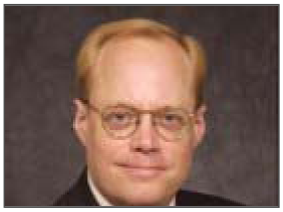

Robert W. Wood
THE TAX LAWYER

Oct. 24 2012

Romney As Tax Change Maven

Image credit: Getty Images via @daylife

If the reports are to be believed, Massachusetts made considerable tax progress with Mitt Romney at its helm. Despite being a Republican governor in a predominantly Democratic state, he pushed through significant tax changes. Surprisingly, a number of them were aimed at businesses, not individuals.

What's more, the revenue raised was big enough to help close a significant budget gap. See How Romney Tackled Tax Changes. Is past success a guarantee of future results? Not hardly, yet any such success could still be important if Mr. Romney is elected.

Mr. Romney has been pilloried for offshore investments and his famously low rate. Yet the biggest of Mr. Romney's tax problems is arguably his relative lack of specificity. It has caused many to question whether he's serious about reforms. Even if he is, we worry exactly who and what he'll target. His elitist image and ties to the private equity world surely don't help.

For example, the tax law allows carried interests to be taxed as capital gain even though they seem like service income. Management fees are ordinary income while carried interests—deemed fund investments—are taxed as capital gain. This seems unfair, has been attacked, and could be changed. See Romney's Taxes: It's The Carried Interest, Stupid.

In fact, Ways and Means Committee Ranking Member Sander Levin (D-MI) has twice authored legislation to tax carried interests as ordinary income. It passed the House ***four times*** but never got past the Senate. In the meantime, New York is investigating whether ***conversions*** of 35% management fees to 15% carried interests–often called management fee waivers–were abused. See Whistleblower Fingers Tax Tricks At Private Equity Firms. Abuse or not, according to a Dow Jones survey, 40% of U.S. based funds do it.

Regardless of whether Mr. Obama wins a second term or Mr. Romney wins a first, a comprehensive overhaul of the tax code is overdue. Carried interests are on some lists why. See Capital Gains, Ordinary Income and Shades of Gray. Yet how partnership income is taxed is determined by how ***partnerships*** earn a profit, not by what ***partners*** contribute.

Indeed, singling out any tax break may be unfair. There are so many that starting over with a new tax code arguably makes more sense. Whoever is elected, it would be a shame if we do not thoroughly revamp (if not remake) our tax code. It truly needs it.

Robert W. Wood practices law with Wood LLP, in San Francisco. The author of more than 30 books, including Taxation of Damage Awards & Settlement Payments (4th Ed. 2009 with 2012 Supplement, Tax Institute), 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.