

Estates and Trusts Law

July 11, 2011

Changes Ahead for the Estate Administration Tax Act

On May 12, 2011, *Ontario Bill 173, Better Tomorrow for Ontario Act (Budget Measures), 2011*¹ received Royal Assent, making a number of notable changes to the 1998 *Estate Administration Tax Act*.

Estate administration tax (often referred to as probate fees) is determined simply as a percentage of an estate's value. It must be paid when a personal representative (i.e. an executor) files an application with the Court for a certificate of appointment of estate trustee and whether or not there is a will³. Under the EATA, the amount of tax payable upon the issuance of an estate certificate for which an application is made is \$5 for each \$1,000 of the first \$50,000 of the value of the estate and \$15 for each \$1,000 of the value of the estate that exceeds \$50,000.

Applicable to applications made on or after January 1, 2013, Schedule 14 of the *Budget Measures Act* introduces section 4.1 to the EATA which requires estate trustees who apply for an estate certificate to provide the Minister of Revenue (the "MNR") certain prescribed information about the deceased person and his or her assets. Currently, no information is available as to what information will be prescribed.

Under new sections 4.2, 4.4 and 4.5(1) of the EATA, the MNR may assess and reassess an estate in respect of its tax payable under the EATA within 4 years after the day the certificate is issued and the tax becomes payable. Furthermore, the MNR may assess or reassess an estate's tax payable *at any time* if the Minister establishes that any person failed to give the appropriate prescribed information about the deceased or the estate or made a misrepresentation that is attributable to neglect, carelessness or wilful default or fraud. Additionally, the *Budget Measures Act* makes it an offence to not comply with the

information disclosure requirements or to make misrepresentations. Penalties could include a fine equal to an amount that is at least \$1,000 but does not exceed twice the amount of tax payable by the estate if that amount is greater than \$1,000 and/or to imprisonment for a term not exceeding 2 years.

Estate trustees will also be required under the EATA to keep at their residence or place of business detailed records and books of account containing the information that will enable the accurate determination of tax payable.

Impact of the New Amendment

The new amendments will, according to the Government of Ontario, "[...]enhance compliance by integrating the administration of this tax with audit and verification functions at the Ministry of Revenue"⁴. The practical impact of the recent amendments, however, is likely a more onerous, time consuming and expensive estate administration process and an increase in the responsibilities of estate trustees. In 2013, not only will estate trustees be required to be able to support valuations of the estate, but will be subject to potential reassessments for a 4 year period and perhaps even longer. As of the date of writing, the amendments do not provide for a clearance certificate that would provide protection to an estate trustee prior to the distribution of the assets of an estate and this will be of concern to many estate trustees.

Once more information is available regarding the type of information to be required there may well be planning opportunities that clients should explore to help minimize the impact of these new obligations.

If you have any questions regarding these changes and how they may affect you, please feel free to contact any member of our Charities, Trusts and Estates group.

¹ SO 2011, c 9 [Budget Measures Act].

² SO 1998, c 34 [EATA].

³ Robert Spenceley, *Probate Planning Through Will Substitutes* (North York: CCH Canadian Limited, 2000) at 1-2; Frequently asked questions about estates, online: Ontario Ministry of the Attorney General <<http://www.attorneygeneral.jus.gov.on.ca/english/estates/estates-FAQ.asp#s9>>.

⁴ 2011 Ontario Budget: Chapter III: Tax and Pension Systems for Ontario's Future, online: Ontario Ministry of Finance <<http://www.fin.gov.on.ca/en/budget/ontariobudgets/2011/ch3.html>>