Deutsche Bank Sued Over Tax Shelters

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Investors have filed two lawsuits that accuse Deutsche Bank, the German financial giant, of working with several accounting, law and financial services firms, including American Express, to sell abusive tax shelters from 1999 to 2001.

The plaintiffs in both cases, who collectively owe the federal government tens of millions of dollars in back taxes, are seeking to recover fees, interest and penalties.

One lawsuit, filed by Robert L. Barron, a wealthy California technology executive, accuses Deutsche Bank of directly promoting and selling such shelters even after the Internal Revenue Service had formally banned them. The I.R.S. has never considered the type of shelter in question, called Cobra, valid for deductions, although the agency did not officially prohibit its use until August 2000.

The Barron complaint, which has 12 plaintiffs, also accuses American Express of deliberately preparing for some plaintiffs, including for Mr. Barron, false tax returns that incorporated illegal tax breaks generated by shelters.

Mr. Barron is a former Lucent Technologies executive who sold his start-up company, Chromatis, to Lucent in 1999 for $4.75 billion. He then became head of Lightcross, an optical company that merged with Arroyo Optics late last year. He briefly headed the merged company before leaving.

The Barron complaint was filed in the Central District of California in amended form on May 10. It names as defendants Deutsche Bank and three employees -- Paul Young, Phillip Miles and Craig Brubaker; American Express and its employee Robert Goldstein, an accountant; and entities closely related to both companies.

Cobra stands for currency options bring reward alternatives, and Cobra Swaps, a similar transaction named in the Barron complaint, involve generating artificial losses through offsetting foreign currency trades channeled through partnerships and private companies. The losses are then claimed on the individual's tax returns as legitimate to offset taxable income.

The Barron complaint accuses Mr. Young, a Deutsche Bank accountant, and two other unnamed employees, all based in Deutsche Bank's Atlanta office, of flying to an unspecified city in California around June 2001 to meet Mr. Barron. Another Deutsche Bank employee, Mr. Miles, also of Atlanta, gave tax advice via telephone, the complaint says. The other two Deutsche Bank defendants carried out trades for the tax shelter. Mr. Miles suggested that Mr. Barron hire Mr. Goldstein to prepare his tax return for that year and Mr. Barron took him up on it, according to the suit.

A Deutsche Bank spokeswoman, Rohini Pragasam, said yesterday that the bank had no comment on the lawsuits.

An American Express spokesman, Tony Mitchell, said yesterday of the Barron lawsuit, "we do not believe there is any basis for this complaint."

Mr. Barron contends that he paid $1 million in fees to all the defendants, including $425,000 to Deutsche Bank, for a Cobra intended to shelter $17 million in taxable income. He bought the shelter in July 2001, and received a favorable legal opinion for it in January 2002 from the law firm of Jenkens & Gilchrist, which is based in Dallas.

Mr. Miles introduced Mr. Barron to Paul Daugerdas of Jenkens & Gilchrist to provide legal opinions of the shelter, the suit said. Mr. Daugerdas has been a promoter of abusive shelters, according to various civil complaints and the government.

The I.R.S., in its attempt to crack down on such tax shelters, has said it will go after promoters, who can face fines and disciplinary measures.

The I.R.S. began warning as early as December 1999 that Cobra-type transactions were improper, before explicitly declaring them invalid in August 2000. But investors who bought one before that announcement and attempted to use it for deductions on their tax returns would have been denied the deductions.

The Barron complaint also charges that Mr. Goldstein of American Express talked another plaintiff out of doing a legitimate real estate transaction, urging him instead to sell the property and buy a Cobra shelter to shield some $7 million in gains, according to the complaint.

The Barron plaintiffs became aware that Cobra and Cobra Swaps were illegal through published reports and I.R.S. audit notices, and have since filed amended returns for the years in question.

A second lawsuit, filed last Friday in the Southern District Court of New York, charges that Deutsche Bank "created a tax shelter machine" by recruiting small law and accounting firms to help it sell a questionable tax shelter called M.L.D. That shelter, which stands for market-linked deposit, is nearly identical to the Cobra-type shelters.

David Deary, a lawyer based in Dallas who filed both complaints, declined to comment yesterday.

Defendants in the second complaint include Deutsche Bank and three employees -- Todd Clendening, David Parse and Mr. Brubaker -- and related entities; a law firm known as Cantley & Sedacca, which is defunct; and Pasquale & Bowers, an accounting firm in Syracuse that has since merged with Dermody, Burke & Brown, another Syracuse accounting firm.

Pasquale & Bowers sold 40 M.L.D. shelters, according to the complaint, more than any other firm.

"This happened before our combining with Pasquale & Bowers," said Pennie Gorney, a spokeswoman for Dermody, Burke & Brown. She declined to comment further.

The second lawsuit, which seeks class-action status, contends that a former Deutsche Bank employee named David Brooks, also a defendant in the complaint, developed M.L.D. to get around restrictions on the Cobra shelter, with the three Deutsche individual defendants accused of carrying out trading for the shelters. Mr. Brooks said yesterday that he had no comment.

Cantley & Sedacca, the law firm, took in fees of $30 million to $40 million from marketing and selling favorable opinion letters for the M.L.D. shelter, according to the complaint. Mr. Brubaker and Mr. Clendening, both of Deutsche Bank, formed partnerships within the bank to personally share in the fees earned from M.L.D. transactions, the lawsuit contends.