

## **Tax Issues and ABA**

Applicable to the 1999 Tax Year

Dear MFEAT members:

A member recently sought an opinion about tax issues around in-home ABA programs from his accountant. His accountant, PriceWaterhouseCoopers, is well respected. This member has asked me to share the accountant's findings with other MFEAT members, (and other Canadian FEAT's as well). It was implied in his discussions with me that he wished not to be named.

What follows has been retyped to take up fewer pages (to save on photocopying), to more easily share with other FEAT's on the web (using e-mail), and to include in the next newsletter (for those unable to attend today's meeting).

I am sure you will find this information useful. If you have any questions or concerns, they are best taken up with your accountant or tax preparer.

Stephen

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### **[Cover letter from member]**

Dear Stephen:

Enclosed is the opinion of a major international accounting firm regarding ABA expenses and taxation. These are applicable to the 1999 tax year. Please circulate freely to all MFEAT members and other autism groups. Those families who have already filed for 1999 may want to refile. Actual text of tax amendments are enclosed as well.

The Essentials:

- 1) T2201 Disability Tax Credit certificate
- 2) Therapy must be prescribed by and administered under general supervision of medical doctor or psychologist.
- 3) Therapy receipts should include therapists name and social insurance number. Therapist must be 18 years or older and cannot be related to the child. Receipt should probably read Behaviour Therapy / Special Tutoring for [child's name].

**[Memo from PriceWaterhouseCoopers]**

Private and Confidential

Date: February 23, 2000

**Subject: Treatment of Medical Expenses and Disability Amount**

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**Facts**

- I received a call from X. He informed me that his two year old daughter has been diagnosed as autistic.
- He will be incurring significant medical expenses related to his child's disability. Specifically he will be paying medical fees to ABA Consultants which is a firm of clinical psychologists outside of Winnipeg. Essentially, the clinical psychologists will fly in to Winnipeg in order to meet several clients which have been diagnosed with autism. The services they provide consist of an evaluation of the child, which is performed during a three day consultation in the child's home. They will also, based on that evaluation, establish a behavioural therapy regime for the child.
- He will also incur expenses for behavioural therapists based here in Winnipeg. These therapists will also conduct the therapy in the child's home.
- The payments X make to ABA Consultants will be for professional services to evaluate and develop a treatment plan for his daughter. He will also be partially responsible for their travelling expenses to Winnipeg. Specifically, the psychologists will fly into Winnipeg and remain here in order to meet several families. X will pay his prorata share of the expenses, which will vary depending upon the number of families involved.
- X was not sure how the invoices he would receive from ABA Consultants would be presented. Therefore, we do not know at this time whether the travel related expenses will be itemized separately on the invoices.

**Issues**

- X has asked us to advise him on the income tax implications of these various expenses related to his daughter's disability.

**Analysis**

- Section 118.3(1) provides for the disability credit. Subsection 118.3(2) permits the transfer of the disability amount from the dependent to the parent. In order to qualify for the tax credit the individual has to have a severe and prolonged mental and physical impairment which markedly restricts the ability to perform a basic activity of daily living and which is certified by a medical doctor or psychologist under form T2201 Disability Tax Credit Certificate. The maximum credit is \$4,233. In this case, X will have to obtain from the child's doctor the completed Form T2201 as evidence that she qualifies for the disability amount.
- Section 118.2 of the Income Tax Act also provides for the medical expense credit. Amendments to the Income Tax Act are proposed to add a new paragraph 118.2(2)(1.9)

which extends the list of eligible medical expenses to remuneration paid for therapy administered to an individual with a severe mental or physical impairment who is eligible for the disability tax credit. In order to qualify, therapy must be prescribed by and administered under the general supervision of a medical doctor or a psychologist in the case of a mental impairment. While the proposed legislation refers to remuneration paid for therapy, it does not specifically deal with travel costs incurred by X to have the therapist travel to Winnipeg. Therefore, to the extent possible, it would be preferable if the invoices rendered by the psychologists could be worded so that the entire cost appears as professional fees.

- Taxpayers can claim medical expenses incurred for themselves, their spouses and their dependent children. Only expenses in excess of the lesser of 3% of the taxpayers net income, or \$1,614, are eligible. The taxpayer can claim medical expenses which have not been reimbursed for any 12 month period ending in the taxation year. The expenses are claimed as a non-refundable tax credit, which effectively results in a 25% tax break.

## Conclusion

- It is important to note that for the therapy costs to be eligible, the child must be entitled to the disability tax credit. The eligibility is dependent upon certification by a doctor or psychologist as markedly restricting a basic activity of daily living. Since 1996, Canada
- Customs and Revenue Agency reviews all new claims when assessing tax returns. As a first step, should obtain the form T2201 certified by the child's physician or psychologist that she qualifies for the disability credit. Providing she qualifies for the disability credit, it appears that the therapy provided by ABA Consultants as well as the Winnipeg based behavioural therapists will qualify under new paragraph 118.2(2)(1.9) as a qualifying medical expense. It is not clear whether the travel expenses paid by on behalf of ABA Consultants are eligible under this paragraph. However, since it's clear that the travel expenses are necessary to enable the psychologist to perform the evaluation in the child's home, and that it forms part of the psychologists overall professional fees related to this therapy, it can be argued that the travel costs form part of remuneration paid for therapy. It would be preferable if the invoices rendered by ABA Consultants did not itemize separately the travel expenses but rather included it in the overall professional fee.
- As a secondary issue, X will be able to claim the disability amount transferred from his daughter for the 1998 taxation year if the condition existed at that time (X and the doctor has certified in box 6738 that the patient became markedly restricted in 1998. Once he has filed the form T2201 with Canada Customs and Revenue Agency, and they have assessed the disability amount as eligible for 1998 as well, we should file an adjustment T1ADJ for the 1998 year in order to claim the credit.

**[Appendix - Canadian Income Tax Act]**

**Section 118.2: Medical Expense Credit**

**Clause 25**

Section 118.2 of the Act provides rules for determining the amount that may be claimed as a tax credit in respect of an individual's medical expenses.

**Section 118.2(2)(l.9) and (l.10): Medical Expense Credit**

**Clause 25**

Subsection 118.2(2) of the Act sets out the expenses that may be included in the computation of an individual's medical expense credit.

New paragraph 118.2(2)(l.9) adds to the list of eligible medical expenses remuneration paid for therapy administered to an individual with a severe mental or physical impairment who is eligible for the disability tax credit. The therapy must be prescribed by, and administered under the general supervision of, a medical doctor (or a psychologist in the case of a mental impairment, or an occupational therapist in the case of a physical impairment).

New paragraph 118.2(2)(l.10) adds to the list of eligible medical expenses remuneration paid for tutoring services for individuals with learning disabilities (or a mental impairment). In order for the remuneration to qualify as an eligible medical expense, the need for tutoring services must be certified in writing by a medical practitioner and the tutor has to be a person whose occupation is to offer tutoring services to individuals to whom the tutor is not related.

These amendments apply to the 1999 and subsequent taxation years.

**(4) Subsection 118.2(2) of the Act is amended by adding the following after paragraph (1.8):**

*(1.9)* as remuneration for therapy provided to the patient because of the patient's severe and prolonged impairment, if

- (i) because of the patient's impairment, an amount may be deducted under section 118.3 in computing a taxpayer's tax payable under this Part for the taxation year in which the remuneration is paid,
- (ii) the therapy is prescribed by, and administered under the general supervision of,
  - (A) a medical doctor or a psychologist, in the case of mental impairment, and
  - (B) a medical doctor or an occupational therapist, in the case of a physical impairment,
- (iii) at the time the remuneration is paid, the payee is neither the individual's spouse nor an individual who is under 18 years of age, and
- (iv) each receipt filed with the Minister to prove payment of the remuneration was issued by the payee and contains, where the payee is an individual, that individual's Social Insurance Number;

*(1.91)* as remuneration for tutoring services that are rendered to, and are supplementary to the primary education of, the patient who

- (i) has a learning disability or a mental impairment, and
- (ii) has been certified in writing by a medical practitioner to be a person who, because of that disability or impairment, requires those services,

if the payment is made to a person ordinarily engaged in the business of providing such services to individuals who are not related to the payee.

**[Appendix - Canadian Tax Reporter Commentary (December 7, 1999)]**

**(4) Subsection 118.2(2) of the Act is amended by adding the following after paragraph (1.8):**

(1.9) as remuneration for therapy provided to the patient because of the patient's severe and prolonged impairment, if

- (i) because of the patient's impairment, an amount may be deducted under section 118.3 in computing a taxpayer's tax payable under this Part for the taxation year in which the remuneration is paid,
- (ii) the therapy is prescribed by, and administered under the general supervision of,
  - (A) a medical doctor or a psychologist, in the case of mental impairment, and
  - (B) a medical doctor or an occupational therapist, in the case of a physical impairment,
- (iii) at the time the remuneration is paid, the payee is neither the individual's spouse nor an individual who is under 18 years of age, and
- (iv) each receipt filed with the Minister to prove payment of the remuneration was issued by the payee and contains, where the payee is an individual, that individual's Social Insurance Number;

(1.91) as remuneration for tutoring services that are rendered to, and are supplementary to the primary education of, the patient who

- (i) has a learning disability or a mental impairment, and
- (ii) has been certified in writing by a medical practitioner to be a person who, because of that disability or impairment, requires those services, if the payment is made to a person ordinarily engaged in the business of providing such services to individuals who are not related to the payee.