

January 2016

Re: 2016 Tax Update

Dear Clients and Colleagues:

This letter is an update on the most recent estate and gift tax developments and serves as a follow-up to our previous annual tax updates, which can be accessed by clicking the “Family Wealth and Tax Planning” link on our firm website (www.hopkinscarley.com), and clicking the link titled “Related Articles” on the right side of the screen.

Estate, Gift and Generation-Skipping Transfer Taxes

The American Taxpayer Relief Act of 2012 (the “Act”) made permanent (1) the reunification of the estate and gift tax regimes, (2) the \$5 million estate, gift and generation-skipping transfer (“GST”) tax exemptions, as increased for inflation, and (3) portability.

For 2016, the tax exemption inflation increases are as follows:

- \$5,450,000 federal estate tax and lifetime gift tax exemption (increased from \$5,430,000 in 2015) and a 40% top federal estate and gift tax rate
- \$5,450,000 GST tax exemption (increased from \$5,430,000 in 2015) and a 40% top federal GST tax rate
- \$14,000 annual gift tax exclusion (no increase from 2015)
- \$148,000 annual exclusion for gifts to a noncitizen spouse (increased from \$147,000 in 2015)

These increased exemptions create opportunities to make larger lifetime gifts, to leverage more assets through a variety of estate planning techniques and to shift income producing assets to individuals such as children or grandchildren, who may be in lower income tax brackets and/or reside in states with a low income tax rate or no state income tax.

As a reminder, unlimited tax-free gifts can be made for medical and educational expenses, but only if the payment is made directly to the medical provider or educational institution.

Portability

With portability, a deceased spouse's unused estate and gift tax exemption can be transferred to and used by the surviving spouse. The election can only be made on the deceased spouse's U.S. estate tax return. Portability is intended to provide a simplified method for utilizing both spouses' exemptions, but there are complex rules that must be followed to qualify for portability.

Over the summer, the IRS released final regulations on the requirements for electing portability. These regulations attempt to provide additional clarity as to the timing and information that is required to properly make the election. In addition, for those individuals with non-U.S. citizen spouses or spouses about to become U.S. citizens, the regulations provide added guidance. However, please keep in mind that, even with the final regulations, these rules still remain quite complex.

2015 Gift Tax Returns

Gift tax returns for gifts made in 2015 are due on April 15, 2016. You can extend the due date to October 17, 2016, with a timely filed request for an automatic extension to file your 2015 income tax return, which also extends the time to file your gift tax return. However, such extension does not extend the time to pay any such taxes due.

Federal Legislative Updates

Surface Transportation and Veterans Health Care Choice Improvement Act of 2015

This legislation signed by President Obama on July 31, 2015, contains three notable tax-related provisions.

1. Changes to Filing Dates for Entities. The first provision changes the filing due date and extension periods for certain tax and information returns. Most notably, this change affects partnerships and corporations that have effectively swapped filing due dates. For partnership returns, the new due date is the 15th day of the third month following the close of the partnership's fiscal year (*e.g.*, March 15 for calendar year partnerships). Previously, partnerships were required to file on the 15th day of the fourth month following the close of the partnership's fiscal year. For corporations, the new due date is the 15th day of the fourth month following the close of the corporation's fiscal year (*e.g.*, April 15 for calendar year corporations). Previously, corporations were required to file on the 15th day of the third month following the close of the corporation's fiscal year. This provision does not change the filing date for S corporations, which remains the 15th day of the third month following the close of the S corporation's fiscal year. For those who are subject to the Foreign Bank and Financial Accounts filing requirement (*i.e.*, FinCEN Report 114), this filing date will change from June 30 to April 15. A new 6-month

extension is provided. Please note that these changes do not go into effect until next tax year (*i.e.*, Tax Year 2016).

2. New Tax Basis Reporting Requirements. The second provision requires that the basis of property acquired from a decedent be consistent with the basis reported on the estate tax return. Failure to report consistently between an estate tax return and a beneficiary's income tax return could result in penalties. In addition, the executor is required to disclose the estate tax basis by furnishing a statement to the IRS and to each person acquiring an interest in property included in the decedent's gross estate, identifying the value of each property interest as reported on the estate tax return. These statements must be furnished by the earlier of 30 days after the due date for the estate tax return (including extensions), or 30 days after the return was actually filed. These rules are already effective for estate tax returns filed after July 31, 2015. However, in a notice released late August, the IRS announced that it has deferred this reporting obligation until February 29, 2016 due to the fact that it has yet to make available the requisite reporting form.

3. New Statute of Limitation for Income Tax Understatement. The third provision applies a six-year statute of limitations in circumstances where an overstatement of basis results in a substantial understatement of income tax (*e.g.*, in excess of 25%). This provision applies to tax returns filed on or after July 31, 2015 as well as to any return for which the normal three-year statute of limitations period has not yet closed.

Protecting Americans from Tax Hikes Act of 2015 (The "PATH Act")

This legislation signed by President Obama on December 18, 2015, extends or makes permanent certain tax relief provisions that expired at the end of 2014. Two notable tax-related provisions in the PATH Act are:

1. Permanent IRA Charitable Rollover Provision. The PATH Act made permanent the "IRA Charitable Rollover" provision. First enacted in 2006, the "IRA Charitable Rollover" provision allows individuals who have reached age 70½ to donate directly from their Individual Retirement Account (IRA) to charitable organizations in amounts up to \$100,000 (\$200,000 for married couples filing jointly) income tax-free if certain requirements are met. Donating directly from the IRA to the charity avoids inclusion of the withdrawn amount in the donor's income, but does not allow for an offsetting charitable deduction (which often is not equal to the amount taken into income). The direct donation does, however, qualify towards the individual's annual "Required Minimum Distribution". Please note that this provision applies retroactively to any 2015 IRA gifts that qualify for such treatment.

2. Permanent Qualified Small Business Stock Provision. The PATH Act made permanent the capital gains tax exclusion applicable to the sale of Qualified Small Business Stock held for more than 5 years. The new law provides that Qualified Small Business Stock acquired dating back to September 28, 2010 and purchased moving forward shall be eligible to

receive a 100% exclusion on either the first \$10 million of gain or 10 times the taxpayer's basis in the stock, whichever is greater. Qualified Small Business Stock is generally defined as stock of a domestic C corporation whose gross assets did not exceed \$50 million as determined at the time it issued such stock. The stock must be acquired at its original issue. In addition, over the five year holding period requirement, the C corporation must have operated as an active business. There are many nuances to this rule, so please exercise care when evaluating whether your stock is in fact eligible for the preferential treatment provided by this provision.

California Legislative Updates

Revocable Transfer on Death Deed

Effective as of January 1, 2016, Assembly Bill 139 establishes a Revocable Transfer on Death Deed. This new form of deed permits an individual to transfer property on his or her death without a probate proceeding. The bill includes a sunset provision of January 1, 2021. Although in theory such forms may sound simple and straightforward, these deeds carry the potential to generate serious issues for your estate planning.

End of Life Treatment

Assembly Bill 15 authorizes an adult who meets certain qualifications to request life-ending treatment. Such a person must be suffering from a terminal disease as confirmed by both his or her attending physician and a consulting physician. This bill requires certain forms and procedures for the request along with specific documentation by the attending physician and includes a sunset provision of January 1, 2026.

How do these changes affect your existing Hopkins & Carley estate planning documents?

Our estate planning documents are drafted to be flexible and, in general, their overall structure remains unaffected by the increased exemption amounts. There may, however, be instances where you should consider updating your documents to reflect changes made by the Act. For example, by utilizing the portability rules, many married couples can simplify the administration of their revocable living trust after the first spouse's death. Also, estate plans that are designed to allocate or distribute amounts based on the available estate tax exemption should be reviewed to ensure that the new, higher exemption levels are consistent with the original objectives of the plan.

We typically recommend a review of your estate plan with one of our attorneys every two or three years. Reasons that you may need to modify your plan include:

- An increase or decrease in the size of your estate;
- Acquisitions of major assets, including life insurance;

- Change in your marital status or that of your children (marriage, divorce or separation);
- Additions to your family through birth, adoption or marriage; or
- New thoughts about who should administer funds for your heirs, or how and when your heirs should receive your estate.

Other Hopkins & Carley News

Family Wealth and Tax Planning Group

Our Family Wealth and Tax Planning (FWTP) Group has added four new attorneys and three new paralegals to make us the largest trusts & estates practice in Northern California:

Dan Cooperider serves as special counsel in the FWTP Group, based in our Palo Alto office. Prior to joining Hopkins & Carley, Dan was with Jorgenson, Siegel, McClure & Flegel, LLP in Menlo Park and Gray Cary Ware & Freidenrich LLP in Palo Alto, as well as with the Wells Fargo Private Bank.

W. Martin Behn is an associate in the FWTP Group, based in our Palo Alto office. Prior to joining Hopkins & Carley, Martin was with Sinsheimer Juhnke McIvor & Stroh, LLP in San Luis Obispo and Grant & Gordon, LLP in Palo Alto.

Chad Jaben is an associate in the FWTP Group, based in our San Jose office. Prior to joining Hopkins & Carley, Chad was with PricewaterhouseCoopers LLP in San Francisco.

Jaclyn Smith is an associate in the FWTP Group, based in our Palo Alto office. Prior to joining Hopkins & Carley, Jaclyn was with McDowell Cotter, APC in San Mateo.

Our new paralegals are Jacqueline Ferreira (based in our Palo Alto office) and Mary Beth Ancona and Jessica Borland (both based in our San Jose office).

Further Growth in Our Palo Alto Office

Lisa Stalteri and **Jennifer Johnson** have recently joined as shareholders in our Real Estate group. Previously, they were with Carr McLellan PC in Burlingame. **Lisa** has counseled public and private companies and high net worth individuals in the acquisition, disposition, financing, construction, and leasing of real estate for over 25 years. Lisa brings a deal-oriented, hands-on approach to appropriately manage her clients' risk and to develop creative solutions to her clients' real estate needs. **Jennifer** is one of the most sophisticated and effective real estate

and bankruptcy attorneys in the Bay Area. Her clients appreciate how she brings an efficient, responsive and business-oriented approach to resolving their problems.

Sepideh “Sepi” Ghiasvand has joined our Corporate, Tax, & Business Transactions Department as of counsel. Sepi was previously with Landrum LLP. She has over a decade of experience serving as general counsel to domestic and international, emerging and middle-market privately held companies in a wide range of industries. Sepi also handles tax disputes with the IRS, California FTB and other taxing authorities.

As always, we look forward to assisting you and your family with your estate planning needs. If you have any questions or would like to discuss any of the issues above in more detail, please feel free to contact any one of our FWTP attorneys listed below:

SAN JOSE OFFICE **THE LETITIA BUILDING**
70 S. FIRST STREET
SAN JOSE, CA 95113
(408) 286-9800

James V. Quillinan jquillinan@hopkinscarley.com
Bruce B. Roberts broberts@hopkinscarley.com
James M. Hager jhager@hopkinscarley.com
Debbie Y. Chin dchin@hopkinscarley.com
Chad M. Jaben cjaben@hopkinscarley.com
John F. Hopkins *Emeritus*

PALO ALTO OFFICE **200 PAGE MILL ROAD**
SUITE 200
PALO ALTO, CA 94306
(650) 804-7600

Charles H. Packer cpacker@hopkinscarley.com
Laurie-Ann D. Look llook@hopkinscarley.com
Darin H. Donovan ddonovan@hopkinscarley.com
Peter LaBoskey plaboskey@hopkinscarley.com
John P. Golden jpgolden@hopkinscarley.com
Richard J. Schachtli rschachtli@hopkinscarley.com
Michael P. Varela mvarela@hopkinscarley.com
Dan Cooperider dcooperider@hopkinscarley.com
Jaclyn B. Smith jsmith@hopkinscarley.com
W. Martin Behn mbehn@hopkinscarley.com

Sincerely,

HOPKINS & CARLEY
A Law Corporation

Notice: Any tax advice contained in this correspondence (including any attachments) is not intended or written to be used, and cannot be used, for the purpose of (i) avoiding tax-related penalties under federal, state or local tax law or (ii) promoting, marketing or recommending to another party any transaction or matter addressed herein.