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Barristers & Solicitors

ONTARIO ESTATE INFORMATION RETURN

All applicants for a Certificate of Appointment of Estate Trustee submitted to court as of January 1, 2015 are now required to deliver, within 90 days of the date of issue of the Certificate, an "Estate Information Return".

BACKGROUND: ESTATE ADMINISTRATION TAX

Estate Administration Tax ("E.A.T.") - formerly called "probate fee" - is payable to the Ontario government for all Applications for a Certificate of Appointment. The amount of tax generally is based on the estimated estate value when the Application is filed with the court. The tax rate is essentially .5% of the estate value up to \$50,000.00 and 1.5% of the estate value above that amount. Until now, estate trustees would often neglect their duty to review the amount of E.A.T. payable if, for example, the real estate assets of the estate sold for a higher price than the estimated value upon which the E.A.T. was initially paid.

BACKGROUND: JANUARY 1, 2013 AMENDMENTS

In 2012 the government passed a law making clear that it could reassess E.A.T. for a period up to four years after the Certificate was issued. If on a reassessment it were found that more tax should have been paid, it could assess the tax owing, interest, and penalties against the trustees. This enforcement provision came into force on January 1, 2013.

ESTATE INFORMATION RETURN

The requirement for an Estate Information Return ("E.I.R.") came into force on January 1, 2015 and applies to all Applications for a Certificate of Appointment submitted on or after that date. This tax return is seven pages in length, and requires very detailed information as to the estate asset values. It must be submitted to the Ontario Ministry of Finance within 90 calendar days of the date that the Certificate of Appointment was issued. If the E.A.T. submitted with the court Application was insufficient, then of course the balance must then be paid. It also provides for a refund if the E.A.T. submitted with the Application was overpaid, based on an over-estimate of the estate value.

FORMS AND GUIDE

The Ontario government website at <http://www.fin.gov.on.ca/en/tax/eat/> provides information to answer most questions about the E.A.T. together with the seven-page E.I.R. form. We have also taken the liberty of

posting a copy of the form on our website at <http://www.fleurcom.on.ca/PDFs/eir.pdf>

THE 90-DAY DEADLINE

As estate trustees you must ensure that the E.I.R. is filed on time. We are, however, critical of the 90-day deadline mentioned above. In many if not most estate administrations, the true final value of the estate cannot be determined for a much longer period after the issue of the Certificate. Nevertheless, there is this deadline. An amended E.I.R. may be filed if an estate trustee becomes aware that any information therein was incorrect or incomplete.

KEEP YOUR RECORDS

The Ministry can reassess you during the four (4) years after the E.A.T. was payable. We suggest you retain your financial records for the estate for at least that time.

DO YOU NEED A LAWYER (OR ACCOUNTANT)?

We are of course prepared to assist in the preparation and filing of the E.I.R. As this is a new obligation for estate trustees, only time will tell whether professional assistance makes a difference. Unless otherwise instructed, we shall leave this as a matter for your discretion. We do, however, suggest that when you provide us with information as to the estate assets for court application purposes, you might take more time to provide full documentation and particulars of the assets. The ensuing list of estate assets for court application purposes might then contain all relevant and necessary particulars.

OPINION

We concur with the view of eminent estate lawyer, Barry Corbin. See Memo#38 on our website to click on this link: <http://www.lawtimesnews.com/201502164488/commentary/speak-er-s-corner-new-estate-tax-rules-evidence-of-bureaucracy-in-action>

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