



## Robert W. Wood

THE TAX LAWYER

---

TAXES 1/28/2016

### Tax Hikes By Executive Action Previewed By Obama, Clinton, Sanders

Tax the rich is a common refrain this election season. As Mrs. Clinton and Bernie Sanders compete to ‘feel the Bern,’ it may seem that tax increases are inevitable. Even Mr. Trump is saying that he will go after his hedge fund friends, increasing some taxes despite his general call for tax cuts.

Curiously, though, Mrs. Clinton and Mr. Sanders have both suggested that they might raise some taxes on their own without Congress. The remarks may be greased and emboldened by that great friend of executive action, President Obama. Controversially, Mr. Obama took executive action on immigration, then more recently took [executive action on guns](#). Some applaud his actions, while others decry them.



*President Barack Obama speaks at a town hall styled event at McKinley Senior High School in Baton Rouge, La., Jan. 14, 2016. (Photo credit: AP Photo/Gerald Herbert)*

The President intimated that he was poised to tackle tax reform by himself too. And as his term grows shorter, the power of his mighty pen may become

more intoxicating. It is not exaggeration to say that President Obama likes to raise taxes and to enact new ones, as his budget made clear. And that is where executive action might create the perfect storm. The Congressional Budget Office said Mr. Obama's executive immigration action [would increase federal deficits by \\$8.8 billion over ten years](#).

Still, taxes by executive action? White House Press Secretary Josh Earnest said the President was ["very interested" in raising taxes through executive action](#)? However, the thought arguably started with Sen. Bernie Sanders (I-VT), [calling](#) on the President in [a letter](#) to raise over \$100 billion in taxes. Sen. Sanders [listed](#) actions he said the IRS could take *without even asking* Congress.

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:

6 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." Now *there's* an understatement.

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.

Of course, these are only proposals, and there are many others. A Republican Congress left these and other proposed tax changes stillborn. But if President Obama can give work permits, Social Security numbers, and driver's licenses to approximately 4 million illegal immigrants, tax increases might seem easy.

The Clinton and Sanders campaigns have both said that they could *and would* go after the carried-interest provision as well as corporate inversions. Experts differ on whether these are appropriate subjects for executive action. But Sanders wants to go much further with his pen, attacking check-the-box elections and other staples of tax planning. It is worth noting that President Obama had his IRS impose new rules on inversions twice already by executive action. But more sweeping changes are arguably not allowed without Congress.

If either Mrs. Clinton or Mr. Sanders wins the White House, we may see more executive tax action, not less of it.

*For alerts to tax articles, email me at [Wood@WoodLLP.com](mailto:Wood@WoodLLP.com). This article is not legal advice.*