

SUB-COMMITTEE ON THE STATUS OF PERSONS WITH DISABILITIES OF THE
STANDING COMMITTEE ON HUMAN RESOURCES DEVELOPMENT AND THE
STATUS OF PERSONS WITH DISABILITIES

“Answers to Questions Regarding the Disability Tax Credit”
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[NOTE: The functional criteria of “severe” and “prolonged” are not discussed in any detail in this document, as they will be covered by other presenters to the Sub-Committee during the current hearings.]

What is the Disability Tax Credit?

The Disability Tax Credit (DTC) is a non-refundable credit that may be claimed on the income tax return by a:

- taxpayer with a disability (Line 316 claim)
- taxpayer with a dependant with a disability (Line 318 claim)
- taxpayer with a spouse or same sex partner with a disability (Line 326 claim).

The person in question must have a disability that is “severe” and “prolonged”.

The rules regarding the availability of the Line 318 claim are complex. Essentially, however, the availability of this claim depends on the interrelationship of five factors:

- the “closeness” of the relative’s family relationship to the taxpayer (e.g. parent, grandchild, aunt, cousin)
- whether the relative lives with the taxpayer
- whether or not the taxpayer has a spouse whom he or she lives with
- whether or not the taxpayer supports the relative
- the relative’s taxable income.

The rules regarding the availability of the Line 326 claim for a spouse or same-sex partner depend on:

- the taxable income of the spouse or same-sex partner
- the other tax credits claimed with respect to the spouse or same-sex partner.

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What is the Monetary Value of the DTC to the Taxpayer?

The “value” of the DTC, as stated on the tax return, will be \$6,000 for the 2001 taxation year. It was \$4,393 for the 2000 taxation year. But the actual savings in dollars to taxpayers is much less.

The primary reason for this, of course, is that the \$4,393 (now to be \$6000) is converted to a 17% federal tax credit at line 338 of the tax return, like all of the other personal tax credits. 17% of \$4,393 is \$747, which is the maximum federal tax saving from the credit for 2000. 17% of \$6000 is \$1020, which is the maximum federal tax saving from the credit for 2001.¹

The other main reason for the reduced actual value of the DTC is that the credit is non-refundable, and can only be used to offset tax otherwise payable. As taxpayers with disabilities typically have below-average incomes, even where they are able to claim the DTC (and many are not) they often have less tax to offset.

Which Persons with Disabilities, and Family Members who Support Them, are Unable to Claim the DTC at All?

As already noted, the DTC is a non-refundable credit, so low-income Canadians do not benefit from the DTC.

The interpretation of “severe” and “prolonged” is quite restrictive, so many taxpayers with disabilities and taxpayers who have dependants, spouses or same-sex partners with disabilities are unable to make the claim.

There is a rule in the *Income Tax Act* which provides that a DTC claim may not be made together with a medical expenses claim for care in a nursing home or institution, or with a medical expenses attendant care claim for over \$10,000 (\$20,000 in the year of death). It is difficult to see the justification for this rule, which excludes individuals and families who are making very high personal expenditures on attendant care from the DTC. Individuals and families who are receiving 100% government-funded supports can still claim the DTC, while those who are paying over \$10,000 themselves cannot. (It should be noted that the medical expenses attendant care claim is not only converted to a 17% credit, but is subject to the prior reduction of 3% of net income which is applied to all medical expenses.)

Is the Number of DTC Claims Allowed Increasing?

Based on the CCRA publication “Tax Statistics on Individuals” available on the Internet,

¹ There are consequential provincial tax savings as well, which will increase the actual dollar value by about 50% - the actual impact on provincial taxes depends upon the province’s tax rate and other provincial tax provisions.

there seems to be very little increase in recent years. For 1993, there were about 450,000 claims (excluding spousal DTC claims, for which separate data are not given). For 1999, that number had increased to about 458,000.

What are the Further Tax Consequences of DTC Eligibility or Ineligibility?

It is necessary to meet the definitional eligibility criteria for the DTC in order to make the following tax claims (that is, the disability must be “severe” and “prolonged”, although the individual or family need not be financially eligible to actually get the DTC):

- higher child-care claim for an “older” child with a disability (Line 214)
- work- or training- related attendant care expenses (Line 215)
- attendant care medical expense claim (Line 330)

For other claims, having medical certification of eligibility for the DTC is one way of qualifying, although for these claims a person may also be certified by a physician as “infirm”. As “infirmity” is not defined in the *Income Tax Act*, and there is no form for certifying infirmity, it is uncertain how well this alternative is understood by the public or health professionals, or how often this alternative is used.

These claims include:

- educational credit for part-time students (Line 323)
- care in a nursing home, institution or “other place” (Line 330)
- home modifications medical expense claim (Line 330).

From these examples, it is clear that the functional eligibility criteria for the DTC have a significance considerably beyond the potential value of the DTC claim itself. If someone does not qualify functionally for the DTC, that person or a supporting taxpayer is not eligible to make several other disability-related tax claims, or may find it more difficult to do so.

What Obstacles do Taxpayers Face in Appealing the DTC?

A taxpayer denied the DTC for himself or herself, or for a spouse, same-sex partner or other dependant relative has appeal rights, but many find these difficult to exercise effectively, for the following reasons:

- the person may not understand their appeal rights
- the 90-day time limit for filing a Notice of Objection is a barrier to some
- physicians may be reluctant to become involved in an appeal, especially as considerable work is involved and there is no source of funding for their work other than the patient or family
- if the case reaches the Tax Court, typically a taxpayer or lay advocate is required to meet a case presented by a lawyer with the assistance of a government doctor.