IT’S TAX TIME AGAIN!

Harry Beatty

1997 Tax Year

Once again, it’s tax time! By April 30, 1997, we have to file our returns for the 1997 taxation year. Here are answers to some of the most frequent tax questions related to disability which we get at ARCH. While we welcome questions and comments related to the information in this article, because of our limited resources ARCH is unable to respond in detail to every tax inquiry we receive.

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 - NOTE: Income tax legislation is very complex and this article is meant only to highlight the areas which apply to taxpayers with a disability, and to taxpayers who have dependants with a disability.

While every effort is made to ensure accuracy, rules are stated generally without reviewing all detailed exceptions. For example, the income tax rules relating to marital breakdown are not cross-referenced in the information to which they might relate. Not all of the rules relating to residency, immigration status, and living outside Canada are covered.

It must be remembered as well that Revenue Canada does not necessarily provide a clear and consistent explanation of all claims which can be made. For example, two claims which are left in considerable uncertainty this year are the scope of the work-related Attendant Care Expenses deduction (see Question 17) and transfer of the Disability Tax Credit from a dependant (see Question 22).

For detailed tax advice, please consult your own tax adviser, one of the many tax publications produced each year, or Revenue Canada.

You should be cautious in relying on verbal advice obtained over the telephone from Revenue Canada, or from any other source, for that matter. It is difficult to deal with all aspects of an individual taxpayer’s situation over the telephone in a few minutes.

The information which follows apply to Ontario taxpayers. Some things are different in other provinces. Information which is specific to Ontario is generally identified as such in the Questions.
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Advocating a Fairer Tax System for Persons with Disabilities

ARCH has been involved over the years in a range of litigation and law reform efforts aimed at helping to create a fairer income tax system for persons with disabilities. While this article is primarily intended to review what the current income tax law relating to persons with disabilities is, rather than what it should be, provided here is a brief review of ARCH's test cases and law reform involvement on behalf of individuals with disabilities, their families, and organizations representing persons with disabilities.

In 1983, an ARCH client, Michael Overdyk, was successful before the Tax Review Board in his claim for the "Disability Deduction" (now the "Disability Tax Credit" or "Disability Amount"). At that time, eligibility for the Disability Deduction was based on the individual being "blind, or confined to a bed or wheelchair". Mr. Overdyk was paralyzed from the waist down on his left side, but chose to use braces rather than a wheelchair (as his doctors recommended) largely because his workplace was inaccessible and he wanted to continue working. The Tax Review Board upheld Mr. Overdyk's claim for the Disability Deduction, on the basis that he would have been confined to a bed or wheelchair if he did not have the braces. This decision, and the publicity surrounding it, formed an important part of the background to the Federal Government's decision in 1985 to extend eligibility to "all severely disabled Canadians".

Another important decision, in 1986, involved Professor Mark Nagler of Renison College, University of Waterloo (Professor Nagler was later to serve as ARCH's President). Professor Nagler, who has cerebral palsy, required an assistant to carry out his teaching duties, such as preparing lectures. He had to pay the assistant himself as no public funding was available. The Income Tax Act only permitted the cost of an assistant to be deductible when "required by the contract of employment". ARCH argued on Professor Nagler's behalf that the hiring of the assistant should be regarded as an implied term of the contract of employment, since he could not teach otherwise. This position was accepted by Revenue Canada, and the result was a consent judgment in Professor Nagler's favour in the Tax Court of Canada.

In 1995 came the Brown decision in the Federal Court, Trial Division. ARCH's clients were a couple of modest means, and Mrs. Brown had multiple sclerosis. She was among those persons with m.s. whose health is very adversely affected by heat, so the purchase of an air conditioner for her was strongly indicated. ARCH was able to argue successfully that the air conditioner fell within the income tax regulation providing that a claim could be made for a device "designed" to assist a person with a disability in walking. (See Question 36 for a further discussion of the issue of when a medical expense claim can be made for air conditioners.)

Currently, ARCH is representing the Weeks family in the Tax Court of Canada. Fred and Pauline Weeks are the parents of John Weeks, a young adult with a very significant disability. They have made tremendous efforts to ensure their son has lived with them in the community, rather than going to a residence or institution. Revenue Canada disallowed a number of medical expense claims which Fred Weeks made over a four-year period. ARCH is arguing on Fred Weeks' behalf, among other things, that these types of expenses are (implicitly) allowed with respect to people in institutions, and should be allowed in the community as well.

All of these cases aim at changing the income tax system so that it provides fairer recognition of the costs of living with a disability in the community, and of trying to become independent. While things are changing slowly, the tax system still has a strong tendency to provide support for dependence and for "special" programs, rather than independent living and integration.

As well as test case litigation, ARCH is also involved in law reform and research relating to the fairness of the tax system for persons with disabilities. In 1991, ARCH acted as legal consultant to the Council of Canadians with Disabilities (CCD) in preparing an extensive discussion paper, "Tax Reform and People with a Disability". More recently (1996), David Baker and Harry Beatty wrote a research report for the Federal Task Force on Disability Issues entitled "Taxation and Disability: Recommended Reforms". Some of the recommendations in this paper (and in the papers written by other consultants for the Task Force) were reflected in the 1997 Federal Budget and are highlighted in the section of this paper entitled "Changes for the 1997 Taxation Year - What's New?".

It is important that individuals with disabilities, their families and their organizations continue their efforts to advocate a fairer tax system for persons with disabilities, especially with the federal Minister of Finance, the Honourable Paul Martin, and federal MP's, but with their provincial counterparts as well. ARCH appreciates being informed regarding your advocacy efforts in this area.

Information Available From Revenue Canada

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For the 1997 taxation year, Revenue Canada has produced a new booklet, “Information Concerning People with Disabilities 97" - RC4064). This new publication is a much more comprehensive guide to this area than the federal government has produced in the past. It is strongly recommended that you get this publication from Revenue Canada and review it before completing your 1997 return. “Information Concerning People with Disabilities 97” was developed with the assistance of the Persons with Disabilities Advisory Committee established by Revenue Canada in 1997.
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“Information Concerning People with Disabilities 97” contains the following Revenue Canada forms (also available separately).

- “Child Care Expenses Deduction for 1997” (T778)

- “Attendant Care Expenses” (T929). [Note: to be used only by people who pay their own attendant care expenses related to work, occupational training, or research]

- “Disability Tax Credit Certificate” (T2201)

Other materials which you may get from Revenue Canada include:

- “General Income Tax Guide 97”

- “General Income Tax Forms 97”

- the Interpretation Bulletin “Medical Expense and Disability Tax Credits and Attendant Care Expense Deduction” (IT-519R). [You should get the IT-519R dated February 20, 1995 as the previous version was from 1989.]

- the Child Tax Benefit Information Package (also available by calling the toll-free Child Tax Benefit Program information line 1-800-387-1193).

There are other forms and Interpretation Bulletins which may apply to your individual circumstances. In each case, check the date to make sure the information is current. Most of the forms mentioned above, and many others as well, have been revised for the 1997 taxation year, so you should be careful to get the most current version of the forms you need.

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Note: ARCH regrets that we are unable to supply tax forms and guides. Please contact Revenue Canada to get this material.
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Contacting Revenue Canada

Revenue Canada can be contacted by telephone. Several contact numbers for Revenue Canada are listed in the Government of Canada section of the blue pages in your telephone directory.

As the General Information numbers are quite busy, especially during March and April, it is advisable to call specific numbers where possible, such as the number to request forms. Your income tax inquiry, whether general or personal, may be answered by Revenue Canada’s automated Tax Information Phone Service (T.I.P.S.). This includes the status of your 1997 refund, information about your GST/HST credit, RRSP contribution limits and general information about other tax topics. See General Income Tax Forms 1997 or the blue pages of your telephone directory for details about T.I.P.S.

Revenue Canada also has forms and other publications available on the Internet at http:www.rc.gc.ca. Publications and forms specifically relating to persons with disabilities are found at http:www.rc.gc.ca/disability. Because of confidentiality and security issues, however, Revenue Canada does not accept or send client communications over the Internet.

Accessible Information for Taxpayers with Disabilities

Tax information and assistance is available from Revenue Canada for taxpayers who require alternative formats. A summary of how to obtain accessible information is provided here - further details are found in the booklet “Information Concerning People with Disabilities 97” referred to above.

People who use a TTY can get tax information toll-free by calling Revenue Canada’s bilingual advisory service at 1-800-665-0354. This is a TTY number only. It may be called during regular hours of service (extended to evening hours during the income tax filing season).

People who are deaf or hard-of-hearing may also call Revenue Canada using the Bell Relay Service, or make an appointment to discuss their situation in person. Revenue Canada’s information material indicates that “in most cases, “sign language interpretation can be arranged with 48 hours notice”.

People who are blind or visually impaired can get tax information toll-free by calling Revenue Canada at 1-800-267-1267 during regular hours of service (Eastern Time). Publications and forms relating to personal income tax returns are available in a variety of alternative formats, including audio cassette, Braille, large print and computer diskette.

Returns may be completed in Braille, large print or on computer diskette. Requests for alternative format tax materials should be made as early as possible.

Revenue Canada has made extensive efforts around accessibility in recent years, including not only accessibility for people with communication disabilities, but also mobility accessibility of their offices. You may request assistance from Revenue Canada staff at any Tax Services office.

Assistance with Filing Your Income Tax Return

Assistance in filing basic tax returns is available from the Community Volunteer Income Tax Program run by Revenue Canada, and from tax clinics operated through community organizations (information about these may be obtained from your local Community Information Centre or from InfoAbility at 416-482-4359 for Toronto, 1-800-665-9092 for Ontario outside Toronto).

Ontario Tax Information

Provincial tax credits are important to taxpayers. An "Information Sheet About Ontario Tax Credits" is found in "General Income Tax Forms 97". Ontario residents requiring further information should obtain informational materials available from the provincial Ministry of Finance. The information numbers for the Ministry of Finance are:

. English 1-800-263-7965
. French 1-800-668-5821
. TTY 1-800-263-7776
. Fax 1-905-433-6777.

Changes for the 1997 Taxation Year - What's New?

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Note: The Revenue Canada publication, "Information Concerning People with Disabilities 97" highlights changes for 1997 by outlining them in red. So does the "General Income Tax Guide 97". Both publications qualify their references to a number of changes announced in the 1997 Federal Budget by saying that they are "proposed" or "were not law at the time of printing". These changes, however, will be implemented by Bill C-28, which was before Parliament as of the date of writing this article. There is no reason to believe Bill C-28 will not be enacted with the changes, so you should make the claims described in these publications as "proposed" on your 1997 return.
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The 1997 changes will be listed briefly here, and described more fully in the Questions indicated.

1. Completion of Disability Tax Credit Certificate by Audiologist Now Permitted.

As of February 19, 1997, an audiologist is permitted to complete the Disability Tax Credit Certificate form (T2201) for a person with a hearing impairment (see Question 8).

2. $5,000 Limit on Attendant Care Expense Claim Which is Employment-, Training-, or Research-Related has been Removed.

The previous $5,000 limit on the “Attendant Care Expenses” claim that can be made at Line 215 using Form 929 has been removed, so this claim is now limited only by the requirement that it be not more than 2/3 of "earned income". This claim, however, relates only to attendant care expenses paid by taxpayers with disabilities themselves to permit them to earn income from employment, a National Training Act allowance, or a research grant. There are different changes (see point 5 later in this section) applying to attendant care claimable as a medical expense at Line 330 (see Question 33).

3. New Refundable Tax Credit for Working Persons with Low Incomes and High Medical Expenses

There is a completely new refundable tax credit in 1997 for persons who are employed or self-employed, and whose medical expenses are “high” while their net family income (i.e., including their spouse’s income, if any) is “low”. Whether you qualify to make this claim depends on rules and calculations set out in Schedule 10. If you qualify, the claim is made at Line 452 of your return. You do not have to qualify for the Disability Tax Credit to make this claim (see Question 27).

4. Additional Items are Now Claimable as Medical Expenses

As of 1997, the following new items are claimable as medical expenses at Line 330 of the income tax return.

- 20% of the cost of an adapted van (or one adapted within 6 months of purchase) to be used to transport an individual who uses a wheelchair up to a limit of $5,000 (previously, only the cost of the adaptations was claimable - see Question 37).

- 50% of the cost of an air conditioner, prescribed by a medical practitioner for an individual with a severe chronic ailment, disease, or disorder, to a limit of $1,000 (but see Question 36 for a discussion of whether the Brown case still applies to permit a claim of 100% of the cost in some cases).

- reasonable moving expenses (that no one has otherwise claimed) up to a limit of $2,000, where the reason for the move is to enable a person “who has a severe and prolonged mobility impairment, or who lacks normal physical development” to live in a more accessible home (see Question 39)

- reasonable costs of altering the driveway of the primary residence of a person with a “severe and prolonged mobility impairment” to allow easier access to a bus (see Question 37)

- sign language interpreter fees paid to a person in the business of providing such services (see Question 26).

5. Higher Amounts May be Claimed for Attendant Care

If attendant care of $10,000 or less is claimed as a medical expense at Line 330 with respect to a person, the Disability Tax Credit can also be claimed in 1997. For 1996, and several previous years, this limit was $5,000. The $10,000 limit is increased to $20,000 if the person died in 1997. The previous limit in the year of death was $10,000.

Attendant care expenses of more than $10,000 (or $20,000 in the year of death) may be claimed with respect to an individual in 1997 if it is advantageous to do so despite the loss of the DTC.

(The claim for attendant care expenses as medical expenses at Line 330 should not be confused with the claim for employment-related attendant care expenses made at Line 214, which are discussed above in point 2 in this section. See Question 33 for further details).

6. Tuition and Education Claims Improved

While not a disability-specific item, it is worth noting that the tuition and education amounts have been combined at Line 323, a wider range of fees can now be claimed, the monthly education amount has been increased to $150, and unused credits may now be carried forward to a future year by students. See Line 323 in the “General Income Tax Guide 97” for details.

7. Preferred Beneficiary Election Rules Changed

While the Preferred Beneficiary Election is being removed for dependants who do not have a disability, persons with a disability may now qualify if they are "infirm", subject to certain income requirements. The Preferred Beneficiary Election, if available, permits the person with a disability to be taxed only at his or her marginal tax rate, which may be a significant saving.

8. National Register of Electors

A new feature of the 1997 income tax return is that taxpayers are asked to consent to Revenue Canada’s giving your name, address and date of birth to Elections Canada for use in their new computerized voters' list, the National Register of Electors. More information is contained in the "General Income Tax Guide 97" (see page 4).

10 TAX TIPS TO REMEMBER

TIP #1

File a Return to Claim Refundable Credits Even If You do Not Have Taxable Income. But Don't Pay Tax on Social Assistance or Workers' Compensation.

Many people with disabilities who receive non-taxable income, such as social assistance or Workers' Compensation, do not file returns. This is usually a mistake, because by failing to file, they give up their entitlement to both federal and provincial refundable credits and other financial benefits obtainable only by filing an income tax return (Refundable credits means that people can get money back even if they do not pay or owe income tax).

One important federal refundable credit is the GST/HST (Goods and Services Tax/ Harmonized Sales Tax) credit (applied for through the income tax return but paid separately). Almost every low-income Canadian at least 19 years old, or younger if married or a parent, can at least get the basic GST credit (maximum value is $199 for a single person) for 1997. The credit is increased where there is a spouse or dependent children. Taxpayers with modest incomes may be eligible as well. Be sure to complete the appropriate section on the first page of your income tax form to claim the GST/HST credit if you think you might qualify.

Parents and other primary caregivers must complete an income tax return to obtain the refundable Child Tax Benefit (CTB) from the federal government.

The Child Tax Benefit provides tax-free monthly payments on an income-tested basis to help with the cost of raising children under 18. Although in most cases, the mother of the child is considered to be the primary caregiver and eligible for the CTB, where the spouses cohabit, both must file a tax return to claim the CTB. There is a separate application and information package for the CTB which may be obtained from your Tax Services Office or by calling a Revenue Canada toll-free information number: 1-800-387-1193.

The Ontario Government offers both sales tax and property tax refundable credits which you must file an income tax return to claim. Like the GST credit, the sales tax credit is available to almost every low-income adult in Ontario. The property tax credit is available to renters as well as homeowners. There is a new refundable medical expense supplement this year (see Question 27 for details). It is necessary to file an income tax return to claim this as well.

Because of these refundable credits, all low-income people should complete an income tax return, or have one completed on their behalf. This requires getting a social insurance number from your local Human Resources Canada Centre if you don’t have one.

It is important to file an income tax return for other purposes as well. As of the 1997 taxation year, students who have “unused” tuition and education credits which neither they nor another taxpayer can use to reduce tax in the current year, can carry them forward to later years. It is necessary to file an income tax return to do this. (See Line 323 in the “General Income Tax Guide 97” for details).

The provincial Trillium Drug Program (for people with high drug costs) is income-tested and based on your, and other family members’ tax return(s). Your entitlement for the year starting April 1, 1998 will be based on your 1997 tax return.

The Trillium Drug Program may allow you to document your income otherwise than through a tax return, but filing a return is the main way of proving your income. (For more information about the Trillium Drug Plan, contact the Drugs Program Branch, Ontario Ministry of Health, or your local pharmacy.)

The Handicapped Children’s Benefit Program of the Ontario Ministry of Community and Social Services is also income-tested and based on the parents’ previous year’s tax return(s).

Yet another reason for those with low self-employment income to file is to ensure that you make your CPP contributions for the year. Not only are you required by law to do so if you earned more than the basic CPP exempt amount of $3,500 in 1997, but if you fail to make your CPP contributions for a year, this may affect your future entitlement to a CPP disability pension, as well as the amount of your retirement pension.

For payments like social assistance and Workers’ Compensation, you should receive a T5007 form from the government or WCB to attach to your tax return. This money is not taxable. However, it has to be taken into account in calculating your tax credits and in determining whether someone can make certain claims for you as a dependant.

The tax return requires you to report Workers Compensation payments (at Line 144) and social assistance payments (at Line 145) in accordance with the T5007 slip. These amounts are to be deducted at Line 250. Be sure to make the deduction of these amounts at Line 250, or else you will wind up paying tax on them.

TIP 2

Consider Whether You, Your Spouse or a Dependant Qualifies for the Disability Tax Credit (Disability Amount)

If you, your spouse, or a dependant has a significant disability, consider whether you can claim the Disability Tax Credit (DTC). The DTC is also called the "Disability Amount". A taxpayer with a disability makes this claim at Line 316. (The conditions under which a claim may be made for a spouse or other dependant with a disability are discussed under Tip #4).

If this claim was made and accepted for 1996, you do not have to file another T2201 for 1997 unless the previous form said that the disability would end in 1996, or a new form is requested by Revenue Canada. To make this claim, obtain Form T2201, "Disability Tax Credit Certificate" from your Tax Services Office (a T2201 form is included as part of the Revenue Canada booklet, "Information Concerning People with Disabilities 97". The T2201 form must be signed by a medical doctor, an optometrist in the case of vision impairments, or an audiologist in the case of hearing impairments (new in 1997).

There are two conditions which must be met for you or your spouse or dependant to qualify for the disability amount for 1997.

1 you (or your spouse or dependant) had a severe mental or physical impairment in 1997, which caused you (or your spouse or dependant) to be markedly restricted in your ability to perform a basic activity of daily living; and

2 you (or your spouse's or dependant's) impairment is prolonged, which means it has lasted or is expected to last for a continuous period of at least 12 months.

Revenue Canada has applied these tests since eligibility for the DTC was broadened in 1985. However, in 1991, the Income Tax Act was amended to give a new, stricter interpretation of these tests the force of law. In 1993, and again for 1994, the T2201 form was revised to include more specific criteria, and this has made the DTC even more difficult to get now for those who have not previously qualified. (The 1997 DTC form is virtually the same as the 1994, 1995, and 1996 forms.)

Under the revised T2201, a marked restriction in activities of daily living means, for example, that the person is:

- "legally" blind (i.e., meets the "standard test" for blindness)

- unable to feed and dress himself/herself

- unable to speak to or hear another person whom he or she knows well in a quiet setting

- unable to walk more than 50 metres on level ground (the last test was made more difficult to meet starting with the 1994 version of the T2201 - it was 100 metres in 1993!).

Inability to control bowel and bladder functions may be another ground of eligibility.

Most subjective is the description of mental disability, where the doctor is asked whether his or her patient can “think, perceive and remember”. A side comment, however, gives as an example whether the person “can manage person affairs or do personal care without supervision" - this provides a test which is a bit more clear.

In every case, it is emphasized on the T2201 that the marked restriction test is to be applied having regard to whether the person cannot do the activities in question “even with therapy and the use of appropriate aids and medication”. The vision test is to applied assuming the person has corrective lenses, and the walking, speaking, hearing and feeding and dressing tests also refer to the use of appropriate aids.

The test for elimination (incontinence) gives as examples that a person with an “uncomplicated ostomy”, or who uses a catheter, is not necessarily eligible for these reasons. And the test for mental functions is to be applied considering the possible effects of medication or therapy.

Because Revenue Canada is continuing to “tighten up” the eligibility criteria, it is more important than ever that the physician (or optometrist or audiologist) complete the T2201 form very carefully, documenting all conditions leading to a severe disability.

Inability to work, or receipt of other disability benefits such as Workers’ Compensation, Long-Term Disability Insurance or Canada Pension Plan disability, does not make someone eligible who does not meet the two eligibility conditions. While inability to work does not necessarily imply ineligibility for the Disability Tax Credit, someone who is working can qualify so long as their disability is “severe” and “prolonged” according to the Revenue Canada definitions.

A Disability Tax Credit claim certified by the person’s physician, optometrist or audiologist is not necessarily accepted by Revenue Canada. It may be reviewed by the medical advisors at Human Resources Development Canada, and the physician, optometrist or audiologist is often contacted for more information.

In the past, taxpayers often had DTC claims apparently accepted, only to be reviewed later and rejected retroactively for up to three years. Understandably, this caused major hardships to taxpayers with disabilities and to those who have family members with disabilities.

In response to this, Revenue Canada has, effective with the 1996 taxation year, established as a policy that all new DTC claims will be reviewed before the returns are assessed. The implication is that retroactive re-assessments will be very infrequent in the future, although there is no outright guarantee that there will never be a re-assessment in an exceptional case (e.g., if the doctor’s signature turned out to be a forgery! (See Question 9 for a fuller discussion).

As well, two years ago, the federal Minister of Revenue at that time, the Honourable Jane Stewart, informed ARCH that her Department would review all cases in which there was a retroactive re-assessment of more than one year, at the request of the taxpayer.

That is, they would review the issue of the assessment being made retroactively separately from the issue of whether the individual actually qualified for the DTC, and would cancel the retroactive re-assessment (back further than the most recent taxation year) in most cases. A letter to the Chief of Appeals at the local Tax Services Office will initiate this review (see Question 12 for a fuller discussion).

There are no age limits applied to eligibility for the disability amount. A child born in 1997 is eligible if his or her disability meets the two conditions. For children under three, however, eligibility is to be assessed with regard to the child’s developmental progress and prognosis. Seniors are also eligible if their disabilities meet the two conditions.

Taxpayers with disabilities who themselves qualify for the Disability Tax Credit make this claim at Line 316. (As already noted, making this claim for a spouse or a dependant is discussed in Tip #4). The amount that you see at Line 316 is $4,233, but like all non-refundable tax credits, it is converted to a 17% federal tax credit, so the actual maximum federal tax saving is $720.

However, there is also an impact on provincial tax and federal and provincial surtax, so the real value of the disability amount is likely to be $1100-$1300, depending on the province you live in and whether you are in a high income group.

It’s a non-refundable credit, so you must have paid or owe tax, either by deduction from your paycheques or otherwise, in order to benefit from the DTC.

As explained in Tip #4, if you can’t benefit from the credit yourself because you do not pay tax, perhaps it can be transferred to a supporting person who can benefit.

TIP #3

Consider Claiming a Non-Refundable Tax Credit for a Spouse or Dependant with a Disability

Personal amount claims for spouses and other dependants ("dependant" means someone supported at least partly by the taxpayer during 1997) are covered at Lines 303, 305 and 306 on the income tax return. These claims, like the DTC, are non-refundable and the amounts listed are converted to 17% federal tax credits. The rules are complex and must be reviewed very carefully. It is not possible here to review all of the implications of marriage or spousal breakdown and/or support provisions.

Claim for a Spouse

The spousal amount is claimed at Line 303. This claim can only be made by legally married spouses or by common-law spouses. "Common-law spouses" are opposite sex couples who have cohabited for 12 months or who have a child together as birth parents or through adoption. (see page 10 of the "General Income Tax Guide 97" for an overview including how separations are dealt with). The disability of a spouse has no direct bearing on this claim (but see Tip #4 for a discussion of the transferability of the Disability Tax Credit to a spouse, which is a separate issue).

The availability and amount of the claim depends only on the net income of the spouse. Net income includes social assistance and Workers' Compensation income - see Tip #1).

Dependent Children under 18

There is no longer (as of 1993 when the Child Tax Benefit system was introduced) an income tax credit for dependent children under 18. (However, a dependent child under 18 may still qualify for the equivalent-to-spouse credit, discussed next, and for transfer of the DTC, discussed in Tip #4).

Equivalent-to-Spouse Claim

If you were single, divorced, separated or widowed (at any time) and supported a relative at that time, consider whether you can claim the "equivalent-to-spouse amount" at Line 305 using Schedule 5. The rules are complicated, but the basic principle is that the "equivalent-to-spouse" claim replaces the spousal claim for those without a spouse. You cannot make this claim if you are claiming a spousal amount at Line 303.

The equivalent-to-spouse claim may only be made for a dependant who is related to you "by blood, marriage or adoption". The dependant must also fall into at least one of the following three classes:

(a) under 18
(b) your parent or grandparent; or
(c) “mentally or physically inform”.

“Infirmity” requires a doctor’s certificate (there is no special form) but it is a wider concept than eligibility for the DTC. Revenue Canada’s basic interpretation of “infirm” is that it refers to an inability to be gainfully employed.

The dependant must live with you in a home that you maintained. Revenue Canada considers a student who lives away from your home to qualify, so long as the student resides with you when not attending school. The home must be in Canada, except where the dependant is your child.

Each household is allowed only one claim for the equivalent-to-spouse amount. If anyone else in your household is making this claim, you cannot. The net income of the dependant, including social assistance and Workers’ Compensation, is taken into account in calculating this claim.

Claim for “Infirm” Dependants 18 or Over

Where a relative, including your child, was over 18 for at least part of 1997 (i.e., born in 1979 or earlier), and is “mentally or physically infirm”, an “additional personal amount” or credit may be claimed at Line 306 using Schedule 6. To qualify, the relative must be your or your spouse’s child, grandchild, parent, grandparent, brother, sister, aunt, uncle, niece or nephew.

[The "General Income Tax Guide 97", at Line 306, contains the puzzling statement that "A child can include anyone who has become dependent on you, even if he or she is older than you". Taken literally, this would allow the "infirm dependant" claim to extend very widely indeed e.g. to relatives other than those listed in the previous paragraph. The problem is that this apparently wider interpretation is not related to any changes in the Income Tax Act. It may be helpful to seek guidance on this point from Revenue Canada or your own tax advisor.]

Except for children or grandchildren, the relative must have lived in Canada at some time during 1997. Their net income (including social assistance and Workers’ Compensation income) is taken into account in calculating this claim. This claim may be divided between two taxpayers who support the same dependant.

In some cases, it is possible to combine an equivalent-to-spouse claim at Line 305 with a (partial) claim with respect to the same individual at Line 306 (see the "General Income Tax Guide 97”, Lines 305 and 306, and Question 22 for more information).

TIP #4

Consider Applying for the Disability Tax Credit (Disability Amount) for a Family Member

Medical eligibility for the DTC was discussed above in Tip #2. We have just discussed claiming personal amounts for spouses or disabled dependants in Tip #3.

It is important to distinguish between claiming a personal amount for a relative and obtaining a transfer of his or her (unused) Disability Tax Credit. You may be able to do one but not the other, with respect to a spouse, child, or other relative with a disability.

A key point is that the calculation for transfer of the DTC is based on the “taxable income” of the dependent spouse, child, or other relative (as opposed to “net income” for the calculation of personal amount claims). Therefore, social assistance, Workers’ Compensation and similar payments are not taken into account in calculating the transferable amount of the DTC.

This means that a transfer of the DTC may be available, even where no personal amount for the dependant may be claimed. On the other hand, sometimes it works the other way, where a personal amount may be claimed with respect to a dependant with a disability, but there is no transfer of the DTC.

Transfers Between Spouses

If your spouse is disabled and does not need to use all of the DTC himself or herself to reduce his or her own tax payable, it can be transferred to you at Line 326 using Schedule 2. (Line 326 is not found on the T1 Special Form - to make this claim you must use the T1 General Return.)

Transfers from Relatives other than Spouses in General

To obtain a transfer of the DTC from a person other than your spouse, you must be a “supporting person” of that individual. Being a “supporting person” requires that you be related “by blood, marriage or adoption”.

The Income Tax Act requires that the relative from whom you obtain a transfer of the DTC be “dependent” on you for “support”. However, the terms “dependent” and “support” are not defined. In the past, they seemed to mean a degree of "partial support". But the new Revenue Canada publication “Information Concerning People with Disabilities 97” (at pages 6-7) provides a somewhat different approach to interpreting this than has been available in the past. It states that “...we will consider you to be a supporting person related to a person with a disability if that person is any of the following:

- completely dependent on you for support now, and you have custody and control of the person with disabilities or did have custody and control of the person immediately before that person turned 19 years of age;

- your natural or adopted child;

- your spouse’s child; or

- your child’s spouse.”

This seems to say that you can get a transfer of the DTC from your child (or spouse’s child or child’s spouse) regardless of whether you actually provided support to them in 1997. On the other hand, for relatives other than these, it requires “complete” dependence for support and “custody and control” (either now or immediately before the person turned 19).

This interpretation does not seem to reflect either the provisions of the Income Tax Act or other explanatory material published by Revenue Canada. This is an area where you should try to get a clarification from Revenue Canada regarding its policy, or seek advice from your own tax advisor.

To obtain the transfer of the DTC for any relative other than a spouse, the relative must have lived in Canada at some time during 1997.

There are additional rules relating to different classes of relatives which must also be considered with respect to transfer of the DTC.

Transfers from Children or Grandchildren

If your (or your spouse’s) dependent child or grandchild is disabled and does not need to use all of the Disability Tax Credit himself or herself to reduce his or her own tax payable (this includes children under 18), in some circumstances it can be transferred to you at Line 318 (there is no Schedule for this claim).

There are four classes of your (or your spouse’s) children and grandchildren from whom you may obtain this transfer:

- a child or grandchild for whom you claimed an equivalent-to-spouse amount at Line 305

- a child or grandchild for whom you could have claimed an equivalent-to-spouse amount assuming that you had no spouse and assuming that the child or grandchild had no income in 1997

- a child or grandchild 18 or older in 1997 (i.e., born in 1979 or earlier) for whom you claimed an “amount for infirm dependants” at Line 306

- a child or grandchild 18 or older in 1997 (i.e., born in 1979 or earlier) for whom you could have made an "infirm dependants" claim at Line 306 assuming that the child or grandchild had no income in 1997 and that he or she was dependent on you because of infirmity.

The second and fourth classes are not easy to understand but the net result is that you may have to go back and consider whether you could have claimed the person at Line 305 or 306 assuming certain hypothetical facts, which may or may not be true.

Given that Revenue Canada seems to interpret "supporting person" very widely where the dependant is a child or grandchild, however, we can sum up by saying that subject to restrictions soon to be covered, you can usually claim a transfer of the unused DTC from a child or grandchild regardless of their age.

Transfers from Parents or Grandparents

In almost every case, you can get a transfer of the unused portion of the DTC, at Line 318, from your or your spouse’s parent or grandparent who lived with you in 1997 in a home that you maintained. You can make this claim if you claimed the equivalent-to-spouse amount for the parent or grandparent at Line 305, or could have made this claim if they had no income and you had not had a spouse.

Even if the parent or grandparent did not live with you, you can usually get a transfer of the DTC from them if they were dependent on you because of mental or physical infirmity. The test is whether you either claimed an “amount for infirm dependants” for them at Line 306 or could have claimed this amount if they had had no income during 1997.

Transfers from Other Relatives

A transfer of the DTC may be obtained (again at Line 318) from relatives other than your or your spouse’s children, grandchildren, parents or grandparents only if you actually claimed the equivalent-to-spouse amount for them at Line 305 (not if you could have claimed them had circumstances been different).

Restrictions

You cannot obtain a transfer of the DTC at Line 318 for any of the classes of relatives just discussed if:

- the relative is your child for whom you are entitled to deduct child support payments (but there are special rules for the first year)

- you, or anyone else, makes a medical expenses claim for the relative of more than $10,000 in the year of death) or for full-time care in a nursing home. In the case of attendant care, you must choose between limiting the attendant care medical expenses claim to $10,000 or giving up the DTC

- the relative’s spouse claims any personal credit (other than medical expenses) with respect to the relative.

If there are two or more “supporting persons” of a dependant with a disability, they may divide the claim, but the total amount claimed cannot be more than one “supporting person” would have claimed.

TIP #5

Consider Whether Disability Items are Claimable as Medical Expenses

At Line 330, you may claim “medical expenses”. You must keep your receipts and submit them with your tax return. The items that may be claimed are specifically listed in the Income Tax Act and Regulations. These include:

- fees to health professionals

- laboratory examinations and tests

- dental services

- hospital fees

- prescription medications

- premiums paid to private (not government) health insurance plans (but not items paid for by these plans)

- some travelling expenses to obtain medical treatment.

- other health-related items.

They also include many payments which you make related to your disability or your spouse’s or dependant’s disability. A wide range of adaptive devices and equipment is included, but so are other items. Some examples are:

- home renovations for accessibility

- communication devices for persons who are deaf or blind

- incontinence products

- expenses for guide and hearing-ear dogs

- payments to full-time, part-time or temporary attendants (see Tip #6)

- fees for programs specially adapted to disability.

For the 1997 taxation year, a number of new expense claims related to disability can be made. See “Changes for the 1997 Taxation Year-What’s New? above for details.

Some items require a doctor’s prescription. Others require a certificate from a “medical practitioner”, which includes many health professionals other than doctors. In almost every case, it will be useful to have a clear supporting letter from the individual’s doctor or other qualified health professional explaining why the item is requires.

While the categories of claimable medical expenses seem fixed, Revenue Canada does exercise discretion in individual cases. In the Weeks case discussed earlier (in the section entitled "Advocating a Fairer Tax System for Persons with Disabilities"), Revenue Canada conceded a number of claims not usually allowed as medical expenses and not easy to fit within the existing medical expense categories. These included: training in martial arts (for coordination); purchase of ankle and arm weights; replacement clothing and bedding (where the extra wear-and-tear was due to a disability); bath sheets; extra heating costs and additional rug and furniture cleaning costs (again directly attributable to the disability of the taxpayer's son). You should consider making these claims if appropriate - they should be dealt with by Revenue Canada on a consistent basis.

Medical expenses can be claimed that were paid for yourself or your spouse. They can also be claimed for a child or grandchild of you or your spouse who was dependent upon you for support in 1997.

Being “dependent upon you for support” does not require that you have claimed a personal amount for the person at Lines 305 and 306. So, for example, you could make the claim for medical expenses incurred on behalf of a non-disabled son or daughter over 18 who was dependent on you for support, as well as for a son or daughter with a disability.

You can also claim medical expenses for your, or your spouse’s parent, grandparent, brother, sister, uncle, aunt, niece or nephew, provided that they lived in Canada at some time during 1997 and were dependent upon you for support (a spouse, child or grandchild need not have lived in Canada).

However, if you claim medical expenses for a dependant other than a spouse, whose net income in 1997 was more than $6,456, there is a “medical expenses adjustment” at Line 331 which will reduce your claim. (Remember that “net income” includes non-taxable amounts such as social assistance and

Workers Compensation.)

Since the “medical expenses adjustment” is subtracted from your medical expenses claim, it is not to your advantage to claim medical expenses for a dependant (or dependants) for whom the “medical expenses adjustment” is greater than the medical expenses claimed.

There is a reduction of 3% of your net income from a medical expense claim (to a maximum of $1,614). Together with the conversion to a 17% non-refundable federal credit, this means that a claim for medical expenses falls far short of full reimbursement. It may amount at most to a 10-30% reimbursement of what actually was spent, and in many cases, the claim is reduced to 0%. The 3%/$1,614 reduction leads to consideration of some “strategies” around medical expenses.

One strategy involves deciding which spouse should pay medical expenses. You or your spouse may claim medical expenses for either of you or your dependants, regardless of who actually paid them.

There may be an advantage to the lower income spouse making the medical expense claim, as his or her net income is less, and so the 3% net income reduction applied to medical expenses has a lesser impact. But remember that it is a non-refundable credit, so the lower income spouse must have sufficient tax payable in order to take advantage of the credit.

In some circumstances, it is better not to claim your 1997 expenses on the return you are filing now, but to “save” them for 1998 by choosing a 12-month period different from the calendar year, as you are permitted to do - see Line 330 in the “General Income Tax Guide 97”. This is because it is better to have the 3% net income reduction applied in only one taxation year rather than in two.

For low income families, the impact on the new Refundable Medical Expense Supplement of these “strategic choices” should be considered as well (see Tip #7).

You cannot claim as medical expenses payments for which you will be reimbursed by a government plan or private insurer (although, as noted above, the insurance premiums paid to a private insurer, but not to a government plan, are claimable). If the reimbursement is only partial, however, you may claim the amount which you actually pay yourself and are not reimbursed for.

If your employer reimburses you for items included under medical expenses, and includes the amount of the reimbursement on your T4 form, you may claim these amounts at Line 330, provided that you did not deduct the reimbursement anywhere else on your return.

For details regarding medical expenses, you should obtain

Interpretation Bulletin IT-519R, “Medical Expense and Disability Tax Credits and Attendant Care Expense Deduction”. (The current IT-519R is dated February 20, 1995).

TIP #6

Claim Attendant Care Expenses at Work and at Home

There are three separate attendant care expense claims which you can consider. In each case, the expenses must be paid to a person 18 years of age or older who is not your spouse. (Payments to other relatives are eligible if 18 or older.) You may not use different attendant care claims to claim the same expenses twice. A Disability Tax Credit certificate (see Tip #2 above) must be filed to make the first two of the three attendant care expense claims discussed next - a physician's letter certifying dependence due to infirmity is another way of qualifying for the third.

First, if you are eligible for the DTC, attendant care expenses which you pay yourself to enable you to work, conduct research, or attend an eligible training program can be claimed at Line 215 of your return (only a taxpayer with a disability can make this claim, not a “supporting person”). The attendant care need not actually occur in the place of employment, research or training, so long as the care is related to helping you earn income. Obtain Form T929, “Attendant Care Expenses” from Revenue Canada to make this claim. The limit to this claim (which is a deduction, not a credit) is 2/3 of your "earned income" - the previous $5,000 maximum has been removed for the 1997 taxation year. For this claim, the expenses must be paid for care in Canada, except for “deemed” or “factual” residents.

Where the employer pays the attendant care expenses through reimbursement or through an allowance, this is a tax-free employee benefit which should not be included in your T4 and which is not income to be reported for tax purposes.

Second, there is also a permitted claim of up to $10,000 for part-time or temporary attendant care at home, which may be made by a taxpayer with a disability who qualifies for the DTC, or by a “supporting person”. The maximum claim is increased to $20,000 in the year of death. This is claimed as a medical expense credit at Line 330. (See Tip #5 for more information about medical expense claims).

Finally, there is a claim for a full-time attendant (or care in a nursing home) which is also made as a medical expense credit claim at Line 330, and which may be claimed either by a taxpayer with a disability or by a “supporting person”. The real meaning attached to “full-time” is simply that the annual cost is more than $10,000 (or $20,000 in the year of death). Strictly speaking, this claim does not require that the person qualify for the DTC. However, he or she must have a letter from a doctor or other medical practitioner certifying that the person is dependent on others for care "due to long-term mental or physical infirmity", which is close to the same standard as eligibility for the DTC.

There are a number of rules regarding how attendant care claims can be combined with other claims and credits. The starting point is that only one attendant care claim may be made for any individual.

The attendant care expenses at work claim, made at Line 215, may be combined with a claim for the DTC. Similarly, the part-time or temporary attendant care claim (to a maximum of $10,000 or $20,000 in the year of death) at Line 330 may be combined with a claim for the DTC. But the full-time attendant care (or care in a nursing home) claim cannot be combined with a claim for the DTC (no matter who makes the DTC claim).

You cannot claim both child care expenses at Line 214 and attendant care expenses at Line 330 with respect to the same child. You can choose the claim which is most advantageous to you.

Part-time or temporary ($10,000 maximum) claims can be made only for attendant care provided in Canada. However, a claim for a full-time attendant, or care in a nursing home, is not restricted to care provided in Canada under the Income Tax Act.

TIP #7

Claim the new Refundable Medical Expense Supplement if You have Low Employment Earnings and High Medical Expenses

For the 1997 taxation year, there is a new claim available called the “Refundable Medical Expense Supplement" (RMES). RMES is claimed at Line 452 of your income tax return using Schedule 10. Since it is a refundable credit, the RMES may be claimed by a person even if he or she otherwise had no tax to pay.

The RMES is available to any taxpayer who qualifies under the rules. It is not limited to persons with disabilities and their families. It is not necessary to qualify for the DTC in order to make this claim. However, as people with disabilities tend, on average, to have lower incomes and higher medical expenses, the RMES is intended to benefit them in particular.

The RMES is an additional claim to the medical expense credit, and is based on the same list of medical expenses, as well as being subject to the same reduction of 3% of net income (to a maximum of $1,614). You can make both the medical expense claim and the RMES claim. The 3%/$1,614 reduction gives your allowable medical expenses (Line 332) on which the RMES calculation is based. In considering alternate methods of calculating medical expenses (see Tip #5), for lower income families, the impact on RMES claims must be considered as well.

To be eligible to claim the RMES, you must have been 18 or older by the end of 1997, and have been a resident of Canada throughout 1997.

Your income from employment and self-employment must have been more than $2,500 in 1997, according to rules set out at Line 452 of the “General Income Tax Guide 97” and in Schedule 10. (This shows how the RMES is targetted at the “working poor” - persons dependent solely on disability income, for example, don’t qualify).

For purposes of the RMES, you start with your allowable medical expenses, from Line 332, and take 25% of these to a maximum of $500. (The maximum of $500 significantly limits the value of the RMES to those individuals and families with very high medical expenses.) From this amount, you subtract 5% of your net family income (from Line 236) over $16,069. “Net family income” includes your spouse’s net income if you lived together at the end of 1997, but not the income of other family members. For income tax purposes, remember that net income includes non-taxable payments such as social assistance and Workers’ Compensation.

As explained in Question 27, the RMES is calculated in the same way for individuals and families with dependants, which is somewhat unfair to larger families in particular. The “General Income Tax Guide 97” and “Information Concerning People with Disabilities” both state that you cannot make this claim if you and your spouse’s net income is more than $26,069 - this is accurate for the maximum $500 claim, but the “cut-off” point is lower if your claim is less than $500.

TIP #8

Claim the Tuition and Education Amounts If You Are a Part-Time or Full-Time Student with a Disability

For the 1997 taxation year, the method of claiming tuition fees and the education amount has been changed. Previously, they were claimed on separate lines of the income tax return. Now, both are claimed at Line 323 using Schedule 11.

Tuition fees can be claimed generally for post-secondary education in Canada. There are some restrictions for post-secondary education outside Canada - see Line 323 in “General Income Tax Guide 97” for details. Tuition fees can also be claimed for persons 16 or older on December 31, 1997 if paid for an occupational training course to an institution certified by the Minister of Human Resources Development. Expenses other than tuition, such as books, board or lodging, cannot be claimed. As of 1997, athletic and health services fees can be claimed, subject to certain rules.

Subject to certain conditions (also set out at Line 323 of the “Guide”), post-secondary or occupational training course students can also claim an “education amount” of $150/month (increased from $100/month in 1996). While the credit is ordinarily for full-time students, a claim may also be made by part-time students who can only attend part-time because of a “mental or physical impairment”. Form T2202, the “Education Credit Certificate for Full- and Part-Time Students”, must be completed to make this claim.

Part 2, “Statement by Student”, has a box for students to check if they qualify for the Disability Tax Credit (Form T2201). Form T2202 also has a Part 3, “Certification by Physician for Part-Time Studies” which can be completed by medical doctors (or an optometrists or audiologists) for students who do not qualify for the DTC but who still are limited to part-time studies by a “mental or physical impairment”.

The tuition and education amounts are a non-refundable credit. However, if you do not need all of this credit to reduce your own federal tax payable to zero, you may be able to transfer the “unused” amount to your spouse, or to your or your spouse’s parent or grandparent. You may also (as of the 1997 taxation year) be able to carry forward the “unused” amount and claim it yourself in future years. See Line 324 of the “General Income Tax Guide 97” for details.

TIP #9

Claim Higher Child Care Expenses for an “Older” Disabled Child and Consider an Extra Child Care Expense Claim if You or Your Spouse is Disabled

Child care expenses are based on actual expenditures, and are claimed by single parents or the lower income parent in two-parent families to a maximum of two-thirds of "earned income" for the year.

Ordinarily, the maximum child care expenses claim (Line 214) is $5,000 for a child 6 and under, $3,000 for a child 7 to 16, and nothing for a child over 16. (Note: the “upper” age of 16 was established for the 1996 taxation year - it was 14 for previous years). However, if a DTC Certificate (T2201) is submitted for the child, the maximum claim is $5,000, regardless of age. If a child over 16 has a “mental or physical infirmity” (see Tip #3 above for a discussion of “infirmity”), then a maximum claim of $3,000 can be made even if the child does not qualify for the DTC.

The usual rule is that the parent (or “supporting person”) with the lower net income must claim child care expenses.

However, if one parent is disabled and unable to care for the children as a result, then the higher income spouse may make the claim. (There are other circumstances where this is possible, such as where the lower-income spouse is attending school). The claims are limited on a weekly basis to $150 where the child is 6 and under or qualifies for the DTC, and $90 where the child is 7 to 16 or “mentally or physically infirm”, regardless of age.

Obtain Form T778, “Child Care Expenses Deduction for 1997” for more information. (Form T778 is contained in “Information Concerning People with Disabilities 97”).

TIP #10

You Can Still Make Claims Back to the 1985 Taxation Year

If you have not made a claim, such as for the DTC or for medical expenses, under the existing income tax rules for previous years, you could still go back as far as the 1985 taxation year. The “General Income Tax Guide 97” (on page 9) explains how you can request a refund back to your 1985 tax return. In fact, you can still file returns back to 1985 to claim refunds.

You can write to Revenue Canada giving your social insurance number, the telephone number where you can be reached during the day, the details of the changes you believe should be made, the years you are applying for and the supporting documentation (such as the T2201 if the claims is for the Disability Tax Credit - in this case, it is important that the physician indicate clearly the date the disability began). Revenue Canada also has a form, the T1-ADJ or “T1 Adjustment Request” which can be used for this purpose.

If you have already filed tax returns for the years in question, you should not file entire new returns. It is often advisable to speak to your local Tax Services Office before writing. Before making an extended retroactive claim (e.g., for several years ofthe DTC), you should consider how strong the claim is and how well it can be documented. Not surprisingly, it appears that Revenue Canada scrutinizes claims for several years’ retroactive entitlement extremely closely.

ANSWERS TO YOUR SPECIFIC TAX QUESTIONS FOR THE 1997 TAXATION YEAR

FILING A RETURN

1. I received the T1 Special Tax Guide and return from Revenue Canada in the mail. Should I use it, or might I need another guide or form?

There are a number of circumstances in which taxpayers with disabilities, or taxpayers with family members who have disabilities, ought to use the T1 General rather than the T1 Special Return. You should use the T1 General Income Tax Form if, for example, you are claiming attendant care expenses related to work, occupational training or research (at Line 215 - see Question 17), or if you are claiming the unused portion (either part or all) of your spouse's DTC. (For the 1997 taxation year, however, the T1 Special may be used to claim medical expenses).

You can be sure of considering all claims by using the T1 General Return rather than the T1 Special Return (or the versions of the T1 Special called the "T1S" - "A", "B" and "C" - which do not require any calculations). The T1 General (called this year "General Income Tax Forms 97") is available at any Post Office or Tax Services Office.

2. I am a person with a disability receiving Family Benefits. Should I file an income tax return? I understand that social assistance payment such as Family Benefits or General Welfare Assistance are not taxable.

Also, I have a friend receiving Workers' Compensation, which isn't taxable either. Should she file a return?

Social assistance payments, including Family Benefits and General Welfare Assistance are not taxable. Workers' Compensation is not taxable either. But if you are receiving these benefits, you should still file an income tax return, because this is the only way you can claim certain refundable tax credits.

A refundable tax credit means you can get money back from the government even if you don't pay or owe any tax. As well, there are other government programs, both federal and provincial, which are income-tested and which require you (and your spouse) to file income tax returns to qualify. The main refundable credits and benefits for the 1997 tax year are:

- the federal Goods and Services Tax/Harmonized Sales Tax (GST/HST) credit (which will be sent through separate quarterly cheques, although it is applied for using the income tax return) - the 1997 maximum is $199, divided into four quarterly payments (if over $100 - if less, it is paid in one lump sum) for a single person (an increased amount is available for families)

- There is a new refundable tax credit for 1997, the Refundable Medical Expense Supplement (RMES), which is available to taxpayers (whether they have disabilities or not) who have low employment earnings and high medical expenses. (The RMES is discussed in detail above at Tax Tip #7 and below at Question 27.)

- Ontario provincial property and sales tax credits (the sales tax credit for which almost every low- and modest-income Ontario resident qualifies has a maximum value of $100 to a single person in 1997 - increased if there is a spouse and/or dependent children)

As explained in Tip #1, since these credits are refundable, you can get money back even though you pay no income tax. As discussed in Questions 3 and 20-24, even though social assistance payments and Workers' Compensation payments are not taxable, they are taken into account in determining eligibility for many credits and transfers - but not the DTC - and in determining whether you are someone's dependant. Receiving these credits will not reduce your Family Benefits or General Welfare Assistance entitlement. They don't come off these allowances.

There are also a number of important federal and provincial programs which are income-tested and which require that you (and your spouse) file an income tax return in order to qualify.

The federal Child Tax Benefit (CTB) provides tax-free monthly payments to help with the cost of raising children under the age of 18. The benefit is paid on the child's behalf to the parent, or another person who is the child's primary caregiver. In most cases, the mother of the child is considered to be the primary caregiver.

To receive the CTB, an application must be submitted, using a form from Revenue Canada. Both the applicant and the cohabiting spouse must file income tax returns. For more information, you can contact the CTB Program toll-free number: 1-800-387-1193.

The Ontario Provincial Government has implemented the Trillium Drug Program for people with high drug costs (not covered by an insurance plan). The Trillium Drug Program is different from and in addition to the Ontario Drug Benefit for seniors and social assistance recipients.

People with moderate or high incomes are eligible for the Trillium Drug Program as well as lower income people, but there is a significant deductible (amount you must pay for drugs out of your own pocket) which increases with family income. Since this is an income-tested program, all adult family members should file income tax returns for 1997 to document their incomes. (In some circumstances, TDP may allow income to be documented in another way, but filing an Income Tax return is the preferred method.)

The Trillium Drug Program runs each year from April 1 to March 31 of the following year. You should be careful to save all your drug receipts to apply to Trillium. Application forms and an information booklet are available from the Ontario Ministry of Health or your local pharmacy. If you cannot get an application from your local pharmacy or have questions about the Program, contact the Drugs Program Branch, Ontario Ministry of Health at: 326-1558 (Toronto), 1-

800-575-5386 (toll-free outside Toronto), 1-800-387-5559 (TTY).

The Handicapped Children’s Benefits program of the Ontario Ministry of Community and Social Services (MCSS) is also income-tested, so parents should file income tax returns in order to document their incomes for 1997. Contact your local MCSS office (listed in the blue pages of your telephone book) for more information about this program.

Self-employed people who earned more than $3,500 in 1997 are required to file an income tax return to make their Canada Pension Plan (CPP) contributions ($3,500 is the basic CPP exemption for 1997). The calculation is made on Schedule 8 and reported on the income tax return at Line 310.

People with disabilities are strongly advised to file returns and pay into CPP, not only because it is a legal requirement, but also because contributing to the CPP plan in a particular year may be important in connection with their future eligibility for a CPP disability pension, should their disability progress to where they are unable to be in substantially gainful employment. CPP contributions also raise an individual’s future CPP retirement pension.

Students have a new reason for filing returns in 1997. As of the 1997 taxation year, students who have “unused” tuition and education credits, which neither they nor another taxpayer can use to reduce tax in the current year, can carry them forward to later years. It is necessary to file an income tax return to do this. (See Line 323 in the “General Income Tax Guide 97” for details).

3. I receive Family Benefits as a person with a disability. Recently, I received a “T5007” information slip in the mail from the Ministry of Community and Social Services. What am I supposed to do with it? Does it mean I will be taxed on it?

The federal government requires the provinces to issue tax information slips (T5007’s) for:

- social assistance payments (Family Benefits, General Welfare Assistance)

- Workers’ Compensation

- Gains-A for seniors.

These payments are not taxable. However, they are reported on the income tax return. Workers’ Compensation payments are reported at Line 144 and social assistance payments (Family Benefits and General Welfare) at Line 145. They are included in total income (Line 150) and net income (Line 236). It is essential, however, to note that these amounts are then deducted at Line 250. Because they are deducted at Line 250, they are not included in your taxable income, and you do not pay tax on them.

Because social assistance and Worker’s Compensation are included in your net income, they affect the following benefits and calculations:

- GST credit

- Child Tax Benefit

- Ontario property and sales tax credits (on the Ontario Tax Credits form, T1C (Ont.) 1997

- dependants’ income calculations
    - Line 303, Spousal Amount
    - Line 305, Equivalent-to-Spouse Amount
    - Line 306, Amounts for Infirm Dependants Aged 18 or over
    - Line 331, Medical Expense Adjustment

- Line 452, Schedule 10, Refundable Medical Expense Supplement.

Note that you do not include the amounts shown on the T5007 as income when you claim the unused part of a family member’s Disability Tax Credit (Disability Amount), either at Line 318 for a family member other than your spouse, or at Line 326 (using Schedule 2) for your spouse. The reasons for this is that “taxable income” rather than “net income” is used at Lines 318 and 326 in considering transferability of the DTC. (See Questions 20 and 22 for an elaboration).

TAXABLE AND NON-TAXABLE DISABILITY BENEFITS

Note: The information given for the Canada Pension Plan (CPP) in this section also applies to the Quebec Pension Plan (QPP).

4. I receive a CPP disability pension from the Federal Government and long-term disability (LTD) payments from an insurance plan paid for by my employer. Because I am disabled, my 7-year-old daughter receives a disabled contributor’s child benefit from CPP as well. Are these amounts taxable?

Both payments to you are taxable. CPP disability payments must be reported at Line 114 of your return. A T4A(P) information slip will be sent to you. Your CPP (or QPP) disability pension payments total for 1997 is reported in box 16 of the T4A(P) form. As explained in the “General Income Tax Guide 97”, CPP disability benefits on the information slip are also reported on Line 152, just below Line 114, but Line 152 should not be included in total income at Line 150. Because the CPP disability benefits are already included in “total income” at Line 114, they should not be counted a second time at Line 152.

The payment to your daughter (in box 17 of the T4A(P) form) should not be reported as your income on your return - it is her income, even if you receive it on her behalf. It is taxable, but only in your daughter’s hands, and there is no need to file a return on her behalf unless, by some chance, she has other significant taxable income and might owe tax for 1997. (She is not eligible for any refundable tax credits in her own right).

Long-term disability (LTD) insurance payments are taxable if the employer paid the premiums. They are tax-free only where the individual paid the premiums. For a group plan to produce tax-free payments to those employees who become disabled, all employees must pay the premiums, either directly or through a payroll deduction or other system whereby the premium, if subsidized by the employer, is a taxable benefit. This is called an “employee pay-all” plan.

Where both you and your employer originally paid a share of the premiums (with the employer’s contribution being a non-taxable benefit), there is a formula to determine the taxable amount. For the most part, the payments are taxable in this situation. For more information, obtain Information Bulletin IT-428, “Wage Loss Replacement Plans” from Revenue Canada.

5. I applied for a CPP disability pension because of an accident in 1995. Originally, I was turned down, but a Review Tribunal awarded me the pension retroactively to 1995. I received the payments for 1995 and 1996 in a lump sum in 1997 (which also included payments for part of 1997). Does this mean I have to pay more tax on these amounts than if I had received them initially on a monthly basis?

The law relating to this changed as of the 1991 taxation year. For previous years, Revenue Canada would consider a request for “administrative relief” in this situation on a case-by-case basis. (The legislative authority was s.23 of the Financial Administration Act). In 1991, however, the Income Tax Act was amended, and the income will be allocated to the previous years to which it relates (in this case, 1995 and 1996) where this would be more favourable to the taxpayer (if the amount is more than $300).

However, you must include the full amount of the lump sum payment at Line 114 and 152, and then Revenue Canada does the calculation to see which approach is better for you. See Line 114 in the “General Income Tax Guide 97” for details. If you want to do the calculation for yourself, see Line 500 on the T1 General Return and Schedule 1 (“Detailed Tax Calculation”).

If you do not agree with the way Revenue Canada allocates the lump sum amount of CPP disability payments, ultimately it is your option, and you can request that Revenue Canada make the allocation in the way that you want.

As of the 1997 taxation year, the reallocation of lump sum payments to previous years has been extended to CPP payments other than disability pensions (e.g., retirement pensions). See Line 114 in the “General Income Tax Guide 97” for details.

If you received a lump sum taxable disability payment other than CPP relating to more than one taxation year (LTD purchased by an employer, for example), you would apparently still be in the position of applying for administrative relief from Revenue Canada.

6. Can I contribute from my CPP disability pension and my LTD insurance payments to my RRSP, in order to defer tax?

CPP disability payments (received in 1991 or later) form part of your earned income for RRSP contribution limit purposes. When Revenue Canada sent out the 1997 contribution limits for RRSPs, they should have taken into account CPP disability payments reported on the 1996 income tax return.

Where CPP or QPP lump sum disability benefits were paid in 1997, but part of the lump sum is for previous years, it appears that the entire amount is included in 1997 (for RRSP contribution limit purposes), even if part of the lump sum amount has otherwise been allocated to the years to which it relates. (See Question 5 regarding tax treatment of CPP lump sums). This is because the Income Tax Act refers to CPP disability payments received in a year as part of that year’s contribution limit.

The rules regarding LTD payments and RRSPs are complicated. Generally, however, it appears that where the payments are taxable (because the contributions were originally paid by the employer - see Question 4), the payments will be included in “earned income” and form part of the RRSP contribution limit. Where the payments are not taxable (because the employee originally paid the premiums), they will not be included in the contribution limit.

7. I used to receive long-term disability (LTD) benefits of $2,500/month from an insurance company. It was tax-free as I was part of an employee pay-all plan. That is, the employees paid the premiums rather than the employer. The insurer became bankrupt.

As part of the winding up of the insurer, my monthly LTD payment was reduced by the Superintendent of Financial Institutions to $2,000/month (the amount guaranteed by the Canadian Life and Health Insurance Compensation Corporation), and taken over by another insurer.

Fortunately, my employer is willing to pay me the additional $500 per month. Is the $500/month taxable?

No. New rules introduced by Revenue Canada in 1995 provide that “top-up” payments in response to failures of LTD insurers will not be taxable. These rules were developed in response to the failure of the Confederation Life Insurance Company in 1994.

CLAIMING THE DISABILITY TAX CREDIT (DISABILITY AMOUNT)

8. How do I (or does my dependant) qualify for the Disability Tax Credit (also called the Disability Amount)?

The Disability Tax Credit (Line 316 on the tax return for a taxpayer with a disability, Line 318 for a family member with a disability other than the spouse, Line 326 using Schedule 2 for a spouse with a disability) is obtained by having your physician, optometrist or audiologist complete form T2201, the Disability Tax Credit Certificate. [As of February 19, 1997, audiologists are permitted to complete the T2201 form for a person with a hearing impairment.]

If applying, you should get a current T2201 form since it is revised from time to time. However, the 1997 version is almost identical to that in use since 1994.

The doctor (for convenience, we use the term “doctor” to include optometrists and audiologists) must certify that the impairment is severe and prolonged. The test of severity is whether the effects of the impairment markedly restrict you or your dependant’s ability to perform one or more basic activities of daily living all or almost all of the time. The test for prolonged is that the impairment has lasted for a continuous period of 12 months or is reasonably expected to last that long.

The T2201 form is submitted with your income tax return if you are claiming it for yourself for a family member for the first time. If the Disability Tax Credit was received last year and the disability has not changed, the T2201 does not need to be filed again, unless the T2201 filed last year indicated that the disability was expected to end in 1996, or Revenue Canada requests a new certificate. Revenue Canada’s pamphlet, “Information Concerning People with Disabilities 97”, contains the T2201 as well as information on claiming the Disability Tax Credit.

9. Have the eligibility rules for the Disability Tax Credit been changed from previous years? What should I discuss with my doctor when asking him or her to fill it out?

The Federal Government has been restricting eligibility for the DTC over the past few years. Clearly, Revenue Canada’s perception was that the DTC was being “abused”, and the

Government has acted both by amending the Income Tax Act and changing the Disability Tax Credit Certificate (T2201) to make it much more difficult to qualify than during the late 1980s. In 1991, the Income Tax Act was amended to provide the following conditions under which an individual's impairment would qualify for the DTC:

"(a) an impairment is prolonged where it has lasted, or may reasonably be expected to last, for a continuous period of at least 12 months;

(b) an individual's ability to perform a basic activity of daily living is markedly restricted only where all or substantially all of the time, even with therapy and the use of appropriate devices and medication, the individual is blind or is unable (or requires an inordinate amount of time) to perform a basic activity of daily living;

(c) a basic activity of daily living in relation to an individual means

(i) perceiving, thinking and remembering;

(ii) feeding and dressing oneself;

(iii) speaking so as to be understood, in a quiet setting, by another person familiar with the individual;

(iv) hearing so as to understand, in a quiet setting, another person familiar with the individual;

(v) eliminating (bowel or bladder functions); or

(vi) walking; and

(d) for greater certainty, no other activity, including working, housekeeping or a social or recreational activity, shall be considered as a basic activity of daily living". [Income Tax Act, Section 118.4(1)].

The T2201 form was revised for the 1994 taxation year, making it even more restrictive. The 1997 DTC form T2201 is almost identical to the 1994, 1995 and 1996 forms. The T2201 now incorporates in certain items an even more restricted interpretation of eligibility for the DTC than the legislation would require. Additional comments on the information sheet, "Disability Tax Credit Information" (which comes with the T2201) also serve to limit eligibility.

Let us consider the components of the legislated criteria for an impairment which would qualify for the DTC, as reflected in the legislated definition set out above, and in the questions asked of the doctor (including an optometrist or audiologist) on the 1997 T2201 form.

(a) “Prolonged”

Because the impairment must be for a continuous period of at least 12 months, people who have severe but episodic disabilities, such as multiple sclerosis or manic-depressive illness, will have great difficulty qualifying in many cases.

(b) “All or substantially all of the time”

Revenue Canada apparently interprets this to mean 90% of the time or more. Someone whose disability has a variable effect from day to day will have difficulty qualifying for the DTC, even if they are very significantly disabled most of the time.

“Even with therapy and the use of appropriate devices and medication”

This appears to mean that people will be assessed as if they had, for example, the best adaptive equipment available, even where this is not really the case. Or, in the case of a person with a psychiatric disability, entitlement to the DTC may be denied on the basis of the person’s not taking his or her medication, even where this may be based on legitimate concern about side effects, or where the individual’s “refusal to comply” may itself be a product of his or her disability.

“The individual is blind”

The T2201 now asks the physician or optometrist “Is your patient able to see, using corrective lenses if necessary? Your patient is considered blind if visual acuity in both eyes with proper reflective lenses is 20/200 (6/60) or less with Snellen Chart or equivalent, or when the greatest diameter of the field of vision in both eyes is less than 20 degrees.)" If an individual with low vision does not meet this test, the strong implication is that he or she is automatically ineligible, even though the person might have a very significant vision impairment.

(c)(i) “Perceiving, thinking and remembering”

On the T2201 form, the physician is asked “Is your patient able to think, perceive, and remember, using medication or therapy if necessary? (For example, can he or she manage personal affairs or do personal care without supervision”) .

Again, this wording is quite restrictive, in that the criteria for being able to “think, perceive and remember” are not set out. For a person with a very significant developmental disability, learning disability, or psychiatric diagnosis, careful documentation by the physician of inability to manage personal affairs is the usual route to establishing DTC eligibility.

However, this in effect requires the person to be labelled as “incapable” or “incompetent” which is contrary to accepted goals for most people with these disabilities. The reference to “using medication or therapy” raises the possibility that someone who actually has a “marked restriction” in activities of daily living will be found ineligible because he or she could function better with improved treatment, whether it is actually being provided or not.

(c)(ii) Feeding and dressing oneself”

On the T2201, the physician is required to answer two questions about the individual’s abilities - “Is your patient able to feed himself or herself, using an aid if necessary?” and “Is your patient able to dress himself or herself, using an aid if necessary?”

Once again, the test is quite restrictive, as the test is stated to be whether one can feed or dress oneself at all, without regard to the time it takes (despite the language in clause (b) of the Income Tax Act provision cited above, which says “unable (or requiring an inordinate amount of time)" or whether these activities may be substantially, if only partially, restricted. If the person is to qualify for the DTC, very careful documentation will be needed of the limitations which he or she has in each of these areas.

(c)(iii) Speaking so as to be understood, in a quiet setting, by another person familiar with the individual”

The T2201 states this test in the question to the physician as “Is your patient able to speak so as to be understood in a quiet setting, using an aid if necessary? (Exclude language differences)”. The main problem with this legislated test is that life does not go on entirely in a quiet setting. Someone could have a very significant speech disability and not qualify under this test for the DTC, especially having regard to the qualification “using an aid if necessary”.

(c)(iv) Hearing so as to understand, in a quiet setting, another person familiar with the individual”

On the T2201, the question for the physician or audiologist relating to hearing disabilities is “Is your patient able to hear (without speech reading) so as to understand a spoken conversation in a quiet setting, using an aid if necessary? (Exclude language differences)."

Essentially, the same comment applies as to the previous test for speaking disabilities. A person can have a hearing impairment which restricts their day-to-day life very significantly and still not qualify for the DTC using this test. The parenthetical comment (“without speech reading”) has been added to the 1997 version of the T2201 DTC form, and this may make it easier for some individuals to qualify.

If a claim is to be made for a hearing disability, an audiogram will probably be required, although the T2201 no longer has a specific reference to this. (Remember that an audiologist can now certify individuals as eligible for the DTC because of hearing disabilities.)

(c)(v) “Eliminating (bowel or bladder functions)”

On the T2201, the doctor is asked “Is your patient able to control and personally manage bowel and bladder functions, using an aid if necessary? (For example, has uncomplicated ostomy or uses a catheter)”.

Once again, the test has been stated for the physician in restrictive terms. Clearly, even an “uncomplicated ostomy” is a very significant disability and may entail significant disability-related costs, both direct and indirect. But an individual with this disability is not eligible for the DTC, at least according to the interpretation given by this question on the T2201 form.

(c)(vi) “Walking”

The test on the T2201 is “Is your patient able to walk, using an aid if necessary? (For example, at least 50 metres on level ground.”). As with the speaking and hearing tests, the problem is that life does not take place in ideal circumstances. The real world has hills and stairs. A person could have a very significant mobility disability and fail to get the DTC because of the restrictive interpretation imposed by the way this question is framed.

It is interesting to note that on the 1993 version of the T2201, this question was framed with reference to walking 100 metres. It was changed to 50 metres in 1994. This is a clear example of how Revenue Canada has taken every opportunity to make the test more restrictive. And there is no reference on the T2201 to how long it would take the person to walk this far, despite the reference already noted in clause (b) above - “unable (or requires an inordinate amount of time)...”.

(d) “No other activity”

Clearly, Revenue Canada does not want to consider any social or economic factors at all in relation to eligibility for the DTC. The booklet, “Information Concerning People with Disabilities 97” makes it clear that those on disability income programs such as the Canada Pension Plan or Workers’ Compensation, even if permanently outside the workforce, do not necessarily qualify for the DTC.

The T2201 formerly contained a place where the doctor could list “other disabling impairments”. But this section is now gone from the form. This has removed almost all of the doctor’s scope for interpretation with regard to who takes an excessive amount of time to do the activities listed in the Income Tax Act s.118.4(1) and on Form T2201.

Finally, on the T2201, the physician, optometrist or audiologist is asked, “Has the impairment lasted, or is it expected to last, for a continuous period of at least 12 months?”, and “Is the impairment severe enough to restrict the basic activity of daily living identified above, all or almost all of the time, even with therapy and the use of appropriate aids and medication?”

If the doctor is unable to answer “yes” to either question, it is clear the individual will be ineligible. These questions basically reproduce the restricted test brought into the Income Tax Act in 1991 by the federal government.

The doctor is no longer asked to certify that the person is eligible for the DTC in so many words, but he or she is asked to certify that the information is “true and complete” and in reality, the physician, optometrist or audiologist is still making the initial decision as to whether or not the person is eligible. It is now much harder to qualify for the DTC, and it is more important than ever that the doctor provide full and accurate information on the T2201 to support the claim.

Unfortunately, Revenue Canada provides no payments for doctors to complete this form, and individuals with disabilities and/or their families are responsible for payment. This causes a particular problem for those with low incomes.

Some doctors are also reluctant to get involved in “fighting” with Revenue Canada and the Medical Advisory Panel at Human Resources Development Canada over their patient’s eligibility for DTC. The adjudicators at HRD reject or question eligibility assessments by the person’s own doctor in a significant number of cases and may contact the physician, optometrist or audiologist with a request to provide a significant amount of additional information.

Starting with the 1996 taxation year, Revenue Canada has adopted a policy of reviewing new DTC claims before assessing the taxpayer’s return. The stated intent is to avoid retroactive reassessments, but giving more scrutiny initially to DTC claims may also lead to an initial delay in processing returns with new DTC claims. However, once a claim is accepted, under the new approach the taxpayer will be able to claim in subsequent years without so much concern regarding retroactive reassessment.

Revenue Canada has not given an iron-clad guarantee, however, that no cases will be reviewed retroactively in the future. For example, a fraudulent claim (such as forgery of the doctor’s signature) would presumably be grounds for the government to re-open a claim from previous years.

10. My father is 96 and uses a wheelchair. Can he claim the Disability Tax Credit?

Yes, there is no age restriction. Seniors are eligible if they meet all of the requirements.

11. My child, born in 1997, has spina bifida. If her doctor certifies this disability using the T2201, can I get a transfer of the DTC to me (at Line 318)?

Yes, a child born in 1997 may be eligible for the full amount of the Disability Tax Credit. For children under 3, the test of marked restriction in activities of daily living is interpreted relative to what is developmentally appropriate for the child’s age, taking into account the prognosis for the future, but infants and small children can qualify if their disabilities are significant enough.

Line 318 refers to a “transfer” of the DTC which seems odd where the person eligible for the DTC is a small child, but it is clear at Line 318 that children under 18 can qualify regardless of age, so long as they are medically eligible.

12. Originally, Revenue Canada allowed my Disability Tax Credit claim for the 1994 and 1995 tax years. Then I got a letter with a questionnaire asking for more information, and another questionnaire went to my doctor. After the replies were sent in, I got another letter disallowing my DTC claims for both years and requesting repayment with interest. What is going on? Can I do anything?

Revenue Canada has audited your claim. They only audit some of the millions of returns filed each year, so the fact that your claim may have “gotten through” for previous years doesn’t mean that much. (As of 1996, however, there was a new policy where Revenue Canada will review all new DTC claims before assessing returns - see Question 9).

You can appeal the reassessment decision but you will have to get a detailed medical opinion that you qualify to have much chance of succeeding. It is important to file your Notice of Objection within 90 days of receiving your reassessment notice. (You may be able to file a Notice of Objection “out-of-time”, but it is not guaranteed).

A number of taxpayers have now appealed the denial of the DTC to the Tax Court of Canada, but it appears from the decisions reviewed so far that the Tax Court is upholding Revenue Canada’s restrictive interpretations in the majority of cases. Some Tax Court judges take a more “liberal” approach to interpreting the DTC criteria than do others.

Many have shown a disconcerting tendency to “eyeball” the person concerned rather than relying on the medical evidence! In several cases where the Tax Court judges dismissed the taxpayer’s appeals, they have expressed great sympathy for the individuals with disabilities and commented on the harshness of the legislation (see Question 47 below dealing with appeals).

The issue of the reassessment being retroactive for more than one year can and should be raised separately with Revenue Canada from the basic issue of entitlement. During 1996, the Federal Revenue Minister at the time, Jane Stewart, gave assurances to ARCH that taxpayers who had been reassessed for multiple years with respect to the DTC could write to the Chief of Appeals at their local Tax Services Office regarding the retroactive reassessment, and expect it to be cancelled unless there were unusual circumstances.

This separate process does not alter the need to appeal the main issue of DTC entitlement for taxpayers who wish to do this. But it provides a separate route for dealing with the unfairness and financial hardship caused by retroactive reassessment. [For details, see Revenue Minister Clarifies Disability Tax Credit Procedures”, by David Baker and Harry Beatty in ARCH*TYPE, Vol.13 No.6/Vol.14 No.1 (Mar/April 1996) at page 68].

13. Can I claim the Disability Tax Credit for a family member who has a disability? Is his or her income taken into account?

In some circumstances, you can claim a transfer of the unused portion of the DTC from a family member who has a disability. You must be a “supporting person" of that individual. His or her taxable income is taken into account. (This is discussed in more detail after we deal with claiming a personal amount for someone as a dependant, which is different from obtaining a transfer of the Disability Tax Credit. See Questions 20 through 24.)

14. What is the Disability Tax Credit really worth? Line 316 on the return says “claim $4,233” but is that the real amount I get? Does everyone who qualifies for the DTC receive the same amount?

Unlike the refundable tax credits discussed in Question 2, the DTC is one of the non-refundable tax credits found on the income tax return. This means that it can only be used to reduce tax that otherwise would have to be paid. It does not lead to a refund for those who don’t pay any tax, such as Family Benefits recipients or those who have only Workers’ Compensation payments as income.

So not all taxpayers receive the same benefit. Those with lower taxable incomes may benefit less or not at all. In some cases, however, people with disabilities may be able to transfer the unused value of their disability credits to another family member who does pay tax (See Questions 20 through 24).

Care must be taken to understand the meaning of “non-refundable”. People who are employed have tax deducted from each paycheque. At the end of the year, if Revenue Canada owes them money, they get a refund. If they qualify for non-refundable credits, that will increase their refund in some cases, and reduce their tax owing in others. Where the non-refundable credit increases their refund, however, this is because it is reducing their tax liability on tax they have already paid through their payroll deductions. If they had not had any tax deducted, and didn’t otherwise owe tax, the non-refundable credit would not increase their refund.

The real value of the Disability Tax Credit varies from about $1,100 to $1,300 for those who would otherwise pay that much tax. It varies depending on the province and on an individual taxpayer’s circumstances, such as whether he or she pays federal or provincial surtax. The rules determining the value of the DTC are the same for taxpayers with disabilities and those who can obtain a transfer of the credit from a disabled family member.

Originally, $4,233 is claimed at Line 316 (taxpayer with a disability). Line 318 (family member with a disability other than a spouse) or Line 326 (spouse with a disability - using Schedule 2). Where the claim is for a family member with a disability who has some taxable income, the claim may be less, but let’s assume for now it’s $4,233.

At Line 338, all of the non-refundable tax credits are converted to credits by multiplying them by 17%. This converts $4,233 to a credit of $720. But this is the federal tax credit. Since Ontario also charges income tax at a basic rate of 48% of the federal tax, we multiply $720 by 48% to get a provincial tax saving of $346. Adding together $720 and $346, we get a combined federal and provincial tax saving of $1,066 which should be increased somewhat to reflect a saving in federal and provincial surtaxes as well.

As the credit is non-refundable, the full benefit is available only to those who would otherwise have paid $1,066 or more in federal and provincial tax (either through payroll deductions or after completing their returns). For those who would pay a lesser amount, the value is the tax they would have paid.

For those who would pay no tax anyway, the DTC has no value to them personally (although they may be able to transfer the credit to someone else).

15. I am a paraplegic who works full-time. May I claim the Disability Tax Credit?

Yes. Your disability meets the eligibility criterion of a "prolonged impairment that markedly restricts all or substantially all of the time" [your] "ability to perform basic activities of daily living". It not part of the criteria that you be unable to work. People with disabilities who meet the tests are eligible whether or not they are employed. Conversely, as discussed in Question 9 (see "No other activity"), people who are unable to work may well still be ineligible to receive the DTC.

16. My child is disabled. I wasn't aware of the DTC until very recently. His doctor says she will fill out Form T2201 and that, in her opinion, my child has met the eligibility tests since her birth in 1985. Can I make the DTC claim for all of the tax years back to 1985?

Revenue Canada will consider claims for refunds back to the 1985 taxation year. (See Question 46 regarding how to make claims for previous years). However, prior to the 1986 taxation year, the disability claim was only for people who were blind or "confined to a bed or wheelchair", so this would have to be taken into account in determining whether your child was eligible in 1985.

As discussed in Question 46, although there is no reason not to pursue this claim back to 1985 if your child was obviously eligible, if the claim might be doubtful, perhaps you should consider limiting the years of retroactivity claimed, in consultation with your child's physician. A retroactive claim for a decade will not be granted by Revenue Canada without extremely careful scrutiny.

WORK-RELATED EXPENSES

17. I am a wheelchair user. I pay an attendant $100/week to assist me at home every weekday morning getting ready to go to work. Government funding is not available for this necessary support. Can I claim this expense on my tax return? If I claim this expense, can I also claim the Disability Tax Credit? Can I make an additional claim for a part-time attendant at home?

As well, my employer pays me to have a space for my accessible van in a parking lot. Is this a taxable benefit to me?

Attendant care expenses related to employment, training or a research grant are deductible on your return at Line 215. You must get and complete Form T929, "Attendant Care Expenses". Only people eligible to claim the DTC can claim this attendant care expense. You can make both this claim and the claim for the DTC. The attendant must be at least 18 years old and not your spouse. Only a taxpayer with a disability who pays these attendant care expense himself or herself can make this claim - not a "supporting person" even if he or she makes these payments.

In order to make this attendant care claim, you must be engaged in one of the following:

- employment

- a business (in which you were actively involved)

- an occupational training course for which you received a training allowance under the National Training Act

- research or similar work for which you received a grant.

The expenses must be for care in Canada except in the case of "deemed" or "factual" residents.

The attendant care expenses need not be incurred at the place of employment, training or research, so long as they were incurred in order to enable you to earn the income. This is made clear in the new Revenue Canada publication, "Information Concerning People with Disabilities 97" - the example of an attendant who assists someone at home each morning is found on page 16 of that publication. What Revenue Canada has not made clear is how far the connection between the attendant care and earning the income extends. If attendant care in the morning is claimable at Line 215, can you also claim attendant care when you come home at night? And what about weekend care as well - would it matter if you sometimes work on the weekends? Taxpayers should attempt to get a clarification from Revenue Canada as to their policy in this area, in conjunction with their own tax advisors.

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In past years, "Answers to Your Tax Questions" assumed that this claim for attendant care expenses could only be made where the expenses were incurred at the place of employment, training or research. Now that Revenue Canada has suggested a wider interpretation, you may want to reconsider your claims for previous years. See Question 46 as to how this can be done.
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The issue of the interpretation of the attendant care expenses claim is especially important for the 1997 taxation year because a previous limit on this claim has been removed. For 1996 and earlier years, the claim was limited to the lower of $5,000 or two thirds of your earned income, but now the $5,000 limit has been removed. A much higher claim can be made if you have sufficient earned income. The part time attendant care claim as a medical expense, on the other hand, has a $10,000 limit - see Question 33.

Another reason why the interpretation of the attendant care claim at Line 215 is so important is that you cannot make both this claim and the part-time or full-time medical expenses attendent care claim at Line 330. Only one attendant care claim can be made - see Question 33 for more information. Yet another important point is that claiming attendant care expenses at Line 215 is much more valuable to the taxpayer than claiming them as medical expenses at Line 330. At Line 215, you get a deduction rather than a credit, and your claim is not subject to the 3%/$1,614 reduction (see Question 27 for an explanation).

So, if you have expenses for attendant care provided to you at home, as of 1997 you can get a tax deduction for them at Line 215 up to 2/3 of your "earned income" if you can show they were incurred in order to earn income from employment, a business, a training grant or research as defined above. You can claim the DTC as well. If the expenses do not qualify for the Line 215 claim, you may still be able to claim them as medical expenses at Line 330, but they will be converted to a credit subject to the 3%/$1,614 reduction, and if you claim more than $10,000, you lose the DTC. This is why it is important to seek clarification of this interpretation.

At Line 215, you can claim only attendant care expenses you paid yourself, not what the government or an agency pays on your behalf. You cannot claim attendant care expenses which you or anyone else has claimed as medical expenses. Receipts do not have to be submitted with your return, but must be kept in case Revenue Canada asks to see them during an audit.

The Income Tax Act was amended effective with the 1991 taxation year to make it clear that, where an employer pays disability-related transportation or attendant care expenses for an employee, it is not a taxable benefit to the employee. So the parking space is not a taxable benefit to you. If your employer paid for your attendant care, these payments would not be a taxable benefit to you either.

18. I am deaf. My job requires that I make phone calls. It’s difficult for me, even with a TTY, so I pay an assistant $6,000 a year out of my own pocket to help. Can I claim this on my income tax?

There are four approaches to paying an assistant or attendant and getting some tax relief under the Income Tax Act. First, if your job can be considered an independent business, the cost of hiring an assistant is just an ordinary business expense. But if you are an employee, that doesn’t work.

Second, you can claim the $6,000 as attendant care expenses related to earning employment income (see Line 215), assuming a clerical assistant would be accepted by Revenue Canada as an “attendant”. Revenue Canada has indicated that they are willing to accept a fairly wide interpretation of “attendant”, so long as it relates to assistance being provided in relation to the kinds of restrictions in activities of daily living which would qualify you for the Disability Tax Credit. As a profoundly deaf person, you would qualify for the DTC, which is necessary in any event for you to be able make this attendant care claim. (See Question 17 for details.)

Third, you could consider claiming the assistant as a medical expense at Line 330. If the assistant is a sign language interpreter, as of the 1997 taxation year his or her services qualify as a medical expense (see Question 26). However, this claim would probably be less valuable to you than the work-related attendant care claim at Line 215. This is because the medical expenses claim is converted to a 17% federal credit after 3% of your net income is deducted (see Question 27 for more on calculating the value of medical expense claims), while the work-related attendant care claim is a deduction from taxable income. Making either attendant care claim would preclude making the other one, even with respect to different expenses.

Fourth, if you have a contract of employment which requires you to pay this assistant, you can claim the expense using a Form T2200, which must be completed by your employer. You can get more information from the Revenue Canada publication, “Employment Expenses 97”. Your employer should clarify in a written contract of employment that the hiring of the assistant is your legal obligation, and certify this using Form 2200 (which you are required to file with your return). [Please see the discussion of the Nagler case above in the section "Advocating a Fairer Tax System for Persons with Disabilities.]

Better still, get your employer to assume the actual costs as job-related accommodation which may be mandated under the Canadian Human Rights or Ontario Human Rights Code. Then you won’t need to pay the assistant at all! And it won’t be a taxable benefit to you either! (see Question 17 above).

19. I am part of a group of employees with disabilities at my workplace. Our employer consulted with us regarding accessibility accommodations. In consultation with us, the employer developed and implemented an employment equity plan, which included the installation of exterior and interior ramps, electric door openers, the widening of doorways, bathroom and elevator modifications including Braille and audio signals, the installation of TTYs, and the purchase of adapted computer equipment for staff who require this because of a disability.

The modifications were made both at our main office, which the employer owns, and at our satellite office, which the employer rents from ABC Realty Company. Is our employer entitled to any income tax relief for these accessibility renovations? Is ABC entitled (ABC cost-shared all the renovations 50-50 with the employer at the satellite office except for the TTYs and adapted computers)? All these expenditures were incurred by the employer and ABC during 1997.

By Regulations passed under the Income Tax Act, your employer is entitled to claim all of these costs, except for the computers themselves, as a business expense during 1997. Prior to these Regulations, which first were made effective as of December 31, 1990 and later amended effective February 25, 1992 (these are the effective dates although the Department of Finance did not actually enact the regulations until late in 1993) the cost of these renovations would have been spread out over several years using Capital Cost Allowance (CCA).

The Regulations allow a one-year “write-off” which is a much more favourable tax treatment than CCA in most cases. ABC can claim all of its expenditures as well. It is not necessary that a business actually be an employer of persons with disabilities (so ABC can claim) or own its premises (so the employer can claim for its share of the renovations at the satellite office) in order to get the favourable tax treatment under the Regulation. It is only necessary that the business or company incur the expenditure as part of its operations, intending to benefit employees, customers, tenants, and other persons with disabilities. The disability-related accessories to the computers receive this favourable tax treatment. The computers themselves, however, are not covered by the Regulation.

CLAIMING DISABLED FAMILY MEMBERS AS DEPENDANTS/OBTAINING A TRANSFER OF THEIR DISABILITY TAX CREDITS

Note: The Meaning of “Supporting Person”, “Dependant”, “Dependent” and “Completely Dependent”

In this section, we refer extensively to the terms Ssupporting person”, “dependant”, “dependent” and “completely dependent”. These terms are not, however, applied to spouses, and these comments do not apply to spouses. Unfortunately, while these terms are used in the Income Tax Act, and in Revenue Canada publications, they are not clearly defined. In past years, “Answers to your Tax Questions” interpreted these terms according to their usual meaning and such limited guidance as could be found in Revenue Canada publications. [See especially Interpretation Bulletin IT-513, "Personal Tax Credits" (February 3, 1989).]

Using the ordinary meaning of these terms, it would appear that you must provide some degree of actual support, financial or otherwise, for you to be someone’s “supporting person” and for that person to be your “dependant” (i.e., “dependent on you). The fact that the person receives Family Benefits or other disability-related income does not mean that you cannot claim them as a “dependant”. Nor does the receipt of support from programs such as Special Services at Home mean that a dependency claim can not be made. As long as you are providing at last partial support to the person, it appears that you can be a “supporting person”.

There is no general requirement in the Income Tax Act that a person must live with you for you to be his or her “supporting person”, although certain specific claims, as we shall see, require the person to live with you. While some degree of actual support can be inferred from the fact the person lives with you, clearly you could also be providing support to someone who lives elsewhere.

Revenue Canada’s new publication, “Information Concerning People with Disabilities 97” has complicated the picture by providing what appears to be a new policy regarding who is someone’s “supporting person”. On pages 6-7, it states:

“Generally, a supporting person has to be related to the person with disabilities by blood, marriage or adoption. For this purpose, we will consider you to be a supporting person related to a person with disabilities if that person is any of the following:

- completely dependent on you for support now, and you have custody and control of the person with disabilities or did have custody and control of the person immediately before the person turned 19 years of age;

- your natural or adopted child;

- your spouse’s child;

- your child’s spouse.”

What this appears to say is that a person who falls into the last 3 (of 4) classes (i.e., natural or adopted child, spouse’s child, child’s spouse) is your “dependant” whether or not you actually provided support to the person in 1997. But other relatives are not your “dependants” unless they are “completely dependent” on you and you have “custody and control” of them either in 1997 or immediately before they turned 19. If this is correct, then you could be a “supporting person” of your child (spouse’s child, child’s spouse) in almost every case - even if your son or daughter is in a fully-funded government residence, for example. But it would be extremely difficult to be the “supporting person” of any other relative. He or she would have to be “completely dependent” on you - this would preclude cases where another person (or government?) provides even limited actual support. And the person would have to be within your “custody and control” - does this require legal guardianship in the case of an adult? As already stated, this “new” interpretation does not seem to be clearly based on provisions in the Income Tax Act. Nor does it seem fair (at least to the author). Taxpayers and their tax advisors should attempt to get a clearer interpretation from Revenue

Canada as to what its policy in this area actually is.

20. My son is 19 and has Down Syndrome. He lives at home with my spouse and myself. He receives Family Benefits, and the Ministry of Community and Social Services sent him a T5007 slip for $6,000 for 1997. Can I claim him as an “infirm” dependant aged 18 or older at Line 306? Would the answer be different if the T5007 slip had been for $7,000? $4,000?

Can I get a transfer of his Disability Tax Credit at Line 318? (His physician has certified that he is eligible for the DTC). Would the answers be different if he were 15 and not receiving any income? Would the answers be different if he were not living at home?

At Line 306 using Schedule 6 you may claim an amount for a dependent son or daughter who was born in 1979 or earlier (and was therefore over 18 during at least part of 1997) if your son or daughter was “physically or mentally infirm”. Your son or daughter is your “dependant” in almost every case, and certainly qualifies if living at home with you.

“Infirmity” requires a doctor’s letter, but it is a more general concept than eligibility for the DTC. Revenue Canada appears to equate “infirmity” with “inability to be gainfully employed” which would cover many more people than the DTC. (There is no special form for certifying “infirmity”. The doctor’s letter must be kept, but need not be submitted with your return. The maximum claim, which would be converted to a 17% federal credit, is $2,353.

As the Guide explains at Line 306, whether this claim can be made depends on the “net income” of your son or daughter. A social assistance payment such as Family Benefits (or Workers’ Compensation) is included in “net income” for this purpose (see Question 3).

The impact of your son’s “net income” on your ability to make the “infirm dependant” claim at Line 306 is set out in the calculation in Schedule 6. The “base amount” of the claim is $6,456, from which your son’s net income of $6,000 is deducted. This leaves a claim of $456, which is converted to a 17% federal non-refundable credit at Line 338. If the T5007 amount had been $7,000, no claim could be made at all. If the T5007 amount had been $4,000, the claim would have been the maximum claim of $2,353 (converted to a 17% federal credit).

At Line 318, you are also able to obtain a transfer of your son’s unused Disability Tax Credit of $4,233. All of his DTC is an unused amount since your son pays no tax and can’t make use of this non-refundable credit himself. There is a calculation of the amount available to transfer under Line 318 at page 35 of the “General Income Tax Guide 97” (“unused part of dependant’s disability amount").

Your son’s income is taken into account in this DTC calculation, but it is his taxable income, which does not include social assistance payments such as Family Benefits and Workers’ Compensation. As well as claiming your son as an “infirm” dependant, you can get a transfer of his DTC regardless of his net income.

If your son were 15 (with no income of his own), you would be eligible to apply for the Child Tax Benefit for him just as for any other child (whether it would be available would depend on your and your spouse’s income), and a transfer of his DTC at Line 318 could be obtained as well.

If your son were not living at home, you could still claim both the “infirm” dependant amount (Line 306) and a transfer of his DTC (Line 318) so long as he were “dependent” on you. You would have to be his “supporting person” but Revenue Canada is interpreting this very widely in cases where the dependants are sons and daughters.

21. My common-law wife of two years has severe asthma. Her specialist has completed the Disability Tax Credit Certificate (T2201) for her. Can I claim the spousal amount for her at Line 303? Can I claim a transfer of her DTC (which she doesn’t need as she has no taxable income)?

You claim the spousal amount at Line 303 for your spouse, as for any other spouse without income. Effective with the 1993 taxation year, common-law spouses (thus far restricted to opposite sex couples under the Income Tax Act) where there is a relationship of 12 months or more, or where the spouses are the natural or adoptive parents of a child, are treated the same as legally married spouses for all income tax purposes (see page 10 of “General Income Tax Guide 97” for an overview and some examples: a full discussion of all circumstances is beyond the scope of this article).

Your spouse’s disability is irrelevant to claiming the spousal amount. The maximum spousal amount claim for 1997 is $5,380, which is converted to a 17% federal tax credit. It is reduced by the spouse’s net income which includes social assistance and Workers’ Compensation.

You can also claim a transfer of your spouse’s unused DTC at Line 326 using Schedule 2.

22. What is the equivalent-to-spouse amount, and when can I claim it? What relatives may I claim as “infirm” dependants if they are adults with disabilities? When can I obtain a transfer of the Disability Tax Credits of relatives with disabilities?

The equivalent-to-spouse amount is claimed at Line 305 using Schedule 5. It is intended to provide a claim equivalent to the spousal claim for taxpayers who do not have a spouse but support another family member, subject to certain conditions.

Remember that starting with the 1993 taxation year, common-law couples of the opposite sex are considered “spouses” if they are in a relationship of at least 12 months’ duration or if they have a child together by birth or adoption (see Question 21).

The equivalent-to-spouse amount can only be claimed by taxpayers who were single, divorced, separated, or widowed (for at least part of 1997), and who supported a dependant at that time. Someone who has a “spouse” under the Income Tax Act definition cannot make this claim (although he or she may be able to claim the spousal amount depending on the spouse’s income). A spousal amount claim and an equivalent-to-spouse claim cannot be made by the same person, or if anyone else in the same household is making an equivalent-to-spouse claim.

A parent entitled to deduct payments for child support is not allowed an equivalent-to-spouse claim (there is an exception for the first year of such payments). If someone makes the equivalent-to-spouse claim for a person, no one else can make the same claim with respect to that person. The equivalent-to-spouse claim cannot be divided among taxpayers.

A change (effective with the 1996 taxation year) is that it is now possible to make a claim on both Line 305 (“equivalent-to-spouse”) and Line 306 (“infirm dependant”) with respect to the same individual. The calculation is explained at Line 306 on page 31 of “General Income Tax Guide 97” and is carried out on Schedule 6.

The equivalent-to-spouse amount can only be claimed for a person related to you by blood, marriage or adoption. The person must have lived with you in a home that you maintained in 1997. The person must have been supported by you during a time in 1997 when you were single, divorced, separated or widowed. These conditions may be satisfied for only part of the year and the claim may still be made.

Dependants living away from home while attending school are still considered eligible for this claim if they lived with you while not in school.

A relative living outside Canada is not eligible for the equivalent-to-spouse claim unless he or she is your child (under or over 18).

If the relative lived with you for part of 1997 and was supported by you in a home you maintained, you can in general claim the equivalent-to-spousal amount as follows:

- A child under 18 may be claimed (regardless of disability or “infirmity”)

- A parent or grandparent who lives with you may be claimed under the equivalent-to-spousal amount regardless of age, and regardless of whether or not the parent or grandparent is “infirm”.

- Relatives other than parents or grandparents, including children over 18, must be “mentally or physically infirm” (see the discussion of “infirmity” in Question 20).

The equivalent-to-spousal amount, like the spousal amount (Line 303) is a maximum of $5,380, converted to a 17% federal tax credit. It is reduced by the dependent relative’s income which includes social assistance and Workers’ Compensation. If the dependant’s net income for 1997 is more than $5,918, no claim can be made.

Next, there are “amounts for infirm dependants aged 18 or older” which can be claimed for the following dependent relatives at Line 306 using Schedule 6:

- children
- grandchildren
- parents
- grandparents
- brothers
- sisters
- aunts
- uncles
- nieces
- nephews
- in-laws under all of the above categories (that is, people who stand in one of the listed relationships to your spouse)

if they are resident in Canada (except for children and grandchildren who don’t need to live in Canada), dependent on you for support (see the discussion on the meaning of “dependent” above) and “mentally or physically infirm” (if adults).

The "General Income Tax Guide 97", in discussing the "infirm dependant" claim at Line 306, contains the puzzling statement that "A child can include anyone who has become dependent on you, even if he or she is older than you". Taken literally, this would allow the "infirm dependant" claim to extend very widely indeed e.g. to relatives other than those listed in the previous paragraph. The problem is that this apparently wider interpretation is not related to any recent changes in the Income Tax Act. It may be helpful to seek guidance on this point from Revenue Canada or your own tax advisor.]

The maximum claim for a dependent adult is $2,353 (converted to a 17% federal tax credit) which is reduced by the dependant’s net income including social assistance and Workers’ Compensation, and eliminated altogether if the dependant’s net income is more than $6,456. The example worked out in Question 20 shows both the maximum claim at Line 306 for an “infirm dependant” and the level at which the dependant’s net income begins to reduce the claim.

Next, we consider whether you can obtain a transfer of your dependent relative’s Disability Tax Credit at Line 318. Remember (see Question 20) that this is a separate question from whether you can make the claims at Lines 305 and 306 just discussed, although the issues are related in certain ways. There are three classes of dependent relatives for whom you may obtain a transfer of their unused DTC.

The first class includes children and grandchildren. (An example involving children was already discussed in Question 20). You may obtain a transfer of the unused portion of the DTC from your children or grandchildren, or your spouse’s children or grandchildren (including small children in each case - see Question 11 regarding children and the DTC) if they lived in Canada at any time in 1997 and one of the following applies:

- you made an equivalent-to-spouse claim on Line 305 for the child or grandchild

- you could have made an equivalent-to-spouse claim on Line 305 for the child or grandchild if you did not have a spouse and if the child or grandchild did not have any income

- you made an “infirm dependant” claim on Line 306 for the child or grandchild

- you could have made an “infirm dependant” claim on Line 306 for the child or grandchild if he or she had no income and had been 18 years of age or older in 1997, and the child or grandchild was dependent on you because of infirmity.

The first and third categories of eligibility for DTC transfer from children or grandchildren are relatively straightforward - they just depend on eligibility for the claims at Lines 305 and 306 discussed earlier in this question.

The second and fourth categories, however, are confusing because they require you to make hypothetical assumptions which are contrary-to-fact, and reason through the consequences. A few examples will illustrate how this works.

Let’s start with the second category. Suppose you have a spouse, and an adult son or daughter who is “mentally or physically infirm” who lives with you. You can’t actually make the equivalent-to-spouse claim, because you have a spouse, but if you were single (or divorced, widowed or separated), you could probably make the equivalent-to-spouse claim. So you can likely get a transfer of your son’s or daughter’s DTC unless some other rule would have prevented you from making the equivalent-to-spouse claim (e.g., another person supported your son or daughter for part of 1997 and is actually making the equivalent-to-spouse claim with respect to him or her). The second category would not, however, authorize a transfer of the DTC from a child or grandchild who did not live with you at any time during 1997, since you would not be able to make an equivalent-to-spouse claim for him or her.

The second category would, however, cover a case in which you were divorced, for example, and an adult child or grandchild lived with you who had more than $5,918 in social assistance income (e.g., Family Benefits or Workers' Compensation). Your child's or grandchild's net income would be too high for you to claim the equivalent-to-spouse amount at Line 305. But you can get a transfer of their DTC at Line 318 in most cases, because you could have made the equivalent-to-spouse claim if they had no income.

The fourth category is interpreted similarly, but is much broader. Remember that the "infirm dependant" claim can be made at Line 306 for children or grandchildren who are "mentally or physically infirm" and "born in 1979 or earlier". The fourth category eliminates the age restriction for purposes of DTC transfer, so all that is required is that the child or grandchild be "mentally or physically infirm", a condition presumably met by everyone qualifying for the DTC. The fourth category, like the second, asks you to assume the child or grandchild had no income in 1997, so for purposes of DTC transfer non-taxable income like social assistance or Workers' Compensation is irrelevant. The child or grandchild must be dependent on you because of infirmity, but as we have seen, in these cases Revenue Canada is determining "dependency" very broadly.

The result of these categories, taken together, is that you can obtain a transfer of the DTC from your child or grandchild (and your spouse's child or grandchild) in almost every case, so long as the child or grandchild does not have sufficient taxable income to offset the claim, according to the calculation "unused part of the dependant's disability amount" at Line 318 of the "General Income Tax Guide 97". However, there are some restrictions, such as when someone else also has a legitimate right to make this claim.

The second class with respect to DTC transfers is parents and grandparents (including in-laws). There are three categories of eligibility, slightly different than those for children and grandchildren:

- you made an equivalent-to-spouse claim on Line 305 for the parent or grandparent

- you could have made an equivalent-to-spouse claim on Line 305 for the parent or grandparent if you did not have a spouse and if the parent or grandparent did not have any income

- you could have made an “infirm dependant” claim on Line 306 for the parent or grandparent if he or she had no income in 1997, and if the parent or grandparent was “dependent on you because of his or her mental or physical infirmity”

The first two categories are the same as those for children and grandchildren, and the same analysis applies as to when a transfer of the DTC is available at Line 318.

The third category for parents and grandparents, as stated in the “General Income Tax Guide 97” at Line 318, is odd because it appears to exclude cases where an “infirm dependant” claim is actually made for the parent or grandparent at Line 306. (However, this is probably not the real intent.)

The third category restricts, for DTC transfer purposes, eligibility to parents or grandparents who are not only “mentally or physically infirm” (presumably, anyone who qualifies for the DTC would meet this test), but who are “dependent” on you for this reasons. The meaning of this latter test is somewhat unclear, since the criteria for making a claim at Line 306 include the other person being “dependent” on you in any event. Perhaps this qualification relates to the narrow interpretation of “dependent” discussed in the note which begins this section.

The result of the three categories of parents and grandparents taken together seems to be that in most cases, you can get a transfer of the DTC if a parent or grandparent (including an in-law) lives with you and is dependent on you for support, but a very substantial dependency relationship must be shown if the parent or grandparent does not live with you.

With respect to children and grandchild, parents and grandparents, you may wish to seek a clarification of the law from Revenue Canada or your own tax advisor before you make a claim for transfer of the DTC.

The third class for this claim is other relatives. You may obtain a transfer of the unused DTC from them only if you actually claimed them under the equivalent-to-spousal provision (Line 305). Even if you claimed them as “infirm” at Line 306, this does not suffice to entitle you to a transfer of the unused DTC at Line 318.

Where a transfer of the DTC is authorized at Line 318, the maximum claim is $4,233, the full amount of the DTC. It can be transferred if the dependant does not use it to reduce his or her own taxable income. If the dependant has taxable income, the "unused part of the dependant’s disability amount" calculation at Line 318 in the “General Income Tax Guide 97” (on page 35) must be carried out.

The key point in this calculation is that reduction of this claim occurs when the dependant has taxable income. “Taxable income” does not include social assistance and Workers’ Compensation. So the full amount of the DTC may be transferred to the supporting relative if the above conditions are met, despite the dependant’s receipt of social assistance income (such as Family Benefits or Workers’ Compensation).

Finally, the claim for the transfer of the unused portion of the DTC may not be made if a medical expenses claim is made at Line 330 for a full-time attendant or care in a nursing home. However, it can be combined with a claim for an attendant at work or a training program or research grant at Line 215, or a part-time attendant at home as a medical expense credit, at Line 330. For the Line 330 medical expense claim, “part-time” basically means the annual claim is $10,000 or less - $20,000 or less in the year of death - see Question 33 for more information.

23. My mother who has a disability is 62. She lives with my wife and me. No one else lives with us. She receives Family Benefits but we also help to support her. In 1996, I was disabled myself due to a work injury and received Workers’ Compensation as my only income during 1997. What claims can my wife, who was regularly employed all year in 1997, make with respect to my mother?

Your spouse may not make the equivalent-to-spouse claim (Line 305) with respect to your mother because she is married to you. Your spouse may claim your mother at Line 306 under “Amounts for Infirm Dependants Aged 18 or older (using Schedule 6), but the claim will be reduced or eliminated by your mother’s social assistance payments (it depends on the amount shown on the T5007 - see Questions 3, 20 and 22).

Your spouse may, however, claim a transfer of your mother’s unused Disability Tax Credit at Line 318. This is because your mother lived in a home which your spouse maintained. You could make the same claim, but it won’t benefit you because your Workers’ Compensation payments are non-taxable. To claim, your spouse should attach your mother’s completed DTC certificate (T2201) to her return.

24. I send money to brother, who is disabled, in France to support him. Can I make a claim for him? I also support my sister with a disability who lives with me. No one else lives with us. Her doctor has certified her as eligible for the Disability Tax Credit. Her only income is $1,000 a year in bank account interest. (She lives on her savings). What claims can I make for her? How will her income affect these claims?

No claim can be made for your brother. The only possible claim is under “Amounts for infirm dependants aged 18 or older” at Line 306, and he is ineligible because he is not resident in Canada. However, a child or grandchild under 18 or dependent because of “infirmity” may be claimed when outside Canada if still dependent on his or her parents.

From your sister’s return, her “net income” (at Line 236) will be $1,000. As explained at Question 1, your sister should file a return to obtain her refundable credits and to be able to apply for other government programs.

You can claim the equivalent-to-spouse amount for her at Line 305 using Schedule 5, but her income will reduce the claim from the maximum of $5,380 to $4,918 (using the calculation on Schedule 5). This will be converted to a 17% federal tax credit at Line 338.

Having claimed the equivalent-to-spouse amount for your sister, you can also claim the unused portion of her DTC at Line 318. Use the “unused part of dependant’s disability amount” calculation in the Guide at Line 318 (at page 35). Her taxable income is $1,000, but that is offset by her “basic personal amount” (Line 300) of $6,456. So all of her DTC of $4,233 is unused and may be transferred to you (to be converted to a 17% federal credit).

DISABILITY-RELATED EXPENSES AS MEDICAL EXPENSES AND OTHER MEDICAL EXPENSE CLAIMS

25. What disability-related expenses can I claim under the Income Tax Act?

There is no specific heading for disability-related expenses, but certain disability-related items can be claimed as medical expenses (Line 330). There are many items that can be claimed, and many that cannot be. The starting point is to review Interpretation Bulletin IT-519R, “Medical Expense and Disability Tax Credits and Attendant Care Expense Deduction”, available from your District Taxation Office. It describes in some detail which amounts are allowed. It is important to get the most recent IT-519R dated February 20, 1995, since the previous IT-519R was released in March, 1989. The revised IT-519R now has a comprehensive list of allowable medical expense claims.

There is no longer a Schedule provided for claiming medical expenses, but the method of making the claim is unchanged. The essential point is that you have to retain all receipts to claim medical expenses and file them with your return.

Some examples of claimable expenses are:

- the services of a psychologist who is licensed by a province to provide therapy or rehabilitation

- registered nursing services, including home care

- all prescribed medicines and drugs

- incontinence supplies, including catheters

- wheelchairs and other mobility aids

- TTYs, closed caption decoders, and similar devices

- devices to adapt computers (but not the cost of the computer itself)

- premiums paid to a private (but not a governmental) health insurance plan.

Some non-claimable items are:

- nutritional supplements

- athletic club expenses

- any expenses which you do not pay yourself or for which you are reimbursed by a private insurer or government plan.

While the categories of claimable medical expenses seem fixed, Revenue Canada does exercise discretion in individual cases. In the Weeks case discussed earlier (in the section entitled "Advocating a Fairer Tax System for Persons with Disabilities"), Revenue Canada conceded a number of claims not usually allowed as medical expenses and not easy to fit within the existing medical expense categories. These included: training in martial arts (for coordination); purchase of ankle and arm weights; replacement clothing and bedding (where the extra wear-and-tear was due to a disability); bath sheets; extra heating costs and additional rug and furniture cleaning costs (again directly attributable to the disability of the taxpayer's son). You should consider making these claims if appropriate - they should be dealt with by Revenue Canada on a consistent basis.

There are several new medical expense claims allowed as of the 1997 taxation year. See “Changes for the 1997 Taxation Year-What’s New?” earlier in this article for details. All of the new provisions regarding medical expense claims, as well as the new Refundable Medical Expense Supplement, will be illustrated in subsequent Questions in this section.

26. I am a deaf person. In 1996, I paid $250 for a visual fire alarm for my apartment, $600 for a sign language course, and $2,000 for sign language interpretations. Can I claim these amounts as medical expenses?

Yes. A provision effective as of the 1992 taxation year added the following categories of medical expenses eligible to be claimed at Line 330:

- the cost of visual or vibratory signalling devices to help people with a hearing impairment (for example, a visual fire alarm); and

- payments for rehabilitative therapy to help people adjust to a speech or hearing loss, including training in lip reading and sign language.

And a new provision in 1997 has added another important category for deaf people:

- sign language interpreter fees paid to a person in the business of providing such services, for an individual with a speech or hearing impairment.

27. How is the medical expense credit calculated? How is the new Refundable Medical Expense Supplement (RMES) calculated? Can I qualify for both, if I have a “net income” of $20,069 (at Line 236) and medical expenses of $1,100? Does the size of my family matter?

Your medical expenses are totalled and submitted at Line 330. Then you subtract 3% of your net income or $1,614, whichever is less. In this example, 3% of your net income is $600. $600 is less than $1,614, so you subtract $600 from $1,100 to get $500, which are your “allowable medical expenses” at Line 332. Then 17% of this amount is ultimately taken at Line 338 to get your federal credit. In this example, 17% of $500 is $85, so $85 is your federal credit. Considering the resulting reduction in provincial tax and federal surtax, the real value of the medical expense credit to you is likely to be $130-$140.

The medical expense credit is non-refundable, so you must have tax otherwise payable in order to benefit from it. Otherwise, a “supporting person” who paid the expenses may be able to claim them (see Questions 28 and 29).

You can see from this example that the value of the medical expense credit is quite low in relation to your actual medical expenses (including disability-related costs). This is true generally for people with high medical expenses. The new “Refundable Medical Expense Supplement (RMES) addresses this problem, but only for the working poor, as the following explanation will show.

The RMES is a new refundable tax credit in 1997. The rules governing the RMES are explained in detail in Tax Tip #7, earlier in this article. The RMES is claimed at Line 452 using Schedule 10.

In this example, you would only be eligible for the RMES if you were:

- resident in Canada for all of 1997;

- 18 or older at the end of 1997; and

- had employment and/or self-employment income (as calculated on Schedule 10) of more than $2,500 in 1997.

Assuming you met these three conditions, you could use the calculation on Schedule 10 to calculate your RMES entitlement (if any). First, you take 25% of your “allowable medical expenses” from Line 332. In this example, 25% of $500 is $125.

Next, you take your (and your spouse’s) “net income” to get your “net family income”. Assuming you do not have a spouse, or alternatively that your spouse has no “net income”, this figure is $20,069. From this figure you subtract $16,069, which gives $4,000 in this example. You then calculate 5% of this amount (i.e. family net income - $16,069). In this example, 5% of $4,000 is $200. Finally, this figure is subtracted from the 25% of your “allowable medical expenses” calculated above. In this example, since $200 is greater than $125, you have no RMES claim.

If we changed the example, however, so that your “net family income” was $16,069 or less, your RMES claim would be $125. This would be a refundable credit, which would either be deducted from your tax payable or paid to you by Revenue Canada if you had no tax payable. ($125 is the actual figure - it is not converted using the 17% calculation applied to non-refundable credits).

As may be seen from this example, the same medical expenses are used in calculating both the non-refundable medical expense credit and the refundable RMES. The two claims thus can be added together. For each, however, the calculation is based on “allowable medical expenses” so the 3%/$1,614 maximum net income reduction is applied to both. (This reduction of course significantly limits the value of each claim.)

The condition requiring at least $2,500 in employment and/or self-employment income in 1997 limits the RMES to those who are working. The Government’s intention was clearly to direct this claim towards the “working poor”.

You do not have to have a disability, qualify for the DTC, or be “infirm” to claim the RMES. The calculation is simply based on “allowable medical expenses” and “family net income”

Family status and family size are relevant to some aspects of the RMES, but not to others.

To meet the $2,500 employment and/or self-employment minimum, it is only the taxpayer’s earning which “counts” - not those of any other family member. The reduction of the RMES claim by “net family income” over $16,069 takes into account the “net income” of the taxpayer’s spouse, but not of any other family member. As with other “net income” calculations, social assistance and Workers' Compensation are included, so a couple with one spouse "working poor" and the other receiving Workers' Compensation would have both their incomes included in "net family income" (and probably be ineligible for RMES).

The $16,069 "net family income" reduction point and the $26,069 "net family income" are the same regardless of family size. This seems to make the RMES very unfair to larger families with higher medical expenses. (Questions 28 and 29, which follow, deal with the treatment of medical expenses in families).

28. I am a person with severe arthritis. I had $25,000 in net income (Line 236) last year and had $3,000 in medical expenses. My spouse, who had a net income of $40,000, paid $2,500 of the medical expenses and I paid the other $500. Which of us can claim the medical expenses? Which of us should claim to get the maximum benefit?

You or your spouse (which as of the 1993 taxation year includes a common-law spouse - see Tip #4 and Question 21) may claim medical expense for either you or your dependants, regardless of the actually paid them. Interpretation Bulletin IT-519R, "Medical Expense and Disability Tax Credits and Attendant Care Expense Deduction", says at paragraph 17:

"An individual may use the medical expenses of a spouse or a separated spouse regardless of that spouse's income in the taxation year. A receipt in the name of a husband or wife is considered acceptable for a medical expense of either, and the amount of that expense may be used by either, as agreed between them."

As your net income is lower than your spouse's, the 3% reduction would be less if you made the medical expense claim (a reduction of $750 for you as opposed to $1,200 for your spouse in this example), so you should make the claim unless there are exceptional circumstances which means that you do not otherwise have sufficient tax to pay for 1997 to take full advantage of the medical expense credit yourself. Remember that this is a non-refundable credit.

29. My spouse and I both work. I paid $8,000 in medical expenses last year on behalf of our 12-year-old daughter who has spina bifida. Can my wife claim the expenses even though I paid them? Would it be advisable if she has the lower income? I also paid $1,500 in medical expenses for my mother who has a disability. I claimed my mother as an "infirm" dependant at Line 306. Can I claim my mother's medical expenses too?

With regard to claiming medical expenses for relatives other than a spouse, there are two classes to consider:

- You may claim medical expenses which you paid for your or your spouse’s child or grandchild who was dependent (at least partially) on you for support

- You may claim medical expenses which you paid for your or your spouse’s parent, grandparent, brother, sister, aunt, uncle, niece or nephew if they lived in Canada in 1997 and were dependent (at least partially) upon you for support.

The difference between the two classes is the requirement that members of the second class (i.e., not children or grandchildren) must have resided in Canada at some time during 1997.

You can make a claim on your return for your mother’s medical expenses. Since you made a claim for her at Line 306, she must be dependent on you and have lived in Canada in 1997.

However, you have to consider the “medical expenses adjustment” at Line 331. For all dependants other than your spouse, where the dependant had net income over $6,456 (including social assistance or Workers’ Compensation) in 1997, a reduction or adjustment in medical expenses will be calculated should you choose to claim medical expenses for them.

Where the medical expenses claimed for the dependant are less than the amount of the medical expenses adjustment for that dependant, you would be better off not to make the claim. So you should carry out the calculation at Line 331 (page 39 in the “General Income Tax Guide 97”) with respect to your mother’s medical expenses in order to make this comparison.

30. My son is 19 and has a psychiatric disability. He lives at home with my spouse and me. In 1997, he received Family Benefits as a person with a disability, of which $7,500 was reported on his T5007 slip from the Ministry of Community and Social Services. He has no other income. We provided additional help to him out of our own funds including $2,800 for special dental work in 1997. Can I claim the $2,800 as a medical expense? I understand that my son’s Family Benefits reported on the T5007 are included in his “net income” so I can’t claim him as an “infirm” dependant at Line 306, although I can get a transfer of his Disability Tax Credit at Line 318 should he be eligible for it. (See Question 20).

The dental expenses are medical expenses. You are allowed to claim them when paid for your son because he is dependent on you for support (since he lives in your home, we can assume you provide some support to him). Since his net income of $7,500 is more than $6,456, as explained in Question 29, there will be a “medical expenses adjustment at Line 331.

Using the calculation on page 39 of he “General Income Tax Guide 97”, the medical expenses adjustment in this case is (\$7,500 - \$6,456) x 4 = \$4,176. Since \$4,176 is much more than \$2,800, you should not make the claim. If his FBA income as reported on his T5007 form was \$7,000, however, his medical expenses adjustment would be \$2,176. Since \$2,176 is less than \$2,800, in this case, you should make the claim.

31. My spouse and I received \$3,500 from the Special Services at Home Program of the Ontario Ministry of Community and Social Services last year to pay for respite care (parental relief) and an adapted recreational program for our 5-year-old daughter with a disability. Do I pay tax on this money? Can I claim the expenditures as medical expenses?

The \$3,500 is not “income from a source” within the meaning of the Income Tax Act and is not taxable. (The Ministry of Community and Social Services has obtained a ruling from Revenue Canada to this effect. You will not receive a T5007 from MCSS for these payments.).

It is basically a grant for your daughter which is not income at all. Since expenditures for which the taxpayer has been reimbursed cannot be claimed as medical expenses, whether the reimbursement is through a government plan or a private insurer, you can’t claim them as medical expenses either. (Handicapped Children’s Benefits payable through the Family Benefits Act are not “income” either. No T5007 slips are sent out by MCSS for HCB payments).

32. I was very ill beginning in November, 1997 and paid \$800 per week privately for nursing care. I expect to need this care until the end of March, 1998. Should I claim the nursing care provided in 1997 as a medical expense on my 1997 return?

You may do so, but depending on your circumstances, it might be better to wait and claim all of your expenses in the 1998 taxation year. You are permitted to choose any 12-month period for medical expenses ending in the taxation year, provided of course that you have not already claimed the expenses in question (see Line 330 in the “General Income Tax Guide 97” at pages 37-39).

The reason it is likely better to wait is that, by claiming all of the nursing expenses in 1998, you only make the deduction of 3% of net income from them once rather than on the return for both years. However, it is not possible to answer definitively without doing all of the calculations on your returns for both years, taking into account factors such as other medical expenses you might have.

33. I was seriously injured in a motor vehicle accident some years ago and I require full-time attendant care because of my disabilities. I pay three different attendants to work different shifts out of the substantial insurance settlement I received. One of the attendants is my 19-year old daughter, and another is a 17-year-old neighbour.

Can I claim all of their salaries as a medical expense? Can I also claim the Disability Tax Credit using form T2201? My friend requires only part-time attendant care. She spent $10,000 for a part-time attendant to help her at home in 1997. Can she claim this amount as a medical expense?

As the “General Income Tax Guide 97” states at Line 330, you can claim a full-time attendant as a medical expense. A court decision in 1970 held that several part-time attendants should be treated the same as one full-time attendant.

However, a person who is under 18 or who is the spouse of the person claiming the credits is not an “attendant” for tax purposes. So, in this case, the salary paid to your daughter can be claimed as a medical expense, while that paid to your neighbour cannot be, since the neighbour is under 18.

In order for you to claim full-time attendant care at home, you must have a letter from a doctor of other medical practitioner certifying your dependence on others for care due to “long-term mental or physical infirmity”. Or the Disability Tax Credit Certificate, T2201 can be used if you are medically eligible for it. However, you may not actually claim the DTC if you are claiming for a full-time attendant (nor may anyone else receive a transfer of the DTC). You should make the more favourable claim. (Compare with Question 17 - you can claim both the DTC and work-related attendant care expenses at Line 215). You can also claim both the DTC and up to $10,000 for care at Line 330, as discussed shortly.

Your friend can benefit from the part-time attendant claim, but only if she qualifies for the DTC, which is required for eligibility. Part-time attendant care is a medical expense credit claim as well, made at Line 330 attaching receipts issued by the payee and showing his or her Social Insurance Number.

The amounts for attendant care claims must actually have been paid: imputed amounts will not qualify. The maximum claim for 1997 for a part-time attendant care claim is now $10,000, so that is what your friend can claim. However, an increased claim of $20,000 is available in the year of death.

While this is called a “part-time” attendant care claim in the “General Income Tax Guide 97”, it can also be made by someone who required a full-time attendant for a limited period so long as the total expenditure claimed was not more than $10,000. The “part-time” attendant care claim can be combined with a claim for the DTC, but cannot be combined with a work-related attendant care expenses claim at Line 215, nor with a full-time attendant care claim at Line 330. No two attendant care claims for the same person may be combined (see Question 17 for a discussion of the issues regarding which claim to choose).

34. My eight-year-old child has a learning disability. I pay $10,000 annually for her to attend a special school for children with learning disabilities. Is this a claimable medical expense?

My friend’s four-year-old child has a developmental disability. She goes to a integrated nursery school which advertises itself as making special accommodations for children with disabilities. My friend pays $300/month for her daughter to attend. Can she claim this as a medical expense?

Medical expense claims relating to special programs are often in a “grey area”. There is a wordy definition in the Income Tax Act (reproduced in Interpretation Bulletin IT-519R in paragraphs 32 and 33) which permits medical expense claims for fees paid to certain “schools, institutions or other places” where special “care and training” is given because of the disability of the person. According to paragraphs 32 and 33 of the IT-519R:

32. The costs paid for the care, or the care and training, of a patient at a school, institution or other place will qualify...as a medical expense when an appropriately qualified person has certified that patient to be a person who, by reason of a physical or mental impairment, requires the equipment, facilities or personnel specially provided by the place... “other place” includes an out-patient clinic and also includes a nursing home...

An “appropriately qualified person” includes a medical practitioner as well as any other person who has been given the required certification powers under provincial or federal law. A patient (e.g., a dependant) suffering from a behavioural problem arising out of a mental or physical impairment or suffering from a learning disability, including dyslexia, who attends a school that specializes in the care and training of persons who have the same type of problem or disability is considered to qualify...and the expenses paid for the patient are qualifying medical expenses even though some part of the expenses could be construed as being tuition fees (see Ranelli v. MNR, 91 DTC 816, [1991]2 CTC 2040, (TCC)). A patient suffering from an addiction to drugs or alcohol can also qualify. ...Consequently, when all the conditions of that paragraph, as discussed above, are met, the expenses paid for the care of the patient in a detoxification clinic qualify as medical expenses. Fees paid for a stop-smoking course or program are not considered to qualify as medical expenses...unless, in an exceptional case, such a course or program is part of a patient's medical treatment that is required because of a serious health deteriorated problem and that is both prescribed and monitored by a medical practitioner.

33. There is no requirement that a nursing home or a detoxification clinic be a public or licensed private hospital. The fact that the name of a residential establishment sometimes includes the word "school" or "nursery" will not affect the determination of whether it qualifies as a nursing home. While the care need not be full time, it must be stressed that equipment, facilities or personnel specially provided by the nursing home (or other place described in 32 above) must be specifically tailored for the care of persons suffering from the physical or mental impairment in question and that the other conditions set out in 32 above must be met, for the fees to qualify as medical expenses..."

These provisions have been set out almost in their entirety from the Interpretation Bulletin so the actual language used Revenue Canada will be clear. It can be seen that these paragraphs allow for a range of interpretations.

The word "patient" is used in the Interpretation Bulletin to refer simply to the taxpayer, his or her spouse, and his or her dependants for whom medical expenses may be claimed. It has no particular implications with respect to health status or disability - it just means the person receiving the service.

The reference to the Ranelli case indicates rather clearly that the claim for your child who is attending a school specifically designed for children with learning disabilities will likely be allowed. On the other hand, it will be much harder for your friend to argue that the integrated nursery school is "specially tailored" for her child's needs.

You should each contact the schools in question to see how Revenue Canada has dealt with a medical expense claim for its fees by other parents. There does not seem to be a fully clear and consistent policy articulated in the Interpretation Bulletin.

Even if the nursery school fees are not claimable as a medical expense, your friend may still be able to claim them as child care expenses depending on her family circumstances. In fact, often it would be more advantageous to do so. If it is possible to claim either way, she should work out the consequences of each alternative.

35. Last year, my seven-year-old son was having serious problems with his speech at school. I hired a part-time

special education teacher privately to help out, and paid her $1,800 in total for 30 sessions. Can I claim this as a medical expense? I also made private payments of $800 to an occupational therapist and $700 to a physiotherapist for services not funded by the health care system or the educational system. Are these claimable at Line 330 as medical expenses?

Revenue Canada's Interpretation Bulletin IT-519R, "Medical Expense and Disability Tax Credits and Attendant Care Expense Deduction" indicated (at paragraph 5) that the list of health professionals recognized as "medical practitioners", for purposes of claiming payments to them as medical expenses, had been expanded.

The list now includes, among other categories, physiotherapists, occupational therapists who are members of the Canadian Institute of Occupational Therapists, and qualified speech language pathologists or audiologists. In each case, the health professional must be qualified to practice under the laws of the province.

In this example, the physiotherapist and occupational therapist fees would qualify, but the payments to the special education teacher (unless that person also happened to be a qualified speech language pathologist) would not qualify.

36. My wife has multiple sclerosis. She uses a wheelchair part of the day and walks with some difficulty using braces at other times. During 1997, we had our home renovated to make it more accessible. A ramp was put in leading to the front door, the upstairs and downstairs hallways were widened, the bathroom was made accessible and the kitchen cabinets were lowered. We also added a room for her to use as a study. Finally, we installed air conditioning in all of the rooms she uses regularly. Can these items be claimed as medical expenses?

There has been progress made over the past number of years by the federal government in recognizing home renovations as medical expenses under the Income Tax Act. Effective with the 1991 taxation year, it was made clear under the legislation that expenses for modifying your home for accessibility are claimable if you, or your spouse or dependant qualify as having a severe and prolonged mobility impairment.

The Disability Tax Credit, form T2201, or an equivalent letter must be submitted from your physician to make this claim. All of the accessibility modifications listed should qualify although it should be documented very clearly by your wife's physician or other health practitioner that the study is for your wife's use primarily.

The Federal Court of Canada (Trial Division) in the Brown case, decided in 1994 that the cost of an air conditioner for a person with multiple sclerosis is claimable as a medical expense. (See the discussion of this case in "Advocating a Fairer Tax System for Persons with Disabilities", earlier in this article.) [The Federal Government initially filed an appeal of this decision, but later abandoned it].

For the 1997 taxation year, however, the federal government has apparently modified the result in Brown by introducing as a new category of medical expense:

- 50% of the cost of an air conditioner, prescribed by a medical practitioner for an individual with a severe chronic ailment, disease or disorder to a limit of $1,000.

While this would limit air conditioner claims for those with multiple sclerosis, it also extends the claims to those with respiratory illness, who were previously prohibited from making any medical expense claim with respect to air conditioners.

As of the date of publication of this article, however, the Federal Government has not repealed or amended the Regulation on which the Brown decision was based, nor has it enacted a Regulation to implement the new 50% rule, so there is a strong legal argument that the Brown case is still good law and that people with m.s. can make a 100% claim for their cost.

37. My husband and I have a 9-year-old son with muscular dystrophy. As he is a wheelchair user, we bought a $30,000 van in 1997 to meet his needs, and paid $8,000 to have it adapted. Can we claim these amounts on our tax returns?

Our son requires treatment at a specialized medical centre. We drive him there 3 times a week. The centre is 50 kilometres from our home. Can we claim our transportation costs as a medical expense? We also paid $6,000 to renovate our driveway so that our son’s school bus could get closer to the house, especially in winter. Is this claimable?

For several years, the cost of adapting a van for a person with a significant mobility impairment has been claimable as a medical expense. The $8,000 can be claimed at Line 330.

As of the 1997 taxation year, there is a new category of medical expense defined as follows:

- 20% of the cost of a van that has been adapted (or is adapted within six months of when you acquire it) to be able to transport an individual who uses a wheelchair to a limit of $5,000.

As 20% of $30,000 is $6,000, in this case the limit of

$5,000 may be claimed at Line 330 with respect to the cost of the van.

You can claim the transportation costs as a medical expense at Line 330, assuming that the specialized treatment was not available at a centre closer to your home. The important consideration is that the centre is more than 40 kilometres from your home. You will have to show, however, that there is no public transportation which would be suitable. (See Interpretation Bulletin IT-519R, paragraphs 34-37, for an outline of what travel and transportation expenses are allowable).

Another new category of claimable medical expense for 1997 is:

- the reasonable cost of altering the driveway of the primary residence of an individual with severe and prolonged mobility impairment, to allow easier access to a bus. So long as the $6,000 is a “reasonable cost” of improving access to the school bus, it is claimable at Line 330 as well. (Since the new provision makes specific reference to access by a bus, it does not appear that accessibility to one's own vehicle would qualify, which seems unfair.)

38. Our 14-year-old daughter has severe epilepsy. She was referred by our doctor in North Bay to the Hospital for Sick Children for a specialized neurological consultation. Both of us spent a week with her in Toronto, flying down and staying in a hotel. Are these allowable medical expenses?

Our daughter spent three days with us at the hotel as well, rather than as an in-patient. Are her hotel expenses and meals claimable as medical expenses? What if she had been an adult and able to travel alone?

Assuming that your daughter is certified by her doctor as unable to travel alone, the transportation, accommodation and meals for one accompanying individual are allowed as medical expenses. (As with the previous question, IT-519R should be reviewed). So apparently, the expenses for only one parent are covered. Your daughter’s expenses are also covered, as they would be if she were an adult and able to travel alone, so long as there is clear documentation that the travel for medical assessment and/or treatment was justified.

39. Last year, I was injured in a diving accident and had a major spinal cord injury. Now I use a wheelchair. I sold my home and bought another (a wheelchair accessible) home in the same neighbourhood. Can I claim moving expenses of $3,000 at Line 219? Or are they claimable as medical expenses at Line 330?

The Income Tax Act allows a claim for moving expenses at

Line 219 only where the individual has moved at least 40 kilometres closer to his or her workplace or post-secondary educational institution.

As of the 1997 taxation year, however, the following is a new category of medical expense claimable at Line 330:

- reasonable moving expenses (that have not been claimed as moving expenses on anyone's return) to move an individual who has a severe and prolonged mobility impairment, or who lacks normal physical development, to housing that is more accessible to the individual or in which the individual is more mobile and functional, to a limit of $2,000.

So $2,000 of the $3,000 moving expense is claimable as a medical expense at Line 330.

EDUCATION CREDIT FOR PART-TIME STUDENTS

40. I am a university student studying fine arts. I also have chronic fatigue syndrome. Last year, I could only take three courses as a result, whereas a full course load for my program is six courses. Can I claim the education amount at Line 323?

Yes, with the support of your doctor. This is an applicable provision for 1992 and later taxation years. While ordinarily only full-time students can claim the education amount of $150/month (increased in 1997 over $100/month in 1996), students who are part-time because of their disabilities can also make this claim.

The claim is made on Form T2202, the "Education Credit Certificate for Full- and Part-Time Students". Part-time students eligible for the Disability Tax Credit make the claim for the education credit simply by checking the appropriate box in Part 2, "Statement by Student". Part-time students not eligible for the Disability Tax Credit may also make the claim, but their physician or optometrist must complete Part 3 of the T2202, "Certification by Physician for Part-Time Students".

CHILD CARE EXPENSE PROVISIONS RELATING TO DISABILITY

41. I am a woman who is working to support a husband with a disability and two children, ages 4 and 8. My husband used to look after the children as a "househusband" but now he is too disabled to do this, and we have hired a nanny. Can I claim child care expenses at Line 214?

Yes. The child care deduction is usually available only to the lower-income spouse (in this case, your husband) but where that spouse's disability makes him or her incapable of child care, then the higher income spouse may claim. Obtain Form T778, "Child Care Expenses Deduction for 1997" which must be submitted (available from Revenue Canada).

Basically, given the ages of your children and assuming neither has a disability, you may claim up to $8,000 annually in actual child care expenses up to a maximum of 2/3 of your “earned income” (income from employment or business). There is also a limit, however, of $150/week for a child who is under 7 or eligible for the DTC, and $90/week for a child 7 to 16, or older if “infirm”. This weekly limit would apply if your husband were disabled for only part of 1997.

42. My child is 19 but requires child care because of a disability. Can I still claim child care expenses for her?

Yes. Your physician should fill out Form T2201, the Disability Tax Credit certificate. When this is filed with Revenue Canada (this should be done anyway so you can claim the DTC), then child care expenses to a maximum of $5,000 can be claimed for a child even if over 16.

The maximum age to claim child care expenses, regardless of disability, was raised from 14 to 16 as of the 1996 taxation year. If your child were 15, you could claim $3,000 in child care expenses without proof of disability, but would still have to obtain a DTC to claim the $5,000 maximum.

Even where the child does not qualify for the DTC, a maximum of $3,000 may be claimed annually, regardless of age if the child is “physically or mentally infirm” (“Infirmity is discussed above in Question 20).

In either case, you will have to be otherwise eligible; i.e., if there are two spouses, the lower income spouse must claim the child care expenses for periods when he or she was working or in a training course. See Line 214 in the “General Income Tax Guide 97” for more details.

ONTARIO TAX REDUCTION

43. I heard about an “Ontario Tax Reduction” What is it?

The Ontario Tax Reduction Program is designed to eliminate or reduce income tax for Ontario taxpayers with low to moderate incomes. It only applies to Ontario provincial tax, the basic rate for which is 48% of the federal tax. It is calculated on the pink form called “Ontario Tax”, T1C(Ont) TC-1997.

The basic idea is that a “personal” reduction is calculated by each taxpayer. Everyone gets a basic personal reduction of $171. Then $334 is added for each dependent child born in 1979 or later - i.e., under 18. A further $334 is added for each disabled dependant (whom you or your spouse claimed at Lines 305, 306 or 318, or a spouse for whom you claimed a transfer of the DTC at Line 326 using Schedule 2 - note that transfer of the DTC is sufficient to qualify for the “personal reduction”. The sum of all these amounts ($171 + $334 per child + $334 per disabled dependant) is the taxpayer’s “personal reduction”

This “personal reduction” is then compared with the taxpayer’s Ontario tax (as explained on the pink “Ontario Income Tax” form). If the personal reduction is greater than the Ontario tax, no Ontario tax is payable at all. (he taxpayer may still have federal tax to pay.)

If the personal reduction is smaller than the Ontario tax, there may still be a reduction in Ontario tax. The calculation is carried out on the “Ontario Tax” form.

44. My daughter who has cerebral palsy is 11. Her physician has completed the T2201 disability credit certificate and has certified her as eligible. When I come to complete the Ontario Income Tax form for the Ontario Tax Reduction, can I make two $334 claims for her, once as a dependent child and once as a dependent with a disability?

Perhaps surprisingly, the answer is yes. It is clear on the “Ontario Tax” form that you can make two claims for a dependent child who has a disability.

45. I am a taxpayer with a disability. Can I claim $334 as an additional “personal reduction” under the Ontario Tax Reduction program?

Perhaps surprisingly, the answer is no. There is no additional tax reduction for taxpayers with disabilities, only for taxpayers with dependants who have disabilities.

CLAIMING FOR PREVIOUS YEARS

46. Can I go back and claim items I missed for previous years? What do I do?

If you have not made a claim, such as for the Disability Tax Credit or for medical expenses, under the rules for previous years you can still go back as far as the 1985 taxation year (see page 9 in the “General Income Tax Guide 97”. You can use Form T1-ADJ, “T1 Adjustment Request” for this purpose.

You may write to Revenue Canada giving your social insurance number, the telephone number where you can be reached during the day, the details of the changes you believe should be made, the years you are applying for and the supporting documentation (such as the T2201 if the claim is for the DTC - in this case, it is important that the physician indicate clearly the date the disability began). If you have filed returns for the years in question, you should not attempt to file new returns. You can file returns for years back to 1985 if you have not done so previously, however.

If the claim for previous years is for the DTC, and you are claiming for the present year as well, you can get your physician to photocopy the T2201 and put an original signature on each copy. Then one copy can be mailed with your 1996 return, and one with your letter.

It probably makes sense to contact your local Tax Services Office to discuss the problem informally with them before submitting extensive documentation. It seems clear that Revenue Canada may well scrutinize a retroactive claim for several years, for the DTC or medical expenses for example, much more closely than a “new” claim which just applies to the 1997 taxation year. A retroactive claim going back several years will presumably have to be very well documented in order to be accepted.

However, in a clear case of eligibility, you should not hesitate to claim back for all of the years from 1985 on, for which you were eligible to make the claim.

APPEALS

47. If a claim is disallowed, what can I do?

You have 90 days from the date on the reassessment notice to file a Notice of Objection. A Notice of Objection is a one-page form which you can get at the District Taxation Office. The Notice of Objection is sent in by registered mail.

If you are getting near the end of the 90-day period, send in the Notice of Objection at once. Additional documentation may be submitted later. You should probably consult with a tax advisor, if possible, before filling in the Notice of Objection.

If you miss the 90-day period, you may be able to get an extension from Revenue Canada or ultimately from the Tax Court, but this is not guaranteed. While your appeal is going ahead, it is best to pay the tax bill in dispute if possible, to avoid interest penalties. This will not jeopardize your case.

If you are still unsuccessful, there is a further appeal to the Tax Court of Canada, and in rare cases, to the Federal Court of Canada and the Supreme Court of Canada. The Tax Court of Canada has an “informal” appeal procedure for this type of case (where the federal tax payable is less than $12,000, where taxpayers may represent themselves or appear through an agent - see Question 12 above for a discussion of DTC appeal cases in the Tax Court of Canada). In the Federal Court or Supreme Court, of course, it is very difficult to proceed without legal counsel.

If you or your family have been reassessed retroactively with respect to the DTC, and Revenue Canada is requesting repayment for more than one year or for a year before the most recent tax year, you should write to the Chief of Appeals at your local Tax Services Office, in accordance with a policy stated to ARCH last year by the Federal Revenue Minister at that time, the Honourable Jane Stewart (see Question 12 for more details).