

# Fedeli Focus on Finance

## Death and Taxes: Ontario's Estate Administration Tax

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# Death and Taxes: Ontario's Estate Administration Tax

On January 1 of this year, changes to Ontario's Estate Administration Tax quietly came into force. In the months that have since passed, Ontarians slowly became aware of the impacts of these changes. Unfortunately, they occur at one of the most difficult periods in their lives – after the passing of a loved one. This edition will focus on what some of those changes mean, and how the government has once again

acted before fully considering the implication of a change in policy.

## A Little History

Originally, the Estate Administration Tax was not a tax. Rather it was a probate needed to be acquired by the executor of an estate.

- A probate is a document that legally confirms someone to be the executor of an estate as mentioned in a will
- The probate may be used to prove to third parties you are in fact the executor of a deceased person's estate
- To acquire a probate there was a fee attached, based on the amount of property you were assuming as executor, with revenues going to the Province

This fee was directly tied to property. It was tripled by the Ontario government in 1992 to get more government revenue. The rates became \$5 for every \$1,000 worth of property up to

\$50,000 total property value, and \$15 for every \$1,000 worth of property past the \$50,000 total threshold. In comparison, most other provinces charge \$3 to \$6 for every \$1,000 of property with no changes for over \$50,000. That means a \$1 million estate in Ontario would see \$14,500 in estate administration taxes whereas other provinces range from only \$3,000 to \$6,000.

Because of the tripling of costs, people began finding ways to avoid paying the tax. These tax avoidance measures included:

- Joint ownership with spouses who would take over ownership of property without paying the tax
- Creating living trusts that transfer property from the principal owner to an heir outside the owner's estate
- Putting money in life insurance products with a designated beneficiary which do not pass through an estate and thus aren't liable to the tax

In 1995, the term "probate" was changed to Certificate of appointment of an Estate Trustee. In 1998, a Supreme Court of Canada Case (Eurig Estate, 1998) ruled that the probate fee actually constituted a tax, as it was directly tied to the amount of property and not the probate service being provided. Thus, the government of the day changed the probate fee to a direct tax on deceased property. However, they kept the rates the same as the probate fee to make the change revenue neutral.



In 2011, then Finance Minister Dwight Duncan targeted people who were avoiding the tax and committed to new regulations to ensure that the values that people were declaring in their certificate applications were accurate and everyone was paying his/her fair share of the tax. The

changes made by Minister Duncan included transferring the collection of fees from the courts to the Revenue wing of Finance, forcing information about the estate to be submitted alongside the paid fees, and made the tax eligible to an audit for four years after the fact. The changes also included a 6 month appeal process and a fine for misleading financial statements but did not change the actual

tax rates. These were approved in the 2011 Budget (but were opposed by the Official Opposition).

In 2014, Finance Minister Charles Sousa made a commitment to further change the regulations around the estate administration tax to shorten the amount of time to file information and pay the fees to 90 days. Minister Sousa also made it so that more information was required in the case of a conflict or further request by the Ministry, and that the executor had only 30 days to respond. If the executor did not comply, a fine could be issued. Those penalties are capped at twice the tax owed or two years in prison.

Lastly, the 2014 changes also make it so that a detailed description of all assets in bank accounts, foreign or domestic, must be submitted as well.

## Concerns Ignored

In December of last year, the Country and District Law Presidents Association wrote to me to asking for help in delaying implementation of the regulation changes to the Estate Administration Tax so they could fully consider the implications. Together, we wrote to the Finance Minister asking that their concerns be addressed. As has become the norm under this government, that request was rebuffed.

***“In the view of some of our members who specialize in this area of law, this regulatory change is a misguided exercise.”***

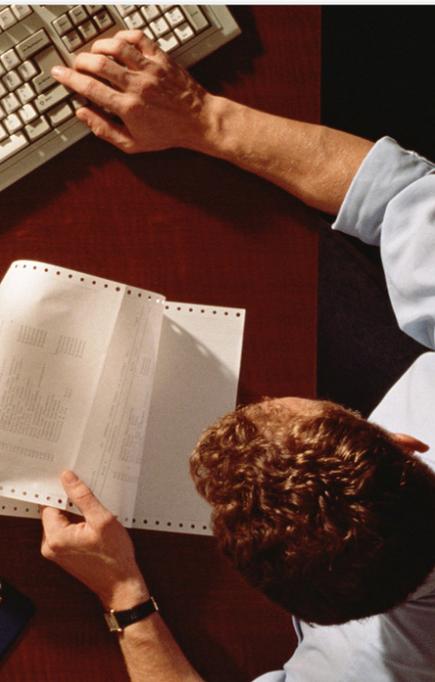
***“We would strongly encourage the Ministry of Finance to re-examine this proposed regulation and the assumptions behind it. At the very least, we would encourage the Ministry of Finance to back off posting this regulation on January 1st to allow for sufficient time for a more careful examination of the matter.”***

-- CDLPA letter to Finance Minister  
Charles Sousa, Dec. 8, 2014

Funeral directors also voiced concerns in March of this year. In an article entitled *Newly changed tax has local Funeral Directors seeing red*, the funeral directors weighed-in with their comments.

Specifically, there are worries the short 90-day reporting deadline will make people more hesitant to accept the important role of acting as an executor, and that the stress and potential penalties for failing to meet the new requirements will make a difficult time even worse for grieving family members.





*“For our government to threaten these individuals with charges and penalties is absurd... We pay tax when we earn our living. We pay tax when it generates income within an investment. We pay tax when we pull it from that investment, so this same money certainly shouldn't be taxed again within the boundaries of someone's estate. Enough is enough.”*

-- Tim Barager, Barager Funeral Homes, Bancroft

You can read the entire story at <http://nowplanb.ca/2015/03/local-funeral-directors-seeing-red/>. To date, the government has failed to address any of these concerns in a meaningful way.

### What it means for you

The bottom line is this: The Minister of Finance had the authority to bring in changes four years ago but didn't get around to it until last fall. And when he finally did, the changes were brought in through Regulation. This means it never was brought to the floor of the Legislature, so there was no debate or vote; it was simply put in place.

These changes shorten the amount of time that is required to comply with the rules, and creates penalties for misfiling.

This certainly appears to some to be an attempt to squeeze more revenue out of the province's taxpayers and close tax loopholes.

### Conclusion

The end result is that people who are still in shock over the death of a loved one will be forced to try to pull information together in a very short period of time – or face significant penalties. We hope this government isn't trying to find new ways to tax people even after they're dead. They need to show more compassion for people who are dealing with difficult circumstances.

### Key Questions

- Why has the government failed to properly educate Ontarians about the changes to the Estate Administration Tax, as they have through mass advertising to promote the Ontario Retirement Pension Plan?
- Why is the government continuing to ignore the concerns raised by Ontarians since the changes were introduced?
- Will the government tell Ontarians whether or not these changes are indeed increasing government revenues, and if so, if they're comfortable with raising taxes on the dead?



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