

DESCRIPTION OF H.R. 5826
(SMALL BUSINESS TAX INCENTIVE ACT OF 1990)

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INTRODUCTION

This document,¹ prepared by the staff of the Joint Committee on Taxation, provides a description of H.R. 5826 (Small Business Tax Incentive Act of 1990). H.R. 5826 was introduced by Chairman Rostenkowski on October 13, 1990. The Committee on Ways and Means is scheduled to mark up the bill on October 16, 1990.

The provisions of H.R. 5826 are the same as those in H.R. 5455 (Small Business Tax Incentive Act of 1990) as introduced on August 3, 1990, except for the deletion of a provision relating to the deduction of health expenses of self-employed individuals. H.R. 5826 contains the following provisions: (A) treatment of certain expenditures incurred to make public accommodations accessible to disabled individuals; (B) review of impact of IRS regulations on small business; and (C) requirement of pie charts in IRS tax form instruction booklets.

¹ This document may be cited as follows: Joint Committee on Taxation, Description of H.R. 5826 (Small Business Tax Incentive Act of 1990) (JCX-40-90), October 15, 1990.

EXPLANATION OF H.R. 5826
(SMALL BUSINESS TAX INCENTIVE ACT OF 1990)

A. Treatment of Certain Expenditures Incurred to Make
Public Accommodations Accessible to Disabled Individuals

Present Law

Under present law, a taxpayer may elect to deduct certain architectural and transportation barrier removal expenses for the taxable year in which paid or incurred rather than capitalizing such expenses. Architectural and transportation barrier removal expenses are defined for this purpose as expenditures that are paid or incurred by a taxpayer in order to make facilities or public transportation vehicles owned or leased in connection with the taxpayer's business more accessible to handicapped and elderly individuals. In order for such expenditures to be deductible under this provision, the taxpayer must establish to the satisfaction of the Secretary of the Treasury that the facility or public transportation vehicle to which the expenditures relate conforms to standards promulgated by the Secretary with the concurrence of the Architectural and Transportation Barriers Compliance Board. The amount of the deduction allowed under this provision for any taxable year is limited to \$35,000.

Explanation of Provision

Public accommodations access credit

In general

Under the bill, an eligible small business is allowed an income tax credit of up to \$5,000 for the amount of eligible public accommodations access expenditures paid or incurred during a taxable year. The credit is a general business credit and, consequently, the credit 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.

Definition of eligible small business

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 that is required by Federal law to make such accommodation accessible to, or usable by, individuals with a disability if (1) the gross

receipts² of the person for the preceding taxable year did not exceed \$1 million, (2) the person had fewer than 15 full-time employees³ during the preceding taxable year, and (3) the person elects the application of the provision by claiming the credit for the taxable year.

Definition of eligible public accommodations access expenditures

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, individuals with a disability, or (2) for providing auxiliary aids and services to individuals with a disability who are employees of, or using, a public accommodation operated by the taxpayer.

The amount of an expenditure is not to be considered an eligible public accommodations access expenditure unless the taxpayer establishes to the satisfaction of the Secretary of the Treasury that the removal of any barrier or the provision of any auxiliary aids and services to which the expenditure relates satisfies standards set forth in regulations promulgated by the Secretary with the concurrence of the Architectural and Transportation Barriers Compliance Board. In addition, amounts paid or incurred by a taxpayer for the purpose of removing architectural, communication, or transportation barriers do not qualify as eligible public accommodations access expenditures if the amounts are paid or incurred in connection with a facility that is first placed in service after December 31, 1990.

Other definitions and special rules

For purposes of the credit provision, the terms "public accommodation," "disability," and "auxiliary aids and services" are to have the respective meanings given such terms by the Americans With Disabilities Act of 1990, as in effect on the date of enactment of this provision.

For purposes of applying the \$5,000 annual limitation on

² The gross receipts of a person for any taxable year are to be determined after reduction for returns and allowances made during the taxable year.

³ For this purpose, a full-time employee is defined as any employee of the taxpayer who is employed at least 30 hours per week for 20 or more calendar weeks during the taxable year.

the amount of the credit and in determining whether the \$1 million gross receipts limitation and the 15 full-time employee limitation are satisfied, all members of the same controlled group of corporations (as defined in section 52(a)) and all persons under common control (as defined in section 52(b)) are treated as one person. Thus, for example, two or more corporations that are members of the same controlled group of corporations would be allowed a credit that is not to exceed \$5,000 if, treating all such corporations as a single person, the \$1 million gross receipts limitation and the 15 full-time employee limitation are satisfied for the preceding year.

In the case of a partnership, the \$5,000 annual limitation on the amount of the credit is to apply at both the partnership level and the partner level. Similarly, in the case of an S corporation, the \$5,000 annual limitation on the amount of the credit is to apply at both the S corporation level and the shareholder level.

The bill also provides that to the extent that a credit is determined with respect to the amount of any expenditure, then no deduction or credit is to be allowed for such amount under any other provision of Chapter 1 of the Internal Revenue Code and the adjusted basis of any property with respect to which the credit is determined is not to include such amount.

Finally, the bill requires the Treasury Secretary to prescribe such regulations as are necessary to carry out the purposes of the provision, including regulations that (1) adjust the \$1 million gross receipts limitation and the 15 full-time employee limitation in the case of taxable years that are less than 12 months and (2) apportion the \$5,000 annual limitation among two or more members of a controlled group of corporations that are treated as a single person under the related-person rules described above.

Reduction of amount deductible as architectural and transportation barrier removal expenses

The bill also reduces the amount of architectural and transportation barrier removal expenses that may be deducted for any taxable year to \$15,000.

Effective Date

The provisions apply to taxable years beginning after December 31, 1990.

B. 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. If the SBA chooses to respond, it must do so within four weeks. Similar rules apply to final regulations that do not supersede proposed regulations.

Explanation of Provision

IRS must continue to submit proposed regulations (after they are published) to the SBA for comment on the impact of those regulations on small business. The SBA must respond within four weeks. The IRS must consider the SBA comments and discuss them in the preamble of the final regulations. Similar rules apply to final regulations that do not supersede proposed regulations.

Effective Date

The provision applies to regulations issued after the date that is 10 days after the date of enactment.

C. Requirement of Pie Charts in IRS Tax Form Instruction Booklets

Present Law

There is no requirement for the Internal Revenue Service (IRS) to publish pie charts. Pie charts illustrating where the Government dollar comes from and where it goes have, however, been published by the IRS in Publication 17, Your Federal Income Tax.

Explanation of Provision

The bill requires the IRS to include two pie charts in individual income tax form instruction booklets: one depicting sources of Government revenue and the other showing how that revenue is spent.

Effective Date

This provision applies to instructions prepared for taxable years beginning after 1989.