

**EXPLANATORY NOTES**  
**BILL**  
**No. 25**  
**An Act to amend *The Income Tax Act,***  
**2000**

**Clause  
of Bill**

1. *The Income Tax (Miscellaneous) Amendment Act, 2025*

2. *The Income Tax Act, 2000*

3. **Existing Provision** section 39.5(3)

**Fertility Treatment Tax Credit**

(3) Subject to subsections (4) to (9), an individual or the individual's cohabiting spouse may claim a one-time fertility treatment tax credit with respect to fertility expenses determined in accordance with paragraph 118.2(2)(v) of the federal Act.

**Explanation**

Section 39.5 is the provision for the Fertility Treatment Tax Credit. For the purposes of this refundable tax credit, the federal definition of 'co-habitation spouse' is being leveraged. The Fertility Treatment Tax Credit utilizes the federal Act's definitions for fertility treatment and surrogacy to determine eligible fertility treatment expenses.

This amendment ensures the new added sections are referenced and clarifies that the individual and the individual's cohabiting spouse can each make a one-time claim.

4. **Existing Provision** section 39.5(4)

**Fertility Treatment Tax Credit**

(4) For greater certainty and subject to subsections (5) to (9), fertility expenses mentioned in subsection (3) include deemed expenses mentioned in subsections 118.2(2.2) and (2.21) of the federal Act, as the case may be.

**Explanation**

Section 39.5 is the provision for the Fertility Treatment Tax Credit.

This amendment ensures the new added sections are referenced by striking out "subsections (5) to (9)" and substituting "subsections (5) to (13)".

5. **Existing Provision** section 39.5(5)

**Fertility Treatment Tax Credit**

(5) Subject to subsections (6) to (9), for the 2025 and subsequent taxation years, an individual's fertility treatment tax credit is the lesser of:

(a) \$10,000; and

(b) 50% of the total of all of the amounts each of which is a medical expense of the individual, or of the individual's cohabiting spouse, as determined in accordance with paragraph 118.2(2)(v) of the federal Act that was paid in the taxation year.

**Explanation**

Section 39.5 is the provision for the Fertility Treatment Tax Credit. Similar to the Medical Expense Tax Credit rules in the federal Act, eligible claimants may use a rolling 12-month period to calculate eligible fertility treatment expenses.

The amendment in clause (a) ensures the new added sections are referenced by striking out "subsections (6) to (9), for the 2025 and subsequent taxation years, an individual's" and substituting "subsections (6) to (13), for the 2025 and subsequent taxation years, an individual's or the individual's cohabiting spouse's".

The amendment in clause (b) further clarifies that the expenses for the one-time refundable Fertility Treatment Tax Credit can occur in any rolling 12-month period ending in the taxation year that is being claimed.

6. **Existing Provision** section 39.5(6)

**Fertility Treatment Tax Credit**

(6) Subject to subsections (7) to (9), an individual or the individual's cohabiting spouse may include in the claim for the tax credit set out in this section the fertility expenses incurred in any 12-month period ending in the taxation year for which the tax credit is being claimed.

**Explanation**

Section 39.5 is the provision for the Fertility Treatment Tax Credit.

This amendment ensures the new added sections are referenced by striking out "subsections (7) to (9)" and substituting "subsections (7) to (13)".

7. **Existing Provision** section 39.5(7)

**Fertility Treatment Tax Credit**

(7) Subject to subsections (8) and (9), an individual whose cohabiting spouse makes a claim for a tax credit pursuant to this section for a taxation year is not eligible to make a claim for a tax credit pursuant to this section for that same taxation year.

**Explanation**

Section 39.5 is the provision for the Fertility Treatment Tax Credit.

This amendment ensures the new added sections are referenced

8. **Existing Provision**

None

**Explanation**

Section 39.5 is the provision for the Fertility Treatment Tax Credit.

Subsection (10) is added to deem the Fertility Treatment Tax Credit as an overpayment on account of tax by the taxpayer. Without deeming it as an “overpayment”, there is no legal basis for the Canada Revenue Agency to issue refund of the tax credit amount to the tax filer.

Subsection (11) is added to clarify residency in the case of death of an individual or an individual’s cohabiting spouse.

Subsection (12) is added to clarify that the Fertility Treatment Tax Credit can only be claimed on one return for the same deceased person.

Subsection (13) is added in the case of a bankruptcy.

9. **Existing Provision** section 42

**Credits in year of bankruptcy**

42(1) Notwithstanding sections 11 to 29 but subject to subsection (2), for the purpose of computing an individual’s tax payable pursuant to this Act for a taxation year that ends in a calendar year in which the individual becomes bankrupt, the individual is allowed:

(a) of the deductions that the individual is entitled to pursuant to sections 18, 19.11, 19.12, 19.2, 19.3, 19.4, 19.5, 21, 22, 24, 25, 27, 28 and 39.5, only those that can reasonably be considered wholly applicable to the taxation year; and

**Explanation**

This provision removes the Fertility Treatment Tax Credit from this section, so it only includes non-refundable tax credits by striking out “sections 18, 19.11, 19.12, 19.2, 19.3, 19.4, 19.5, 21, 22, 24, 25, 27, 28 and 39.5” and substituting “sections 18, 19.11, 19.12, 19.2, 19.3, 19.4, 19.5, 21, 22, 24, 25, 27 and 28”.

10. **Existing Provision** section 44

**Part-year residents**

44(1) Notwithstanding sections 11 to 29 but subject to subsection (2), where an individual is resident in Canada throughout part of a taxation year and throughout another part of the taxation year is non-resident, for the purpose of computing the individual’s tax payable pursuant to this Act for the taxation year:

(a) the amount deductible for the taxation year pursuant to each of sections 11 to 29 with respect to the part of the taxation year that is not included in the period or periods in the taxation year throughout which the individual is resident in Canada is to be computed as though that part was the whole taxation year; and

(b) the individual is allowed:

(i) pursuant to sections 18, 19.11, 19.12, 19.2, 19.3, 19.4, 19.5, 21, 22, 24, 25, 27, 28 and 39.5, only the deductions that can reasonably be considered wholly applicable to the period or periods in

the taxation year throughout which the individual is resident in Canada, computed as though that period or those periods were the whole taxation year; and

**Explanation**

This provision removes the Fertility Treatment Tax Credit from this section, so it only includes non-refundable tax credits by striking out “sections 18, 19.11, 19.12, 19.2, 19.3, 19.4, 19.5, 21, 22, 24, 25, 27, 28 and 39.5” and substituting “sections 18, 19.11, 19.12, 19.2, 19.3, 19.4, 19.5, 21, 22, 24, 25, 27 and 28”.

11. **Existing Provision** section 45

**Non-residents**

45 Sections 11 to 18 , 19.11, 19.12, 19.2, 19.3, 19.4, 19.5, 22, 25, 29 and 39.5 of this Act, and section 23 of this Act with respect to the application of subsections 118.3(2) and (3) of the federal Act, do not apply for the purpose of computing the tax payable pursuant to this Act for a taxation year by an individual who at no time in the taxation year is resident in Canada unless all or substantially all of the individual’s income for the year is included in computing the individual’s taxable income earned in Canada for the taxation year.

**Explanation**

This provision removes the Fertility Treatment Tax Credit from this section, so it only includes non-refundable tax credits by striking out “Sections 11 to 18 , 19.11, 19.12, 19.2, 19.3, 19.4, 19.5, 22, 25, 29 and 39.5” and substituting “Sections 11 to 18 , 19.11, 19.12, 19.2, 19.3, 19.4, 19.5, 22, 25 and 29”.

12. **Existing Provision** section 50

**Credits in separate returns**

50 Where a separate return of income with respect to an individual is filed pursuant to subsection 70(2), 104(23) or 150(4) of the federal Act for a particular period and another return of income pursuant to this Act with respect to the individual is filed for a period ending in the calendar year in which the particular period ends, for the purpose of computing the tax payable pursuant to this Act by the individual in those returns, the total of all deductions claimed in all those returns pursuant to any of sections 18, 19.11, 19.12, 19.2, 19.3, 19.4, 19.5, 21 to 28, subsection 29(3) and sections 39.3 and 39.5 of this Act cannot exceed the total that could be deducted pursuant to those provisions for the taxation year with respect to the individual if no separate returns were filed pursuant to subsections 70(2), 104(23) and 150(4) of the federal Act.

**Explanation**

This provision removes the Fertility Treatment Tax Credit from this section, so it only includes non-refundable tax credits by striking out by striking out “sections 39.3 and 39.5” and substituting “section 39.3”.

13. **Existing Provision**

None

**Explanation**

Section 8 is the Coming into Force provision.