

January 2019

2018 was a stable, productive year at Ansell & Anderson. We are thankful for the ongoing confidence of our clients.

We are pleased to send you this annual summary of the most significant changes to the federal and New Hampshire laws which affect estate planning and estate and trust administration. We hope that you find this information helpful.

As a result of the Tax Cuts and Jobs Act, passed in late 2017, the exemption from gift, estate and generation skipping transfer tax was doubled from \$5,000,000 to \$10,000,000. The inflation adjusted exemption is \$11,400,000 per person for 2019, \$22,800,000 per couple. Like many other provisions of the Tax Cuts and Jobs Act, the gift, estate and generation skipping transfer tax exemption is scheduled to return to \$5,000,000, as adjusted for inflation, in 2026. Portability provisions, made permanent in 2013, are unchanged and allow spouses to share their gift and estate tax exemptions, though not their generation skipping transfer tax exemption. The 2019 annual gift tax exclusion remains the same at \$15,000 and the amount that can be transferred to a non-U.S. citizen spouse increased to \$155,000.

This temporary increase in the transfer tax exemption amount left concerns over the possibility of an estate tax claw back for gifts made during the period of increased exemption. The concern was that gifts made during the period of increased exemption would later be taxed when an individual died after the exemption had reverted to a lower amount. The Internal Revenue Service has now addressed these concerns with Proposed Reg. §20.2010-1. The proposed regulations indicate that there will be no claw back imposed on gifts made during the period of time with the increased exemption amount. Essentially, the calculation of tax will be based on the larger of the exemption in place at the time an individual dies or the exemption in place at the time a gift is made. Check out our November blog article for more details. For clients who have been considering making lifetime gifts in excess of \$5,000,000, the proposed regulations are good news.

Welcome changes to the law on ABLE accounts were implemented in 2018. ABLE accounts are tax-advantaged investment accounts for special needs individuals that do not disqualify the beneficiary from eligibility for government benefits provided certain requirements are met. In 2018, the contribution limit increased from \$14,000 to \$15,000. In addition, ABLE account owners who are employed and choose to contribute to their own ABLE account can contribute up to an additional \$12,060, provided that the account owner is not covered by the employer's retirement savings plan. ABLE account owners who contribute to their own ABLE account may now also be eligible to take advantage of the federal Retirement Savings Contributions Tax Credit (otherwise known as the Saver's Credit). The Saver's Credit is a nonrefundable tax credit that gives a special tax break to low and

moderate income taxpayers who are saving for retirement. It had previously only been available for contributions to more traditional retirement plans like 401(k)s and IRAs, but is now available for contributions to ABLE accounts. Finally, it is now possible to roll funds from a 529 college savings account to an ABLE account without incurring a penalty or tax on the transfer. These rollovers are limited by the annual contribution limits and the beneficiary must be the same on both the 529 college savings account and the ABLE account (or the beneficiary of one of the accounts must be a family member of the 529 college savings account beneficiary as defined in the law).

On the state level, one issue that gained significant attention in the New Hampshire trusts and estates community was New Hampshire's pretermitted heir statute and its application to trusts. The pretermitted heir statute provides that if a child or the surviving descendants of a deceased child are not named or referred to in an individual's will, the child or the child's surviving descendants are entitled to inherit the same amount as if the individual died without a will. The pretermitted heir statute protects an individual's descendants from being inadvertently disinherited or omitted in a will. *In re Teresa Craig Living Trust*, 2017-0532 addressed the question of whether the New Hampshire pretermitted heir statute applies to trusts. The argument presented was that the pretermitted heir statute applies to trusts through a section of the New Hampshire Trust Code that states that the statutory rules of construction that apply to wills also apply to trusts. Teresa E. Craig ("Teresa") died on July 10, 2016. She had two children, Michael and Sebastian. Michael predeceased Teresa in 2007, leaving two children (Teresa's grandchildren). Following Michael's death, Teresa amended her revocable trust leaving everything to Sebastian and his descendants. She also executed a new pour-over will leaving everything to her revocable trust. Neither the will nor the trust named Michael or his children. While the will included standard language indicating that Teresa intentionally made no provision for any child or the issue of any child in her will, the trust did not include similar language. Michael's two children brought the case seeking a determination that they were pretermitted heirs under the trust, arguing that the pretermitted heir statute applies to trusts as a rule of construction, under the New Hampshire Trust Code. The New Hampshire Supreme Court held that the pretermitted heir statute was a rule of law not a rule of construction and therefore, it did not apply to trusts. In addition, while the case was pending before the Supreme Court, the New Hampshire Trust Code was amended to provide specifically that the pretermitted heir statute is not a rule of construction and does not apply to trusts. The significance of this decision and new law is that they preserve what most practitioners believed was the law in New Hampshire and prevent unintended consequences for trusts not prepared with the pretermitted heir statute in mind.

You may recall our coverage of the high profile New Hampshire Supreme Court decision in *David Hodges, Jr. et al v. Alan Johnson et al* 2016-0130 in last year's annual letter. In the *Hodges* case, the trustees decanted assets from certain irrevocable trusts into new irrevocable trusts and in the process eliminated certain

discretionary beneficiaries of the first trust. The decantings were authorized under the terms of the trust and under the New Hampshire decanting statute in effect at the time of the decantings. The trustees argued that the decantings were necessary to preserve the business purpose of the original trust, which held interests in the closely-held business of the grantor. The probate court judge held, and the Supreme Court affirmed, that the decantings were void because they were “accomplished without consideration for the interests of the [removed] beneficiaries.” The Court stated that the authority to decant “does not abrogate the trustee’s duty under [the statute] to administer, invest and manage the trust and distribute the trust property in good faith, in accordance with its terms and purposes and the interests of the beneficiaries, and in accordance with this chapter.” Last year an appeal was pending before the Supreme Court when we wrote to you. This year we can report that the Supreme Court upheld the decision on appeal.

As always, it is important that your estate pass to your intended beneficiaries, whether by will, trust, beneficiary designation or joint tenancy. We encourage each of you to review your estate plan every year. This should include a review of your current documents, ownership of assets and accounts, and confirmation of beneficiary designations. You should consider whether any changes are needed at this time.

In June, Alyssa was married to John Garrigan and changed her name to Alyssa Garrigan. Alyssa and John are expecting their first child in April. Alyssa anticipates being on maternity leave beginning sometime in late March through mid-June. We appreciate your patience while Alyssa is out on maternity leave. Christine and our staff will work to serve all of our clients in Alyssa's absence.

Our associate attorney, Wes Davis, has decided to transition to another firm. We enjoyed having him with us and we wish him the best. We plan on bringing an additional attorney into the firm in the near future to help support our practice and in the meantime remain committed to producing excellent work for our clients.

Our staff works diligently to provide our clients with superior service. We are thankful for the assistance of our paralegals, Jennifer Pierce, Robin Davison and Victoria Farren and for our receptionist, Michele Folsom. We could not serve our clients without their efforts, which we greatly appreciate.

Christine was again honored to be counted among the best trust and estate attorneys in New Hampshire and New England. Christine is thankful for all of our clients and peers who have helped her to achieve these distinctions.

We appreciate your loyalty and referrals of other family members and friends for our services. Best wishes for a healthy and prosperous 2019.

