WILLKIE FARR & GALLAGHER LLP

OF INTEREST

ESTATE PLANNING ALERT

IS THERE A SILVER LINING IN THE CURRENT ECONOMIC RECESSION?

The current economic environment presents a unique opportunity to transfer wealth in a tax-efficient manner to children, grandchildren or other beneficiaries due to the combination of low interest rates and depressed asset values. Most sophisticated estate planning techniques are based on the ability to transfer the "upside potential" of an asset to children or more remote descendants. These techniques enable you to transfer an asset's appreciation in excess of a stated IRS rate of return (the "Hurdle Rate") free from gift and estate tax. Thus, with historically low Hurdle Rates (ranging from .81% to 3.54% depending on the technique employed) there is an increased opportunity to transfer wealth free from gift and estate tax; this opportunity is amplified when asset values are low.

Depending on your objectives, there are several estate planning techniques that you may utilize to take advantage of the present economic environment. These techniques include loans and sales to beneficiaries or trusts for beneficiaries, grantor retained annuity trusts (GRATs) and split-interest charitable trusts. Essentially, to the extent the assets appreciate in excess of the stated Hurdle Rate, such excess appreciation passes free from gift and estate tax to beneficiaries or trusts for beneficiaries. Given that federal gift and estate tax rates are at 45% (and when combined with state level taxes may reach close to 55%), these techniques are very compelling.

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

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