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## MINISTRY OF FINANCE

# Land Transfer Tax Program

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The *Land Transfer Tax Act* requires that purchasers pay a tax when an interest in ownership of land is transferred in Ontario. The tax is based on the value of consideration (usually an amount of money) paid by the purchaser as sworn in an affidavit prepared by the purchaser's lawyer. Generally, the tax is paid when the land transfer is registered at one of the land registry offices operated by the Ministry of Consumer and Commercial Relations under the terms of a Memorandum of Understanding entered into with the Ministry of Finance.

The rate of tax varies from 0.5% of the value of consideration below \$55,000 up to 1.5% on amounts exceeding \$250,000. For single family residences only, the rate of tax increases to 2% on amounts exceeding \$400,000. Land transfer tax is not generally payable when a property is transferred as a gift or inheritance. In addition, land transfer tax may be waived or refunded in whole or in part for first-time home buyers who meet prescribed conditions.

For the 1997/98 fiscal year, approximately 345,000 transfers in interest in land were reported, which resulted in the collection of \$544 million in land transfer tax. For the same year, approximately 20,000 purchasers received refunds or exemptions having a total value of \$2.8 million and \$21.3 million respectively.

The Land Transfer Tax Section of the Ministry of Finance's Motor Fuels and Tobacco Tax Branch has overall responsibility for the administration of the Land Transfer Tax program. This responsibility includes reviewing and auditing selected land transfer tax transactions, including those processed by land registry offices, as well as establishing taxpayer eligibility for land transfer tax refunds or exemptions. The Land Transfer Tax Section is supported in its administration of the program by the Ministry's Collection and Tax Appeals Branches and Property Assessment Division. At the time of our audit in early 1998, a total of 19 staff were assigned to the Land Transfer Tax Section.

## OBJECTIVE AND SCOPE

The objective of our audit was to assess whether the Ministry had appropriate policies and procedures in place to ensure that the correct amount of land transfer tax was being collected, refunded or exempted in accordance with statutory requirements.

Our audit was conducted in accordance with professional standards for assurance engagements, encompassing value for money and compliance, established by the Canadian Institute of Chartered Accountants, and accordingly included such tests and other procedures as we considered necessary in the circumstances.

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The scope of our work included a review of the Ministry's Motor Fuels and Tobacco Tax (MFTT) Branch's administrative policies and procedures as well as a representative sample of audit files. We also held in-depth interviews with appropriate staff. Given the significant involvement of land registry offices in the program's delivery, we reviewed relevant documentation and interviewed staff at several of the Ministry of Consumer and Commercial Relations' land registry offices and requested information from others by means of a questionnaire. In addition, we obtained information from the Ministry's Collection and Tax Appeals Branches and Property Assessment Division.

We did not rely on the work of the Ministry's Internal Audit Services Branch because its most recent report on the Land Transfer Tax program was approximately three years old.

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### OVERALL AUDIT CONCLUSIONS

We concluded that both the Ministry and the land registry offices had adequate procedures in place to ensure that the appropriate amount of land transfer tax was collected and deposited to the Consolidated Revenue Fund and refunded or exempted based on the values of consideration and other information declared by purchasers.

However, improvements were required to ensure that declared values of consideration and other information are reasonable, and, therefore, ultimately to ensure that the appropriate amount of tax is declared and paid. In particular, we found that:

- The Ministry's expectations that land registry office personnel will peruse the land transfer tax affidavits of residence and of value of the consideration and any other relevant land transfer affidavits to determine whether they have been properly completed and whether the information and any conclusion expressed conform to the *Land Transfer Tax Act* and Regulations were not well communicated or understood.
- The Ministry did not provide land transfer tax training programs to land registry office staff, and the land transfer tax information manuals and bulletins available at land registry offices were often incomplete or out of date.

In order to assess additional taxes owing and encourage all taxpayers to voluntarily comply with taxation legislation, the Ministry regularly reviews and audits a sample of land transfer transactions. Although the Ministry's discretionary audit activity resulted in 167 assessments totalling \$6.6 million during the 1996/97 fiscal year, its effectiveness in encouraging voluntary compliance and assessing additional taxes owed was limited because:

- Affidavits for the vast majority of transactions processed by land registry offices for values of consideration less than a predetermined threshold amount and for which some tax was due were not forwarded to the MFTT Branch and, hence, were not subject to audit selection or other reviews.
- The number of audits conducted needed to be substantially increased.
- Current legislation does not have any provisions for penalties for such things as neglect, carelessness, willful default or fraud.

We also noted that:

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- The MFTT Branch did not formally monitor or analyze the overall outcomes of land transfer tax assessment objections or appeals.
  - Ministry procedures to collect \$50 million in outstanding land transfer tax receivables were untimely and based on insufficient information.
  - Applicant eligibility for land transfer tax refunds or exemptions was not verified on a timely basis. For example, eligibility for refunds issued in 1994 under the Ontario Home Ownership Savings Plan Refund Program was not assessed until May 1997.

## DETAILED AUDIT OBSERVATIONS

Approximately 95% of all land transfer tax paid is collected by the 55 land registry offices of the Ministry of Consumer and Commercial Relations when land transfers are registered. Taxes on the remainder of the transactions, consisting primarily of transfers for which the purchasers opt not to register their transactions and complex corporate transactions, are remitted directly to the Land Transfer Tax Section of the Ministry of Finance's Motor Fuels and Tobacco Tax Branch.

The taxes owing are calculated on a graduated scale based on the value of consideration paid as sworn in affidavits prepared by the purchaser's lawyer. The tax is normally charged to the purchaser by his or her solicitor as a disbursement on closing the transaction. The rates of land transfer tax vary as follows:

On amounts up to \$55,000	0.5%
On amounts over \$55,000 up to \$250,000	1.0%
On amounts exceeding \$250,000	1.5%
On amounts exceeding \$400,000 for a single-family residence	2.0%

Until May 6, 1997, a 20% rate of land transfer tax applied to the transfer of farm and recreational properties purchased by non-residents of Canada.

Taxes collected by land registry offices are deposited daily to the credit of the Consolidated Revenue Fund. The Ministry of Consumer and Commercial Relations' Finance and Administration Branch performs a monthly reconciliation of bank deposits to the land transfer tax receipts reported by land registry offices. Once reconciled, the appropriate entries are provided to the Ministry of Finance.

At the time of registering a land transfer and collecting the applicable tax, land registry offices are expected to peruse affidavits to determine whether they have been properly completed and conform to the *Land Transfer Act* and Regulations. Affidavits found to be questionable are to be photocopied and the copies forwarded to the MFTT Branch for further review and follow-up. In addition, copies of all affidavits received by land registry offices are sent to the Property Assessment Division of the Ministry of Finance. The Property Assessment Division scans these and automatically forwards all affidavits with values of consideration greater than a predetermined threshold amount or for which no taxes were paid to the MFTT Branch for further review and follow-up.

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When land transfer tax payments and attached documentation are received directly at the Ministry's MFTT Branch, the attached cheques are forwarded to the Ministry's Central Revenue and Data Processing Centre for deposit and posting to the appropriate account. The attached documentation, including affidavits, is reviewed by branch staff for possible follow-up.

## **ASSESSING INFORMATION PROVIDED**

A Memorandum of Understanding between the MFTT Branch and the Ministry of Consumer and Commercial Relations was signed in April 1990 to clarify and communicate the role and responsibilities of land registry offices in collecting land transfer tax and to support the MFTT Branch in its administration of the Land Transfer Tax program.

We reviewed the Memorandum of Understanding and noted that land registry office personnel are expected to peruse the land transfer tax affidavits to determine whether they have been properly completed and whether the information and any conclusions expressed conform to the *Land Transfer Tax Act* and Regulations. They are also expected to collect land transfer tax based upon the taxable value of the consideration at the appropriate rate. When the land registrar is of the opinion that the MFTT Branch should audit or deal further with a particular matter, the affidavit is to be referred to the MFTT Branch.

The presumption that the MFTT Branch can rely on the land registry offices' up-front reviews of affidavits, as detailed in the Memorandum of Understanding, was one of the reasons that most affidavits were not sent to the MFTT Branch.

However, we found that the Ministry's expectations of land registry office staff to review affidavits and determine whether they have been properly completed and whether the information and any conclusions expressed in them conform to the *Land Transfer Tax Act* and Regulations were not well communicated or understood. As a result, few, if any, land registry offices fulfilled these requirements, and, consequently, the Ministry was unable to rely on land registry offices for assessing the information provided on affidavits.

We interviewed and surveyed a sample of land registry office staff and found that, of those surveyed:

- 43% thought land registry offices were responsible only for ensuring that the amount of tax collected was arithmetically correct based on the value of consideration declared in the affidavit;
- half indicated that land registry offices do not systematically screen affidavits for potential future audit by the MFTT Branch; and
- half were either not aware that a Memorandum of Understanding existed between their Ministry and the Ministry of Finance, or were aware that a Memorandum of Understanding existed but were not aware of its contents.

We also understand that land registry offices have undergone significant staff reductions since the current Memorandum of Understanding was signed in April 1990. As a result, some of the responsibilities that the land registry offices accepted at that time may no longer be practical for them to undertake.

Our review of the Memorandum of Understanding also indicated that, from time to time, the MFTT Branch was to have either requested changes to existing procedures or re-enforced

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existing requirements. However, to the best of our knowledge, no such communication has occurred in recent years.

### **Recommendation**

**In light of the significant difference between the Motor Fuel and Tobacco Tax Branch's expectations of the land registry office staff, as described in the Memorandum of Understanding, and the functions they actually perform, the Ministry should clearly establish and communicate its current expectations for land registry office staff and, where necessary, revise the existing Memorandum of Understanding accordingly.**

### ***Ministry Response***

***We agree. The Memorandum of Understanding will be redrafted to clearly specify the limited compliance functions expected of land registry office staff.***

## **TRAINING AND INFORMATIONAL MATERIALS**

To facilitate land registry offices collection and processing of the correct amount of land transfer tax, the Ministry's Memorandum of Understanding with the Ministry of Consumer and Commercial Relations requires the Ministry to periodically visit land registry offices to provide guidance and training to their staff and to provide them with informational guides and bulletins, including updates, dealing with the more complicated and technical land transfer tax issues.

However, our review of materials available at land registry offices and discussions with land registry office staff revealed that:

- MFTT Branch staff have not visited any land registry offices or otherwise provided any training on land transfer tax issues for a number of years. Several long-serving land registrars could not recall any MFTT Branch staff ever visiting their land registry offices; and
- Land transfer tax user manuals and information guides and bulletins available to land registry office staff were often incomplete and had not been updated in years. We noted that some staff were using program manuals from the early 1980s which did not include amendments to legislation and policy changes that had occurred since that time.

### **Recommendation**

**The Ministry should periodically provide training to land registry office staff on current land transfer tax issues and should ensure that land registry office land transfer tax manuals and informational guides and bulletins are complete and up-to-date.**

### **Ministry Response**

***Sufficient material on the Land Transfer Tax Act changes has been provided to the Ministry of Consumer and Commercial Relations to enable land registry office staff to implement them. The Ministry will take a more pro-active role in the training of land registry office staff.***

## **ENFORCEMENT ACTIVITIES**

### **AUDIT ACTIVITIES**

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Audits of land transfer tax transactions serve two main purposes—to assess additional taxes owing where warranted and to promote voluntary compliance with tax legislation by serving notice to taxpayers that there is a reasonable chance that the information reported for determining tax payable will be followed up for accuracy and completeness.

The MFTT Branch’s audit-related activities consist of two types of activities—ongoing desk reviews of affidavits forwarded to the Branch each year and in-depth, discretionary audits of transactions selected primarily from referrals or desk reviews.

### **AUDIT WORK PERFORMED**

We found that reasons for decisions resulting from audits were generally well supported and clearly documented and that supervisory file reviews and appropriate authorizations were evident.

However, audit working paper files lacked documented audit programs and checklists which help ensure that all necessary and appropriate audit and collection procedures are completed within the required timeframes. The lack of documented audit programs, checklists and related sign-offs contributed to the following instances:

- An assessment for \$1.4 million for taxes payable was not issued because the deed for the transaction was stamped as “tax paid” and the Branch subsequently received a legal opinion which stated that its then-practice for stamping deeds would prevent it from auditing or reassessing tax once the deed had been stamped as tax paid. We were advised that, in effect, this precluded the Ministry from auditing the transaction and reassessing tax payable, if necessary, within four years from the day the tax became payable, as provided for under the *Land Transfer Tax Act*. The stamp applied has since been changed to clearly reserve the Ministry’s right to audit and, if necessary, reassess stamped transactions within the statutory period of limitation.
- A \$15,500 letter of credit serving as collateral for potential tax owed expired and could not be cashed when conditions of the undertaking were not fulfilled.

In addition, the use of audit programs or checklists would facilitate file reviews by supervisory staff and others such as staff in the Tax Appeals Branch.

## **Recommendation**

**The Motor Fuel and Tobacco Tax Branch should develop audit programs or checklists to be included in each audit file to help ensure that all necessary audit and collection procedures are completed by the appropriate time and to facilitate file reviews.**

## ***Ministry Response***

***The Ministry agrees that audit programs and checklists would be beneficial and is now implementing them. However, the fact that an assessment was not issued after the deed was stamped was in accordance with legal advice, which indicated any assessment issued would have been invalid under the statute. The Ministry has since changed the stamping procedure to clearly reserve its right to audit and assess, if necessary.***

## **AUDIT COVERAGE**

Since the objective of the audit function is not only to assess additional taxes owing for the transactions audited but also to promote voluntary compliance with tax legislation for all transfers of an interest in land, it is important that an adequate level of audit coverage be maintained.

However, we question the effectiveness of the Ministry's current audit coverage of land transfer tax transactions in maximizing the assessment of the additional taxes owed or in encouraging voluntary compliance for the following reasons:

- Affidavits for the majority of transactions processed by land registry offices for values of consideration less than the predetermined threshold amount and for which some tax is due are not required to be forwarded to the MFTT Branch and, hence, are not subject to audit selection or other review. This situation is particularly worrisome since, as discussed above, the Ministry's expectations that land registry offices conduct up-front review of affidavits were not often being fulfilled.
- The number of audits conducted needs to be substantially increased.
- The Ministry audits only a very small number of unregistered transactions, on an ad hoc basis, even though the risk of tax evasion is significant in this area.

To help ensure adequate audit coverage of all transactions, it is important that an appropriate, pro-active audit plan be prepared requiring an adequate audit coverage of all types and sizes of transactions.

## **AUDIT REVENUES**

Notwithstanding the MFTT Branch's low audit coverage of land transfer tax transactions, the additional amounts of land transfer tax assessed as a result of audits, net of \$1.9 million in assessments relating to Ontario Home Ownership Savings Plan refunds, were significant, as the table below indicates.

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	# of Assessments Issued	\$ Value of Assessments (millions)	Avg. \$ Value Per Assessment
1996/97	167	6.6	39,500
1995/96	225	3.8	16,900

Source: Ministry of Finance

These amounts do not include additional taxes agreed to and paid by taxpayers as a result of an audit but before an assessment is issued, which are not tracked by the Ministry.

The above-noted audit recoveries are particularly commendable in light of the following points:

- All of the audits were performed by seven analysts who had other duties in addition to their audit responsibilities. For example, we found that for the last two years, approximately one third of the analysts' total time was spent on non-audit-related duties such as responding to complex telephone inquiries and providing rulings.
- Audit recoveries averaged approximately \$750,000 per analyst over the last two years, which significantly exceeded the cost of the audit work performed.
- Over 50% of all audits performed resulted in an assessment of additional taxes owed.

Given the very high incidence and amounts of audit assessments issued, we believe that significant tax revenues would be gained from increasing the number of audits performed.

### Recommendation

**To further promote compliance and maximize recoveries, the Ministry should, if possible, increase the number of audits currently being conducted.**

### Ministry Response

***The Ministry believes that it has an effective audit program for land transfer tax. However, the re-engineering of the Motor Fuels and Tobacco Tax Branch tax programs envisions a new desk audit function which will include land transfer tax audits. The Ministry has already been allocated additional person-years for an increased number of land transfer tax auditors in 1998/99.***

## PENALTIES AND FINES

Beginning June 24, 1994, the *Land Transfer Tax Act* permitted, at the discretion of the Minister, the imposition of a late filing penalty equal to 5% of the tax payable when a taxpayer fails to file a land transfer tax return as required, or fails to remit with the return the amount of tax payable. The Act also allows the imposition of a penalty equal to 5% of the difference between the tax payable and the amount of tax actually paid at the time a transfer of interest in



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land was reported. Prior to June 24, 1994, similar penalty provisions existed but the penalty rate was set at 100% of the tax payable, which we understand was often considered too onerous to apply.

As a result, our review of audit files and penalty assessment records revealed that penalties were seldom assessed for transactions where the 100% penalty rate would have applied, while the current 5% penalty is routinely assessed. We also noted that the reasons for not imposing penalties at the previous 100% rate were not documented.

The *Land Transfer Tax Act* currently has a late filing penalty of 5% but does not have any provisions for additional penalties for such things as neglect, carelessness, willful default or fraud, as is the case in other tax statutes.

However, the *Land Transfer Tax Act* does provide for fines of up to 200% of the tax otherwise payable, plus an additional amount up to \$5,000, upon the conviction of anyone knowingly contravening any provision of the Act, including making or participating in false or deceptive statements in a return or in a response to a demand for information by the Minister. However, we understand that only two cases have been taken to court in the last five years in order that a fine might be imposed.

### **Recommendation**

**The Ministry should consider introducing additional penalties to deter tax evasion through neglect, carelessness, willful default or fraud. In addition, in order to encourage the timely payment of taxes when due, all applicable penalties should be routinely assessed.**

**The rationale for assessing or not assessing penalties and for not pursuing fines should be clearly documented.**

### ***Ministry Response***

***We agree that a new civil penalty for neglect, carelessness, and willful default or fraud should be introduced. Since the 5% late filing penalty is routinely assessed, we do not believe that there is any need to document this on each file. However, we will ensure that the policy for assessing the late filing penalty is published in procedures manuals. We would agree that, once the new civil penalty is introduced, the rationale for its application should be documented each time it is applied.***

## **OBJECTIONS AND APPEALS**

The *Land Transfer Tax Act* allows a person who objects to an assessment of taxes payable issued by the MFTT Branch to file an objection with the Tax Appeals Branch within 180 days of receiving the assessment or statement of disallowance. If the person is not satisfied with the subsequent decision of the Tax Appeals Branch, that person may appeal to the Ontario Court (General Division), within 90 days of receiving notice of the decision, to have the decision overturned.

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For the 1996/97 fiscal year, the Tax Appeals Branch reported that it received 351 taxpayer objections to land transfer tax assessments or statements of disallowance issued by the MFTT Branch (for the 1995/96 fiscal year, it received 406 such objections). As of March 31, 1997, 175 land transfer tax appeals were filed and awaiting hearings in the Ontario Court.

Formally monitoring and analyzing the overall outcomes of all objections and appeals would help the MFTT Branch ensure that its work was of an acceptable standard and would assist in identifying areas for potential improvement.

The MFTT Branch receives a report from the Tax Appeals Branch on each objection where it allowed an adjustment. This report outlines the reasons for the adjustment and is reviewed by the Branch to determine any required follow-up action. For example, the reasons for the adjustment may require changes to procedures, legislation, highlight the need for staff training and so forth. However, we noted the follow-up action taken by the MFTT Branch as a result of this information is not documented.

In addition to these individual reports on each adjustment, the Tax Appeals Branch provides the MFTT Branch with statistical reports summarizing total objections, numbers adjusted, dollars adjusted and so forth. These reports were not being reviewed by the MFTT Branch and, further, the statistical information provided by the Tax Appeals Branch was not always accurate, as the following points illustrates.

For the 1996/97 fiscal year, the Tax Appeals Branch reported that it overturned 10% of the assessments objected to (worth \$254,000) and confirmed the remaining 90% (worth \$2.3 million). In contrast, for the 1995/96 fiscal year, the Branch reported that it overturned 66% of the assessments objected to (worth \$16.7 million) and confirmed the remaining 34% (worth \$8.7 million). Although the MFTT Branch had not analyzed or otherwise used these statistics, we found them to be inaccurate. For example, for the statistics reported for the 1995/96 fiscal year, we noted:

- a case where an objection to a \$412,248 assessment was denied, but the amount reported as denied was \$4,122,048; and
- a case where an objection to a \$776,000 assessment was allowed, but was reported as allowed 11 times, resulting in a \$7.76 million overstatement of allowed objections.

Although the review of the individual reports on the adjustments made by the Tax Appeals Branch would provide the MFTT Branch with the required information to ensure that corrective action was taken where necessary, we believe that a review of the overall statistics of the objections and appeals would assist the MFTT Branch in identifying trends and areas requiring improvements.

### **Recommendation**

**Motor Fuel and Tobacco Tax Branch should ensure that it receives accurate information from the Tax Appeals Branch on the overall results of land transfer tax assessment objections and appeals. The Motor Fuel and Tobacco Tax Branch should then analyze that information to help determine whether its overall work is of an acceptable standard and to identify trends and areas requiring improvement.**

### **Ministry Response**

***We agree and are now reviewing the overall statistical results received from the Tax Appeals Branch. However, these statistics are only an indicator and cannot replace the more effective measure of analyzing each individual report to determine any corrective action required.***

## **ACCOUNTS RECEIVABLE**

We found that the Collections Branch could take more appropriate and timely action to ensure the prompt and complete collection of land transfer tax receivables. As at November 30, 1997, MFTT Branch records indicated that approximately 3,400 accounts totalling \$50 million of land transfer tax were outstanding, of which 95% had been outstanding for longer than 90 days. The outstanding amount was almost six times the \$8.5 million total of all assessments issued by the MFTT Branch during the 1996/97 fiscal year.

The MFTT Branch's collection responsibilities consist of sending an initial assessment notice to the taxpayer and maintaining the accounts receivable system. The Collections Branch of the Ministry's Tax Revenue Division has primary responsibility for subsequent land transfer tax collection activities.

We found that the following factors adversely affected the collection function:

- On average, one and a half years had passed between assessment issuance and any action to collect the outstanding receivable. In most cases, collection actions were limited to sending warning letters.
- The Collections Branch assigned only one collector for the 3,400 land transfer tax receivables accounts, many of which were for relatively small amounts. We understand that the Ministry wrote off approximately 1,100 of these accounts at year end.
- Accounts receivable information from MFTT Branch had to be re-entered manually at the Collections Branch, which contributed to unreliable and inaccurate accounts receivable information. For example, accounts that had been paid or otherwise resolved in MFTT Branch records were still listed as outstanding by the Collections Branch.

In addition, we noted that:

- Some accounts receivable information maintained by MFTT Branch was inaccurate. For example, accounts totalling \$4.3 million resolved one to two years earlier were still listed as outstanding.
- The MFTT Branch manually updated interest charges on large accounts receivable on a regular basis, while interest charges on small accounts are only updated when there is activity in the account.

We also noted that neither the Collections Branch nor the MFTT Branch had information summarizing collection results. For example, basic information such as collection rates and total amounts collected annually were not compiled.

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### **Recommendation**

To increase the effectiveness of collecting accounts receivable, the Ministry should ensure that accounts receivable information is complete, accurate and up-to-date and that appropriate collection action is taken on a timely basis.

### **Ministry Response**

*Over 90% of the value of receivables is secured by warrant. Typically real estate is the main asset of the debtor. The Ministry does not normally force power of sale due to the high costs involved, preferring to wait until the property is sold or refinanced before requiring payment.*

*When debts of individuals are found to be uncollectible, they will be submitted to Revenue Canada for offset against any future personal income tax refunds which may become due.*

*Additional collection staff have been allocated to land transfer tax accounts to ensure collection action is taken in a timely fashion.*

*As part of its re-engineering exercise, the Motor Fuel and Tobacco Tax Branch will develop a new accounting system that will provide the required accounts receivable functions including regular updating of interest, recording of collection activity and performance reporting.*

*In the meantime, the Motor Fuel and Tobacco Tax Branch has instituted a dunning letter if the debt remains unpaid for 45 days. The account will then be referred to the Collections Branch for further action if the account remains unpaid. This procedure should significantly reduce the number of accounts requiring the attention of a collection officer.*

## **REFUNDS AND EXEMPTIONS**

First time purchasers of single family homes may be eligible for land transfer tax refunds or exemptions under one of the two programs described below. Tax refunds or exemptions under these programs are processed by the Ministry based on sworn information provided by the applicant. The Ministry normally establishes eligibility for these refunds or exemptions at a later date, after information corroborating applicant claims becomes available. Assessments for any taxes owing are then issued as warranted.

- Ontario Home Ownership Savings Plan (OHOSP) Refund Program

To qualify for a land transfer tax refund under this program an applicant must:

- have opened an OHOSP prior to January 1, 1994;
- be a first-time home purchaser who has never owned a home anywhere in the world; and
- occupy the home purchased.

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Also, the applicant or his or her spouse must qualify to receive an OHOSP tax credit in the year they purchase their home or have actually received a tax credit in either of the two previous years. Eligibility for the tax credit is based on net income of no more than \$40,000 for a single individual and a combined net income of \$80,000 for a couple.

The amount of the refund is equal to the tax paid up to a maximum of \$1,225 for a home valued at \$150,000. The refund diminishes to \$0 for a home valued at over \$200,000.

- **Newly Constructed Homes Refund Program**

To qualify for a land transfer tax exemption under this program, an applicant must:

- have purchased a newly constructed home between May 7, 1996 and March 31, 1999;
- occupy the home as a principal residence by December 31, 1999; and
- be a first-time home purchaser who has never owned a home anywhere in the world.

The amount of the exemption is equal to the tax paid up to a maximum of \$1,725 for a home valued at \$200,000. The exemption is granted at the time of registration, based on an affidavit completed by the purchaser.

During the 1996/97 fiscal year, approximately 7,400 OHOSP refunds totalling \$5.6 million were approved and paid. During the same period, approximately 10,700 Newly Constructed Home Refund Program land transfer tax exemptions totalling \$13.1 million were granted.

Our review of a sample of land transfer tax refunds and exemptions found that they were correctly processed based on sworn information provided by the applicants. However, we noted that determination of income eligibility under the OHOSP Refund Program was not timely. For example, the income of applicants who had been issued refunds in calendar year 1994 were not confirmed with Revenue Canada until May 1997. Such lengthy delays are likely to reduce the amount of ineligible refunds owing to the Ministry that are ultimately repaid.

Notwithstanding these concerns, during the 1996/97 fiscal year, the Ministry issued approximately 2,100 assessments totalling \$1.9 million for recovery of land transfer tax refunds granted in prior years.

### **Recommendation**

**To verify eligibility for land transfer tax refunds and exemptions on a more timely basis and to more effectively recover land transfer tax amounts wrongly refunded or exempted, the Ministry should make arrangements with Revenue Canada to obtain income information on applicants as soon as it is available.**

### **Ministry Response**

***Effective for the 1996 taxation year onward, the Ministry of Finance has secured an arrangement to receive an early version of the applicable tapes by September of the following calendar year, that is, 1996 information is received in September 1997, and so on. This was not available for years prior to 1996.***

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# OTHER MATTERS

## *PERFORMANCE REPORTING*

Because of the limited resources allocated to the administration of the Land Transfer Tax program, the Ministry relies to a significant extent on voluntary compliance by the principals involved in land transfers.

To determine whether this reliance is warranted, the Ministry needs to develop compliance indicators to help estimate the extent of voluntary compliance and extent of taxes owing as a result of tax evasion.

The MFTT Branch has developed and is monitoring operational performance indicators which track various aspects of branch activities. For example, the Branch produces regular monthly reports which indicate such information as the number of audits completed and the number and dollar value of assessments issued as a result.

However, with the exception of cooperative housing transactions, the Branch has not otherwise attempted to develop quantifiable performance measures to allow it to assess and report on the extent of voluntary compliance by taxpayers or the nature and extent of their tax evasion or avoidance. Although the development of such indicators is at best a difficult task, we believe there are some indicators which over time would permit the Branch to assess the nature and extent of taxpayer non-compliance and the impact of the Branch's activities. For example, the Branch could:

- determine or estimate the type and number of all taxable transactions by particular risk factors, for example, the number of non-registered taxable transactions; and
- estimate the nature and extent of non-compliance for particular types of transactions based on the results of its audit activities.

## *BUSINESS PROCESS RE-ENGINEERING*

In July 1996, the MFTT Branch established a business process re-engineering team and published terms of reference for re-engineering the business processes of the Branch, including those of the Land Transfer Tax Section. The objectives of the project included: using technology to achieve cost savings, increase revenues and reduce backlogs; integrating processes for the different types of taxes administered by the Branch to take advantage of possible economies of scale; and improving management information, workflow and record management systems.

The re-engineering project was to be completed in six phases, with the detailed business design and prototyping phase to be completed by September 1997.

Key deficiencies in land transfer tax business processes identified by the re-engineering team included:

- having multiple stand-alone computer systems which require basic account information to be keyed in more than once and which limit access to information by multiple users;
- a lack of systems integration, which makes tracking necessary management information difficult;

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- the frequent use of outdated information by land transfer tax staff and others because legislation and tax advisory rulings were not always updated and easily accessible; and
  - having land transfer tax staff distracted from their regular duties by handling a large volume of telephone inquires.

At the time of our audit in early 1998, we noted that the detailed business design and prototyping phase had not been completed. As a result, many of the deficiencies identified by the re-engineering team remained in place.

In addition, the ministry business process re-engineering efforts were expected to benefit from the implementation of the TERANET system, a new, computerized land registration information services system being developed by the Province of Ontario and a consortium of private sector partners. Although the TERANET system was originally scheduled to be tested in a land registry office in early 1998, we understand that testing of this system has been delayed at least until 1999.

Around the time that our field work for the audit was completed in January 1998, MFTT Branch began to receive Ontario property assessment data on compact disc (CD OASYS) from the Property Assessment Division. Prior to this, MFTT Branch had only on-line viewing access to this information. CD OASYS could be a very useful tool to MFTT Branch for audit planning purposes as it can be used to extract and summarize data such as the total number of affidavits registered by dollar value of consideration declared and by transaction type. Staff members from MFTT Branch were just starting to familiarize themselves with the software and its capabilities at the end of our audit.

We will follow up on the MFTT Branch's business process re-engineering initiatives to address the above-noted deficiencies in due course.