



Executors and Tax Returns: *Rosenberg Estate v. Canada* (National Revenue)



Marc Weisman

As part of my tax and estates practice, I frequently advise executors on

tax and estates matters. The recent decision of the Federal Court of Canada in *Rosenberg Estate v. Canada* (National Revenue) 2011 DTC 5075 highlights the importance of filing final tax returns on time to avoid penalties to the estate.

This was not a simple estate. Mr. Rosenberg passed away on June 14, 2003 without a Will and therefore without an executor. The court appointed a liquidator (Quebec term for estate trustee) on November 3, 2003. The heirs were in dispute. There was also an undeclared offshore bank account that ultimately resulted in a voluntary disclosure. The liquidator had instructed Mr. Rosenberg's accountant to prepare and file the terminal return and remit a payment on account of the tax owing. The accountant failed to file the terminal return on time and the liquidator appointed a new accountant. Neither the liquidator nor the accountant had sufficient information to determine the precise amount of tax owing by the filing deadline of the terminal return. Further, the liquidator had to deal with

all of the complications of an intestacy and disputes between the heirs.

On April 24, 2004, the liquidator advised the CRA that the terminal return would not be filed on time (i.e., by April 30, 2004). The estate eventually filed the terminal return on September 24, 2004, and the CRA assessed a significant late-filing penalty against the estate.

The liquidator applied to the CRA for relief from the late-filing penalty but was unsuccessful. Accordingly, the liquidator applied to the Federal Court of Canada for judicial review of the CRA's decision. In upholding the CRA's decision not to relieve the penalty, the Federal Court made two significant findings:

- The fact that the terminal tax return may not be complete and correct should not prevent it from being filed on time with a letter explaining that the tax has been estimated in the absence of all the information required to calculate the tax accurately.
- The disputes between the heirs did not constitute sufficiently extraordinary circumstances to justify cancelling the late-filing penalty.

This case highlights the importance for executors and their advisors to ensure that tax returns are filed on time.

Do you have a question about a tax or estates matter, or a topic that you would

We welcome **Craig Vander Zee**, who recently joined the firm as a partner in our Trusts and Estates and Litigation Groups.

Craig is Certified by The Law Society of Upper Canada as a Specialist in Estates and Trusts Law and has extensive experience with estate, trust and capacity disputes and all related litigation.

like to see discussed here? Contact Marc Weisman at (416) 777 5455 or mweisman@torkinmanes.com.

Torkin Manes' Tax, and Trusts and Estates Groups have significant experience in tax planning and estates and trusts matters. Marc Weisman's practice focuses on corporate and personal income tax and commodity tax planning, and trusts and estates matters. He works with accountants, financial advisors and non-tax lawyers on a variety of tax and trusts matters on behalf of their clients.

Please contact members of our Tax, and Trusts and Estates Groups for more information.

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