



A Better Tomorrow? Not Necessarily So for Estates: Amendments to the *Estate Administration Tax Act*.

by Paul Trudelle

Bill 173, optimistically entitled the *Better Tomorrow for Ontario Act (Budget Measures)*, 2011, (the “Act”), received Royal Assent on May 12, 2011.

The *Act* introduces a number of budget-related provisions, four of which impact on the administration of estates in Ontario.

Firstly, upon making an application for a Certificate of Appointment, the estate representative is to provide the Minister of Revenue with “such information about the deceased person as may be prescribed by the Minister of Finance”, within the time prescribed by the Minister of Finance.

This provision applies to applications for Certificates of Appointment made after January 1, 2013. At present, there is no prescribed form setting out the information that is to be provided.

Secondly, and perhaps most importantly, the Minister of Revenue may now assess and even reassess an estate in respect of its tax payable under the *Estate Administration Tax Act*. The provisions of the *Retail Sales Tax Act* apply for the purposes of the assessment and reassessment.

The assessment or reassessment may be made within four years after the day that the taxes become payable, or at a later date, if there was a failure to comply with the information-providing requirement imposed by the amendments, or where there is a misrepresentation attributable to neglect, carelessness or wilful default, or where there is fraud.

The *Act* also establishes an objection and appeal process by the estate representative. The

procedures for so doing are set out in the *Retail Sales Tax Act*, which are incorporated by the terms of the *Act*.

Further, the *Act* authorizes the Minister of Revenue to appoint inspectors for any purpose related to the administration or enforcement of the *Act*.

What remains to be seen is how aggressive the Minister of Revenue will be in pursuing estate administration taxes. Prior to the *Act*, the Minister of Finance has the authority under s. 5(1) of the *Estate Administration Tax Act* to commence proceedings to recover tax payable under the *Estate Administration Tax Act* that had not been paid. There were, however, no known proceedings under the *Estate Administration Tax Act* to make such recovery. There was also a self-reporting requirement that the estate trustee pay tax on the value of any subsequently-discovered property of the estate.

Further, it is unclear as to whether the Minister of Revenue will attempt to undo estate administration tax avoidance techniques, such as transferring property into joint ownership prior to death. Beneficiaries in many estates have been active in seeking determinations that these assets are held in trust for the benefit of the estate. Quare whether the Minister of Revenue will take a similar position, and that estate administration tax will therefore be payable on the value of these assets.

What also remains to be seen is how estate trustees will protect themselves in the event that there is an assessment or reassessment after the estate has been distributed (keeping in mind that such an

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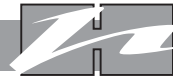
assessment or reassessment may occur up to four years after the date that the taxes become payable, or later if there was a failure to comply with the requirement to provide information, neglect, carelessness, wilful default or fraud). There is no provision for a Clearance Certificate analogous to those normally obtained by estate trustees from Canada Revenue Agency. It may be advisable for an estate trustee to obtain a specific indemnity from the beneficiaries that will apply in the event of such an assessment or reassessment.

Thirdly, Schedule 14 of the *Act* amends the *Estate Administration Tax Act* so that any provision of the Retail Sales Tax Act that may apply to the *Estate*

Administration Tax Act is to be interpreted so that a tax payable by a purchaser is to be paid by an estate or estate representative.

Finally, the *Act* establishes an offence for failing to provide the information required under the legislation, or for giving false or misleading information. A defence exists where the person did not know that the statement or omission was false or misleading and the statement could not have been known to be false or misleading through the exercise of reasonable diligence. The penalty that is imposed is, at minimum, \$1,000, or at maximum, up to twice the amount of tax payable by the estate; imprisonment for up to two years; or both.

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