

# Are Capital Improvements Required By Law Tax Deductible?

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From time to time, the government may step in to tell you what to do about your facilities, such as [improvements required by the American with Disabilities Act \(ADA\)](#). You have little choice about compliance; make the changes that the government wants or pay penalties. What [tax relief can you claim](#) for compliance with the improvements you have to make?

## General rules

Usually, the costs of capital construction and improvements are not immediately deductible. The costs are added to the basis of property and recovered through depreciation. This can be a long process, giving little tax relief upfront when you incur the costs.

If you are forced to pay penalties for noncompliance or law violations, the penalties are *not* tax deductible. The [tax law](#) specifically denies deductions for fines and penalties paid to government for violating the law.

Thus, you have little choice but to comply with government-ordered improvements, and do it as quickly as possible, to minimize or avoid penalties. Special rules may help you accelerate your write-offs for making certain improvements.

## ADA compliance

If you have to make changes to your facilities to accommodate the handicapped and elderly in order to be in compliance with the ADA, such as adding ramps and railings, you may be in line for a tax break. There are two options that could apply to your situation:

- ***Disabled access credit.*** You can claim a tax credit of 50 percent of the cost of expenditures over \$250 and up to \$10,500 a year, for a top tax credit of \$5,000. This credit applies only for small businesses, defined as those with gross receipts of \$1 million or less, *or* fewer than 30 employees in the preceding year. Details about the type of improvements eligible for the credit are explained in the instructions to [IRS Form 8826](#).
- ***Deduction for costs of removing barriers to the disabled and the elderly.*** The deduction is capped at \$15,000 per year. If costs are greater, the amount over \$15,000 can be capitalized and recovered through depreciation.

You can only use a cost once (you can't use it for both a credit and a deduction), so decide how to maximize your write-offs from ADA-related improvements.

## **OSHA Compliance**

The Occupational Safety and Health Administration (OSHA) is concerned with safety for employees in the workplace. There are no special tax breaks immediately tied to OSHA-ordered changes or improvements. Depending on the type of changes required, the costs may be immediately deductible or will have to be capitalized.

**Examples:** Personal safety equipment you buy for workers, such as goggles and protective gloves, may be immediately deductible as an ordinary and necessary business expense, or if expected to last more than one year, as an immediate write-off under [first-year expensing or bonus depreciation rules](#) for 2011. Re-wiring, constructing exit overhead protection, or other capital improvements to a facility may have to be capitalized. However, for a limited time, special rules may help leaseholds, restaurants and retail establishments write-off improvements more quickly than over lengthy depreciation.

You may want to consider [OSHA's free on-site consultation](#). The program does not entail penalties or citations; it merely makes recommendations for improvements to be a safer workplace. This can help you prevent penalties that could result from inspections down the road.

## **Environmental remediation costs**

The Environmental Protection Agency (EPA) may require you to take certain actions, such as encapsulating or removing asbestos. You may be eligible for accelerated write-offs for doing so. As long as the cost merely restores property to its pre-contamination condition and does not improve the value or extend the life of the property, the costs can be immediately deducted.

**Examples:** One nursing home that replaced mold-contaminated drywall could immediately deduct the cost as an ordinary and necessary business expense. The cost of encapsulating asbestos is deductible, while the cost of removing it must be capitalized.

Even if costs to clean up contaminated soil and groundwater and removing hazardous waste would normally have to be capitalized, there is a special rule for remediation costs related to so-called "brownfields." These costs are immediately deductible; there is no annual dollar limit. However, this special break is set to expire at the end of 2011, unless Congress extends it. There is [EPA guidance](#) on this tax break.

Check state-level tax breaks that can be helpful in paying for the cost of cleanup. These can include:

- A current deduction for capitalizable remediation costs.
- Income tax credits.
- Property tax abatements and exemptions.
- Special financing.

### **Bottom line**

Before undertaking any improvement program for your facilities, talk with your tax adviser. You may be able to plan out the changes to maximize upfront write-offs.