

January 2017

We have enjoyed another stable and productive year at Ansell & Anderson. Once again, 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.

In 2016, there were no major changes to the federal gift, estate and generation skipping transfer tax laws. The 2017 gift, estate and generation skipping transfer tax exemption inflation adjusted amount is \$5,490,000 (\$10,980,000 for a married couple). Portability provisions, made permanent in 2013, are unchanged and allow spouses to share their gift and estate tax exemptions. The 2017 annual gift tax exclusion remains \$14,000 and the amount that can be transferred to a non-U.S. citizen spouse increased to \$149,000.

As we look forward, it appears that we may see significant changes to federal tax laws in 2017. Reforms to both the individual tax laws and the business tax laws are likely and may include repealing the estate tax. President Donald Trump has indicated that tax reform is one of his top priorities and with Republicans controlling both the House and the Senate as well as the White House, the prospect of a major reform of the tax code has increased. This would be the first major reform of the tax code since 1986.

We are closely watching for changes on the horizon and will continue to monitor the situation. As no changes are certain, and it will take time for any legislation to be finalized, we are not generally recommending dismantling all tax planning incorporated in your estate plan at this time. If a repeal of the estate tax does come, careful consideration should be given to each plan to determine if changes should be made. It is important to remember that no changes to the tax code are ever really permanent. As we wait to see what changes this year brings, we do encourage you to review your estate plan to determine if a repeal of the estate tax will cause unintended consequence to your plan. For example, if your trust provides that the estate tax exempt amount is to be held in trust for the benefit of your (second) spouse and children (from the first marriage), with the balance passing to your children, then, in this example, if the estate tax is eliminated, a trust with these provisions would pass entirely to your children. If, in the same example, the balance over the estate tax exempt amount passes to your spouse, then the entire trust would pass to your spouse, in the event of estate tax repeal. If you have questions, please contact us. You may also want to consider waiting on purely tax motivated gifts.

On the state level, the legislature created two new exceptions from the real estate transfer tax. For years, clients have paid the \$40 minimum real estate transfer tax to transfer real estate into a revocable trust. Today, transfers into a revocable trust for estate planning purposes are exempt from real estate transfer tax.

In the past, we have also cautioned clients not to transfer their property out of their revocable trusts in connection with a refinancing, for fear of incurring the full real estate transfer tax. These types of transfers are now exempt from payment of the transfer tax. Of course after the refinancing is completed, we recommend that clients convey the property back into the revocable trust.

Additionally, the new transfer tax legislation provides that there would be no real estate transfer tax imposed in the context of a client transferring property into an LLC as long as the equitable ownership of the property before the transfer is the same as after the transfer. For many years, clients have refrained from transferring rental or commercial properties into an LLC because of the imposition of the full real estate transfer tax.

In last year's annual letter, we advised you of the elimination of New Hampshire's statute providing for a joint bank account to be payable to the surviving joint owner on the first joint owner's death. As we indicated last year, this change likely had little effect, as joint account holder agreements still addressed what happened to joint accounts on the death of a joint account holder. This issue has now been completely resolved, as during the 2016 legislative session, the New Hampshire statute covering joint accounts was reenacted.

The New Hampshire Supreme Court recently issued an opinion, which has implications for irrevocable trusts created for Medicaid planning. In order for assets in an irrevocable trust to not be countable for Medicaid eligibility purposes, there must be "no circumstances under which payment from the trust could be made 'for the benefit' of the applicant." In *Petition of Estate of Thea Braiterman*, the Supreme Court determined that Ms. Braiterman's trust failed to meet this requirement. It was not enough that she was not a beneficiary entitled to receive principal. The Court took issue with several provisions, which gave Ms. Braiterman power over the trust, including the ability to appoint additional and successor trustees and appoint the assets in the trust to the beneficiaries during her lifetime and at her death. This case highlights the potential scrutiny Medicaid irrevocable trusts face. If you set up an irrevocable trust for this purpose, you may want to have it reviewed to determine if you retained potentially problematic rights over the trust.

Progress has also been made for ABLE savings account programs. The ABLE Act was passed in December of 2014, allowing tax-favored savings accounts for individuals who are blind or disabled. Assets in an ABLE account will not disqualify the beneficiary from eligibility for government benefits, provided that certain requirements are met. In 2016, legislation was enacted establishing the New Hampshire ABLE savings account program. The bill made implementation of the program contingent on several factors. As a result, the New Hampshire program is still not up and running; however, New Hampshire residents can take advantage of several states that have active programs. Just like with 529 college saving accounts, an individual can choose to establish an account in any state with a national program. Six states have launched programs that are open nationally: Michigan, Nebraska, Ohio, Oregon, Tennessee and Virginia.

You can find additional information about ABLE accounts as well as many of the other topics discussed in this letter on our blog, found at: www.ansellpa.com.

A recent New Hampshire Ethics Advisory Opinion discussed a lawyer's duty to safeguard a client's property through proper ownership, retention and disposal of client files. Many years ago, we adopted a file destruction policy for closed files. We take this opportunity to remind you of our file destruction policy for closed files. The file destruction policy does not apply to estate planning files for living individuals, including the original estate planning documents that we are holding in our vault for safekeeping. Our policy applies only to former client files that have been inactive for at least 10 years. By example, when clients move to another state and retain a new attorney, we send them their original estate planning documents. At that point, they become former clients. In such cases, after the file has been inactive for 10 years, the file will be destroyed. In conformity with our obligation to keep your affairs confidential, these files are shredded. We encourage each of you to review your files from time to time and safely discard obsolete records.

As always, it is important that your estate will 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, including a review of your current documents, ownership of assets and accounts, and confirmation of beneficiary designations, and to consider whether changes are needed at this time.

Our staff works incredibly hard to provide our clients with excellent service. We continue to be blessed with Jennifer Pierce, our estate planning paralegal, Melissa Myrdek, our probate paralegal, Robin Davison, our legal assistant, and Ellen Boudreau, our bookkeeper. We appreciate their efforts. We were sad to lose Julie Hart, our wonderful receptionist. We wish her luck in her new pursuits. We are pleased to be joined by our new receptionist, Elizabeth Gyure.

Christine was again honored to be counted among the best trust and estate attorneys in New Hampshire and New England. Alyssa was honored to be designated as a Rising Star by Super Lawyers. This designation is limited to no more than 2.5 percent of lawyers in the state who are either under 40 or in practice for 10 years or less. We are thankful for all of our clients and peers who have helped us 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 2017.

