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Barrier Removal Tax Deduction [American Coalition of Citizens with Disabilities convention] [1979]

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February 6, 1979

Mr. John Hughes
Sales Manager
Mariner Conference Center
Holiday Inn Downtown
301 Calhoun
Houston, TX 77002

Dear Mr. Hughes:

The American Coalition of Citizens with Disabilities (ACCD) looks forward to holding its convention in your hotel May 17-20, 1979. We understand space is available at this time and our site review committee has unanimously recommended selection of your hotel for our meeting. We have discussed with your representative some minor modifications that are needed for the hotel to become fully accessible. Why should you make them?

- (1) This a national meeting bringing together representatives of organizations of and for disabled people from Maine to Florida and Washington, D. C. to Hawaii, many of whom will be responsible for planning national, state, and local conferences subsequent to our Delegate Assembly. The meeting will be publicized nationally. This presents an excellent opportunity for the Holiday Inns, yours and the chain at large, to reinforce your leadership position among American hotels in designing for all Americans.
- (2) I believe you will find the cost associated with assessibility modifications to be minimal. You may also wish to investigate the Tax Reform Act of 1976 with respect to tax deductions up to \$25,000 for accessibility modifications.

-more-

Mr. John Hughes
February 6, 1979
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- (3) And of course, you are aware that the Department of Labor will shortly publish revised regulations governing Section 503: these revised rules will require accessibility of any private corporation doing business with the government.
- (4) The Department of Health, Education and Welfare, and any other Federal agencies have instituted a new policy under which all meetings sponsored, conducted, or benefit~~ing~~g by or with federal funds must be held in full accessible sites.
- (5) Finally, accessibility aids all guests and reduces accidents.

For these reasons, I believe that our association through this meeting will be a highly mutual beneficial one.

If there is any further assistance I can offer to you, please do not hesitate to write.

Sincerely yours,

Frank G. Bowe, Ph.D.
Director

FGB/raj

bcc:

cc: T.J. O'Rourke
Lex Frieden
Ann Ford
Marcia Miller

RULES AND REGULATIONS

Title 26—Internal Revenue

CHAPTER I—INTERNAL REVENUE SERVICE, DEPARTMENT OF THE TREASURY

SUBCHAPTER A—INCOME TAX

[T.D. 7477]

PART 7—TEMPORARY INCOME TAX REGULATIONS UNDER THE TAX REFORM ACT OF 1976

Expenditures To Remove Architectural and Transportation Barriers to Handicapped and Elderly

AGENCY: Internal Revenue Service, Treasury.

ACTION: Interim regulations.

SUMMARY: This document provides interim regulations relating to expenditures to remove architectural and transportation barriers to the handicapped and elderly. Changes to the applicable tax law were made by the Tax Reform Act of 1976. These regulations may affect persons who make expenditures to remove architectural and transportation barriers to the handicapped and elderly and provide them with the guidance needed to comply with the law. In addition, the regulations promulgated by this document are proposed to be prescribed as final regulations.

EFFECTIVE DATES: The interim regulations are effective for taxable years beginning after December 31, 1976, and the final regulations are proposed to be effective for taxable years beginning after December 31, 1976. Written comments and requests for a public hearing must be delivered or mailed by

ADDRESS: Send comments and requests for a public hearing to: Commissioner of Internal Revenue, Attention: CC:LR:T, Washington, D.C. 20224.

FOR FURTHER INFORMATION CONTACT:

John M. Coulter, Jr., of the Legislation and Regulations Division, Office of the Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue, N.W., Washington, D.C. 20224. (Attention: CC:LR:T). (202-556-3346).

SUPPLEMENTARY INFORMATION:

BACKGROUND

This document contains interim income tax regulations under part VI of subchapter B of chapter 1 of the Internal Revenue Code of 1954. These amendments conform the Temporary Income Tax Regulations under the Tax Reform Act of 1976 (26 CFR Part 7) to section 2122 of the Tax Reform Act of 1976 (90 Stat. 1914). They are issued under the authority contained in sections 190 and 7805 of the Internal Revenue Code of

1954 (90 Stat. 1914 and 68A Stat. 917; 26 U.S.C. 190 and 7805). In addition, the regulations promulgated in this document are proposed to be prescribed as final Income Tax Regulations (26 CFR Part 1) under section 190 of the Internal Revenue Code of 1954. The amendments are proposed to conform the Income Tax Regulations to section 2122 of the Tax Reform Act of 1976 (90 Stat. 1914). They are also to be issued under the authority contained in sections 190 and 7805 of the Internal Revenue Code of 1954 (90 Stat. 1914 and 68A Stat. 917; 26 U.S.C. 190 and 7805).

EXPLANATION OF PROVISIONS

Section 2122 of the Tax Reform Act of 1976 added section 190 to the Code. Section 190 provides that a taxpayer may elect to deduct certain amounts paid or incurred by him in any taxable year beginning after December 31, 1976, and before January 1, 1980, for qualified architectural and transportation barrier removal expenses. The deduction is allowed for certain expenses 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, or usable by, handicapped or elderly individuals.

Under the interim regulations, the term "facility" means all or any portion of buildings, structures, equipment, roads, walks, parking lots, or similar real or personal property. Further, a "public transportation vehicle" is defined as a vehicle, such as a bus, a railroad car, or other conveyance, whether publicly or privately owned, which provides to the public general or special transportation service. This includes service rendered to the customers of a taxpayer who is not in the trade or business of rendering transportation services. The term "handicapped individual" means any individual who has (1) a physical or mental disability (including, but not limited to, blindness or deafness) which for that individual constitutes or results in a functional limitation to employment, or (2) a physical or mental impairment (including, but not limited to, a sight or hearing impairment) which substantially limits one or more of the individual's major life activities. Examples of these activities are performing manual tasks, walking, speaking, breathing, learning, and working. An "elderly individual" is one age 65 or over.

To qualify for the deduction, the taxpayer must establish, to the satisfaction of the Commissioner or his delegate, that the removal of a barrier conforms a facility or public transportation vehicle to one or more of the standards set forth in the interim regulations. The interim regulations also provide that qualified expenses include only expenses specifically attributable to the removal of an existing architectural or transportation barrier. These expenses do not include any part of an expense in connection with the construction or comprehensive renovation of a facility or public transportation vehicle or the normal replacement of depreciable property.

The amount deductible under section 190 for any taxable year is limited to \$25,000. Under the interim regulations, the maximum deduction for a taxpayer (including an affiliated group of corporations filing a consolidated return) for any taxable year is \$25,000. The \$25,000 limitation applies to a partnership and to each partner. The interim regulations further provide that expenditures for a taxable year in excess of this amount are to be treated as capital expenditures and constitute adjustments to basis under section 1016(a). A special rule applies where a partner's expenditures exceed \$25,000.

The election to deduct qualified architectural and transportation barrier removal expenses is made by claiming the deduction as a separate item identified as such on the taxpayer's income tax return for the taxable year for which the election applies. The return must be filed not later than the time prescribed by law for filing the return (including extensions). Once made, an election is irrevocable and applies to all qualified expenditures paid or incurred during the taxable year up to the limitation. If such expenditures exceed \$25,000, the taxpayer elects which expenditures comprise those deducted. An electing taxpayer must have available records and documentation of all the facts necessary to determine the amount deductible pursuant to the election, as well as the amount of any adjustment to basis required to be made for expenditures exceeding the \$25,000 limit.

STATUTORY CONCURRENCE

The Architectural and Transportation Barriers Compliance Board has concurred in the standards set forth in this interim regulation.

COMMENTS AND REQUESTS FOR A PUBLIC HEARING

Before adoption of the final regulations proposed in this document, consideration will be given to any written comments that are submitted (preferably six copies) to the Commissioner of Internal Revenue. All comments will be available for public inspection and copying. A public hearing will be held upon written request to the Commissioner by any person who has submitted written comments. If a public hearing is held, notice of the time and place will be published in the FEDERAL REGISTER.

DRAFTING INFORMATION

The principal author of this regulation was John M. Coulter, Jr. of the Legislation and Regulations Division of the Office of Chief Counsel, Internal Revenue Service. However, personnel from other offices of the Internal Revenue Service and Treasury Department participated in developing the regulation, both on matters of substance and style.

ADOPTION OF AMENDMENTS TO THE REGULATIONS

Accordingly, the following interim regulations are adopted:

1. Section 7.190-1 is added to read as set forth below.

§ 7.190-1 Expenditures to remove architectural and transportation barriers to the handicapped and elderly.

(a) *In general.* Under section 190 of the Internal Revenue Code of 1954, a taxpayer may elect, in the manner provided in § 7.190-3 of this chapter, to deduct certain amounts paid or incurred by him in any taxable year beginning after December 31, 1976, and before January 1, 1980, for qualified architectural and transportation barrier removal expenses (as defined in § 7.190-2(b) of this chapter). In the case of a partnership, the election shall be made by the partnership. The election applies to expenditures paid or incurred during the taxable year which (but for the election) are chargeable to capital account.

(b) *Limitation.* The maximum deduction for a taxpayer (including an affiliated group of corporations filing a consolidated return) for any taxable year is \$25,000. The \$25,000 limitation applies to a partnership and to each partner. Expenditures paid or incurred in a taxable year in excess of the amount deductible under section 190 for such taxable year are capital expenditures and are adjustments to basis under section 1016(a). A partner must combine his distributive share of the partnership's deductible expenditures (after application of the \$25,000 limitation at the partnership level) with that partner's distributive share of deductible expenditures from any other partnership plus that partner's own section 190 expenditures, if any (if he makes the election with respect to his own expenditures), and apply the partner's \$25,000 limitation to the combined total to determine the aggregate amount deductible by that partner. In so doing, the partner may allocate the partner's \$25,000 limitation among the partner's own section 190 expenditures and the partner's distributive share of partnership deductible expenditures in any manner. If such allocation results in all or a portion of the partner's distributive share of a partnership's deductible expenditures not being an allowable deduction by the partner, the partnership may capitalize such unallowable portion by an appropriate adjustment to the basis of the relevant partnership property under section 1016. For purposes of adjustments to the basis of properties held by a partnership, however, it shall be presumed that each partner's distributive share of partnership deductible expenditures (after application of the \$25,000 limitation at the partnership level) was allowable in full to the partner. This presumption can be rebutted only by clear and convincing evidence that all or any portion of a partner's distributive share of the partnership section 190 deduction was not allowable as a deduction to the partner because it exceeded that partner's \$25,000 limitation as allocated by him. For example, suppose for 1978 A's distributive share of the ABC partnership's deductible section 190 expenditures (after application of the \$25,000 limitation at the partnership level) is \$15,000. A also made section 190 expenditures of \$20,000

in 1978 which he elects to deduct. A allocates \$10,000 of his \$25,000 limitation to his distributive share of the ABC expenditures and \$15,000 to his own expenditures. A may capitalize the excess \$5,000 of his own expenditures. In addition, if ABC obtains from A evidence which meets the requisite burden of proof, it may capitalize the \$5,000 of A's distributive share which is not allowable as a deduction to A.

2. Section 7.190-2 is added to read as set forth below.

§ 7.190-2 Definitions.

For purposes of section 190 and the regulations thereunder—

(a) *Architectural and transportation barrier removal expenses.* The term "architectural and transportation barrier removal expenses" means expenditures 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, or usable by, handicapped individuals or elderly individuals. For purposes of this section—

(1) The term "facility" means all or any portion of buildings, structures, equipment, roads, walks, parking lots, or similar real or personal property.

(2) The term "public transportation vehicle" means a vehicle, such as a bus, a railroad car, or other conveyance, which provides to the public general or special transportation service (including such service rendered to the customers of a taxpayer who is not in the trade or business of rendering transportation services).

(3) The term "handicapped individual" means any individual who has—

(i) A physical or mental disability (including, but not limited to, blindness or deafness) which for such individual constitutes or results in a functional limitation to employment, or

(ii) A physical or mental impairment (including, but not limited to, a sight or hearing impairment) which substantially limits one or more of such individual's major life activities, such as performing manual tasks, walking, speaking, breathing, learning, or working.

(4) The term "elderly individual" means an individual age 65 or over.

(b) *Qualified architectural and transportation barrier removal expense.*—(1) *In general.* The term "qualified architectural and transportation barrier removal expense" means an architectural or transportation barrier removal expense (as defined in paragraph (a) of this section) with respect to which the taxpayer establishes, to the satisfaction of the Commissioner or his delegate, that the resulting removal of any such barrier conforms a facility or public transportation vehicle to all the requirements set forth in one or more of paragraphs (b) (2) through (22) of this section or in one or more of the subdivisions of paragraph (b) (20) or (21). Such term includes only expenses specifically attributable to the removal of an existing architectural or transportation barrier. It does not include any part of any expense paid

or incurred in connection with the construction or comprehensive renovation of a facility or public transportation vehicle or the normal replacement of depreciable property. Such term may include expenses of construction, as, for example, the construction of a ramp to remove the barrier posed for wheelchair users by steps. Major portions of the standards set forth in this paragraph were adapted from "American National Standard Specifications for Making Buildings and Facilities Accessible to, and Usable by the Physically Handicapped" (1971), the copyright for which is held by the American National Standards Institute, 1430 Broadway, New York, New York 10018.

(2) *Grading.* The grading of ground, even contrary to existing topography, shall attain a level with a normal entrance to make a facility accessible to individuals with physical disabilities.

(3) *Walks.* (i) A public walk shall be at least 48 inches wide and shall have a gradient not greater than 5 percent. A walk of maximum or near maximum grade and of considerable length shall have level areas at regular intervals. A walk or driveway shall have a nonslip surface.

(ii) A walk shall be of a continuing common surface and shall not be interrupted by steps or abrupt changes in level.

(iii) Where a walk crosses a walk, a driveway, or a parking lot, they shall blend to a common level. However, the preceding sentence does not require the elimination of those curbs which are a safety feature for the handicapped, particularly the blind.

(iv) An inclined walk shall have a level platform at the top and at the bottom. If a door swings out onto the platform toward the walk, such platform shall be at least 5 feet deep and 5 feet wide. If a door does not swing onto the platform or toward the walk, such platform shall be at least 3 feet deep and 5 feet wide. A platform shall extend at least 1 foot beyond the strike jamb side of any doorway.

(4) *Parking lots.* (i) At least one parking space that is accessible and approximate to a facility shall be set aside and identified for use by the handicapped.

(ii) A parking space shall be open on one side to allow room for individuals in wheelchairs and individuals on braces or crutches to get in and out of an automobile onto a level surface which is suitable for wheeling and walking.

(iii) A parking space for the handicapped, when placed between two conventional diagonal or head-on parking spaces, shall be at least 12 feet wide.

(iv) A parking space shall be positioned so that individuals in wheelchairs and individuals on braces or crutches need not wheel or walk behind parked cars.

(5) *Ramps.* (i) A ramp shall not have a slope greater than 1 inch rise in 12 inches.

(ii) A ramp shall have at least one handrail that is 32 inches in height, measured from the surface of the ramp, that is smooth, and that extends 1 foot

beyond the top and bottom of the ramp. However, the preceding sentence does not require a handrail extension which is itself a hazard.

(iii) A ramp shall have a nonslip surface.

(iv) A ramp shall have a level platform at the top and at the bottom. If a door swings out onto the platform or toward the ramp, such platform shall be at least 5 feet deep and 5 feet wide. If a door does not swing onto the platform or toward the ramp, such platform shall be at least 3 feet deep and 5 feet wide. A platform shall extend at least 1 foot beyond the strike jamb side of any doorway.

(v) A ramp shall have level platforms at not more than 30-foot intervals and at any turn.

(vi) A curb ramp shall be provided at an intersection. The curb ramp shall not be less than 4 feet wide; it shall not have a slope greater than 1 inch rise in 12 inches. The transition between the two surfaces shall be smooth. A curb ramp shall have a nonslip surface.

(6) *Entrances.* A building shall have at least one primary entrance which is usable by individuals in wheelchairs and which is on a level accessible to an elevator.

(7) *Doors and doorways.* (i) A door shall have a clear opening of no less than 32 inches and shall be operable by a single effort.

(ii) The floor on the inside and outside of a doorway shall be level for a distance of at least 5 feet from the door in the direction the door swings and shall extend at least 1 foot beyond the strike jamb side of the doorway.

(iii) There shall be no sharp inclines or abrupt changes in level at a doorway. The threshold shall be flush with the floor. The door closer shall be selected, placed, and set so as not to impair the use of the door by the handicapped.

(8) *Stairs.* (i) Stairsteps shall have round nosing of between 1 and 1½-inch radius.

(ii) Stairs shall have a handrail 32 inches high as measured from the tread at the face of the riser.

(iii) Stairs shall have at least one handrail that extends at least 18 inches beyond the top step and beyond the bottom step. The preceding sentence does not require a handrail extension which is itself a hazard.

(iv) Steps shall have risers which do not exceed 7 inches.

(9) *Floors.* (i) Floors shall have a nonslip surface.

(ii) Floors on a given story of a building shall be of a common level or shall be connected by a ramp in accordance with subparagraph (5) of this paragraph.

(10) *Toilet rooms.* (i) A toilet room shall have sufficient space to allow traffic of individuals in wheelchairs.

(ii) A toilet room shall have at least one toilet stall that—

(A) Is at least 36 inches wide;

(B) Is at least 56 inches deep;

(C) Has a door, if any, that is at least 32 inches wide and swings out;

(D) Has handrails on each side, 33 inches high and parallel to the floor, 1½ inches in outside diameter, 1½ inches clearance between rail and wall, and fastened securely at ends and center; and

(E) Has a water closet with a seat 19 to 20 inches from the finished floor.

(iii) A toilet room shall have, in addition to or in lieu of a toilet stall described in (ii), at least one toilet stall that—

(A) Is at least 66 inches wide;

(B) Is at least 60 inches deep;

(C) Has a door, if any, that is at least 32 inches wide and swings out;

(D) Has a handrail on one side, 33 inches high and parallel to the floor, 1½ inches in outside diameter, 1½ inches clearance between rail and wall, and fastened securely at ends and center; and

(E) Has a water closet with a seat 19 to 20 inches from the finished floor, centerline located 18 inches from the side wall on which the handrail is located.

(iv) A toilet room shall have lavatories with narrow aprons. Drain pipes and hot water pipes under a lavatory shall be covered or insulated.

(v) A mirror and a shelf above a lavatory shall be no higher than 40 inches above the floor, measured from the top of the shelf and the bottom of the mirror.

(vi) A toilet room for men shall have wall-mounted urinals with the opening of the basin 15 to 19 inches from the finished floor or shall have floor-mounted urinals that are level with the main floor of the toilet room.

(vii) Towel racks, towel dispensers, and other dispensers and disposal units shall be mounted no higher than 40 inches from the floor.

(11) *Water fountains.* (i) A water fountain and a cooler shall have up-front spouts and controls.

(ii) A water fountain and a cooler shall be hand-operated or hand-and-foot-operated.

(iii) A water fountain mounted on the side of a floor-mounted cooler shall not be more than 30 inches above the floor.

(iv) A wall-mounted, hand-operated water cooler shall be mounted with the basin 36 inches from the floor.

(v) A water fountain shall not be fully recessed and shall not be set into an alcove unless the alcove is at least 36 inches wide.

(12) *Public telephones.* (i) A public telephone shall be placed so that the dial and the headset can be reached by individuals in wheelchairs.

(ii) A public telephone shall be equipped for those with hearing disabilities and so identified with instructions for use.

(iii) Coin slots of public telephones shall be not more than 48 inches from the floor.

(13) *Elevators.* (i) An elevator shall be accessible to, and usable by, the handicapped or the elderly on the levels they use to enter the building and all levels and areas normally used.

(ii) Cab size shall allow for the turning of a wheelchair. It shall measure at least 54 by 68 inches.

(iii) Door clear opening width shall be at least 32 inches.

(iv) All essential controls shall be within 48 to 54 inches from cab floor. Such controls shall be usable by the blind and shall be tactilely identifiable.

(14) *Controls.* Switches and controls for light, heat, ventilation, windows, draperies, fire alarms, and all similar controls of frequent or essential use, shall be placed within the reach of individuals in wheelchairs. Such switches and controls shall be no higher than 48 inches from the floor.

(15) *Identification.* (i) Raised letters or numbers shall be used to identify a room or an office. Such identification shall be placed on the wall to the right or left of the door at a height of 54 inches to 66 inches, measured from the finished floor.

(ii) A door that might prove dangerous if a blind person were to exit or enter by it (such as a door leading to a loading platform, boiler room, stage, or fire escape) shall be tactilely identifiable.

(16) *Warning signals.* (i) An audible warning signal shall be accompanied by a simultaneous visual signal for the benefit of those with hearing disabilities.

(ii) A visual warning signal shall be accompanied by a simultaneous audible signal for the benefit of the blind.

(17) *Hazards.* Hanging signs, ceiling lights, and similar objects and fixtures shall be placed at a minimum height of 7 feet, measured from the floor.

(18) *International accessibility symbol.* The international accessibility symbol (see illustration) shall be displayed on routes to and at wheelchair-accessible entrances to facilities and public transportation vehicles.



(19) *Additional standards for rail facilities.* (i) A rail facility shall contain a fare control area with at least one entrance with a clear opening at least 36 inches wide.

(ii) A boarding platform edge bordering a drop-off or other dangerous condition shall be marked with a warning device consisting of a strip of floor material differing in color and texture from the remaining floor surface. The gap between boarding platform and vehicle doorway shall be minimized.

(20) *Standards for buses.* (i) A bus shall have a level change mechanism (e.g., lift or ramp) to enter the bus and sufficient clearance to permit a wheelchair user to reach a secure location.

(ii) A bus shall have a wheelchair securement device. However, the preceding sentence does not require a wheelchair securement device which is itself a barrier or hazard.

(iii) The vertical distance from a curb or from street level to the first front door step shall not exceed 8 inches; the riser height for each front doorstep after the first step up from the curb or street level shall also not exceed 8 inches; and the tread depth of steps at front and rear doors shall be no less than 12 inches.

(iv) A bus shall contain clearly legible signs that indicate that seats in the front of the bus are priority seats for handicapped or elderly persons, and that encourage other passengers to make such seats available to handicapped and elderly persons who wish to use them.

(v) Handrails and stanchions shall be provided in the entranceway to the bus in a configuration that allows handicapped and elderly persons to grasp such assists from outside the bus while starting to board and to continue to use such assists throughout the boarding and fare collection processes. The configuration of the passenger assist system shall include a rail across the front of the interior of the bus located to allow passengers to lean against it while paying fares. Overhead handrails shall be continuous except for a gap at the rear doorway.

(vi) Floors and steps shall have nonslip surfaces. Step edges shall have a band of bright contrasting color running the full width of the step.

(vii) A stepwell immediately adjacent to the driver shall have, when the door is open, at least 2 foot-candles of illumination measured on the step tread. Other stepwells shall have, at all times, at least 2 foot-candles of illumination measured on the step tread.

(viii) The doorways of the bus shall have outside lighting that provides at least 1 foot-candle of illumination on the street surface for a distance of 3 feet from all points on the bottom step tread edge. Such lighting shall be located below window level and shall be shielded to protect the eyes of entering and exiting passengers.

(ix) The fare box shall be located as far forward as practicable and shall not obstruct traffic in the vestibule.

(21) *Standards for rapid and light rail vehicles.* (i) Passenger doorways on the vehicle sides shall have clear openings at least 32 inches wide.

(ii) Audible or visual warning signals shall be provided to alert handicapped and elderly persons of closing doors.

(iii) Handrails and stanchions shall be sufficient to permit safe boarding, on-board circulation, seating and standing assistance, and unboarding by handicapped and elderly persons. On a level-entry vehicle, handrails, stanchions, and seats shall be located so as to allow a wheelchair user to enter the vehicle and

position the wheelchair in a location which does not obstruct the movement of other passengers. On a vehicle that requires the use of steps in the boarding process, handrails and stanchions shall be provided in the entranceway to the vehicle in a configuration that allows handicapped and elderly persons to grasp such assists from outside the vehicle while starting to board, and to continue using such assists throughout the boarding process.

(iv) Floors shall have nonslip surfaces. Step edges on a light rail vehicle shall have a band of bright contrasting color running the full width of the step.

(v) A stepwell immediately adjacent to the driver shall have, when the door is open, at least 2 foot-candles of illumination measured on the step tread. Other stepwells shall have, at all times, at least 2 foot-candles of illumination measured on the step tread.

(vi) Doorways on a light rail vehicle shall have outside lighting that provides at least 1 foot-candle of illumination on the street surface for a distance of 3 feet from all points on the bottom step tread edge. Such lighting shall be located below window level and shall be shielded to protect the eyes of entering and exiting passengers.

(22) *Other barrier removals.* The provisions of this subparagraph apply to any barrier which would not be removed by compliance with paragraphs (b) (2) through (21) of this section. The requirements of this subparagraph are:

(i) A substantial barrier to the access to or use of a facility or public transportation vehicle by handicapped or elderly individuals is removed;

(ii) The barrier which is removed had been a barrier for one or more major classes of such individuals (such as the blind, deaf, or wheelchair users); and

(iii) The removal of that barrier is accomplished without creating any new barrier that significantly impairs access to or use of the facility or vehicle by such class or classes.

3. Section 7.190-3 is added to read as set forth below:

§ 7.190-3 Election to deduct architectural and transportation barrier removal expenses.

(a) *Manner of making election.* The election to deduct expenditures for removal of architectural and transportation barriers provided by section 190(a) shall be made by claiming the deduction as a separate item identified as such on the taxpayer's income tax return for the taxable year for which such election is to apply (or, in the case of a partnership, to the return of partnership income for such year). For the election to be valid, the return must be filed not later than the time prescribed by law for filing the return (including extensions thereof) for the taxable year for which the election is to apply.

(b) *Scope of election.* An election under section 190(a) shall apply to all expenditures described in § 7.190-2 (or, in the case of a taxpayer whose architectural and transportation barrier removal expenses exceed \$25,000 for the

taxable year, to the \$25,000 of such expenses with respect to which the deduction is claimed) paid or incurred during the taxable year for which made and shall be irrevocable after the date by which any such election must have been made.

(c) *Records to be kept.* In any case in which an election is made under section 190(a), the taxpayer shall have available, for the period prescribed by paragraph (e) of § 1.6001-1 of this chapter (Income Tax Regulations), records and documentation, including architectural plans and blueprints, contracts, and any building permits, of all the facts necessary to determine the amount of any deduction to which he is entitled by reason of the election, as well as the amount of any adjustment to basis made for expenditures in excess of the amount deductible under section 190.

There is a need for immediate guidance with respect to the provisions contained in this Treasury decision. For this reason, it is found impracticable to issue it with notice and public procedure under subsection (b) of section 553 of Title 5 of the United States Code or subject to the effective date limitation of subsection (d) of that section.

(Secs. 190 and 7805 of the Internal Revenue Code of 1954 (90 Stat. 1014 and 68A Stat. 917; 26 U.S.C. 190 and 7805).)

WILLIAM E. WILLIAMS,
Acting Commissioner of
Internal Revenue.

Approved: March 28, 1977.

LAURENCE N. WOODWORTH,
Assistant Secretary of the
Treasury.

[FR Doc.77-9995 Filed 3-30-77;4:50 pm]