

# INITIATIVE

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## Changes to the Ontario Estate Administration Tax Act ("EATA")

On May 12, 2011, Ontario Bill 173, Better Tomorrow for Ontario Act 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. The current rate 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. For example, an estate valued at \$1,000,000 would therefore have an EAT liability of \$14,500.

After December 31, 2012, EATA 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.

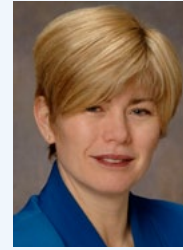
Under the new sections of the EATA, the MNR may assess and reassess an estate in respect of its tax payable under the EATA within 4 years after the day the certificate is issued and the tax becomes payable. Furthermore, the MNR may assess or reassess an estate's tax payable at any time if the Minister 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.

Further, it is 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 detailed records and books of account containing the information that will enable the accurate determination of the probate tax payable.

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". 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

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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.

With appropriate planning and use of designated beneficiary elections, assets will pass outside the estate. Insurance policies, critical illness insurance policies and annuity policies can all bypass the estate and therefore the EATA.

Not only does the use of a named beneficiary result in probate fee savings, it also provides for a quicker disbursement of the funds.

Other strategies exist for avoiding the impact of the new EATA including the use of alter ego or joint partner trust. Each situation has its own circumstances and solution. The Tax and Estate planning team is here to assist you.