

What You Need to Know: Changes to Ontario's Estate Administration Tax Act

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By Lori Duffy

The holiday season offers a rare opportunity for family members to come together to discuss important issues, including the often uncomfortable topic of estate planning. This year, it is important for testators and those they will appoint as their estate trustees to broaden that discussion to include Bill 173 (Better Tomorrow for Ontario Act (Budget Measures), 2011) and its impact on estate administration. Amendments introduced by Bill 173 were incorporated into the *Estate Administration Tax Act* (the "Act"), with some significant changes coming into force on January 1, 2013.

Background

In Ontario, when a person dies, an estate trustee is usually appointed to administer the deceased's estate. This includes, among other things, gathering the deceased's assets, paying his or her debts, and distributing the balance of the estate to beneficiaries.

The estate trustee may be required to apply for a Certificate of Appointment of Estate Trustee ("Certificate") from the Ontario Superior Court of Justice to provide evidence of authority to deal with the estate's assets. Upon such application, estate administration tax ("EAT") must be paid on the value of the assets in the deceased's estate that are included in the application. If the value is based on estimation, it is now customary that the estate trustee provide a signed undertaking to file a sworn statement of the actual total estate value when determined, and to pay additional EAT if the value was underestimated.

Changes to Estate Administration Tax Act Effective January 1, 2013

The jurisdiction for the collection of EAT will now lie with the Ministry of Finance, rather than the Ministry of the Attorney General. For applications made on or after January 1, 2013, estate trustees applying for a Certificate may be required to provide the Minister of Revenue with information about the deceased's assets as prescribed by the Minister of Finance.

It is not clear what this information will be as regulations are not yet available, but it is possible that an inventory of assets owned by a deceased person, as well as valuations and appraisals, may be required. The estate trustee will need to provide such information within the time, and in the manner, as decided by the Minister of Finance.

The Minister of Revenue now has the power to assess and reassess an estate, in respect of its EAT payable under the Act, within four years after the day the tax becomes payable.

What does this mean?

The job of administering an estate is becoming more difficult and it is now more crucial than ever for estate trustees to obtain accurate information and supporting documentation proving an estate's value. If false or misleading statements are provided, the

estate trustee may be fined and/or imprisoned for up to two years.

To help ease this process, testators may want to start thinking carefully about who to appoint for this difficult task, and keep records and documentation about their assets to assist in providing an accurate valuation.

Perhaps more importantly, greater attention should be given to estate plans to try and avoid the need for a Certificate at all. An estate lawyer can help. WeirFoulds would be pleased to assist.

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