Robert W. Wood
THE TAX LAWYER

TAXES 6/20/2016

Hillary Eyes Tax Hikes By Executive Action, Follows Obama's Lead

Hillary Clinton has not yet been elected. But if she is, she says she would raise taxes by executive action on fund managers. The ‘carried interest’ provision has become controversial, allowing even wealthy managers to pay capital gain tax rather than ordinary income on their distributions. Mrs. Clinton has said she would push for a range of tax increases, though most presumably could only happen in conjunction with Congress. But some of Mrs. Clinton’s groundwork on executive action was prepared by President Obama.

Democratic presidential candidate Hillary Clinton speaks at the Cleveland Industrial Innovation Center, Monday, June 13, 2016, in Cleveland. (AP Photo/Tony Dejak)

Controversially, President Obama took executive action on guns and on immigration. He also said he could raise taxes by executive action in lieu of going to Congress. The push for executive action on taxes may have actually started with Sen. Bernie Sanders (I-VT). Bernie called on the President in this letter to raise over $100 billion in taxes. Sen. Sanders listed actions he said the IRS could take *without* asking Congress. After that, White House Press Secretary Josh Earnest said the President was "very interested" in raising taxes through executive action.

House Ways & Means Committee Chair Paul Ryan (R-WI) and Senate Finance Committee Chair Orrin Hatch (R-UT) responded against unilateral action and asking for the job to be left to Congress. Our system dictates that tax laws are passed by Congress and administered by the IRS and Treasury Department. Sen. Sanders wants to target corporations, but the tax hikes the President's budget proposed are numerous.

That made it doubly worrisome when Press Secretary Earnest said:

> ‘ the president has asked his team to examine the array of executive authorities that are available to him to try to make progress on his goals. So I am not in a position to talk in any detail at this point, but the President is very interested in this avenue generally."

Sen. Sanders wants the President to fix "check the box" rules that allow multinational corporations to shield profits from taxation. He also wants to end the tax break for carried interests. But if his executive action expands to tax, what else from President Obama's budget might be considered? Of the many tax proposals in his budget, the President wants to increase taxes on retirement savings.

Taxing retirement savings is hard to understand given the fact that we so desperately need private savings. Our Social Security system is going broke, Americans are living longer and living costs keep going up. It almost seems impossible to have too much for retirement. Nevertheless, Mr. Obama proposed cutting back on retirement savings, limiting them to an amount sufficient to generate $210,000 a year beginning at age 62.

The President also wants to change the independent contractor vs. employee playing field. Notably, Obamacare covers employees, not independent contractors. The President's proposal would put more power in the hands of the IRS to reclassify independent contractors as employees. The budget recognizes that the law is tough to apply and tough for businesses to understand. It states that, “New enforcement activity would focus mainly on obtaining the proper worker classification prospectively, since in many cases the proper classification of workers may not be clear.”

The President wants more tax reporting too. Businesses that purchase more than $600 worth of goods or services from a contractor would have to get that contractor’s Taxpayer Identification Number and check it with the IRS. If it doesn’t check out, the business would have to withhold from 15% to 35% of the payment, sending it off to the IRS. It isn’t an exaggeration to say that it would double or triple the reporting obligations of small businesses.

The President wants to deny tax deductions for donations linked to sports tickets. Many colleges and universities rely on event tickets to goose alumni contributions. Today, if you give to charity and your contribution makes you eligible to buy advance tickets, you can only deduct 80% of your contribution, not 100%. The White House says *no part of your donation* should be deductible, period.

As for Mrs. Clinton, she has proposed a ‘Buffett Rule,’ imposing a minimum 30% tax on anyone with adjusted gross income over $1 million. She would cap the value of itemized deductions at 28%, and make the 20% capital gain tax rate apply only if you held the asset for six years or longer. But she says that her carried interest change for fund managers, a change Sen. Sanders has also pushed, would be by executive action if Congress fails to take action. That is another thing she may inherit from President Obama: if Congress fails to act, the executive steps in.

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