



Robert W. Wood

THE TAX LAWYER

TAXES 2/03/2015

Obama's Proposed 68% Death Tax Would Be Highest In World

Like a scary movie trailer before his State of the Union address to a Republican controlled Congress, President Obama proposed \$320 billion in tax hikes, throwing down a tax gauntlet. His signature ideas would make community college free, extend sick leave to working families, and more. Among the ways Mr. Obama would pay for this let-them-eat-rich-people's-cake largesse was to tax Section 529 plans.

The backlash from that idea was unexpectedly bad for the President, so it was quickly dropped. Still, you have to admit that taxing someone who had saved for college so someone else could go to college for free had a certain Robin Hood symmetry to it. Other plans from which the President has not backed away, however, are to raise the long term capital gain rate to 28% for couples making more than \$500,000 per year. Of course, President Obama *already* raised it from 15% to 20%, and even that rate isn't accurate.

Actually, long term capital gains today pay 23.8%, 3.8% from the President's net investment income tax enacted to help fund Obamacare. In these and other ways, President Obama says he will simplify our complex tax code and make it fairer. One 'loophole' he says is egregious is step up in basis. Although assets upon death may be subject to estate tax, the assets are stepped up to market value for income tax purposes. Otherwise, one could pay both income and estate tax on the same dollars.

Calling basis step up a 'loophole,' the President thinks it is a scam wealthy people exploit. One of the justifications for grabbing more money is that the current unified estate and gift tax exemption of \$5.43 million per person is too high. So there would be no basis step up. Regardless of whether this sounds fair, the dollars at stake are impressive. It would raise approximately \$200 billion over the next decade.

When combined with state estate taxes, the [President's proposal would yield the highest estate tax rate in the world](#). That would be quite a distinction. It is not an exaggeration to say that basis step up is a big issue and one that it seems unlikely Mr. Obama can kill. Small and family businesses might be particularly hard hit by such a change. Already, it is hard for many family-owned businesses to stay afloat after the death of a key figure. Not all of the reasons are managerial. Many are financial, and taxes can force a sale.

Under the President's proposal, the estate tax would balloon. Stephen Moore of the Heritage Foundation calculates that by eliminating basis step up, we would end up with [the world's highest estate tax rate](#). Dick Patten, chairman of the Family Business Defense Council calculates an effective death tax rate of 57%. If you add in state inheritance taxes, the combined tax rate could go as high as 68%.

Accounting firm Ernst & Young tracks estate taxes in 38 industrialized countries, finding that only Belgium is higher at 80%. Yet in most cases Belgium would be lower, providing a 60% rate to immediate family members. Not so in America, where you could build up your business and face estate tax and income tax. More about the President's simpler and fairer tax code can be found [here](#).

For alerts to future tax articles, follow me on Forbes. 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.