

By January 1, 2013, changes will be coming to how estate administration tax (“probate tax”) is assessed and collected in Ontario. Estate trustees (executors) will need to understand how these changes affect their estate value decisions and the risks involved with incorrect valuation of assets.

### **Background**

When dealing with an estate, the estate trustees apply for a “certificate of appointment” (also known as “letter probate”) to validate their authority as estate trustees to deal with certain assets of the deceased person (such as real property). The application requires an affidavit as to the value of the estate, which determines how much estate administration tax is payable. Estate administration tax must be paid in order to receive the certificate of appointment.

### **What are the changes?**

To prevent estate trustees from underestimating or understating an estate’s value, the Ontario government will soon require a prescribed information return from estate trustees. This means an estate trustee must describe in detail the assets belonging to the deceased person and each item’s approximate value.

It sounds simple, but it’s important to note that failure to provide the required information (or providing intentionally false or misleading information) can result in a fine of between \$1,000.00 and twice the value of the payable estate administration tax, or up to two years’ imprisonment.

Ontario’s Ministry of Finance will authorize inspectors to audit estates and request additional information from estate trustees or other persons. Though an estate trustee could challenge an estate re-assessment, this can be costly and time-consuming.

### **What does this all mean?**

The changes will not affect the options available to individuals engaging in estate planning with their legal advisors and the potential options to reduce estate administration tax. (Suggestions can include having multiple wills, spousal trusts or life insurance going to a named beneficiary.)

Estate trustees need to correctly identify and secure all assets belonging to the deceased. They should record each item, and consider obtaining formal valuations for real estate and other valuable assets which require probate. Providing detailed, accurate information to the government from the beginning may prevent problems later on.

Importantly, whether a person has finished, just started or has yet to begin planning his estate, a conversation with the proposed estate trustees is recommended, so that they can understand what is required of them and how best to complete their duties.

If you would like more information on the changes to the estate administration tax, please contact us.

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*This publication provides an outline of issues for business professionals to consider. The content should not be taken as legal advice. It is not exhaustive and is subject to change. Please consult with an HHS lawyer for information or advice specific to your situation.*