



Unique collectibles

Ottawa Estate Planning Council

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Wealth Management
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Agenda

Overview

Estate planning considerations

- Multiple Wills
- Special executor
- Executor compensation
- Inventory
- Distribution
- Gifts to minors

Estate administration considerations

- Insurance
- Valuation
- Safeguarding
- Digital assets
- Tax

Overview

Collectibles such as comics, coins, stamps, rare books, artwork, movie props/costumes, figurines, wines, and... cards!

Such as sports cards, collectible card game or trading card game cards.

(e.g., Magic: The Gathering cards, Pokémon, Yu-Gi-Oh!, etc.)

Overview



A titanic sale!

An example of a valuable movie prop:

The door used by Rose to float and stay alive in the Titanic movie was sold at auction for \$718,750¹.

The movie prop was owned by Planet Hollywood (restaurant/resort chain).

¹ Andre Rhoden-Paul, "Titanic 'door' prop that kept Rose alive sells for \$718,750", BBC News, March 27, 2024, found online March 28, 2024 at <https://www.bbc.com/news/entertainment-arts-68672177>

Overview

**Spins a web at any price?
And leaps tall prices in a single bound?**

An example of valuable comics:

In 2023, Moncton, N.B. comic book shop was asking nearly \$60,000 for Amazing Fantasy #15 (1962 comic featuring first appearance of Spider-Man). Another copy sold for U.S. \$3.6 million in 2021¹.

In April 2024, a 1938 Action Comics #1 (first appearance of Superman) [graded at 8.5] sold at auction for U.S. \$6 million!².

¹ Phillip Drost, “Holy grail’ of comics selling for nearly \$60K at Moncton store”, CBCNews, December 3, 2023, found online March 22, 2024 at <https://www.cbc.ca/news/canada/new-brunswick/spider-man-comic-book-1.7047857>

² Expensive Comic Ever”, April 4, 2024,IGN found online April 5, 2024 at: [Action Comics #1 Auctions for \\$6 Million to Become the Most Expensive Comic Ever – IGN](#)

Overview

He shoots, he scores!

An example of a valuable sports card:

A recent article described a “once-in-a generation find” in a collector’s home in Saskatchewan of a case of “...16 sealed boxes of O-Pee-Chee's 1979-80 hockey card collection, amounting to more than 10,000 cards.” According to the article, the cards could potentially include several copies of the Wayne Gretzky rookie card.

It was reported that a mint condition of a first-edition of the Gretzky card had previously sold at auction for \$3.75 million in 2021!¹

The unopened boxes were bought by a winning bidder from Thornhill, Ontario for \$3.7 million².

¹ “Saskatchewan collector finds rare case containing coveted Wayne Gretzky rookie cards” accessed online February 5, 2024 at: [Saskatchewan collector finds rare case containing coveted Wayne Gretzky rookie cards | CP24.com](https://cp24.com/story/saskatchewan-collector-finds-rare-case-containing-coveted-wayne-gretzky-rookie-cards/2024/02/05/)

² Rob Drinkwater, “Winning bidder of classic hockey cards feeling remorse over \$3.7M purchase”, globalnews.ca, found online April 16, 2024 at <https://globalnews.ca/news/10423918/hockey-cards-winning-bidder-remorse/>

Overview

Penny for your thoughts!?

An example of valuable coins:

- 2021 – gold coin sold for \$18.9 million (Sotheby's)
- BNN Bloomberg reported that the Will of the late Lars Emil Bruun (1852-1923) required that his collection (which included coins and medals) be retained for 100 years and then sold at auction (estimated value of entire collection = US\$72 million); coin auction house Stack's Bowers involved¹.

¹ James Tarmy, "Danish heirs to sell US 72 million rare coin collection after 100 years", Bloomberg News, BNNBloomberg, found online April 26, 2024 at <https://www.bnnbloomberg.ca/danish-heirs-to-sell-72-million-rare-coin-collection-after-100-years-1.2062471>



Overview

“Magic: The Gathering”

Magic: The Gathering (MTG) is a card game created by Richard Garfield and released by Wizards of the Coast (now a subsidiary of Hasbro) in 1993 (almost 32 years ago).

It was the first collectible “trading” card game, and it was available in several languages—including French, German, Spanish and Japanese and Italian. Billions of cards have been printed.

¹ Magic: The Gathering – Wikipedia, found on the internet on August 14, 2023 at: https://en.m.wikipedia.org/wiki/Magic:_The_Gathering

Overview

“Magic: The Gathering”

Described as “...the most computationally complex real-world game known in the literature...”¹

It’s also been referred to as “chess with cards” with each card brought to the table acting like a chess piece².

While it is a game that involves strategy, luck also plays a role.

¹ “Magic: The Gathering” is officially the world’s most complex game”, MIT Technology Review, May 7, 2019, found on the internet on January 5, 2023 at <https://www.technologyreview.com/2019/05/07/135482/magic-the-gathering-is-officially-the-worlds-most-complex-game/>

² Dustin Taylor, “Magic the Gathering offers game that’s ‘chess with cards’”, October 11, 2015, updated March 9, 2018 Longview News-Journal found online August 14, 2023 at: https://www.news-journal.com/features/lifestyle/magic-the-gathering-offers-game-that-s-chess-with-cards/article_b793e957-72b2-5fab-a166-07a5d89901fe.html

Overview

“Magic: The Gathering”

Why is it relevant?

- In 2022, singer Post Malone paid US \$800,000 for the artist signed “Black Lotus” MTG card.
- In 2023, he purchased the one-of-a-kind “The One Ring” card (from the Tales of Middle-Earth MTG set) from Brook Trafton of Ontario for \$2.64 million!
- In 2024, a “Black Lotus” card from MTG’s Alpha set graded as a “10” sold for \$3 million!
- Players who have been playing MTG since the ‘90s can have collections potentially worth many thousands of dollars.

Overview

“Magic: The Gathering”

Why is it relevant?

- Given the potential value of MTG collections, what should MTG card owners [and collectors of unique collectibles generally] consider when doing their estate planning?
- What should personal representatives be aware of when administering an estate that contains unique collectibles?
- Presentation will use MTG cards to address various estate planning and estate administration considerations, but many of the same considerations apply to other valuable collections (e.g., coins, stamps, books, comics, wine, art, etc.).

Overview

Be aware of legal restrictions!

Some collectibles may be subject to certain legal restrictions (e.g., ability to own, distribute or sell).

Subject to specified exceptions, the *Importation of Intoxicating Liquors Act*, R.S.C., 1985, c.1-3 ss.3(1) prohibits the importation of wines except by authorized entities, and provincial laws can restrict ability of, for example, legal representatives of an estate to sell wines privately (see e.g., *Liquor License and Control Act*, 2019, S.O. 2019, c.15, Sched.22, see esp. section 2).

See also *Cultural Property Export and Import Act*, R.S.C., 1985 c.C-51.

Estate planning considerations

- Multiple Wills
- Special executor
- Executor compensation
- Inventory
- Distribution
- Gifts to minors

Multiple Wills

- Where permitted, strategy can avoid probate charges for assets that do not require probate to be administered.
- Judicially approved in Ontario in the case of *Granovsky Estate v. Ontario*, where Greer, J. stated:

“The estate planning of having multiple Wills in the form of a Primary Will and a Secondary Will which take effect on death is, in my view, simply another example of how a careful testator plans to have her or his estate pay the least possible probate fees on death. There is no legal obligation to obtain probate and, as I have noted above, limited grants are permissible.”

[1998 CanLII 14913 (ON SC), at para.29, per Greer, J.]

- Generally, it shouldn't require probate to administer collectibles, such as MTG cards. However, consider legal cost of preparing multiple Wills vs. probate tax savings that might be realized.

Special executor



- Consider benefits of appointing a “special executor” with skill and experience to administer the unique assets of a testator
- Can facilitate administration of estate
- Potentially reduce risk of litigation
- If a multiple Will strategy with special executor, then special executor should be appointed in Will that governs the administration of the testator’s collectibles (and for which probate will not otherwise be required)

Executor compensation

- When appointing a special executor to handle a testator's unique collections, consideration should be given to how such a special executor will be paid.
- Ideally, clause in Will expressly setting out special executor compensation, or alternatively a separate compensation agreement signed between the testator and special executor and incorporated by reference into the Will.



Executor compensation

Where compensation has not been stipulated in the Will, personal representatives will need to look to statute and jurisprudence for guidance. For example, in Ontario, ss.61(1) of its *Trustee Act* provides:

“A trustee, guardian or personal representative is entitled to such fair and reasonable allowance for the care, pains and trouble, and the time expended in and about the estate, as may be allowed by a judge of the Superior Court of Justice.”

Jurisprudence sets out the principles to be applied in determining “fair and reasonable” compensation under ss.61(1) of the *Trustee Act*.

Executor compensation

Incorporation by Reference: Executor Compensation/Personal Effects

Incorporation by reference requires:

“(1) that the reference in the will must show that the testator intended to incorporate the extrinsic document into the will; (2) the language of the will must be such that it refers to the extrinsic document as one already in existence at the time of the execution of the will; (3) the reference in the will must be sufficiently specific that it identifies the extrinsic document with reasonable certainty; (4) the document offered must be proven satisfactorily to be the one referred to in the will; and (5) there must be satisfactory proof that the document was actually in existence at the time of the execution of the will: see Allen v. Maddock (1858), 11 Moore P.C. 427.”

Quinn Estate v. Rydland, 2019 BCCA 91 (CanLII) at para.19 per Bauman, C.J. quoting Leal, A. “Testamentary Additions to Trusts” in Proceedings of the Forty-Ninth Annual Meeting of the Conference of Commissioners on Uniformity of Legislation in Canada (St. John’s: 1967) 207 at 208.

Inventory



- Create an inventory of the items in testator's collection.
- Where possible, include purchase price of collectible items and, if relevant, any story around the items' acquisition which could be passed on to beneficiaries and substantiate provenance of the items should this prove necessary.
- Consider using online inventory and valuation databases, e.g., for MTG cards: www.mtgstand.com or MTGPrice.com.

Distribution

- Will collectibles be distributed to beneficiaries or sold?
- If distributed to beneficiaries, will collectibles be gifted individually or collectively?
- If to several beneficiaries, then individually, jointly or as tenants in common?



Distribution

- If gift of personal property (such as MTG cards!) to two or more beneficiaries without a clear indication as to how those beneficiaries are to receive the gift, common law assumes that the gift is to them jointly
- Any contrary intention will result in the gift being received as tenants in common
[Feeney's Canadian Law of Wills, at § 12.40 LexisNexis Canada Inc., current to release 103, January 2023, found on Lexis Advance Quicklaw, case reference notes omitted]
- If collection to be divided among individuals, consider process: e.g., lottery?

Gifts to minors

- Absent any provisions in the Will, at common law beneficiaries who are minors are not able to give valid discharges for estate assets distributed to them
- In *Roberton (Re)*¹, the Will required payment of a legacy to a minor. Meredith, C.J.C.P. stated at para.6:

“No doubt, the law is that, notwithstanding such a direction as that contained in this will, in the absence of a provision that the infant's discharge shall be sufficient, an executor is not bound [17 OLR Page569] to pay the legacy to an infant on the infant attaining the prescribed age, but the reason for this rule is that, upon payment of the legacy, the executor is entitled to a discharge from the legatee, which an infant is not competent to give.”

¹ [1909] O.J. No.77; 17 O.L.R. 568 (Ont H.C.J.) (QL) The Will provided that the legacy was to be paid to the beneficiary upon her attaining eighteen (18) years of age, which was at that time still considered under the age of majority.

Gifts to minors



However, jurisprudence suggests that where minor has a validly appointed or constituted legal guardian by the laws of the jurisdiction governing the personal representative (and by which laws such legal guardian has authority to take charge and manage the minor's property that would include the interest due to the minor from an estate or trust), that legal guardian can provide the discharge on behalf of the minor.

Effect of boilerplate clause gifting “personal effects”

- What if Will does not expressly identify a gift of the MTG cards and instead contains a typical boilerplate clause gifting “personal effects” or “household effects” to Beneficiary X?
- Would MTG cards (or any other collection of articles) fall under the category of “personal effects” or “household effects” and belong to Beneficiary X, or could they be something else and therefore fall into the residue of the estate to be dealt with according to the instructions for distribution of residue (which might instead divide the residue equally between Beneficiaries Y and Z)?

Effect of boilerplate clause gifting “personal effects”

Jurisprudence stands for proposition that stamps and gold coins collected as part of testator’s hobby are “personal effects”

“I conclude that the prima facie meaning of the expression ‘personal effects’ is such that it would include the stamp collection and the coin collection.”

Re Collins’s Settlement Trusts; Donne and another v Hewetson and others [1971] 1 All ER 283 (Ch.D.) [“re Collins”] at p.286 (per Brightman, J.)

Effect of boilerplate clause gifting “personal effects”

Does “household effects” encompass articles like cards, comics, stamps or coins?

“The phrase “household effects” has been used to describe “articles adapted for use or ornament in the house”; or property that has a “...household use or a recognizable connection with the use, enjoyment and proper functioning of the...home”. It is said that the term applies to property that belongs to the house and differs from “personal effects” which belong to the person.”

RE Sonya Lyttle, 2014 CanLII 66458 (NL SC), at para.6 (per Handrigan, J.)

Effect of boilerplate clause gifting “personal effects”

“Pianos, organs, books, china, plate and linen, radios, TVs, or pictures that adorn the walls of a home are examples of “household effects”; while gun, antique car or art collections, especially if those collections are simply stored on site and not displayed for interactive use or other viewing, are examples of “personal effects”.”

RE Sonya Lyttle, 2014 CanLII 66458 (NL SC), at para.7 (per Handrigan, J.)

Effect of boilerplate clause gifting “personal effects”

A collection of assets acquired by a testator that are:

- i. not adapted for use in the home or to adorn the home by being on general display or
 - ii. that are not associated with the use, enjoyment or proper functioning of the home
- will generally be considered “personal effects” because such assets belong to the testator and are associated with him or her (whereas household effects are articles that belong to the house).

Effect of boilerplate clause gifting “personal effects”



- Could a collection be considered something other than part of a testator’s personal or household effects?
- *Parrag Estate (Re)*, [1983] O.J. No.491 (QL)

Effect of boilerplate clause gifting “personal effects”

Reid J. examined the meaning of “effects” and “personal” stating at paragraph 6:

“‘Effects’ is a term of wide import. ‘The word ‘effects’ will be construed ordinarily to mean the whole personal estate of the testator, unless the context restricts the meaning to something else’: Orde J. in re Channon (1923), 24 O.W.N. 408, 409. The term ‘personal’ imports ‘physical chattels, having some personal connection with the testator such as articles of personal or domestic use or ornament, clothing, furniture and so forth’: see Joseph v. Phillips, [1934] A.C. 349, 352.”

Effect of boilerplate clause gifting “personal effects”

Query what would happen if one or more of an item in a collection was/were appraised at a significant value

Would the residuary beneficiaries be ok with, for example, the serialized The One Ring MTG card (valued at over \$2 million) being distributed along with the deceased’s clothing to the one beneficiary specified in the typical boiler-plate personal effects clause??

Estate administration considerations

Insurance
Valuation
Safeguarding
Digital assets
Tax

Insurance

- One of the duties that personal representatives have upon accepting the appointment as executor or administrator is to ensure that the assets of the estate are safeguarded.
- In the case of personal effects, this means ensuring that assets are in secure location and, in the case of valuable assets, that proper insurance is in place.



Insurance

- In *Gamble (Re)*, executors failed to place property insurance on farm property belonging to deceased and there was a loss due to fire
- The Court indicated that:

“A trustee's duty is not to take such care only as a prudent man would take if he had himself alone to consider; but rather to take such care as an ordinary prudent man would take if he were minded to provide against loss to people for whom he felt morally bound to provide. And here there were infants to be maintained and educated.”

Gamble (Re), [1925] OJ No 76, 57 OLR 504, [1925] 4 DLR 768 (at para.6, per Mowat, J.)

Insurance

Court dismissed appeal relating to executors' liability on devastavit upon a passing of accounts, stating:

“It is the custom in this country to insure, and failure to do so is negligent conduct on the part of executors. The testator himself had insured. The executors knew this-they carelessly allowed the insurance to lapse. They are liable not for damages, but as for a debt owing to the estate, just as they would be liable for delay which would enable the Statute of Limitations to be pleaded, or for not realising assets at a proper time whereby loss is occasioned, or by allowing beneficiaries to waste property instead of realising it, or by allowing debts bearing interest to run on where there were assets sufficient to discharge them, or allowing the goods of the estate to be lost, or neglecting to invest unneeded balances: Ingpen on Executors and Administrators, 2nd ed. (1914), p. 655.”

at para.5 (per Mowat, J.)

Insurance

- Who is responsible for the cost of insurance/storage re: personal effects?
- Testator could stipulate in Will
- Where Will silent and provides beneficiaries with ability to choose from among testator's personal effects, jurisprudence stands for proposition that cost of preserving such articles, including storage and insurance, from the death of the testator to the date of selection by the beneficiaries will be borne by the estate
- But where Will provides for specific gift of personal effect to a particular beneficiary, then that beneficiary appears to be responsible for costs of preservation incurred from the date of the testator's death to the date of the executor's assent to the personal effect belonging to the beneficiary

Insurance

Where insurance/storage costs borne by estate, jurisprudence also suggests that such costs will generally be borne by estate income:

“As between capital and income of residue, I have not been referred to any case which shows that an ordinary revenue outgoing such as cost of insurance or cost of storage, ought to be borne by capital rather than income. It seems to me that logically income must bear any expense which is incurred in looking after property which, if income-producing, yields such income for the benefit of the life tenant. I therefore reach the conclusion that the charges in question in this case should be borne by the income and not the capital of residue.”

Re Collins's Settlement Trusts; Donne and another v Hewetson and others [1971] 1 All ER 283 (Ch.D.) at pg.288 (per Brightman, J.)

Valuation



- In order to apply for probate, executors have to determine value of estate on which relevant jurisdiction's "probate tax" will be charged.
- When it comes to items in a collection, executors may need to engage a valuator or find some other way to value the items.

Valuation

- Utilizing a “card grading service” such as Professional Sports Authenticator (PSA) or Beckett Grading Services (BGS)
- Evaluate and grade condition of cards
- Generally, on a scale of 1 to 10¹
- Higher the grade the higher the condition/quality of the card which in turn should translate into higher value
- Given “unique” nature of collectibles [like MTG cards], appointing “special executor” familiar with the collectibles may be prudent to assist with obtaining proper values (especially if testator’s intent is to sell)

¹David Royale, “The Top 10 Card Grading Services for TCGs Ranked”, March 1, 2024, Draftsim.com, found online on April 4, 2024 at <https://draftsim.com/card-grading-services/#:~:text=%231,->



Delivery costs



- Ideally, testator's Will clearly provides for who will be responsible for shipping and related insurance costs
- If not, guidance provided in *Hayes v Swift (Executor of the Estate of Bernard William Hayes)*, 2021 SKQB 132 (CanLII)

Responsibility for costs of shipping personal effects - *Hayes v Swift*

- Will provided that executor was to “deliver” tools to the specified beneficiary
- Beneficiary took the position that estate had to physically deliver tools to him, whereas executor argued that requirement to deliver contemplated delivery of “ownership” as opposed to “actual possession or physical delivery”
- Canadian jurisprudence sparse

Referred to Garnham v PC, [2013] JRC 088 (13 May 2013) - “...it is perfectly proper for an executor to incur moderate and reasonable expenses in relation to gaining possession of that asset and delivering it to the specific legatee, but he appears - although the position is not entirely clear - to be under no duty to do so.” [at para.82]

Responsibility for costs of shipping personal effects - *Hayes v Swift*

“In my view, this reflects the appropriate approach to be taken. The duty of the executor is to assent the item to the specific beneficiary. It is appropriate for an executor to incur moderate and reasonable expenses to transport a chattel to a specific beneficiary. There are a number of factors which may be relevant, such as the value of the estate, the cost of shipping or transportation, and the value and nature of the asset or chattel. However, this is within the executor’s discretion. The executor is under no obligation to incur out of the ordinary expenses which would then be charged against the residue of the estate. Such expenses should be borne by the specific beneficiary.”

[at para.51, per Crooks, J.]

Responsibility for costs of shipping personal effects - *Hayes v Swift*



Executor had already paid for delivery of some tools to beneficiary.

Cost to deliver remaining tools would represent a significant portion of value of those tools (appraised value of tools was \$2,700, and the cost to ship was approximately \$2,000).

Judge's view was that executor had already exercised her discretion to incur reasonable shipping fees and responsibility for further shipping costs now fell to beneficiary.

Responsibility for costs of shipping personal effects - *Hayes v Swift*

What we learn from this case

Duty of executor is to assent to items belonging to specified beneficiary pursuant to terms of Will

Subject to any express terms in Will, it appears that executor has discretion to incur “moderate and reasonable” shipping costs to deliver such items to the intended beneficiary

In exercising limited discretion, executor should take into account the following factors:

- value of the estate
- cost of shipping or transportation
- value of the asset or chattel
- nature of the asset or chattel

Digital assets

- Some collections may have a digital component
- MTG can be played digitally, for example, on Magic the Gathering Arena
- Wizards of the Coast's general terms of service ("General Terms") provides that users are given a "...limited, personal, non-exclusive, nontransferable, non-assignable, fully revocable license to use the Websites and Services solely for [the user's] individual and non-commercial use."*
- General Terms make it clear that users "...have no ownership right or interest or other rights in or to any part of the Game Content, Websites, Games, or Services, including without limitation in-game items whether earned in game or purchased from Wizards."**

Wizards of the Coast, "General Terms" found online (February 22, 2024) at:
<https://company.wizards.com/en/legal/terms>, *Sec. 2.1 "License" and ** at sec.6.2 "Limited License"

Digital assets

- Wizards of the Coast LLC's website also contains the "Magic: The Gathering Arena End User License Agreement" ("End User Agreement")
- End User Agreement is described as a "contract" between the user (described as "you") and Wizards of the Coast LLC and provides that "...together with the general Terms, explains the terms and conditions under which you are licensed to download, install, and use MTG Arena and related services."



Digital assets

Section 2.3 of the End User Agreement refers to “virtual” cards:

“2.3. Virtual In-Game Items. We may, from time to time, allow you to acquire a limited license to access virtual items related to the Game Services, which may include but are not limited to virtual Magic: The Gathering cards, booster packs, draft packs, cosmetics and enhancements (i.e., vanity items), events, and other downloadable content (“VirtualItems”). We may allow you to access Virtual Items in various ways including but not limited to (a) purchasing a limited license to use the Virtual Item for a fee (i.e., “real-world” money); (b) redeeming a limited license to use Virtual Item with Virtual Currency; or (c) earning a limited license to use Virtual Items by performing or accomplishing specific tasks in the Game Services (e.g., event rewards, Vault rewards, Wildcard Rewards etc.).”

Digital assets



As the ability to access MTG Arena and the Virtual Items are subject to a limited license which is non-assignable it appears that a player's digital MTG card collection, at least insofar as MTG Arena is concerned, is simply “lost” at death (assuming that Wizards of the Coast LLC sticks to the terms of the contract when faced with an executor seeking to transfer access to a beneficiary).

Tax - Personal Use Property (“PUP”)

“**personal-use property**” of a taxpayer includes

(a) property owned by the taxpayer that is used primarily for the personal use or enjoyment of the taxpayer or for the personal use or enjoyment of one or more individuals each of whom is

(i) the taxpayer,

(ii) a person related to the taxpayer, or

(iii) where the taxpayer is a trust, a beneficiary under the trust or any person related to the beneficiary,

(b) any debt owing to the taxpayer in respect of the disposition of property that was the taxpayer’s personal-use property, and

(c) any property of the taxpayer that is an option to acquire property that would, if the taxpayer acquired it, be personal-use property of the taxpayer,

*and **personal-use property** of a partnership includes any partnership property that is used primarily for the personal use or enjoyment of any member of the partnership or for the personal use or enjoyment of one or more individuals each of whom is a member of the partnership or a person related to such a member;”*

[S.54, *Income Tax Act* (Canada), underlining added for emphasis]

Tax - Listed Personal Property (“LPP”)

“**listed personal property** of a taxpayer means the taxpayer’s personal-use property that is all or any portion of, or any interest in or right to — or, for civil law, any right in or to — any

- **(a)** print, etching, drawing, painting, sculpture, or other similar work of art,
- **(b)** jewellery,
- **(c)** rare folio, rare manuscript, or rare book,
- **(d)** stamp, or
- **(e)** coin;”

[S.54, *Income Tax Act* (Canada)]

Tax - Personal Use Property (“PUP”)

- Since MTG cards do not fall under any of the LPP categories, they would be considered PUP for tax purposes
- Income Tax Act (Canada (“ITA”) generally deems the adjusted cost base (“ACB”) and the proceeds of disposition for PUP to be a minimum of \$1,000 where the ACB and proceeds are less than \$1,000
- In some cases where items are part of a set and sold to the same purchaser or related parties in more than one disposition, CRA may take position that the collection as a whole is a single PUP with a cost base and proceeds of disposition of \$1,000

Tax - Difference between LPP and PUP



Where the collectible is a “listed personal property”, major tax difference from PUP is that losses from disposition of LPP (e.g., the deemed disposition on death) can be applied against realized gains from LPP in the three (3) years prior to death and carried forward to be applied against any gains in the seven years following death.

Tax - Estate

In the 2023 STEP National Conference, CRA Roundtable, the following situation was presented to the Canada Revenue Agency ("CRA") for comment:

“An individual died with various personal possessions (like furniture, artwork of nominal value, etc.) that were personal-use properties ("PUPs") to him.

- He paid less than \$1,000 for each PUP.
- After his death, no PUP was used by a beneficiary for personal use or enjoyment (e.g., it was moved into storage and later sold to an auction house).
- Each PUP fetched less than \$1,000.
- Under s.46(1)(a) of the Income Tax Act (the "Act"), the minimum adjusted cost base ("ACB") of a PUP is \$1,000.
- More specifically, the CRA was asked if the estate could claim capital losses if those PUPs were sold by the estate.”

STEP 2023- Q1 – Personal-Use Property, found on Wolters Kluwer CCH AnswerConnect on March 12, 2024.

Tax - Estate

- CRA = “a deceased person and their estate are distinct taxpayers”
- Assuming neither the estate nor any beneficiary of estate or persons related to them were using assets for personal use and enjoyment post-death and prior to sale, property would not meet the definition of PUP
- Consequently, paragraph 70(5)(b) of the ITA would continue to apply to the estate, and its ACB of the personal possessions would be their fair market value (“FMV”) immediately before the death of the taxpayer
- If a capital loss is realized by the estate on the sale of the collectible to a person not affiliated with the estate, that loss would be deductible against the capital gains or can be carried forward

Summary of considerations

- Valuation, inventory
- Special Executor?
- Multiple Wills?
- How to Distribute (clear definition of items covered; gift jointly or tenants in common; minors)
- Safeguarding, obtain insurance
- Arrange for valuation (consider engaging experts)
- Consider application for probate
- Cost of delivering collectibles
- Tax



Thank you

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