

October 9, 2015

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Charles Sousa  
Ontario Minister of Finance  
Ministry of Finance  
7<sup>th</sup> Floor, Frost Building South  
7 Queen's Park Crescent  
Toronto, Ontario M7A 1Y7

Dear Sir:

**Re: The Statutes for Maximum Ontario Claim for Attendant Care Expenses are incorrectly summarized in the guide for Line 5868, resulting in incorrect rejection of medical expenses by the CRA, to only the Ontario portion of assessments.**

**Please correct the guide and issue interim instructions on this matter to the CRA.**

The Statutes for Maximum Ontario Claim for Attendant Care Expenses are incorrectly summarized in the guide for Line 5868. This results in CRA disallowance of legitimate expenses in cases of real hardship due to high attendant care costs.

Two appeals I know of have reversed the CRA disallowance of the Ontario portion of the claim, while allowing the full Federal portion of the claim. These appeals were filed after front line CRA officials repeatedly rejected requests for a reassessment.

Please correct the wording in the guide forthwith to avoid further hardship to taxpayers with already severe medical expense hardships.

In detail:

1. The federal rule on medical expenses is that a person may file for a medical disability allowance, but is then limited to a \$10,000 claim of medical expenses for attendant care. If the disability allowance is NOT claimed, there is NO limit medical expenses for attendant care
2. In an apparent attempt by the Ontario legislature to make the \$10,000 limit indexed to cost of living increases, the limit changes with time and is now \$13,372.
3. Unfortunately, when this limit was changed, the wording in the guide for line 5868 omitted the concept that the LIMIT ONLY APPLIES if the taxpayer DOES CLAIM medical disability allowance. A copy of the relevant section of the guide for line 5858 is attached.
4. CRA officials routinely limit the amount claimed for attendant care to \$13,372 on the Ontario portion of the return while not limiting it to the Federal portion of the same return. CRA officials refuse to acknowledge the link between the limit and the medical disability claim, except on appeal. In our case the actual expenses were over \$100,000 and accepted after audit for the Federal assessment, but only \$13,372 was allowed on the Ontario portion of the assessment.

5. I am aware of two appeals which have reversed stubborn refusal by the CRA to amend assessments and cancel application of the \$13,372 limit on attendant care. Our own successful appeal is dated October 5, 2015, reference number GB1512 4102 9339. An earlier successful appeal was dated January 2<sup>nd</sup> 2014 , reference number GB 1425 4212 0597. Copies are attached for your convenience.
6. Please change the words in the guide for line 5868 from
  - ***“the maximum Ontario claim for attendant care expenses is \$13,372 (\$26,743 in the year of death);”***

to

  - ***“if, and only if, the medical disability allowance is claimed, the maximum Ontario claim for attendant care expenses is \$13,372 (\$26,743 in the year of death);”***

I would appreciate your acknowledgement of my letter and, in due course, (in the fullness of time, after study, after due consideration, after appropriate consultation ☺), a letter describing the action that is taken on this matter.

With genuine respect,

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Appendices A, B and C

## Appendix A

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### **Line 5868 – Medical expenses for self, spouse or common-law partner, and your dependent children born in 1997 or later**

The medical expenses you can claim on line 5868 are the same as those you can claim on line 330 of your federal Schedule 1, except for the following:

- the maximum Ontario claim for attendant care expenses is \$13,372 (\$26,743 in the year of death);
- the maximum Ontario claim for the cost of a van adapted for transporting a patient who requires the use of a wheelchair is \$6,686; and
- the maximum Ontario claim for moving expenses for a patient's move to a more accessible dwelling is \$2,674.

The federal and provincial medical expenses you claim have to cover the **same 12-month period ending in 2014**, and must be expenses no one has claimed on a 2013 return. Your total medical expenses have to be more than either **3%** of your net income (line 236 of your return) or **\$2,188**,



Appeals Division  
Shawinigan-Sud, QC, G9P 5H9

Reference Number  
GB1512 4102 9339

Dear Mr. :

This letter refers to your Notice of Objection dated April 6, 2015, to the Income Tax assessment for the year 2013.

Having carefully reconsidered the assessment with reference to the information and reasons set forth in your Notice of Objection, the Minister of National Revenue renders the following decision.

Your objection is allowed in full and the assessment will be reversed. A Notice of Reassessment will follow under separate cover.

Dated at Shawinigan-Sud, this October 5, 2015.

Minister of National Revenue

Per:

Lyne Buongiorno  
Team Leader  
Appeals Division  
Quebec Region

Canada

Appeals Division  
Shawinigan-Sud Tax Centre  
4695 12th avenue  
Shawinigan-Sud QC G9P 5H9

Local: 819-536-6973 ext 3838  
Toll Free: 800-959-7772 ext: 3838  
Fax: 819-536-4903  
Web Site: [www.cra.gc.ca](http://www.cra.gc.ca)

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**OBJECTION – INCOME TAX ACT**

- You can use this form to file an objection to a notice of assessment or a notice of determination issued under the *Income Tax Act*.
- Deliver or mail your completed form to the Chief of Appeals at your tax services office or tax centre.
- Filing deadlines** – If you are an individual (other than a trust) or filing for a testamentary trust, the time limit for filing an objection is whichever of the following two dates is later: one year after the date of the return's filing deadline; or 90 days after the day we sent the notice of assessment or notice of determination. In every other case, you have to file an objection within 90 days of the day we sent the notice of assessment or notice of determination.
- Large corporations** – In addition to providing facts and reasons for objecting, large corporations have to describe each issue and specify the relief they want for each one.
- Collection action** – We usually postpone collection action on amounts in dispute until 90 days after we mail the Minister's decision. In some situations we will not postpone collection action on disputed amounts, such as for taxes you had to withhold and remit. In all cases, interest will continue to accrue on any amount payable.
- For more information, contact the Appeals Division at your tax services office or tax centre.

<p><b>To: Chief of Appeals</b> Address (as shown on your notice) Canada Revenue Agency Summerside, PEI, C1N 6A2</p>	<p>Name <b>From:</b> Address Mr xxxxxxxxxxxxxxx xxxxxxxxxxxxx Drive xxxxxxxxxxxxx, Ontario, xxxxxxxx</p> <p>Telephone (including area code) Home (111) 111-1111      Business</p>
<p>Name and address of any authorized representative (if applicable)</p> <p>Mr xxxxxxxxxxxxxxxx xxxxxxxxxxxxxxxxxxxxx Drive, xxxxxxxxxxxxxxxxx, Ontario, xxxxxxxxxxxxxxxxx</p> <p style="text-align: right;">Telephone (including area code) (111) 111-1111</p>	

Please provide the following information or enclose a copy of your notice of assessment or notice of determination.

Date of notice	Number of notice (if printed on notice)	Tax year (for T2s show fiscal period end)	Social Insurance number or Business number
Year      Month      Day			
2   0   1   4        0   7   1   4		2013	11111111

Please state the relevant facts and reasons for your objection (if you need more room, attach a separate sheet).

After a pre-assessment audit confirming the (very large) medical expenses, the assessment allowed Federal Medical Expenses of \$xxxxxxx (over \$100,000) but only allowed Ontario medical expenses of \$30,xxx. The reasoning for the limited Ontario medical expenses is that the guidelines for Ontario line 5368 are said to limit the Ontario claim for attendant expenses to \$13,372 (more in the year of death), (although I am not able to reconstruct how this results in the \$30,xxx figure). Basically, both Mr xxx and Mrs xxx have substantial attendant care expenses.

In our case the attendant care expenses were

Mr xxx (aged "over 90" in 2013 and needing substantial care)

\$ xxxxx - retirement home attendant care

Ms . xxxxx (aged "over 90" in 2013 and needing 24 hour a day care)

\$ xxxxx- retirement home attendant care

over \$100,000 - sum of costs of 3 care providers - 24 x 7 Personal Support Worker care needed due to a combination of medical conditions

Both Mr xxx and Mrs xxx do have disability tax certificates, but these were NOT claimed in either case.

The problem is with the interpretation of the limitation on attendant care expenses. This \$13,372 limit derives from details of the Ontario statutes that make a cost of living adjustment to the Federal \$10,000 limit on attendant care expenses. The Ontario maximum only applies when the Federal maximum applies, and the Federal maximum ONLY APPLIES WHEN THE DISABILITY TAX CREDIT IS CLAIMED. The wording in the Ontario guidelines are an "inartful" synopsis of the Ontario Statutes and are ambiguous, which resulted in the assessment denying the full medical expense deduction.

May I refer you to the CRA Appeal, CRA file number GB1425 4212 0597 dated 2nd of January 2014 by Appeals Officer L. Saarela. I have been advised by reliable counsel that the Ontario Ministry of Finance reviewed the Appeal cited below and confirmed that the \$13,372 maximum for attendant care expenses does not apply, when there is no \$10,000 Federal maximum, i.e. when there the disability tax credit is not applied.

I REQUEST THAT YOU ALLOW THE FULL MEDICAL EXPENSE DEDUCTION FOR 2013, AND THE EVEN HIGHER AMOUNT FOR THE 2014 TAX YEAR.

Your signature (or of an authorized person, if a corporation or trust is filing the objection)

Date

Year	Month	Day



Canada Revenue Agency Agence du revenu du Canada

Our file  
GB1425 4212 0597

Account Number  
XXXXX

Dear Madam:

This letter refers to your Notice of Objection to the Income Tax Reassessment for the year 2013.

Having carefully reconsidered the reassessment with reference to the information and reasons set forth in your Notice of Objection, the Minister of National Revenue renders the following decision.

Your objection is allowed and the reassessment dated August 28, 2014 will be adjusted in accordance with subsection 165(3) of the Income Tax Act (ITA).

The basis of your objection is that your federal claim for medical expenses was adjusted to agree with the 2013 receipt from \_\_\_\_\_ and your provincial claim was reduced to \$13,239.00 as in Ontario, the maximum claim for eligible attendant care in 2013 was \$13,239.00. This was not correct as your 12 month period was from January 5, 2012 to January 1, 2013 and your total expenses were \$30,972.97 and as you were not claiming the disability tax credit, your provincial claim should be the same as your federal claim and you would like your return adjusted accordingly.

A review the facts and documents indicates that we will reverse our previous reassessment and reinstate your medical expenses of \$30,972.97 both federally and provincially as originally filed based on your 12 month period as per section 118.2 of the ITA.

A Notice of Reassessment will follow under separate cover.

As an information security measure, we have masked the first six digits of your social insurance number (SIN) on this letter. However, if you are initiating contact with the CRA, either in writing or by telephone, you are still required to provide your full SIN to ensure correct identification.

Fax: (604) 587-2672  
Appeals Division  
Vancouver Tax Services Office  
Surrey Campus  
9737 King George Boulevard  
P.O. Box 9070 Str. Main  
Surrey, BC V3T 5W6

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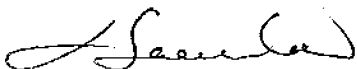
**Canada**

If you have any further questions, please contact me at 604-587-2443,  
or 1-800-959-5513, local 2443.

Dated at Surrey, this 2<sup>nd</sup> day of January, 2014.

Minister of National Revenue

Per:

A handwritten signature in black ink, appearing to read 'L. Saarela', written in a cursive style.

L. Saarela  
Appeals Officer  
Appeals Division