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New York, NY | **Leading Wealth Advisor**

Excelsior Wealth Management at Morgan Stanley Smith Barney

Craig Pastolove, CIMA®, CPWA®, PRP, Senior Vice President—Wealth Management

Scott Sklar, Managing Director—Wealth Management

Jesse Friedman, CFP®, Financial Advisor—Wealth Management

“How can my family benefit from the current estate tax exemptions?”

By Craig Pastolove

Craig Pastolove: I asked Bruce Wexler, partner and chairman of the New York Trusts and Estates Department for Loeb & Loeb, to comment on the latest wealth transfer trends. Bruce, what makes sense for wealthy families in the current environment?

Bruce Wexler: As stock and real estate markets appear depressed, now is a terrific time to transfer wealth to the next generation either by making outright gifts or via more advanced strategies. A great technique that leverages use of the current \$5 million gift tax exemption, and which we have implemented with many of our clients, is a strategy known as a sale to an intentionally defective grantor trust, or IDGT. The title is actually a misnomer because the trust is not defective at all; on the contrary, this technique is particularly advantageous given the glum state of the capital markets, coupled with low interest rates. Although it has not been formally blessed by the IRS, if done correctly, it can be very effective.

Here is an example of how it works. Let us say I own an undervalued building through an LLC. First, I recapitalize the LLC into voting and nonvoting interests. I sell the nonvoting interests

in the LLC to a trust for the benefit of my spouse and children. In return, I receive a nine-year promissory note—or a promissory note plus cash—from the trust for the value of those nonvoting interests. I receive periodic interest payments on the note based on the midterm applicable federal rate set by the IRS (1.20 percent for November 2011). The key is that any appreciation on the building and any income that it brings into the trust that is in excess of these relatively small interest payments will pass to my children free of gift or estate tax.

Also, because I am selling nonvoting interests, the value should not be simply a pro rata portion of the building's value. Instead, an appraisal may allow for discounts in the value of the LLC interests for lack of control as well as for lack of marketability. The resulting lower assessment of these interests reduces the remaining value of my estate, saving significant money for my heirs.

Pastolove: Is there more risk in planning gifting strategies now or in waiting?

Wexler: Given that the estate tax regime is expected to become considerably less favorable come 2013 and that Congress may disallow certain

techniques such as zeroed-out GRATs, I think sooner rather than later is the way to go. Under current federal law, on January 1, 2013, the estate tax will revert back to what it was in 2001, with a 55 percent maximum tax rate and only a \$1 million estate and gift tax exemption. In 2012 it is a 35 percent maximum tax rate and a \$5 million estate and gift tax exemption.

Pastolove: What do you see as the most likely scenario? Will the future of wealth transfer taxes hinge completely on who wins the presidential election?

Wexler: It is more than likely that the estate tax will continue for the foreseeable future, particularly given our country's deficit problems. The main question is the specifics. For example, what will be the amount of the exemption, what will the tax rate be, and will Congress prohibit certain techniques that the IRS may decide are abusive? These specifics may depend on the outcome of the election.

Pastolove: Bruce, it certainly seems there may be risk in waiting as one could potentially lose the ability to transfer significant dollars in tax-free gifts under the current tax law. ☹

Craig Pastolove is a financial advisor with the Global Wealth Management Division of Morgan Stanley Smith Barney in the 522 Fifth Avenue branch. The information contained in this article is not a solicitation to purchase or sell investments. Any information presented is general in nature and not intended to provide individually tailored investment advice. The views expressed herein are those of the author and do not necessarily reflect the views of Morgan Stanley Smith Barney or its affiliates. All opinions are subject to change without notice. Neither the information provided nor any opinion expressed constitutes a solicitation for the purchase or sale of any security. Past performance is no guarantee of future results. Tax laws are complex and subject to change. Morgan Stanley Smith Barney LLC, its affiliates and Morgan Stanley Smith Barney financial advisors do not provide tax or legal advice. This material was not intended or written to be used for the purpose of avoiding tax penalties that may be imposed on the taxpayer. Individuals are urged to consult their personal tax or legal advisors to understand the tax and related consequences of any actions or investments described herein. © 2011 Morgan Stanley Smith Barney LLC, member SIPC.

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- Bruce Wexler

How to reach Excelsior Wealth Management

We look forward to hearing from you and can be reached at 212.296.1026.

Left to right:
Jesse Friedman,
Craig Pastolove
and Scott Sklar



About Excelsior Wealth Management

In less than 15 years, Craig Pastolove, Senior Vice President-Wealth Management, has built a large, well-respected wealth management team. Clients include celebrities, senior executives at publicly traded companies, entrepreneurs and hedge fund principals and traders. Scott Sklar, Managing Director-Wealth Management, has been providing capital market insights to the hedge fund industry for 20 years. His reputation in providing timely and competent advice has garnered relationships with many of the leading managers in the asset class. Jesse Friedman, Financial Advisor-Wealth Management, has worked with Mr. Pastolove since 2001 and manages the financial planning process from start to finish. He marshals the thought leaders at the firm for the team in order to brainstorm about clients before presenting them with a plan. He is also responsible for managing the other six members of the team, which include certified financial planners, consulting group analysts and group administrators.

Assets Under Management
\$500 million

Minimum Fee for Initial Meeting
None required

Minimum Net Worth Requirement
\$3 million

Largest Client Net Worth
\$200 million

Financial Services Experience
50+ years (combined)

Compensation Method **Asset-based fees and commissions (customized structured products and syndicate)**

Primary Custodian for Investor Assets **Morgan Stanley Smith Barney**

Professional Services Provided **Financial planning, investment management, family office services and institutional consulting**

Association Membership
Investment Management Consultants Association

Website **fa.morganstanleyindividual.com/excelsiorwealthmanagement**

Email **craig.pastolove@mssb.com**