August 1, 2010

Billionaire McCombs Told to Pay $45 Million by IRS

The IRS is demanding $45 million in back taxes from San Antonio billionaire Billy Joe "Red" McCombs. The back taxes pertain to the tax years 2002 and 2003. The basis for the demand was a tax strategy that was disallowed by a judge, originally to billionaire Philip Anschutz.

In another court case, McCombs is contesting an IRS contention that he did not declare $213.4 million in long-term capital gains in 2002 as a result of his sale of 11.3 million shares in a company he co-founded in 1972, Clear Channel Communications Inc. As a result of the sale of these shares, the IRS further contends that McCombs failed to pay $3.3 million in capital gains tax in 2003. In total, the IRS asserts that McCombs made $245 million in 2002 and 2003 for which he should have been taxed $53 million. McCombs declared that he made $18 million in that time and paid only $8 million in taxes.

All this was apparently a complicated but well-known insider tax strategy that originated from Wall Street and used by the rich like Anschutz and McCombs to raise money from appreciated stock positions but deferring capital gains tax. The court's decision against Anschutz was the first among the Wall Street billionaires. The Anschutz company is aggressively pursuing an appeal against the ruling.

According to the IRS lawsuit, in the late 1990s, McCombs bought the Minnesota Vikings football team and made other investments and borrowed $300 million to finance the deal. The collateral used were 11.3 million out of the 14.5 million shares in Clear Channel Communications that McCombs owned. In 2002, McCombs was faced with margin calls due to the drastic depreciation of the value of the Clear Channel stocks. But McCombs refused to sell the stocks, firmly believing they would eventually appreciate in value and because he had a 'strong emotional attachment to his ownership in the company'.

That was when 3 investment banks, namely JPMorgan, Wells Fargo and Goldman Sacs, advised McCombs to enter into a variable prepaid forward contract. This sort of forward contract is where the owner of a big and highly-appreciated stock position agrees to deliver a pre-determined number of his shares or cash sometime in future depending on how his stocks perform, in exchange for an upfront payment from an investment firm now (typically, the upfront payment is between 75% and 85% of the value of his shares). By doing so, the owner of the stocks can theoretically say that he has not sold his shares and therefore is not taxable for the upfront payment he has received.

In July 2002, McCombs entered into a variable prepaid forward contract with JPMorgan to be settled in 2003, 2004 and 2005. And in August the same year, he entered into a stock lending agreement where he lent 11.3 million shares in Clear Channel to JPMorgan Chase. The IRS contends that the 2 transactions are in substance the same and taxable in 2002.

These types of transactions were common until 2006 when the IRS issued a technical advice memo stating that they would view stock lending agreements and variable prepaid forward contracts to be one and the same and technically a taxable sale of shares.

Darrin T. Mish is a veteran, nationally recognized tax attorney who has focused on providing IRS help to taxpayers for over a decade. He regularly travels the country training other attorneys, CPAs and enrolled agents on how to handle their toughest cases with the IRS. He is highly ranked among the top attorneys in the country, with an AV rating from Martindale-Hubbell and a perfect 10 on Avvo.com. Martindale-Hubbell has also honored him with a listing in their Bar Register of Preeminent Lawyers. He is a member of the American Society of IRS Problem Solvers and the Tax Freedom Institute. With clients on every continent but Antarctica, he has what it takes to solve your IRS problems no matter where you live in the world. If you would like more information about his practice and how he can help you, please call his office at (813) 229-7100 or toll free at 1-888-GET-MISH.