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# Ray Lane Rode Tech Boom Tax-Shelter Wave Broken by IRS

By Andrew Zajac and Jesse Drucker - Jun 7, 2013

The dot-com boom of the late 1990s has come back to haunt former Hewlett-Packard Co. (HPQ) Chairman Ray Lane.

Lane's dispute with the Internal Revenue Service opens a window to a mostly bygone era when accounting and law firms conceived and sold tax-dodging strategies to investors seeking to avoid taxes on outsized gains from the still-swelling tech bubble.

The shelters had memorable nicknames, based on acronyms: Son of BOSS, BLIPS, PICO and COBRA. Lane used one called POPS.

Then the IRS cracked down, triggering the kind of legal battles with the agency Lane is now embroiled in.

"Most of these types of tax shelters have flushed through the system," said Bryan Skarlatos, a tax attorney at Kostelanetz & Fink LLP in New York. "The ones like you're seeing with Lane are some of the stragglers."

"It's not the very last dinosaur caught in the tar pit, but it's one of the last," said Skarlatos, who represents clients in disputes with the IRS over POPS transactions.

## Tax Bill

Lane, also the former president of Oracle Corp. (ORCL) and partner emeritus at venture-capital firm Kleiner Perkins Caufield & Byers, used POPS in an attempt to shield $250 million of income through what the IRS ruled were "sham" transactions.

Lane, 66, who left Oracle with more than $1 billion in stock and stock options in mid-2000, has agreed to settle with the IRS on a tax bill that could be as much as $100 million, even as he appeals the agency's ruling in U.S. Tax Court in Washington. He said he fully paid his tax bill on sale of his Oracle options.

"My tax advisers put me into an investment," he said in an interview. "Somewhere along the way I knew these things were being questioned by the IRS."

The investment totaled $25 million, Lane said, and included an $18 million up-front payment used to fund startups.

A portion of that went to purchase warrants or stock options in five companies, including RocketGas Inc., Kleptomaniac.com. and Spectrum Target Detection Inc., according to a filing in one of at least five U.S. Tax Court cases involving Lane's tax shelter investments.

## Tech Startups

RocketGas was described in court papers as a business to "bring services traditionally available only at a gasoline station to customer's home or office."

Kleptomaniac.com was an "e-commerce solutions provider and e-tailing consultant" to brick-and-mortar retailers and Spectrum had developed a traffic radar gun that "was expected to replace traditional speed measuring devices used by law enforcement agencies."

"Like most high tech startups which seemed so attractive in 2000, that high risk, high reward portfolio proved worthless within three years and petitioner simply seeks to recognize the real, hard-cash economic loss," one of Lane's lawyers argued in a court filing. Losses for the five companies totaled about $17 million, according to another filing.

The IRS argued that the investments in the companies "were payments of fees to promoters of listed and/or abusive tax avoidance transactions."

## Other Investors

Lane and other investors didn't establish the value of stock options or warrants in an "amount greater than zero," and as a result, no losses were allowable, IRS lawyers wrote.

Lane said the POPS shelter was assembled for him by Sidley Austin LLP, a Chicago-based law firm, the BDO Seidman consulting firm and Deutsche Bank AG, he said.

Deutsche Bank, Germany's largest bank, admitted criminal wrongdoing in 2010 and agreed to pay $553.6 million to avoid prosecution over its participation in 15 fraudulent tax shelters, including POPS transactions.

The bank admitted to involvement in at least 1,300 deals, helping more than 2,100 customers evade about $5.9 billion in individual income tax on capital gains and ordinary income, according to a settlement agreement with the Justice Department.

Duncan King, a spokesman for Frankfurt-based Deutsche Bank, and Jerry Walsh, a spokesman for BDO, declined to comment on Lane's remarks. Sidley Austin didn't reply to phone and e-mail messages requesting comment.

## Conspiracy Charge

BDO, now known as BDO USA LLP, said in June 2012 it would pay $50 million to settle a charge of tax-fraud conspiracy for helping wealthy individuals evade about $1.3 billion in taxes from 1997 to 2003.

In 2011, a jury convicted former BDO chief executive officer Denis Field and three others of more than 20 criminal counts including conspiracy and tax evasion.

A judge threw out Field's conviction after finding that a juror lied about her past. A re-trial is pending.

POPS stands for Partnership Option Portfolio Securities.

Though it has multiple variations, a POPS transaction, in general, worked like this: an accounting firm would set up a series of partnerships, which would typically enter into transactions called straddles using foreign currencies.

Straddles involve simultaneously taking long and short positions to offset the investment risks.

## Offsetting Loss

The partnership would sell off the position that generates the gain, which would be attributed to a partner that would be indifferent to the tax, such as a tax-exempt entity.

That would leave one of the partnerships with the offsetting loss.

An investor with a big gain somewhere else could then buy into the partnership and thus take advantage of the loss.

The IRS attacked such transactions for separating out the losses from the gains.

The IRS case against Lane's Vanadium Partners LLC mentions "a series of meaningless steps," involving a straddle, a tiered partnership structure and a transitory partner that allowed "a tax shelter investor to claim a permanent non-economic loss."

Lane's attorney, Charles Hodges, disputed the IRS contention that Vanadium was a sham that "lacked economic substance."

In addition to the tech boom, conditions were ripe for tax shelters in the 1990s because the IRS had eased off enforcement under pressure from Congress, said Christopher Rizek, a lawyer at Caplin & Drysdale, a Washington-based law firm that specializes in tax matters.

## Wealthy Individuals

"They spent about two years re-organizing themselves," he said. "They were intimidated."

By the mid-2000s more aggressive enforcement resumed.

Wealthy individuals who purchased POPS and other tax shelters were often identified by the IRS and Justice Department in probes of the accounting firms and law firms that sold them.

The uproar in Congress over whether the IRS tried to head off conservative groups from getting non-profit status could curb challenges to tax shelters again, Rizek said.

Tax lawyers are watching how the agency responds to "this month's use as a pinata by Congress," he said.

## "They could be cowed again," Rizek said. "We'll see."

The case is Vanadium Partners Fund LLC v. IRS, 9970-13, U.S. Tax Court (Washington).

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