracket and other criteria. The amount of the credit reduces the company's deduction for the employee's wages. A lesser credit rate of 25% is provided to employers when the employee remains on the job for 120-399 hours.

Vocational rehabilitation referrals are one of nine groups for whose hiring an employer could claim the WOTC. Employers need to receive certification of eligibility for newly hired workers. In the case of disabled workers, certifications and referrals can be made by any employment network approved under the Ticket to Work Act.<sup>5</sup> Certifications are likely to be more than actual credits claimed because, among other reasons, not all eligible hires will remain on a firm's payrolls for the 120-hour minimum employment period. Recently, according to the U.S. Department of Labor, almost 5% of total certifications have been issued to employers for hiring members of the vocational rehabilitation group.

The work opportunity tax credit first entered the law with passage of the Small Business Job Protection Act of 1996 (P.L. 104-188). The vocational rehabilitation group was retained when the WOTC evolved from prior law's targeted jobs tax credit. The credit was originally available for those employees starting work after September 30, 1996, and before October 1, 1997. The Taxpayer Relief Act of 1997 (P.L. 105-34) first extended the credit for nine months through June 30, 1998.<sup>6</sup> With passage of the Omnibus Appropriations Bill FY1999 (P.L. 105-277), the credit was reauthorized from its prior expiration date through June 30, 1999. The credit was extended a third time by passage of the Ticket to Work and Work Incentives Improvement Act of 1999. This legislation was signed into law (P.L. 106-170) by President Clinton on December 17, 1999. Under this law the provision was made retroactive to its prior expiration date and remained in effect until December 31, 2001. Early in 2002, Congress passed a two-year extension as part of the Job Creation and Worker Assistance Act of 2002 (P.L. 107-147). That extension applied the provision retroactively from January 1, 2002 until its

<sup>3</sup> Note: This provision expired on Dec. 31, 2005.

<sup>4</sup> Vocational rehabilitation referrals are those individuals with physical or mental disabilities that have resulted in substantial handicaps to employment and who have been referred to employers upon completion of or while receiving rehabilitative services under the Rehabilitation Act of 1973 or are referred through a program carried out under chapter 31 of title 38, United States Code.

<sup>5</sup> Under the Social Security Protection Act of 2004 (SSPA) (P.L. 108-203) the definition of the WOTC's vocational rehabilitation referral eligible group was expanded from a state vocational rehabilitation agency to include "any employment network created by the Ticket to Work Act." The provision was effective as if included in the Ticket to Work Act. The Social Security Protection Act of 2004 also requires the GAO to provide an interim assessment report due 12 months after enactment of SSPA.

<sup>6</sup> For additional information on this credit, see CRS Report RL30089, *The Work Opportunity Tax Credit (WOTC) and the Welfare-to-Work (WtW) Tax Credit*, by (name redacted).

expiration on December 31, 2003. In addition, that legislation also amended the WOTC's eligible groups to include "New York Liberty Zone business employees."<sup>7</sup> The most recent extension was included in the Working Families Tax Relief Act of 2004 (P.L. 108-311) which reauthorized the credit retroactive to January 1, 2004 and through December 31, 2005. This legislation also provided a technical correction that clarifies that a member of a controlled group of corporations will not be entitled to claim the credit if the total number of employees of the controlled group exceeds 200.

## **Architectural and Transportation Barrier Removal Deduction**

The removal of architectural and transportation barriers is allowed to be treated as a currently deductible expense rather than as an expenditure that is capitalized and deducted gradually over the useful life of the asset. To qualify, expenditures must be made to make facilities or public transportation vehicles (either owned or leased by the taxpayer and used in the taxpayer's trade or business) more accessible to, and usable by, the elderly or disabled. The maximum deduction permitted a business taxpayer (either an individual, corporation, or a controlled group of corporations) for qualifying expenditures is \$15,000.

Section 190, authorizing this deduction, was first added to the *Internal Revenue Code* with the passage of the Tax Reform Act of 1976 (P.L. 94-455), effective for the 3 tax years 1977, 1978, and 1979. This was followed by a three-year extension provided under an act known as Fringe Benefit Regulations — Issuance — Prohibition (P.L. 96-167). The deduction was reinstated for tax years 1984 and 1985 with the maximum deduction increased to \$35,000 under provisions of the Deficit Reduction Act of 1984 (P.L. 98-369). The Tax Reform Act of 1986 (P.L. 99-514) made the provision permanent. The deduction was reduced to \$15,000 after the enactment of the Omnibus Budget Reconciliation Act of 1990 (OBRA90) (P.L. 100-508). This reduction in the maximum permitted write off was a result of the creation of the tax credit provision available to small businesses for public accommodations expenditures made for disabled individuals (see following provision).

## **Tax Credit for Public Accommodations Expenditures for Disabled Individuals**

A nonrefundable tax credit is provided for expenditures made by eligible small businesses to help comply with the requirements of the Americans With Disabilities Act of 1990 (P.L. 101-336). Small businesses are defined as those for which gross receipts (less returns and allowances) did not exceed \$1 million in the preceding tax year or that had no more than 30 full time employees. Full-time employees are those who work at least 30 hours per week for 20 or more calendar weeks during the tax year.

The credit is equal to 50% of eligible expenditures made during the year. The first \$250 of otherwise eligible access expenditures are not eligible for the credit. Expenditure amounts greater than \$250 but less than \$10,250 are eligible. Thus, a \$5,000 maximum tax credit is available. This credit is included as a general business credit and subject to

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<sup>7</sup> A more detailed legislative history can be found in the previously cited CRS Report RL30089 by (name redacted).

present law limits. As such, the excess or unused credit may be carried back three years (but may not be carried back to tax years that ended before the date of enactment of OBRA90) and forward for 15 years. The Internal Revenue Code does not permit amounts allowable as a disabled access credit to be used as a deduction or credit elsewhere on a tax entity's return.

The Internal Revenue Code defines qualifying expenditures as including those made (A) 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; (B) to provide qualified interpreters or other effective methods of making aurally delivered materials available to individuals with hearing impairments; (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.<sup>8</sup>

Eligible access expenditures must be reasonable. The credit is not available for the construction of new facilities first placed in service after the date of enactment of OBRA90. Eligible access expenditures must meet the standards set by the Secretary of the Treasury in concurrence with the Architectural and Transportation Barriers Compliance Board.

This provision became law with the passage of the Omnibus Budget Reconciliation Act of 1990 (OBRA 90) (P.L. 100-508). No changes to the provision have been made since initial passage.

## **Employee Business Expense**

Normally, employee business expenses other than reimbursed expenses (Section 62(2)(A)) are allowed only as itemized deductions and are subject to a floor of 2% of the taxpayer's adjusted gross income (AGI). Thus, taxpayers must make expenditures that exceed the 2% floor before those expenditures are deductible if they itemize on their income tax return.<sup>9</sup> However, the 2% floor does not apply to impairment-related work expenses of employees with disabilities. This provision is unavailable for persons with disabilities who use the standard deduction.<sup>10</sup>

This provision was included in the Tax Reform Act of 1986 (P.L. 99-514) and made effective for taxable years beginning on or after January 1, 1987.

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<sup>8</sup> Internal Revenue Code §44.

<sup>9</sup> The tax writing committees were concerned over the complexity and extensive recordkeeping required for small expenditures. Both the House and Senate felt that significant problems resulted for the Internal Revenue Service, for whom it is not cost effective to audit situations in which only small dollar amounts are involved. It was also noted that some of these business expenditures have a combination of both personal and business motivations.

<sup>10</sup> An additional standard deduction is available to blind taxpayers. For information on this provision, see CRS Report RS20555, *Additional Standard Tax Deduction for the Blind: A Description and Assessment*, by Louis Alan Talley and (name redacted).

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