

# ATO shoots itself in the foot: tax return must be signed by Administrator

*The ATO refuses to accept a tax return from an intestate deceased estate unless it is signed by the Administrator of the estate. But what if there is no Administrator? Townsends' Dominique Perry explains.*

Jane passed away in her early eighties. Almost everything of any value that she owned she held as joint tenant with her husband who automatically inherited all her assets pursuant to the rules of survivorship. Her estate was therefore worth next to nothing. Knowing this would be so she didn't bother making a Will.

The death of a loved one can be a stressful and emotional process. Complexities can arise when dealing with the Australian Tax Office (ATO) with deceased estates particularly when only an administrator or executor is entitled to deal with the process.

If the deceased's estate is very small their executor under their Will may not consider it is worthwhile going to the expense and inconvenience of applying for a formal grant of probate.

Likewise, if the deceased dies intestate (i.e. without a Will like Jane did), the next of kin (generally the spouse, child or a close family member of the deceased) are able to be appointed by the Court as the administrator of the estate, but again may not consider it practical to bother doing so for a small estate.

The ATO says the administrator must

- notify the ATO of the death and provide a death certificate and proof that the administrator has the authority to deal with the tax affairs of the deceased person;
- lodge any outstanding prior year income tax returns or prior period business activity statements of the deceased person;
- lodge a final (date of death) income tax return, or a non-lodgement advice, on behalf of the deceased person as necessary;
- lodge a final BAS for the concluding tax period (which ends the day before the death) and cancel the deceased's GST registration (if they were registered for GST).

What if there is no Will, executor or administrator of the estate?

Jane's daughter Rachel made the decision not to incur the expense and go to the trouble of applying to be appointed as the administrator of her late mother's estate (officially called "letters of administration" - a

document issued by the Court allowing the administrator to manage and distribute the deceased's assets) given that Jane's estate was so small.

But wanting to do the right thing Rachel simply tried to lodge the tax return for her mother up to the date of death. The ATO refused to accept the tax return for the financial year unless it was signed by the deceased's legal personal representative i.e. administrator.

Jane explained she wasn't going to apply to be appointed as the administrator. The ATO requested letters of administration. What is wrong with this picture?

Rachel cannot apply for letters of administration because the NSW Court will not make a grant of letters of administration if there are no assets for administration which are held in New South Wales. Jane had no such assets. Note that Rachel is not legally obliged to make such an application.

Rachel was frustrated and lodged a formal complaint to the ATO. The ATO told her to lodge a Notification of Deceased Person and a certified Death Certificate to verify that Jane had deceased and to officially notify the ATO. She did this.

The ATO then reiterated that the tax return couldn't be lodged except by Jane's administrator. Rachel was going round in circles.

Rachel has decided to do nothing. If the ATO don't want the final return for her mother that's up to them. Rachel tried.

The Inspector-General of Taxation and Taxation Ombudsman (IGTO) understands that the ATO is working on policies rectifying these issues. The ATO's challenges in this area of deceased estates go a lot further than just Rachel's problems and they include:

- a lack of acknowledgement from the ATO following notification of the death of a taxpayer;
- difficulties or delays obtaining a deceased estate tax file number;
- inconsistent steps for executors to provide their identity to access information, which is made more challenging in instances where the taxpayer died intestate;
- inconsistent advice and requirements to obtain probate or letters of administration;
- inability to appoint registered tax practitioners or solicitors as authorised contacts;
- difficulties or delays in accessing taxpayer information for the purposes of finalising taxpayer and deceased estate trust returns; and
- denial of access to the ATO portals.

All taxpayer advisers (tax practitioners, financial planners, trustees and estate service providers) are welcome to provide to the ATO and/or the IGTO examples and suggestions for improving the administration of the tax laws and systems for deceased persons.

For more information on any aspect covered in this article, please call SUPERCentral on 02 8296 6266 or email [info@supercentral.com.au](mailto:info@supercentral.com.au).