

PERSONAL WEALTH

MANAGEMENT GROUP

UPDATE

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PROBATE TAXES: AN ESTATE PLANNING OPPORTUNITY

Ontario Probate Taxes can be a substantial estate expense. The rate of tax is 1.5 percent of the value of an estate over \$50,000. In addition, there is no deduction for debts that you might owe at your death, other than in respect of mortgages registered against real property. The following example helps put the expense in perspective: an estate valued at \$1,000,000 can attract probate taxes of approximately \$15,000.

WHAT ARE PROBATE TAXES?

Probate taxes are payable when a person applies to the Superior Court of Justice for a Certificate of Appointment of Estate Trustee (formerly known as letters probate or letters of administration). When issued by the Court in relation to an estate, this Certificate identifies the legal representatives of the deceased and confirms their authority to act in administering the assets of the estate.

DOES A WILL HAVE TO BE PROBATED?

Not necessarily. Where a Will has been prepared, the authority of the estate trustee ("executor") appointed by it stems from the Will itself and commences as of the date of death of the testator. The need for a Court Certificate generally arises from commercial practice relating to the transfer or liquidation of particular types of assets owned by the deceased, or the need in some cases to resolve disputes with respect to the validity or interpretation of a Will.

HOW CAN PROBATE TAXES BE MINIMIZED?

Depending upon your particular circumstances, one or more of the following techniques may be available to you. But a word of caution: - any technique must be implemented in the context of the whole estate plan - no steps should be taken in a vacuum.

- holding property such as bank accounts and real estate in joint tenancy so that the property passes automatically to another person by right of survivorship, rather than passing through your estate and thereby attracting probate taxes;
- ensuring that proceeds from insurance policies, RRSPs and RRIFs are payable to a named beneficiary rather than to your estate;

- achieving an effective netting of liabilities against asset values by holding property through a corporation that has significant debt. The value of the shares of the corporation, rather than its assets, would then be relevant for probate tax calculation purposes and the value of those shares will of course reflect the value of the corporation's assets less the amount of its debts;
- making gifts of property prior to your death to intended beneficiaries in order to reduce the ultimate value of your estate;
- use of alter ego or joint spouse trusts (65 years and over): - transferring assets to a trust established during your lifetime so that those assets will not form part of your estate; and
- executing more than one Will. Assets that your executors will be able to deal with in the absence of an Ontario Court Certificate would be governed by one Will and all other assets would be governed by a second Will dealing with your general estate. Only the Will dealing with the general estate would be submitted to the Court and thus subject to probate tax.

CONCLUSION

Probate tax minimization is an important component of any estate plan. Remember, however, that the appropriateness of the techniques listed above depends upon your personal circumstances. Many of them can have important ownership and taxation implications. Accordingly, none should be undertaken without legal advice.

We would be pleased to answer any questions you may have concerning this legislation.
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