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Forget About Trump's Tax Returns

It is customary for candidates to release their tax returns. In fact, it is almost unheard of not to, but there is no legal requirement that they do so.

And Donald Trump is not your usual candidate. He says what he wants, and once again, Mr. Trump is saying that he will not release his returns until his massive audit is completed. That could be one of the [top 10 reasons Trump should not release](#) them.

"I have very big tax returns," Trump [said on NBC's Meet the Press](#). "I'm sure you've seen the picture where the returns are literally from the floor to up to here. They're extremely complex." He has also said that his financials... "show I'm worth more than \$10 billion by any stretch of the imagination." But the tax returns are not coming anytime soon.



In the meantime, at the end of March, Trump's campaign [released a letter](#) from his tax lawyers that confirmed there was an ongoing tax audit. The letter said it covers tax years 2009 and later. The letter also said that Mr. Trump's

2002 through 2008 tax years were audited but closed with the IRS administratively with no net payment due. But that letter has not quelled all the requests.

Of course, having Mitt Romney jab at him over tax returns seems to have helped Trump rather than hurt him. Trump might also get a *boost* from the comments of the IRS Commissioner himself saying the returns can be released. The fact that the IRS says that Mr. Trump could decide to release the returns despite an audit does not mean that doing so would be a good idea. From a tax viewpoint, most tax lawyers have said that the *tax-smart* thing is for Trump *not* to release the returns until his audit has been completely concluded.

It is one thing to have a few IRS auditors reviewing the returns and proposing upward adjustments. It is quite another to having the *entire world* pick them apart and give the IRS lots of new ideas. From a tax viewpoint, that would not be smart. Yet politics is another matter, with very different rules, and Trump is running for President. The conventional answer is that [Trump should release his tax returns](#).

But Mr. Trump turns convention on its head. In fact, perhaps Trump's tax returns may not tell us much we do not already know about him. We know he is rich, but he seems to frequently argue that he is richer than we think he is. Reports say he has more than two hundred entities. He says his returns are huge. They probably are. They also probably show a lot less of what we might call hard income than he may want us to see.

Real estate people famously get rich with appreciation in value that is not currently taxed. If Mr. Trump buys a building for \$50M and it goes up in value to \$200M, that \$150M gain isn't booked or taxed until it is sold. It doesn't really show up until he sells. Real estate people famously get great tax write-offs too. For that reason, even lots of income (say from rents, royalties, commissions), gets sheltered with big depreciation deductions. Depreciation is that assumed erosion in value that occurs every year. It's a tax concept, more than it is a real economic one. As the building is *appreciating* in real dollar value, Mr. Trump can write-off a piece of its value every year as if it were going *down* in value.

Mr. Trump's effective tax rates may also not be too high. Trump echoes Warren Buffett and many other tax-savvy investors in saying that he pays as little tax as he can. Most of Mr. Trump's income is probably not

ordinary income taxed at 39.6%. Most may be capital gain taxed at 20% (plus maybe the 3.8% Obamacare tax). If that is so, that could grate on some of his supporters.

And then there are the charity issues. It is possible that his tax returns will reveal that he is not generous generally, or not generous specifically with respect to causes—like Veterans—that Mr. Trump suggests he supports. And then there are other speculations. Ted Cruz even suggested that Trump's returns may show [mafia ties](#). That's a pretty wild suggestion, even for Mr. Cruz.

Perhaps Mr. Trump's returns are aggressive, taking positions that he may assume may get whittled down and compromised in the audits he complains have been perennial. But if his 'art of the deal' applies to his taxes, will that hurt his image with his followers? It doesn't seem likely.

For alerts to future tax articles, email me at Wood@WoodLLP.com. This discussion is not legal advice.