PERSPECTIVE

Los Angeles | Daily Journal

THURSDAY, MARCH 5, 2015

Obama Should Reconsider A Few Tax Hike Proposals

By Robert W. Wood

Since he has been president, Barack Obama has lobbied repeatedly to increase taxes, at least on the wealthy. There have been disagreements about exactly who is wealthy and exactly how those taxes should be implemented. Many would argue that the middle class is getting caught in the crossfire.

Obama has succeeded in raising taxes several times and in several ways. One key tax increase was the top tax rate, going from 35 percent to 39.6 percent. Another was the long term capital gain rate, which for many Americans went from 15 percent to 20 percent.

Yet even that 5 percent rate hike was not the whole story. One of the main taxes to fund the Patient Protection and Affordable Care Act, or "Obamacare," is the 3.8 percent net investment income tax. It basically adds a 3.8 percent tax to dividends and interest and capital gain.

It applied during all of 2013, so you may not know it, but you already are paying it. Of course, it will figure in 2014 tax returns, too. Now, a long term capital gain faces 23.8 percent tax, the combination of the 20 percent rate plus the 3.8 percent Obamacare tax.

And the president's recent budget proposal suggests that he would like to increase other taxes, too. Is Obama *personally* responsible for all of the crazy tax proposals in his budget? Maybe not, but there's a lot of backpedaling he or his staff may want to do.

Remember the 529 tax plan? The president wanted to tax college savers so he could give free college to others. Maybe the president thought that would sound clever, but he dropped the proposal to tax 529 plans quickly once there was an audible backlash from savers.

Here are four additional tax proposals in the budget that Obama should reconsider.

More Taxes on Retirement Savings

Are Americans saving *too much* for retirement? Of course not, but the White House must think so. Or put differently, even if saving for retirement is good, the president must think collecting more taxes is better.

This is particularly hard to understand given that the proposal is to let the Internal Revenue Service collect taxes from money you put away for your old age. Taxing retirement savings is hard to justify given the fact that we so desperately *need* private savings. Our Social Security system is going broke.

Remember, too, that Americans are living longer and living costs keep going up. With those immutable facts, it almost seems *impossible* to have too much saved up for retirement. Nevertheless, the Obama budget proposes cutting back on allowable retirement savings.

In fact, the cuts would be big, limiting retirement savings to an amount sufficient to generate $210,000 a year beginning at age 62. Apart from the amorphous nature of such actuarial musings, what if you run short? There's a big potential for this simply not being enough money for many retirees.

It seems especially likely in high cost of living cities. That certainly applies to many Californians. The answer would appear to be that this is just too bad. Short term tax revenue is more important.

Independent Contractors to Employees

Another proposal relates to the age-old battleground over worker status. Who is an employee, and who is an independent contractor? Some people see this as a bow by the White House to powerful labor unions that clearly want more members.

Independent contractors aren't easy to get as union members, while employees are a cinch. Obamacare also covers employees, not independent contractors. On the other hand, worker status reform is needed, just not the kind the president suggests.

Indeed, this proposal would put considerably more power in the hands of the IRS. Simply put, the president wants to allow the IRS to reclassify independent contractors as employees. They already have that power, but the president wants to enhance it.

The budget recognizes that the law is tough to apply and tough for businesses to understand. The budget states, "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." Now *there's* an understatement.

More Tax Reporting

Many businesspeople have just survived the annual onslaught of IRS tax reporting, sending and receiving Forms W-2 and 1099. This annual rite of passage becomes more burdensome every year.

And this proposal in the president's budget could make it worse. It is also tied to Obamacare, a provision that was repealed by Congress as unworkable in 2011. So what, the budget seems to say, now the president wants to put it back.

Yes, it is about Forms 1099 and tax withholding. 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 verify it with the IRS. If it doesn't check out, the business must withhold from 15 percent to 35 percent of the payment, sending it off to the IRS.

Businesses rebelled against this the first time around when the idea was 1099s. This withholding rule is even worse. It isn't an exaggeration to say that it would double or triple the reporting obligations of small businesses.

No Tax Deductions for Donations Linked to Sports Tickets

Many colleges and universities rely on sporting event tickets to goose alumni contributions. You give to charity and get a tax write-off, but your contribution also makes you eligible to buy advance tickets. Where's the harm?

It is hard to see it, especially since there's a rule that you already get your donation cut back. Today, the rule is that if you get ticket perks this way, you can only deduct 80 percent of your contribution, not 100 percent. But the White House says if your donation gets you upped on the ticket purchase list, full stop.

It would mean that no part of your donation should be deductible, zip, nada. Starting Jan. 1, 2016, colleges and universities that rely on these gifts may be hurting.

Of course, these are only proposals. A Republican Congress may put a stop to these proposed tax changes, but there will surely be more coming.

Robert W. Wood *is a tax lawyer with a nationwide practice (www.WoodLLP.com). The author of more than 30 books including "Taxation of Damage Awards & Settlement Payments" (4th Ed. 2009 With 2012 Supplement www.taxinstitute.com), he can be reached 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.*