

## ESTATE PLANNING ALERT

ESTATE PLANNING TECHNIQUES IN THIS  
LOW INTEREST RATE ENVIRONMENT

April 2004 presents a unique opportunity to transfer wealth to your children, grandchildren or other beneficiaries (“Beneficiaries”) because of the historically low interest rates. Certain estate planning techniques allow Beneficiaries or trusts for Beneficiaries to receive earnings and appreciation on a particular asset in excess of a certain rate of return dictated by the IRS (the “Hurdle Rate”). Thus, when the Hurdle Rate is low, as it will be this April, there is an increased opportunity to transfer wealth to beneficiaries free of gift tax.

The simplest technique, and one probably familiar to most clients, is to lend money to Beneficiaries or to a trust for your Beneficiaries. Under this technique, you would lend money to a trust for the benefit of your Beneficiaries in exchange for a promissory note. You would first be required to gift 10% of the amount of the promissory note to the trust using a portion of your credit against federal gift tax. This gift is not necessary, however, if you make a loan to an existing trust that has assets equal to 10% of the promissory note. The promissory note would bear interest at the applicable federal rate (in April, 1.46% for short-term notes, demand notes and 3-year adjustable rate notes, 3.13% for mid-term notes and 4.61% for long-term notes), compounded semiannually. The interest on the promissory note would be payable annually to you on the anniversary date of the promissory note with the principal due at the end of the term. If the trust is able to earn a rate of return greater than the interest rate on the note (i.e., the Hurdle Rate), you will have effectively transferred wealth to your Beneficiaries gift tax free. For example, if you give \$100,000 to the trust, then loan \$1 million at 1.46% per year to the trust, assuming an 8% annual investment return, the gift tax free amount inuring to the trust at the end of three years would be \$338,113 (\$100,000 of which was the original gift).

A grantor retained annuity trust (“GRAT”) is another estate planning technique that is very efficient in a low interest rate environment. A GRAT is a trust to which you would contribute assets (e.g., stock, cash, partnership interests, closely held business interests) and retain the right to receive an annuity from the GRAT for a specified term of years (the “Term”). The amount that must be paid to you each year is a percentage of the fair market value of the assets contributed to the GRAT (the “Annuity”). The transfer to the GRAT will be gift tax free. At the end of the Term, the GRAT terminates and any assets remaining in the trust in excess of the Annuity payments made to you will be paid to your Beneficiaries or trusts for their benefit. Generally speaking, to the extent that the GRAT assets grow at a rate in excess of the Hurdle Rate, you will make tax free gifts to your Beneficiaries or trusts for their benefit. The Hurdle Rate for an April 2004 GRAT is 3.8%.

A charitable lead annuity trust (“CLAT”) is a way to combine charitable giving and estate planning. Using the CLAT in a low interest rate environment allows you to benefit charity while also making tax free gifts to your Beneficiaries. A CLAT is a trust that makes fixed annual payments to a designated charity (the “Charity”) for a specified term of years (the “Charitable Term”), with any property remaining in the CLAT at the end of the Charitable Term passing to your Beneficiaries or trusts for their benefit. Like a GRAT, (i) the amount that must be paid to the Charity each year is a percentage of the fair market value of the assets contributed to the CLAT; and (ii) to the extent that the CLAT assets grow at a rate in excess of the Hurdle Rate (e.g., 3.8% for April 2004), you will make tax free gifts to your Beneficiaries or trusts for their benefit.

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If you have any questions or would like more information about the techniques discussed in this letter, please do not hesitate to call or email us at the numbers and addresses listed below.

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April 2004

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