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BB&T STARS Tax Shelter Loss Costs \$660M Plus \$112M Penalty

In [*Salem Financial, Inc. v. United States*](#), the U.S. Court of Federal Claims slapped down BB&T Corporation over \$660 million in tax benefits it claimed on the Structured Trust Advantaged Repackaged Securities (STARS) tax shelter. Barclays Bank invented STARS along with noted shelter cook KPMG. Law firm Sidley Austin was also involved in opining on the deal. Their STARS, it appears, have fallen.

The tax case for BB&T related to an IRS bill for 2002-2007. BB&T paid it in 2010 so it could fight in the Court of Federal Claims, thought to be a more friendly forum for taxpayers than the U.S. Tax Court where the STARS shelter had already failed. After a month-long trial, the court ruled for the government on all grounds.

And the Judge wasn't exactly happy with this taxpayer or any of the other players who had any role in making this complex and dubious stew. The Judge said BB&T, Barclays, KPMG and Sidley Austin's conduct was "nothing short of reprehensible." The Judge went on to say what this supposedly



(Photo credit: Wikipedia)

business or financing scheme was really about: “The weight of the evidence shows that tax avoidance was singularly and precisely the goal pursued in execution of the STARS transaction.”

[BB&T Corporation](#) (BB&T) retorted that the whole deal was legit. “We are surprised and very disappointed with the court’s ruling and continue to firmly believe that this was a legitimate financing transaction,” said Chairman and Chief Executive Officer Kelly S. King. Based in Winston-Salem, N.C., BB&T offers consumer and commercial banking, brokerage, mortgage and insurance from 1,851 financial centers in 12 states and D.C.

BB&T is evaluating its legal options. In the meantime, it takes an after-tax charge of approximately \$250 million this quarter. Of course, BB&T isn’t the only institution that snapped up STARS. The banks in question include Bank of New York Mellon, which lost a STARS case in Tax Court early in 2013. It is appealing its loss. Wells Fargo and Santander also have STARS disputes.

Like most tax shelters, STARS is complex. The idea starts with foreign tax credits, something that is fundamental to U.S. tax law and seems downright fair. After all, U.S. companies can claim foreign tax credits on their U.S. taxes. That way they are not taxed twice on the same profits.

But like just about everything else in U.S. tax law, the law is complex and sometimes even Byzantine. The idea of the creative minds who cooked up STARS was to **manufacture** tax credits for Barclays and for the U.S. corporate taxpayers that bought into the deal. How? Just circulate the U.S. income through an entity taxed in the U.K., the IRS claimed.

But this really wasn’t double-taxed in a way that qualifies for tax credits, said the IRS. Because of the differences between U.S. and U.K. rules, STARS enabled Barclays to reimburse a U.S. company for half the tax paid in the U.K. without reducing the amount of foreign tax credits that could be claimed by either party.

Presto, big, big savings at the expense of U.S. taxpayers. And while Barclays and the other creators or advisers are not before the courts in these cases, one wonders if there are legal actions—or at least customer relations recriminations—anywhere along the line. Some say the shelter era has passed, or at least that **particular** shelter era.

Not long ago, Apple CEO [Tim Cook testified](#) that Apple doesn’t use tax gimmicks. Perhaps, but Apple’s tax strategies don’t seem too different from many others. In [September 2012](#), the Senate Permanent Investigations

Subcommittee examined the tax avoidance strategies of [Microsoft](#) and [Hewlett-Packard](#). Much of it is about off-shoring and IP.

The tax cases involving transfer pricing and off-shoring will take years to get through the tax system and the courts. When they do, we will note some clear differences to previous tax shelter eras. But there may also be some regrettable similarities.

You can reach me at Wood@WoodLLP.com. This discussion is not intended as legal advice, and cannot be relied upon for any purpose without the services of a qualified professional.