

Tax Savings for the Disabled

Kenneth Pope

Tax time is upon us, and families with a disabled member need to know how to take advantage of provisions of the taxation system that apply to them. I estimate that one in eight families could be affected by these provisions, and if yours is one, you need special tax planning advice. In this article, I will explain how you can save thousands of dollars by taking advantage of special benefits that the government has put in place for families with a disabled member.

There are three lines on the tax form that we will consider here, lines 315, 316, and 318. Canada Customs and Revenue Agency, has a useful, but somewhat less than revealing booklet, "Information Concerning People with Disabilities". The booklet does not tell the whole story and is, in part, misleading in the narrow interpretation it gives. More about this problem shortly. Let's start with line 315.

Line 315, the caregiver amount, comes into force when there is a person in the home "dependent on you due to mental or physical infirmity or, if he or she is your spouse or common-law partner's parent or grandparent, born in 1936 or earlier". This provision includes an adult child. If you separated last year and paid child support, you may claim either the caregiver amount or the child support amount, not both. The dependant needs to have been 18 or over at the time he or she was living with you. As well, the person must be your child or grandchild or "you or your spouse or your common-law partner's brother, sister, niece, nephew, aunt, uncle, parent, or grandparent who was resident in Canada".

If the person was with you any time during the year, you are eligible for the amount, even if it was for weekend visits away from an institution or group facility. The eligibility for the caregiver amount is also effected by the dependant's net income and any amount claimed for an eligible dependant (line 305). Those are the bare bones details laid out in the booklet. In addition, just to simplify things, you should know if a child over 18 receives Ontario Disability Support Program payments or a senior gets the Guaranteed Income Supplement, the person will qualify.

You Can Claim for Back Years

What the booklet does not tell you is that, if you failed to apply for the caregiver amount, you may backfile, going back as far as 1998! With the taxation system as complicated as it is, it is good to know that you have another kick at the can. I spoke of this being tax time, but in fact any time is the time to revise past

omissions or errors. Using line 315 should put about \$500 a year in your pocket. Use the T-1 Adjustment Form for backfiling. It is very user-friendly.

Now we turn to line 316, the disability amount. In order to take advantage of this deduction, the person must be blind, have a severe mental or physical impairment which markedly restricts him or her in any of the "basic" activities of daily living (known in the health field as ADL), or requires life-sustaining therapy (e.g., kidney dialysis) at least three times a week for an average of at least 14 hours a week for at least a year. The blindness or inability to carry out activities of daily living must be "prolonged". Currently, line 316 will reduce income taxes by \$1,500 for a person over 18. If the person is under 18, an additional amount can be claimed, using the federal worksheet. When a person has little or no taxable income, the tax credit can be transferred. How? Just keep reading. We'll get there soon.

The Disability Tax Credit Certificate indicates who can complete the document: physicians, optometrists, audiologists, occupational therapists, psychologists, and speech-language pathologists. It also lists the ADLs: walking, speaking, thinking and remembering, hearing, feeding and dressing, eliminating bodily wastes. Clear? Well, don't believe it!

Courts Expand Eligibility

The courts have broadened the concept of ADL in cases brought by taxpayers. For example, the ability to feed oneself has been expanded to include the ability to prepare food. Ability to dress has been understood to include ability to do laundry. The "Information Concerning People with Disabilities" tells us nothing about this wider eligibility. Thus, if you have a disabled dependant, you would be well advised to get legal advice about how that person's disabilities might fit, not just the narrow categories spelled out in the Certificate, but the wider understanding elucidated in court decisions. Using the T-1 Adjustment Form, benefits can be backfiled to 1985! And remember, the T-1 is easy to complete.

It should be noted that the finance department has been actively looking at revising the law to eliminate the extensions made by the courts, but protests from the disability community have put these efforts on the back burner. The fact that the minister responsible is preparing to take a run at the Liberal party leadership may be a factor in the backtracking.

Big Advantage for Families

Finally, let us turn to line 318. The amount claimed on line 316 on the dependant's tax return can be transferred to the caregiver. The amount is entered on line 318. This provision is used when the disabled person does not have taxable income sufficient to take advantage of the tax credit. This can be a major benefit to any family with an eligible disabled member.

Because of the complex nature of the disability tax rules and the incomplete information provided by the

Canada Customs and Revenue Agency publications and forms, it would be wise to consult a knowledgeable accountant or lawyer specializing in disability matters, especially before making the first disability-related claim. Use of the T-1 Adjustment Form, however, requires no special expertise.

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