

## **Disability tax credit—appealing where the credit is denied (August 2011)**

Our tax system provides a federal non-refundable tax credit for taxpayers who have what is termed a “prolonged and severe impairment in physical or mental functions”. The federal credit is a substantial one—for 2011, the amount on which the credit is based is \$7,341, meaning the credit itself is equal to just over \$1,100. When a taxpayer is entitled to claim the disability tax credit and that credit is combined with the basic personal credit to which virtually all Canadian taxpayers are entitled, the taxpayer would be able to receive (for 2011) nearly \$18,000 in income for the year with no federal tax liability.

While being able to claim the disability tax credit can make a huge difference to the standard of living available to disabled persons, who typically must manage on a lower than average income, there are additional consequences to being able to make that claim. Disabled taxpayers are generally eligible for a number of tax programs (such as Registered Disability Savings Plans), and the requirements of other tax credit programs (like the education and textbook tax credits or the Home Buyer’s Plan) may be altered or relaxed in ways which recognize the special circumstances of disabled taxpayers. In almost all cases, eligibility for those programs or altered requirements requires that the taxpayer qualify for the disability tax credit. In other words, where a taxpayer applies to the Canada Revenue for a determination of his or her eligibility for the disability tax credit, there’s a lot riding on the outcome of that decision.

That being the case, it’s unfortunate that the process of obtaining a Disability Tax Credit certificate, which certifies that the taxpayer may claim the disability tax credit, isn’t always straightforward or easy, even for those who qualify. To start with, it’s necessary to have a medical practitioner who is very familiar with both the taxpayer’s medical condition and history and also his or her day-to-day living arrangements to complete a lengthy (nine-page) form, outlining in detail both the individual’s medical condition and how his or her disability affects day-to-day living. That form (Form T2201) is structured in such a way that the medical practitioner is required to answer only “yes” or “no” to questions which contain words or phrases (such as “inordinately”, “significantly”, or “markedly”) whose meaning can be very subjective. As well, the requirements for eligibility for a disability tax credit certificate are very precise, and the medical practitioners who are completing these forms are not typically familiar with those requirements.

Until recently, the real difficulty for taxpayers who were denied eligibility for a Disability Tax Credit certificate was that there was no way to directly appeal from that denial. Where eligibility was denied, the taxpayer had no option but to file his or her next income tax return and then object to the Notice of Assessment which was issued by the Canada Revenue Agency (CRA) in respect of that return. However, that process contained a kind of Catch-22. Often, because income was low, a return filed by a disabled taxpayer would be assessed as having no tax owing—what is known in tax terminology as a “nil assessment”. The Catch-22 arose because, under our tax law, no appeal is possible from a nil assessment, leaving the taxpayer with no means to appeal from or dispute the decision which found that he or she was not entitled to a Disability Tax Credit certificate.

Recognizing the injustice inherent in that situation, the federal government has recently changed the rules to provide taxpayers with the right to object where the CRA determines that they are not eligible for a disability tax credit. That change will be effective for the 2010 and subsequent taxation years.

As a matter of procedure, anyone who wishes to object to a denial of eligibility for the credit must do so by the later of two dates: 90 days after the notice denying eligibility is mailed by the CRA, or one year after the due date for the tax year in question. Take, for example, a taxpayer who submits an application for a Disability Tax Credit certificate in June 2011 and to whom the CRA mails the notice denying eligibility in October 2011. That taxpayer will have until April 30, 2013 (one year after the 2011 filing due date of April 30, 2012) to appeal against the CRA’s determination. The form to be used in appealing against the CRA’s determination is the usual Notice of Objection form—T400A, which is available on the CRA Web site at <http://www.cra-arc.gc.ca/E/pbg/tf/t400a/README.html>.

Special rules—and special time limits—will apply to taxpayers who applied for the certificate in 2008, 2009, or 2010 and who were denied but were unable to appeal. Those taxpayers can now appeal directly against the CRA’s

original decision to deny eligibility, but have only 180 days after June 26, 2011 (the day on which the enacting legislation received Royal Assent) to do so.

The CRA has posted a Q&A document about the new appeal rights on its Web site, and that document can be found at <http://www.cra-arc.gc.ca/gncy/bdgt/2011dte-ciph-eng.html>.