Bloomberg
Businessweek
Tuesday May 18, 2010
Bloomberg

EMC Founder Egan Cheated IRS While Ireland Envoy, Judge Says

May 18, 2010, 12:03 AM EDT
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May 18 (Bloomberg) -- EMC Corp. founder Richard J. Egan used a sham tax shelter to cheat the U.S. government out of more than $62 million starting the same year former President George W. Bush named him ambassador to Ireland, a federal judge ruled.

Egan, who died Aug. 29, used a variation of a widely used transaction known as “Son of Boss” to avoid paying capital gains taxes on more than $327 million in gains from stock or options in Boston-based EMC, the world’s biggest maker of storage computers, according to court papers.

In a 357-page decision, U.S. District Judge Dennis Saylor in Boston ruled yesterday that Egan and his wife, Maureen, concocted transactions with offshore entities to generate artificial tax losses intended to wipe out his taxable gains. The Egans were aided by nine advisers, including law firms and accountants, Saylor wrote. The transactions were managed by their son, Michael J. Egan, the judge said.

“None of the participants in these complex transactions believed that they were real business transactions, with any purpose other than tax avoidance,” Saylor wrote. “Indeed, it is highly doubtful that any participant believed, even for a minute, that the transactions would withstand legal scrutiny if discovered.”

Ray Howell, a family spokesman, didn’t return a call and e- mail seeking comment.

‘Son of Boss’

The Internal Revenue Service outlawed the Son of Boss transaction in August 2000, something the Egans and their advisers were aware of, Saylor wrote. The transaction was widely used in the late 1990s; in 2004, about 1,500 people settled with the IRS in exchange for reduced penalties, paying more than $6 billion.

The shelter “involved creating transactions with offsetting positions, which by itself meant that there was no economic risk,” said Howard Medwed, a partner in the Boston law firm Burns & Levinson LLP who wasn’t involved in the case.

The Egans didn’t settle. They deposited $62.1 million with the IRS and sued the government in 2005 to get the money back. Saylor wrote that a “significant feature of the scheme” was the reliance on legal opinions provided by four law firms that the transaction was legitimate.

The law firms, dubbed “tax promoters” by Saylor, included Proskauer Rose LLP and Brown & Wood LLP, which was acquired by Sidley Austin LLP. Janet Zagorin, a spokeswoman for Sidley Austin, said she had no comment because she hadn’t yet read the case. Josh Epstein, a spokesman for Proskauer Rose, didn’t immediately return a call and e-mail seeking comment.

KPMG, which prepared the Egans’ tax returns, agreed in 2005 to pay $456 million to avoid criminal prosecution over its sale of tax shelters such as the one used by the Egans.

Hiding Transactions

Saylor ruled yesterday the IRS can keep the tax payments. Among other things, he said, the Egans knowingly engaged in the transactions after the IRS outlawed them and went to great lengths to hide them from the tax agency. The IRS also sought more than $13 million in penalties.

The transactions were executed in 2001 and 2002, while Egan was serving as Bush’s first ambassador to Ireland. At least one of the foreign entities was an Irish affiliate of one of the tax promoters, Saylor wrote.

Egan, who was suffering from lung cancer, died of a self- inflected gunshot wound last August, according to an obituary published by Forbes.com. Egan was 73 when he died.

In cases where so many advisers are involved, it’s difficult to hide a transaction, Medwed said.

“They left a huge trail showing the purpose of all this was not to make money from the transaction but to generate tax savings,” he said. “It is the audit trail, the paper trail that was their undoing.”

The case is Fidelity International Currency Advisor A Fund, LLC v. United States of America, 05-cv-40151-FDS, U.S. District Court, District of Massachusetts (Boston).

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