Ansell & Anderson P.A.
TRUST AND ESTATE LAW

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January 2016

Last year was a stable, productive year for Ansell & Anderson and for that we are thankful. There were relatively minor changes to the laws that affect our practice area, both state and federal.

On December 18, 2015, the President signed the Protecting America from Tax Hikes Act of 2015 (the PATH Act). Among the formerly temporary tax provisions that were made permanent is the ability of individuals over the age of 70½ to make charitable contributions of up to $100,000 per year directly from their IRAs without having to include the distribution from the IRA as taxable income.

There were no major changes to the federal gift, estate and generation skipping transfer tax laws. The 2016 gift, estate and generation skipping transfer tax exemption inflation adjusted amount is $5,450,000 ($10,900,000 for a married couple). Portability provisions, made permanent in 2013, are unchanged and allow spouses to share their gift and estate tax exemptions. The 2016 annual gift tax exclusion remains $14,000 and the amount that can be transferred to a non-U.S. citizen spouse increased to $148,000 for 2016.

Over the past several years, we have discussed the concept of portability with many of you. The IRS has finally finalized its regulations regarding the process for electing portability of a deceased spouse's unused estate tax exemption and provided additional guidance on the proper preparation of an estate tax return filed solely to elect portability. You can find additional information about the process of electing portability in Christine's December 2015 blog post on our website: www.ansellpa.com.

Executors of taxable estates (those estates for which an estate tax return is required to be filed, currently for estates valued at over $5,450,000) are now required to report to heirs and the IRS the tax basis of inherited assets. This new requirement applies to estate tax returns filed after July 31, 2015. Assets that are inherited receive an adjustment to their tax basis to the fair market value of the asset as of the decedent's date of death. An asset's tax basis is used to calculate taxable gain on the sale of the asset. The tax basis adjustment that occurs when an asset is inherited is often an increase which results in lower capital gain on the future sale of the inherited asset. For this reason, the adjustment in the basis of inherited assets is typically referred to as the "step-up in basis." The new requirement is intended to prevent heirs from using an inflated tax basis when the assets are eventually sold, further reducing the capital gain.

If you have ever served as the executor of an estate where a federal estate tax return is required, you know that getting a closing letter from the IRS is the goal. The closing letter is the equivalent of the IRS's acceptance of the estate tax return, issued at

the close of an audit, or issued when the IRS opts not to audit the estate tax return. For estate tax returns filed after May 31, 2015, if you want an estate tax closing letter, you must specifically request one. The IRS will no longer routinely issue estate tax return closing letters.

On the state level, Senate Bill 188 was an extensive piece of legislation, which made major revisions to New Hampshire's laws relating to banks and credit unions as well as some additional revisions to New Hampshire's trust laws. Most of the revisions to the trust laws were technical tweaks to New Hampshire's Trust Code, which is among the most progressive in the country. The Bill clarifies the primacy of settlor (the trust creator) intent in construing or modifying the terms of a trust, stating that "the settlor's intent shall be sovereign." New Hampshire trust law is somewhat unusual in its emphasis on carrying out the intent of the creator of the trust, rather than focusing on administering a trust primarily for the benefit of the beneficiaries. This year's change further tips the balance in favor of the intent of the trust creator, in the event that there is a conflict between administering a trust in a manner that is in the best interests of the beneficiary or following the trust creator's intent.

Directly overriding the holding in a 2014 New Hampshire Supreme Court decision, *In Re Theresa Houlahan Trust*, Senate Bill 188 establishes additional limitations on the time period for bringing a claim against a Trustee, Trust Advisor or Trust Protector. These new limitations can provide comfort to those serving as Trustees, Trust Advisors and Trust Protectors that their actions will not be subject to challenge by the beneficiaries indefinitely. The new law sets an outside three year limit for bringing an action against a Trustee, Trust Advisor or Trust Protector following the resignation, removal or death of the fiduciary, the termination of a beneficiary's interest or the termination of the trust.

Senate Bill 188 also eliminated the New Hampshire statute that provided that a joint bank account would be payable to the surviving joint owner on the first joint owner's death. While some have raised concerns that this change in the law will result in joint accounts passing through probate on the first account owner's death, virtually all joint accounts are subject to an account holder's agreement with the bank signed by the joint account owners at the time the account is opened. The terms of the account holder's agreement typically provide that the account will pass to the surviving joint tenant upon the first account holder's death. Accordingly, while this change in the law is noteworthy, joint account holder agreements will address what happens to joint accounts on the first account owner's death.

On January 1, 2016 the New Hampshire homestead exemption, which protects a portion of your home's equity from certain creditors, increased to $120,000 per person or $240,000 per couple from $100,000 per person or $200,000 per couple.

A New Hampshire Ethics Committee Advisory Opinion specifically addressed joint representation of clients in estate planning. The Opinion discusses what an attorney must do when entering into joint representation of estate planning clients, including getting

the informed consent from the couple that information will be shared between them. If there are divergent goals that lead to a conflict, the attorney cannot continue to represent both clients and must withdraw. For many years, we have used engagement letters that address the issues outlined in the Advisory Opinion with couples that we represent. It is good to know that we are, and have been, using the best practices with respect to joint representation of clients in the estate planning context.

We encourage each of you to review your estate plan every year and to consider whether changes are needed. This process should include a review of your current documents, ownership of assets and accounts, and confirmation of beneficiary designations.

In 2015, we hired Melissa Shamaly-Criasia as our new probate paralegal and we added Robin Davison as a legal assistant and secretary supporting our estate planning practice. We continue to be blessed with Jennifer Pierce as our estate planning paralegal, Julie Hart as our receptionist and Ellen Boudreau as our bookkeeper. Our staff works incredibly hard to provide our clients with excellent service. We appreciate their efforts.

Christine was honored to be counted among the best trust and estate attorneys in New Hampshire and New England again this year. This year, Christine received the special designation of "Lawyer of the Year" in the Elder Law category. Last year, Christine received the "Lawyer of the Year" award in the Trusts and Estates category. Christine is thankful for all of our clients and peers who have helped her to achieve these distinctions.

We appreciate your referrals of other family members and friends for our services. Best wishes for a healthy and prosperous 2016.