

SPECIAL NEEDS ALERT

SPECIAL NEEDS ALERT is a commentary on topics of current interest – usually topics relating to planning for special needs individuals and changes to current tax and social assistance legislation. Professional advice should be obtained before acting on any of this information. ed.3/11

DISABILITY TAX CREDIT REVIEW AND ANALYSIS

The Oxford Canadian Dictionary of Current English defines a disability as *a physical or mental condition limiting a person's activity or senses*. The definition is simple, understandable and inclusive.

The Income Tax Act has its own definition of disability and meeting it can provide an annual tax credit (known as the disability credit) for individuals with long term physical or mental impairments. An additional credit (disability supplement) is available to individuals under age 18. Unlike the dictionary definition of disability, the Income Tax Act definition is multi leveled and complex. There are four basic levels of qualification for the tax credit.

- ◆ The impairment must be *severe and prolonged*.
- ◆ The impairment must result in a defined *level of restriction*.
- ◆ The impairment must affect the ability to perform *basic activities of daily living*.
- ◆ The impairment must be *certified* by a medical practitioner on form T2201 and be approved by CRA.

The Disability Tax Credit (DTC)

The federal government and each province allow the (non-refundable) disability tax credit. The provincial credit amount varies from province to province and is not the same as the federal credit. The tax saving from the credit is calculated by multiplying the federal and provincial credit amounts by the applicable federal and provincial tax rates. The Ontario tax savings are about \$1,440 and \$840 for the two credits and are calculated as follows:

	Disability Credit	Disability Supplement
Credit amount (rounded)	\$7,200	\$4,200
Combined federal and Ontario tax rate	20%	20%
Tax credit	\$1,440	\$840

Should the taxpayer claiming the credit be subject to provincial surtax, the savings will be even larger. Since the credit is non-refundable, it only can be used to offset taxes payable and by its own will not produce a tax refund. However, it is transferable to other family members who may be able to use it.

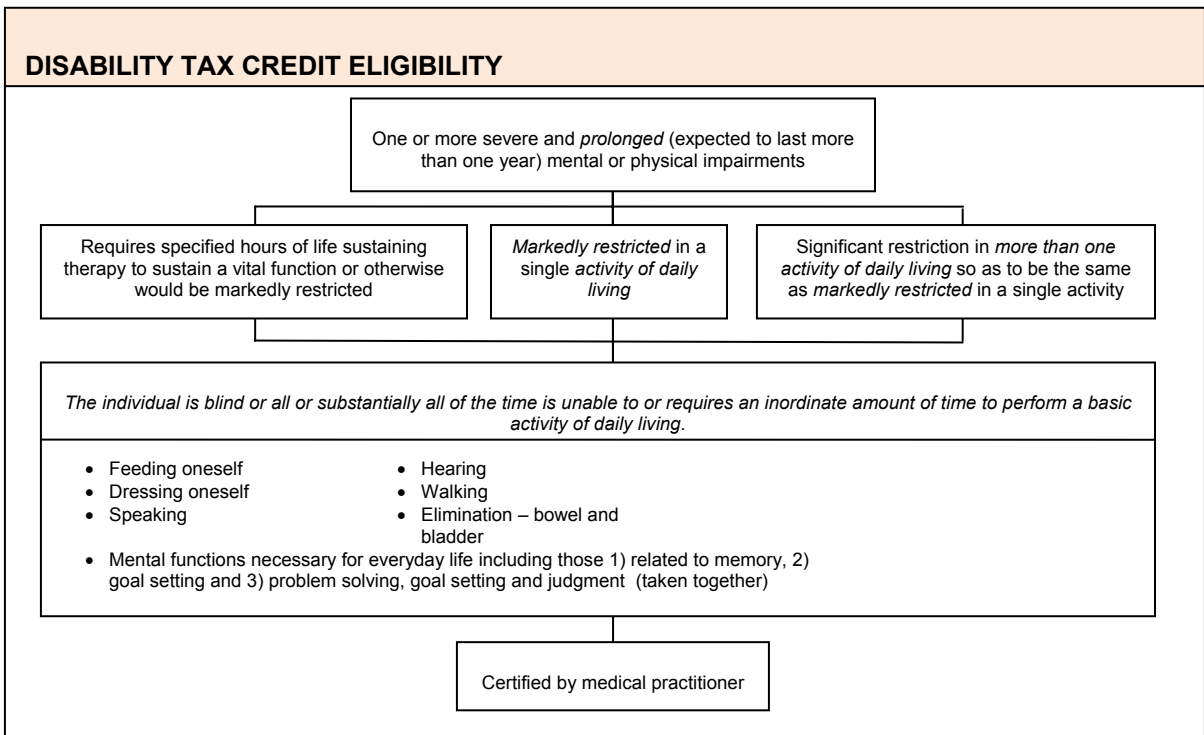
Taxpayers may wish to refer to CRA publication RC4064 – *Medical and Disability Related Expenses* and Interpretation Bulletin IT-519R2 – *Medical Expenses, Disability Tax Credits and Attendant Care Expenses* for the CRA policy positions. CRA has lost many court appeals on the disability provisions so don't give up easily if you have a different point of view.

Other Credits

The array of tax credits and other tax benefits for individuals with disabilities is substantial but confusing – so it is no wonder that these credits are regularly overlooked. Governments should be ashamed for not fixing this mess. Generally, non refundable tax credits for individuals with disabilities can be divided between medical expense credits and disability credits as follows:

Medical Expenses	
Medical Expenses (family)	Unlimited
Dependent's medical expenses (maximum)	\$10,000
Attendant or establishment care (nursing homes, retirement homes etc.)	Generally unlimited
Disability Expenses (2011 federal amounts)	
Disability tax credit	\$7,239
Caregiver	\$4,223
Adult eligible dependent	\$10,382
Infirm dependent over age 18	\$4,223

Set out below is a matrix showing the structure of disability tax credit eligibility.



Severe and Prolonged Impairment

The opening line of the disability tax credit provisions in the Income Tax Act indicates that to qualify for the credit, “an individual has one or more severe and prolonged impairments”. A later part of the section indicates that an impairment is prolonged “where it has lasted or may reasonably be expected to last, for a continuous period of at least 12 months”. The test only needs to be met when eligibility for the DTC first occurs even if the impairment ultimately does not last a year. If the impairment doesn’t continue in later years, the credit will be discontinued at that time.

CRA’s Interpretation Bulletin IT519-R2 indicates that “a claim will not be denied solely because the person dies within the 12 month period”. This opens up the possibility for the tax credit for individuals who are in long term care facilities or who become bedridden because they are terminally ill. Doctors can sign DTC applications after death providing the necessary conditions were met before the individual died and the doctor made the prognosis of their disability at that time.

Level of Restriction

This area of the qualification is more complicated and is shown in the second level of boxes in the matrix. To qualify, the level of restriction must meet any one of three tests.

- ◆ The individual is *markedly* restricted in a basic activity of daily living.
- ◆ The individual is significantly restricted in more than one activity of daily living so that the cumulative effect is the equivalent to being markedly restricted in a single activity of daily living.
- ◆ The individual requires specified hours of life sustaining therapy.

An individual is markedly restricted *where all or substantially all of the time, even with therapy and the use of support devices and medication, the individual is blind and is unable (or requires an inordinate amount of time) to perform a basic activity of daily living.* Where the individual is significantly restricted in several areas, they will be considered as being markedly restricted if the cumulative effect of these restrictions is tantamount to being markedly restricted.

A person receiving life sustaining therapy must meet the following tests:

- ◆ The individual’s ability to perform a basic activity would be markedly restricted but for the therapy.
- ◆ The therapy is essential to sustain a vital function of the individual.
- ◆ The therapy is required to be administered at least three times each week for a total of at least 14 hours a week.

Basic Activities of Daily Living

The basic activities of daily living are precisely defined and limited to the following:

- ◆ Mental functions necessary for everyday living.
- ◆ Feeding or dressing oneself.
- ◆ Speaking so as to be understood, in a quiet setting, by a person familiar with the individual
- ◆ Hearing so as to understand, in a quiet setting, by a person familiar with the individual.
- ◆ Elimination (bowel and bladder functions).
- ◆ Walking.

Mental functions necessary for everyday living are further defined to include 1) memory, 2) problem solving, goal-setting and judgment (taken together) and adaptive functioning. Feeding excludes identifying, finding, shopping for or procuring food and normal food preparation. Dressing oneself does not include identifying, finding, shopping for or procuring clothing.

A basic activity of daily living does not include working, housekeeping or a social or recreational activity. This makes the definition narrower than the one used in the Ontario Disability Support Program Act for social assistance which defines a disability to be restrictions in activities of daily living to attend to personal care, function in the community or participate in the workplace.

Other Tax Benefits from DTC Qualification

The DTC is a pivotal section of the Income Tax Act that opens the door to other tax benefits. Qualifying for the DTC means you meet the fundamental qualification for the following:

- ◆ Registered Disability Savings Plan – tax deferral and \$90,000 of grants.
- ◆ Tax free disability related employment benefits – transportation allowance to work and attendant for work assistance.
- ◆ Enhanced education and text book credit – tax credit as a full time student even if the student is not full time.
- ◆ Additional \$500 fitness credit.
- ◆ Additional \$10,000 child care expenses.
- ◆ Claim for child over age 18 as a dependent.
- ◆ Home buyers plan for a related person.
- ◆ RESP contribution extended to 25 years and plan extended to 30 years.
- ◆ Preferred beneficiary election – trust income taxed at graduated tax rates.
- ◆ Claim additional medical expenses for an attendant, attendant or nursing home care, group home care or special therapy.

Space does not allow for a thorough description of the above benefits but they are significant. Those interested should seek professional advice.

Transferability of the Credit

Individuals eligible for the DTC are often unable to use it because they have little or no taxable income. In such cases, the credit can be transferred to other family members who provide support for the basic necessities of life and are the spouse, parent, grandparent, child or grandchild, brother or sister, aunt or uncle nephew or niece of the person qualifying for the disability tax credit. If more than one person claims the disability credit, the total amount claimed cannot exceed the maximum credit.

Medical Practitioner

The medical practitioners that can certify the various disabilities are shown on Form T2201. Generally speaking, they will be medical doctors or specialists in a particular area such as an optometrist, audiologist or occupational therapist.

Retroactivity

CRA Relief Provisions allow taxpayers to retroactively file for tax credits that have been overlooked as far back as ten years. That could provide a tax refund of up to about \$15,000 for missed DTCs. Other overlooked credits could increase that amount even further. Once the retroactive DTC application has been approved by CRA, a T1-ADJ Adjustment Request form must be filed with CRA to claim the credit for the applicable years.

Information Circular IC 07-1 spells out the details on obtaining overlooked tax credits for prior years. Our article *CRA Relief Provisions/Amended Tax Elections* in the May 2010 edition of the *Canadian MoneySaver* deals extensively with this topic.

A Credit Often Overlooked

The definition of disability for the DTC is admittedly complicated. However, the reason that it is so often overlooked may be because special needs individuals and their families are confused on whether it applies to their situation and no one can tell them. Some tax preparers may avoid suggesting it just because it is too complicated and other advisors have taken on this area as a specialty and have painted a mystique around it to justify hefty fees. Finally, there is a tendency for the disability tax credit to be overlooked by elderly people and their families simply because they think of themselves as just being old and not disabled in the classic sense.

Conclusion

The government has made a serious effort to expand the disability tax credit and other tax benefits for the disabled over the years as they have been requested to do. For that they are to be congratulated. But the complex and arcane provisions present a daunting mountain to climb. Individuals with disabilities have extraordinary challenges already so being confronted with complex tax laws is no help. Let's hope this can be remedied eventually but in the meantime we can only deal with what we have. Press On! *This article first appeared in the MoneySaver magazine.*

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