



What Are the New Estate Laws in Ontario?

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Ontario has introduced a new Estate Administration Tax (EAT) starting in 2015. The gist of the new tax is that reporting requirements will be much more stringent and will have to be done more quickly than in the past. The reporting is also more complicated and the penalties more onerous, so dealing with estates will be less fun than it was in the past.

The Estate Administration Tax rate ranges from 1% to 1.5%, topping out at 1.5% in the \$5 million range or higher for the estate value. This fee will apply to most assets – real estate, bank accounts, vehicles and registered accounts that have no named beneficiary. Any asset that does not pass through the estate would not be subject to this tax - Life Insurance policies with a person as a named beneficiary, real estate outside of Ontario and CPP death benefits are some examples. This tax is generally payable at the time of application with a refund for adjustments to the valuation given later on in the process.

What Is the Process?

The process starts with the executor applying to the Ministry of Finance for a “Certificate of Estate Trustee With (or Without) a Will”. The Ministry of Finance would issue a receipt of “Certificate of Appointment of Estate Trustee”. Within 90 days of this application being started, the executrix must file a detailed “Estate Information Return” with Estate Administration Fees, along with the request for the “Probate Certificate”. The valuation of the assets that are included in the estate would be part of this document. If the value of the assets is an estimate because the actual value is taking time to calculate, the executor or trustee would have 6 months to confirm the actual value of the assets in question. Should the assets be revalued, there would be a new, revised filing within 30 days.

Four Year Rule for Audits

The Ministry of Finance may audit, inspect and reassess after the Estate taxes became payable which would be the date that the certificate was issued. If no information was filed, the Ministry of Finance may also perform an audit. An executrix can object within 6 months of re-assessment providing supporting details. In the case of income tax, the Clearance Certificate can be issued to stop any further audit or action by the CRA. In the case of the Estate Administration Tax, no such certificate will be issued. This means re-assessment can occur indefinitely.

Penalties

Should there be non-compliance, this can result in an order to comply or a restraining order. Fines can range from a minimum of \$1,000 to a maximum of 2 times the Estate Administration Tax value. There can also be imprisonment of up to 2 years in addition or as alternative to a fine.

How Can The Estate Be Planned Better?

The selection of the executor and agent to executor are more important than in the past. An agent to the executor is someone who does the ground work for the executor, but the executor has the ultimate responsibility for what is filed. This is similar to outsourcing some of the work of the executor to another party. The communication with the executrix and agent to executor on responsibilities is more important especially with respect to timing and accuracy. Record keeping will become more important as this will serve as the foundation to arrive at these valuations that are required. The records will have to be accessible and current so that they can be used at any time. There is a possibility for insurance against errors (Errors and Omissions Insurance) that can be used as a safeguard against oversights.

Wills and Powers of Attorney should be kept current. An annual review of these documents may be useful if there are frequent changes. Keep a net worth statement available as a snapshot of the entire estate. Specific details can then be researched if necessary. If there are accounts at many financial institutions, it may make sense to consolidate them to avoid missing information. The contact information for accountants and tax preparers who may have access to the total value of the estate would also be useful.

Sources:

- 1) <http://www.fin.gov.on.ca/en/tax/eat/faq.html#Q2>
- 2) <http://www.fin.gov.on.ca/en/tax/eat/index.html>
- 3) <http://www.advisor.ca/tax/estate-planning/ontario-now-requires-an-estate-information-return-172735>

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