

December 3, 2014

Dan Michaud, Director
Ministry of Finance
Tax Compliance and Benefits Division
Advisory and Compliance Branch
33 King Street West
PO Box 627
Oshawa, Ontario
L1H 8H5

Dear Mr. Michaud:

Re: Draft Estate Administration Tax Regulations, Guide, and Form of Return

Thank you for taking the time to speak with STEP Canada with respect to the proposed *Estate Administration Tax Act, 1998* (the “Act”) regulations (the “Regulations”), guide (the “Guide”), and form of return (the “Return”) on November 27, 2014. As noted on the call, we were somewhat relieved when informed of how you intend to enforce the requirements, however we believe greater clarification can be provided in the Guide to ensure that Estate Trustees are able to comply with the Act and Regulations without causing unnecessary complexity or expense.

We note that due to the very short timeline provided to us to review the Regulations, Guide, and Return, we have not been able to fully canvas our members for feedback, as would have been our preference. Nonetheless, we do have some recommendations with respect to the proposed Regulations and Guide that our working group has identified. These recommendations were discussed on our call with you and have been categorized in this letter for convenience. We note that page and section references are included for convenience, but may not refer to all changes that are necessary to give effect to a particular recommendation.

I. TIMING

The Regulations and Guide provide that the Return must be submitted within 30 calendar days of receipt of certificate. This timeline is unnecessarily short. We recommend that this be extended to six months. [s. 3(1) of the Regulations; p. 2 of the Guide]

We recommend that clarification be provided with respect to what will be done if the due date falls on a weekend or holiday. [p. 2 of the Guide]

We recommend that Service Ontario issue receipts upon submission and that the Return be deemed to be received on the date of postmark. [p. 2 of the Guide]

We note that you indicated on our call that e-filing may be made available in the future. We support the addition of e-filing.

The current drafting of the Guide appears to provide that an amended Return be filed both within 30 days of discovering new assets and within 30 days of informing the Court of the new assets,

which would be unnecessarily duplicative. We recommend that the Ministry review the interaction between the various requirements to update the filing of the Returns. [pp. 2 and 3 of the Guide]

II. RECORDS RETENTION

Please clarify how long records must be retained. [p. 4 of the Guide]

It was indicated on the call that records must be able to be made available in Ontario (rather than be kept in Ontario). This should be clarified in the Guide. [p. 4 of the Guide]

III. VALUATION

It should be clarified that an appraisal is not required for all items. The Guide currently implies that an appraisal would be required for all items, which could lead to unnecessary expense and complication for trustees. [p. 6 of the Guide]

It was indicated on the call that an appraisal would only be required where the assets meet a materiality threshold. Some guidance with respect to the value of the threshold and “assets of a significant value” would be of assistance. [pp. 6 and 9 of the Guide]

It was also indicated on the call that the grouping of personal effects and household items could be done as a household. This should be clarified in the Guide. [p. 9 of the Guide]

IV. CLASSIFICATION OF ASSETS

We believe the categorization of assets may cause unnecessary confusion and the potential for double counting. [pp. 5-9 of the Guide]

For example, “Shares of a corporation” are listed in “Other Property”, but “common shares, preferred shares” are shown as “investments. Please clarify. [p. 9 of the Guide]

It should be made clear in the Guide that each asset is only to be included in one category, to ensure that there is no duplication. [p. 5 of the Guide]

It should also be made clear that grouping of assets can be done for categories other than “Other Property”. For example, investments may be grouped as a portfolio rather than by investment. [p. 9 of the Guide]

It should be clarified that business assets of a sole proprietorship or partnership (if the partnership dissolved on the death of the partner) can be grouped as a single asset and would be included in “Other Property”. [p. 9 of the Guide]

V. DEFINITION OF ESTATE REPRESENTATIVE

The definition of Estate Representative in the Guide is confusing (though we acknowledge it is derived from the Act). This should be revised to be in plain language for the layperson. Given that the Return is to be filed after the Certificate of Appointment of Estate Trustee is received, the Estate Representative should be the person appointed in the Certificate. [p. 11 of the Guide]

VI. FORM OF RETURN

Please confirm that more than one box can be selected. For example, it is possible that someone will both be separated and have a common law spouse. [Part B of the Return]

We recommend that the Estate Representative Information section be revised to contemplate a trust officer acting as a contact person for a Trust Company (we note that it should be clear that trust officers are not signing in their own capacity). [Part C of the Return]

VII. SOFTWARE

In order to ensure that the Return can be easily generated by trustees using software for assistance, we recommend that the Ministry connect with existing providers of estate software, such as Estate-a-Base (<http://www.doprocess.com/products/estate-a-base>) and Wind-Up (<http://www.emergent.ca/windup-estate-acc>).

VIII. GENERAL

As noted above, the above list is not comprehensive.

The Guide is to be used primarily by laypeople acting as Estate Trustee who have no formal training in this regard. There are almost 100,000 deaths per year in Ontario, and it is likely that this Guide is to be consulted by a great number of the Estate Trustees dealing with the estates of these deceased individuals. Accordingly, simplicity and clarity in both the requirements of Estate Trustees and the language in the Guide itself are paramount.

Please do not hesitate to contact us should you require further clarification of our comments or if further discussions with respect to the Act, Regulations, Guide, and/or Return are required.

Yours truly,



Pamela L. Cross

Secretary and Chair of Tax Technical Committee, STEP Canada