

## BEVERLY MAN ACCUSED OF TAX EVASION

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A Beverly man avoided paying nearly a half million dollars in income taxes in 2000 and 2001 by funneling his money through a company in the U.S. Virgin Islands, according to a plea agreement reached last month.

Off-shore tax evasion grabbed national headlines in 2002 when Stanley Works announced a plan to reincorporate in Bermuda, thereby avoiding \$30 million annually in United States taxes. While the toolmaker later scrapped the plan, it called attention to the tax breaks offered in luscious islands locales.

But in this case, the tax break was legal - it was approved by Congress - and was happening in a U.S. territory, adding specter to a case that prosecutors have called "the tip of the iceberg."

Gary J. Payne, 50, of 15 Stone St., Unit C, was charged on Feb. 11 by federal prosecutors in Christiansted, St. Croix with two counts of attempting to evade and defeat tax. A day later, he reached a plea agreement that calls for a lenient sentence - he faces up to five years in jail.

A life insurance salesman with Primerica, in Danvers, Payne has been a "highly successful insurance man" that made a very good living, said his attorney, Thomas E. Dwyer, Jr., of Boston. When approached by people who proposed the tax avoidance scheme, he went along, Dwyer said. Kapok Management, a Virgin Islands-based company that receives a massive tax break, enticed his client, Dwyer said.

Federal prosecutors said in 2000, which Payne earned \$665,000 in commissions and other income as an independent contractor, he owed at least \$190,957 in federal income taxes. In 2001, he again earned about \$650,000 and owed at least \$208,555 in taxes. He did not file a tax return, or pay taxes, to the IRS in either year.

As part of the process of becoming a partner in Kapok, and avoid paying taxes, Payne was given a list of ten things he needed to do to make it look legal, and thereby avoid most of his taxes.

"He was trying to complete the 10 things and then he had an illness in the family," Dwyer said.

Among those ten things, Payne had registered to vote in the Virgin Islands, where he also had a driver's license and rented both a condominium and apartment on St. Croix - he stayed at the apartment once or twice and never visited the condo, court documents said.

But all the while, Payne lived in his Fish Flake Hill condominium with his wife and worked from his Danvers office.

Prosecutors allege Payne avoided paying taxes through a sophisticated scheme "to disguise his legitimately earned United States income as 'wages and partnership distributions' paid to him by a Virgin Islands business that had been issued an [tax credit] certificate," court documents state.

In short, in September 2000 he agreed that Kapok would "manage" his company, for a fee. In turn, they "hired" him as a project manager and assigned him to manage his own company, court papers said. From there, Kapok did not supervise Payne and he did not report to Kapok - he continued to operate his Danvers insurance office on Prince Street as usual.

Although Payne never paid United States taxes in 2000 and 2001, that doesn't mean he did not pay any taxes.

Instead, he owed a total of \$399,512 in taxes to the Virgin Islands Bureau of Internal Revenue over both years. But after getting the government authorized tax credit, his total tax bill was lowered to just \$48,660, which he paid to the Virgin Islands. The U.S. IRS was not paid at all, prosecutors said.

Because the Virgin Islands are an area of extreme poverty, the U.S. Congress set up the Economic Development Law, administered by the Economic Development Commission, in order to promote new business in the Virgin Islands by allowing a variety of tax credits, most significant of which is a 90 percent income tax credit. The tax credit is specifically prohibited for income that is from "sources within the United States."

Among the tax credit recipients was Kapok Management, which it said provided "financial, economic and management consulting services."

Between September and December 2000, Payne allegedly sent \$665,000 to Kapok in the Virgin Islands. The company kept \$38,632 to cover its "costs and fees" and sent the rest back to Payne, according to court documents.

The money being sent to the Virgin Islands was called "management fees" and the money Payne received back was called "wages and distributions."

"The amount of 'management fees' paid to the partnership [Kapok] was not based upon the value of any services performed, but rather on the amount of Payne's income from Primerica," court documents stated.

Again, in 2001, Payne sent about \$650,000 to Kapok, which kept \$46,499 and returned the rest.

Prosecutors have not named Kapok Management by name in court papers or interviews, saying that their policy is to name only individuals and not companies. But Dwyer, Payne's lawyer, said it was Kapok from which his client received the tax credit. What prosecutors have said is that their investigation into the company and its "partners" has taken them to 26 states. The company's tax credit is the only reason Payne became a partner, prosecutors said, and

the case against Payne is "the tip of the iceberg," an IRS investigator told The Virgin Islands Daily News.

Dwyer told the Citizen that as many as 65 other people across the country should expect to face similar charges, and that Payne has been the first person to cooperate with federal investigators during their three year investigation.

In January, Payne paid the IRS all of the \$486,000 he owed in U.S. taxes, Dwyer said. In addition, Dwyer said that he doesn't expect his client will go to jail, and at worst expects him to be sentenced to probation, in large part because of the cooperation he has provided.

Payne is fighting to keep his insurance license in several states, Dwyer said. In Massachusetts, Chris Goetcheus, a spokesman for the state Division of Insurance said Payne has an active license and has no "enforcement actions" in the past 10 years. Typically, a convicted felon can not be a licensed insurance agent, but Dwyer said because the conviction is not related to his business and he has cooperated may allow his to retain his license.

"He's dealing with the transition right now," Dwyer said, adding that means he is going from being a full-time insurance agent to possibly another line of work.

"Some people use off-shore transactions to avoid paying United States income tax and identifying and combating actively promoted tax schemes is one of the highest priorities of the IRS and we will aggressively pursue tax fraud wherever it is identified," said Steven Hickey, spokesman for Joseph A.

Galasso, special agent in charge of the IRS' criminal investigation unit in Boston.

Payne, who was not available, is free on personal recognizance and his sentencing date has not yet been scheduled.