

Income Tax

LAF. 14-3/R2 **Distribution of Property – Successions**

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Reference(s): *Tax Administration Act* (CQLR, c. A-6.002), sections 14 and 14.0.0.1
Regulation respecting fiscal administration (CQLR, c. A-6.002, r. 1), section 14R1

This version of interpretation bulletin LAF. 14-3 (formerly LMR. 14-3) replaces the version of January 31, 2005. The bulletin was updated in view of legislative amendments made since that date. Since the amendments are technical in nature, the position set out in the bulletin remains the same.

This bulletin focuses on the liquidation of successions. It complements the current version of bulletin LAF. 14-1, entitled "Distribution of Property – General Principles," which provides detailed information on the basic principles relating to the distribution of property and their application.

APPLICATION OF THE ACT

PROPERTY WORTH \$12,000 OR LESS

1. Exceptionally, in the case of a succession, property worth \$12,000 or less may be distributed before the notice prescribed by the first paragraph of section 14 of the *Tax Administration Act*¹ (TAA) is filed by the liquidator with the Minister of Revenue, provided the property is used to pay urgent or essential expenses that arise as a direct consequence of the death. Such expenses may include, for example, funeral expenses (the funeral service, burial, etc.). Also, expenditures may be made in the interest of the succession (the payment of electricity, gas or telephone bills, urgent repairs, etc.).

2. Despite that exception, the liquidator of a succession must still include, on the prescribed form (MR-14.A-V), the value of the property that was so distributed before notice was given to the Minister, even if the total value of the property of the succession is less than \$12,000. A liquidator who fails to do so may be assessed an amount up to the value of the property distributed.

¹ This Act was formerly entitled *An Act respecting the Ministère du Revenu*. The title was changed by section 91 of chapter 31 of the Statutes of Québec 2010.

TESTAMENTARY SUCCESSIONS

Designation of a liquidator

3. Any natural person who is designated as a liquidator of a succession in a will and accepts that office is subject to section 14 of the TAA. The person may be a party who is a stranger to the succession, a legatee (a universal legatee, a legatee by general title or a legatee by particular title) or even the notary before whom the will was made, provided the person is designated as a liquidator by the testator and accepts that office.

4. Any legal person that is authorized by law to administer the property of others (for example, a legal person to which the *Act respecting trust companies and savings companies*, CQLR, chapter S-29.01, ss. 1 & 170, or the *Trust and Loan Companies Act*, S.C. 1991, c. 45, ss. 57 & 412, applies) and that is designated as a liquidator of a succession in a will and accepts that office is also subject to section 14 of the TAA.

5. If multiple heirs of a testator were designated by the latter as liquidators, any of them who accept that office are subject to section 14 of the TAA.

6. If there is a sole heir (a universal legatee) and the latter is designated as a liquidator, the heir cannot refuse that office if he or she accepts the legacy. The heir is then subject to section 14 of the TAA. If the court appoints a replacement for the sole heir for reasons provided for in the *Civil Code of Québec* (CCQ), the replacement becomes subject to section 14 of the TAA as soon as the court renders its decision.

A testamentary designation without effect or no designation

7. A will may be silent as to the designation of a liquidator. Also, a person designated in a will as a liquidator may refuse that office or be unable to assume the responsibilities of the office, or may predecease the testator.

8. The CCQ provides that, if no replacement is named in the will, the office of liquidator devolves to all the heirs (the universal legatees or legatees by general title) who are fully capable of exercising their rights and who have not renounced the succession or refused the office of liquidator. Those heirs then assume the office of liquidator collectively and are therefore subject to section 14 of the TAA.

9. The CCQ also grants the heirs (the universal legatees or legatees by general title who have not renounced the succession), whatever their capacity, the right to designate a liquidator by majority vote. If they exercise that right, only the liquidator so designated is subject to section 14 of the TAA. In exercising that right, the heirs may be unable to agree or it may be impossible to appoint or replace a liquidator. In such a case, the heirs may ask the court to designate a liquidator, and only the person designated by the court as the liquidator (or provisional liquidator) is subject to section 14 of the TAA.

10. Where there is a sole heir fully capable of exercising his or her rights, the CCQ provides that the heir cannot refuse the office of liquidator if the latter intends to accept the succession. The heir is then subject to section 14 of the TAA. If the court appoints a replacement for the sole heir for

reasons provided for in the CCQ, the replacement becomes subject to section 14 of the TAA as soon as the court renders its decision.

11. A situation may arise where the liquidator designated in the will may also be the person named by the testator as the sole universal legatee. If that person renounces the succession, he or she is deemed never to have been a successor and, not being an heir, is not required to accept the office of liquidator. In that case, reference must be made to the rules governing intestate successions.

INTESTATE SUCCESSIONS

12. An intestate succession (also known as a legal succession) exists where a person dies without leaving a will or where a will is incomplete or cannot take effect (the will is invalid because of a defect of form, or all the legacies in the will have lapsed, are null or have been revoked).

13. In the case of an intestate succession, the office of liquidator devolves of right to all the heirs.

14. Where multiple heirs are fully capable of exercising their rights and have not renounced the succession or refused the office of liquidator, they assume that office collectively and are all subject to section 14 of the TAA. If the heirs exercise the right to designate a liquidator by majority vote, only the liquidator so designated is subject to section 14 of the TAA. Likewise, where the court designates a liquidator, it is the liquidator so designated who is subject to section 14 of the TAA.

15. Where there is a sole heir who is fully capable of exercising his or her rights and who has not renounced the succession, the heir cannot refuse the office of liquidator under the CCQ and is subject to section 14 of the TAA. If the court appoints a replacement for the sole heir for reasons provided for in the CCQ, the replacement becomes subject to section 14 of the TAA as soon as the court renders its decision.

16. If that sole “potential” heir renounces the succession, he or she is deemed never to have been a successor, is therefore not an heir and, consequently, is not required to accept the office of liquidator. Such is the case, for example, where the sole heir, a childless surviving spouse, renounces the succession in favour of the children of her only brother, who is deceased. The succession then devolves to the children. If they accept the succession, the office of liquidator will devolve of right to them and they will therefore be subject to section 14 of the TAA.

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17. A gift mortis causa, that is, a mutual and reciprocal gift of all the property that will constitute the first deceased’s succession, can be made by marriage contract or civil union contract. Such a gift is made where one spouse dies without leaving a will designating a liquidator and without having otherwise revoked the gift. The surviving spouse who accepts the gift mortis causa made in his or her favour then becomes the sole heir. Under the CCQ, the surviving spouse cannot therefore refuse the office of liquidator and is then subject to section 14 of the TAA. If the court appoints a replacement for the surviving spouse for reasons provided for in the CCQ, the replacement becomes subject to section 14 of the TAA as soon as the court renders its decision.

18. If the surviving spouse refuses the gift, the rules governing intestate successions apply.

TESTAMENTARY TRUSTS

19. Sometimes a will may provide that the same person is to be both the liquidator and the trustee. As the liquidator of the succession, that person must obtain from the Minister of Revenue a certificate authorizing the distribution of the property of the succession, including the property that is to be transferred to the trust.

20. It is important to note that the certificate issued to that person as the liquidator of the succession is issued in respect of the fiscal laws to which the deceased was subject. The certificate in no way relieves that person of any obligations that he or she, as the trustee, may have, arising from the distribution of all or part of the trust's property under the terms of the trust or otherwise.