PERSPECTIVE

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# Will Trump Pay Taxes If He Refuses Salary?

**By Robert W. Wood**

On the campaign trail, Candidate Donald Trump said that he would not accept a presidential salary, saying, “The first thing I’m going to do is tell you that if I’m elected president, I’m accepting no salary, OK? That’s no big deal for me.” Now, post-election, President-elect Donald Trump has told “60 Minutes” that he is turning down his $400,000 presidential salary: “Well, I’ve never commented on this, but the answer is no. I think I have to by law take $1, so I’ll take $1 a year. But it’s a — I don’t even know what it is.”

When CBS news anchor Lesley Stahl reminded him that his new salary would be $400,000 per year, he replied, “No, I’m not gonna take the salary. I’m not taking it.” He even intimated that he might not spend full-time in the White House!

Trump can model his “no thanks” on corporate America, where turning down pay and working for $1 dollar is not uncommon. But it’s rare in politics. It turns out there’s a statute (3 U.S.C. Section 102) that says the president gets $400,000 a year, plus $50,000 for expenses. It goes on to say that if the president doesn’t use the entire $50,000 for expenses, the rest is returned to the Treasury.

Does this mean that he can’t turn down the salary, or that if he does the IRS still gets to tax it? That would surely be silly, but the history is thin. JFK reportedly donated his salary to charity, a practice he continued from his days serving in Congress. Herbert Hoover donated his salary to charity, too.

But charitable contributions often don’t entirely wipe out income due to percentage limits in the tax law, so you have to be careful. In the past, some elected officials have taken the $1 challenge, including former Mayor Michael Bloomberg, former Gov. Arnold Schwarzenegger, and former Gov. Mitt Romney. In the corporate world, there have been many CEO voluntary pay cuts. In fact, USA Today has listed the nine lowest-paid CEOs, some earning only $1 a year.

They include Larry Page and Sergei Brin of Alphabet (Google), John Mackey of Whole Foods Market, Kosta Kartsotis of Fossil, and Jeremy Stoppelman of Yelp. Yet low pay for CEOs is not the norm. In fact, median CEO pay for S&P 1500 companies is $5.4 million, and some CEOs have broken the $30 million-a-year barrier.

Cynical readers might assume that volunteering to take a nominal $1 salary can be tax savvy. After all, stock growth and capital gain are taxed more favorably than salary. In 2012, Mark Zuckerberg earned $770,000 in salary and bonus, but then dropped to Facebook's lowest-paid employee. The tax-smart play is on the increase in the stock value. Rather than drawing large amounts of cash, taking a big equity stake and virtually no cash looks egalitarian.

It also makes the CEO focused on growing the company’s stock. One dollar pay suggests that a CEO is *really* looking out for shareholders. That’s one reason it’s become popular. Google's Sergey Brin and Larry Page are examples. Compensation tied to stock value can be a good deal for the company and the exec. Famous past examples included Chrysler's Lee Iacocca and Steve Jobs.

Long before the huge executive pay packages of the last few decades, the IRS labeled some pay “unreasonable” and levied extra taxes as a result. Usually, that’s pay that is too high, so it can’t be deducted on the company’s taxes. In fact, today most public companies face a limit on pay deductions of $1 million per employee, unless the pay is performance-based.

With closely held companies, how much pay is too much to deduct is fact-specific. With C corporations, there are two levels of tax, one at the corporate level, and one to shareholders. The IRS doesn’t want a CEO/shareholder to take a big salary that the corporation deducts, when the corporation is supposed to pay its own taxes.

Conversely, these days the IRS sometimes attacks pay for being too *low*. Once again, the IRS tries to impose extra taxes as a result. Why would the IRS care if you pay too little?

Whether the IRS stands to collect more by arguing that pay is too low or too high turns primarily on the type of business entity paying the compensation. A C corporation deducts pay as a business expense, so the IRS wants to argue pay is too high and can't be deducted. But with an S corporation, there are smaller taxes to the owners if amounts are paid out as “dividends” not as pay. After all, income taxes apply in either case, and the rates on dividends can be better than pay. What’s more, the payroll taxes on compensation are shared by the employer and the employee. That means each side is paying more tax.

Reported examples of this S corporation tax dodge involved John Edwards and Newt Gingrich. But there’s little to suggest it is illegal. It is simply a question of degree. Many of the tax cases in which people are found to pay too little compensation involve extreme facts, as where someone claims to be working for nothing.

For Mr. Zuckerberg, does the same rationale apply? It is hard to see how, since these are public companies, not closely held. And that’s especially true with people like Messrs. Zuckerberg, Brin and Page. These founders don’t need lots of options and restricted stock.

Where an executive takes $1 cash compensation plus considerable non-cash compensation like options and stock, one could argue there’s an abuse depending on exactly what's awarded and exactly how the plan is implemented. Even so, most equity in this context is subject to tax as wages. Employees — regardless of salary size — must carefully navigate the rules to get capital gain treatment.

Finally, remember the constructive receipt doctrine of tax law. It requires you to pay tax when you merely have a *right* to payment even though you do not actually receive it. If you have a legal right to a payment but elect not to receive it, the IRS can still tax you. The classic example of constructive receipt is a bonus check you ask your employer to pay you next year.

Technically, if you had the right to receive it in December, it is taxable then, even though you might not actually pick it up until January. The IRS does its best to ferret out constructive-receipt issues, and disputes about such items do occur. The situation is different if you negotiated for deferred payments *before* you provided services.

Trump’s case seems more like that. And it seems unlikely that he’ll have to pay tax on his salary that he just turned down.


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