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FOUR INDIVIDUALS CHARGED IN CRIMINAL TAX FRAUD RELATED TO ERNST & YOUNG TAX SHELTERS

MICHAEL J. GARCIA, United States Attorney for the Southern District of New York, and KEVIN BROWN, the Acting Commissioner of the Internal Revenue Service ("IRS"), announced today the unsealing of an Indictment charging four current and former partners of Big-Four accounting firm Ernst & Young ("E&Y") with tax fraud conspiracy and related crimes arising out of tax shelters promoted by E&Y. According to the Indictment, the defendants and their co-conspirators concocted and marketed tax shelter transactions based on false and fraudulent factual scenarios to be used by wealthy individuals with taxable income generally in excess of $10 or $20 million to eliminate or reduce the taxes they would have to pay the IRS.

The Indictment charges four individuals in 8 separate counts, including conspiracy to defraud the IRS, tax evasion, making false statements to the IRS, and impeding and impairing the lawful functioning of the IRS. All four individuals worked in a group set up by E&Y in 1998 to develop tax shelters, which was first named VIPER (Value Ideas Produce Extraordinary Results), and later renamed SISG (Strategic Individual Solutions Group) ("VIPER/SISG").

The four individuals named in the Indictment are:

- ROBERT COPLAN, 54, of Plano, Texas, a former E&Y tax partner who was the leader of the VIPER/SISG group, and the former National Director of E&Y's Center for Wealth Planning. Mr. COPLAN, a lawyer, was at one time a Branch Chief in the IRS' Legislation and Regulations Division.

- MARTIN NISSENBAUM, 51, of Brooklyn, New York, an E&Y partner who was a member of the VIPER/SISG group, and the National Director of E&Y's Personal Income Tax and Retirement Planning practice. Mr. NISSENBAUM is also a lawyer.

- RICHARD SHAPIRO, 58, of Rye Brook, New York, who was a member of the VIPER/SISG group, and an E&Y tax partner. Mr. SHAPIRO is also a lawyer.

- BRIAN VAUGHN, 39, of Calhoun, Louisiana, a former member of the VIPER/SISG group, and a former E&Y tax partner, who is a CPA.

As alleged in the Indictment:

From 1998 through 2004, the four defendants and others participated in a scheme to defraud the IRS by designing, marketing, implementing and defending fraudulent tax shelters. The conspirators sought to deceive the IRS about the bona fides of those shelters and the circumstances under which the shelters were marketed and sold to clients.

The defendants and their co-conspirators understood that if the IRS were to detect their clients' use of these tax shelters, and learn the true facts and circumstances surrounding the design, marketing and implementation of the shelters, the IRS would aggressively challenge the claimed tax benefits. In that event, the IRS would seek to collect the unpaid taxes plus interest, and might also seek to impose substantial penalties upon the clients. Accordingly, the conspirators undertook to prevent the IRS from: a) detecting their clients' use of these shelters; b) understanding how the transactions operated to produce the tax results reported by the clients; c) learning that the shelters were marketed as cookie-cutter products that would eliminate, reduce or defer large tax liabilities; d) learning that the clients were not seeking profit-making investment opportunities, but were instead seeking huge tax benefits; and e) learning that, from the outset, all the clients intended to complete a pre-planned series of steps that had been designed by the conspirators to lead to the specific tax benefits sought by the clients.

In order to maximize the appearance that the tax shelters were investments undertaken to generate profits, and to minimize the likelihood that the IRS would learn the transactions were actually designed to create tax losses and deductions, the defendants and their co-conspirators created and assisted in creating transactional documents and other materials containing false and fraudulent descriptions of the clients' motivations for entering into the transactions, and their motivations for taking the various steps that would yield the tax benefits. The conspirators also carefully protected internal documents and promotional materials that set forth the tax benefits and pricing schedules of the various shelters against disclosure to the IRS.

In order to encourage clients to participate in the shelters, and to shield the clients from substantial penalties that could be imposed if the IRS disallowed the claimed tax benefits, the defendants worked with law firms to provide E&Y's clients with opinion letters that claimed the tax shelter losses or deductions would "more likely than not" survive IRS challenge, or "should" survive IRS challenge. However, the defendants knew those opinions were based upon false and fraudulent statements, and omitted material facts. As described in the conspiracy charge, by helping their clients obtain false and fraudulent opinion letters, with the understanding and intent that those opinion letters would be presented to the IRS if and when the clients were audited, the defendants sought to undermine the ability of the IRS to ascertain the clients' tax liabilities and determine whether penalties should be imposed.

The Indictment alleges that the defendants and their co-conspirators undertook these actions so that E&Y could participate in the highly lucrative tax shelter market in which other accounting firms were already participating; so that E&Y could prevent its high-net-worth clients from taking their business (including, potentially, the highly prized audit business associated with some of these individuals) to its competitors; so that E&Y's Personal Financial Counseling practice – a business unit that was not a substantial contributor to the firm's revenues – could grow and prosper within the firm; and so the individual defendants could enhance their own opportunities for professional recognition, advancement, job security, and remuneration.

Among the alleged fraudulent tax shelter transactions designed, marketed, and implemented by the defendants and their co-conspirators were CDS ("Contingent Deferred Swap"); COBRA ("Currency Options Bring Reward Alternatives"); CDS Add-On; and PICO ("Personal Investment Corporation").

The Indictment also charges defendant ROBERT COPLAN with corruptly endeavoring to impede the due administration of the Internal Revenue laws by instructing E&Y individuals to destroy documents related to the COBRA transaction when he knew of a pending IRS audit of the transaction.

The Indictment charges defendants ROBERT COPLAN and BRIAN VAUGHN with making false statements to the IRS in connection with an examination by the IRS of whether E&Y had complied with various legal requirements applicable to the firm's tax shelter activities.

The Indictment further charges defendants ROBERT COPLAN, MARTIN NISSENBAUM and RICHARD SHAPIRO with implementing a tax shelter in 2000 to evade their own taxes, and with arranging for eight of their E&Y partners to participate in the tax shelter transaction with them. Use of that tax shelter enabled the group of eleven E&Y partners to eliminate a total of approximately $3.7 million in taxes. The Indictment also charges defendant NISSENBAUM with corruptly obstructing the due administration of the Internal Revenue laws by providing false and misleading statements to the IRS on behalf of himself and ten other E&Y partners in connection with an audit of the 2000 tax returns of all eleven participants in the transaction.

Mr. GARCIA thanked the Internal Revenue Service, Criminal Investigation for their work on this case.

Mr. GARCIA added that the investigation is continuing.

U.S. Attorney GARCIA stated: "This prosecution further demonstrates our commitment to hold accountable tax professionals whose deceit costs this country untold millions in tax revenues. The conduct charged in this Indictment far exceeds the bounds of legitimate tax planning and reflects flagrant disregard of the law."

Acting IRS Commissioner BROWN stated: "According to today's indictments, these individuals conspired to defraud the government through a series of fraudulent tax shelter products. They sold these products to high-income clients seeking to diminish or eliminate their tax liabilities. The IRS and the Department of Justice will continue efforts to combat illegal tax shelter activity and ensure the integrity of our tax system."

Assistant United States Attorneys DEBORAH E. LANDIS and JAIKUMAR RAMASWAMY are in charge of the prosecution.

The charges contained in the Indictment are merely accusations, and the defendants are presumed innocent unless and until proven guilty.

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