10 Possible Trump Tax Tricks

By Ryan Erickson October 5, 2016

This weekend, *The New York Times* broke news that it had received parts of three state income tax returns filed by Republican presidential nominee Donald Trump and his wife at the time, Marla Trump, now Marla Maples.[1] The state tax return documents revealed that Trump claimed nearly $1 billion in losses on his 1995 tax returns, which could possibly have allowed him to legally avoid paying federal taxes for up to 18 years.[2]

Donald Trump has declined to release his tax returns, breaking with every GOP presidential nominee since 1980.[3] Trump has repeatedly said that he will not release his returns because they are under audit, even though being under audit does not bar someone from releasing their returns; in fact, Richard Nixon released his tax returns while under audit in 1973.[4] The documents obtained by *The New York Times* may explain why Trump is so nervous about letting the public get a peek at his taxes.

Legal officials and tax experts have plenty of guesses about why Trump is declining to release his taxes, among them that he earns and is worth far less than he boasts; that he gives far less to charity than he has claimed; and that he gets income from sources that might cause him political headaches such as entities in Russia.[5] But the documents obtained by *The New York Times* make a compelling case for one theory in particular: Trump's tax returns would indicate that he pays little or nothing at all in taxes. And other records filed with New Jersey gambling authorities in 1991 and 1993 show that he also paid little to no taxes in those years as well.[6]

Yet Trump could only have used his $900 million in business losses to avoid taxes until 2013 at the latest, suggesting that the losses would not appear on his 2014 or 2015 tax returns. This raises the question of why he has continued to hide his tax returns. Trump is likely taking advantage of a litany of other tax tricks that enable him and wealthy people like him to hack away at their tax bills—until they pay little to nothing at all.

Even with the new information brought to light by *The New York Times*, it is still impossible to know exactly which tax treatments Trump is taking advantage of to reduce his tax bill. Nonetheless, one does not need to look too deeply to realize how much the tax code has enabled Trump and others like him to increase their riches. Trump boasts that he pays as little in taxes as possible, but the truth is that the vast majority of Americans do not have the luxury of either a tax code designed to minimize their tax bills or armies of accountants who can help them avoid paying as much in taxes as possible.

Here are a few tax tricks that Trump and others like him could be using to avoid paying their fair share.

Dollars just passing through

Trump very likely benefits from lower tax rates paid by pass-through entities, which are businesses that do not pay taxes at the corporate level. Instead, any tax is funneled to their owners, resulting in a much lower effective tax rate—the individual rather than corporate tax rate—on these companies' incomes.[7] Although pass-throughs are frequently portrayed as small businesses that would be crushed by taxation at both the individual and corporate levels, a recent report by the Center for American Progress shows that pass-throughs are anything but small: More than 70 percent of the revenue brought in by partnerships and S corporations—the two leading types of pass-throughs—goes to big businesses.[8] Moreover, in 2011, more than 70 percent of the income going to partnerships went to the top 1 percent of households.[9] Trump not only listed income from 68 pass-through entities on his 2015 campaign finance disclosure form, but a textbook used at the now defunct and discredited Trump University also recommended pass-throughs as a tax-avoidance strategy.[10]

How specifically might Trump be using pass-throughs to reduce his tax bill? If any of Trump's holdings that claimed massive losses were set up as C corporations, which pay taxes at the corporate level, any losses would be reported by that company and could not be claimed by Trump at the individual level. Because Trump makes extensive use of pass-throughs to structure his holdings, as noted above, losses from any of his holdings ultimately land with him. Then, because of a provision detailed in *The New York Times* story, he can take the loss of any single partnership or S corporation and apply it to the rest of his income—meaning that even if Trump made significant amounts of money from other holdings he has, the huge loss from one holding could wipe out his tax liability elsewhere. [11]

The best, most tremendous tax break for real estate developers

Trump could be taking advantage of another tax trick of real estate professionals, whereby people involved at least 50 percent of the time in the real estate profession can deduct all of their losses connected to real estate activity.[12] Trump could use this ploy to substantially lower his tax liability on reported income, especially because he could deduct the losses he incurs from any property he owns anywhere in the world in any given year.[13] The tax documents obtained by *The New York Times* suggest that Trump may have benefitted from this particular trick in 1995, when he claimed a $15.8 million loss on real estate holdings and partnerships.[14]

Low taxes in the kingdom of debt

Owing to Trump's complex and extensive business holdings—and given that he once styled himself "the king of debt"—it is possible that Trump is financing his real estate businesses with excessive debt in order to take advantage of the U.S. tax code's favorable treatment of debt.[15] Instead of investing his after-tax profits in his businesses, Trump may be borrowing large amounts to invest in more real estate assets in order to generate deductions on the interest paid on the debt, which, in turn, would reduce his taxes.[16] In addition to the interest deductions, he may be taking depreciation deductions on that same business property, a practice that one *Vanity Fair* article notes could potentially "wash out" any tax liability he has on rental income from the property.[17]

Golfing goats

By grazing goats on his New Jersey golf courses, along with maintaining small hay farming and wood cutting operations, Donald Trump gets to claim that parts of his golf courses qualify as agricultural land, which wins him a tax break in that state.[18] These tax breaks could amount to a pretty significant chunk of change: While we cannot know exactly how much the agricultural assessment saves Trump in taxes, according to *The Wall Street Journal*, it could mean that Trump is paying less than $1,000 per year in taxes on land that would ordinarily be taxed at around $80,000 per year.[19]

Easements to the pain of owning a resort

Trump claimed to donate about $102 million to charity in a list he gave to the Associated Press in 2010—the majority of that amount taking the form of $63.8 million in what he termed "various conservation easements."[20] Essentially, this means that Trump may have given up his rights to develop land he owned—which caused that land to decline in value. In turn, Trump would get to claim this decline as a charitable deduction, which would shrink his tax liability.[21] Internal Revenue Service, or IRS, and U.S. Department of the Treasury officials believe that conservation easements are frequently abused, and the Treasury Department has called for ending this particular tax trick when used for building golf courses and curtailing its use in other areas.[22]

A nod to presidential has-beens

The Gingrich-Edwards Loophole—named for the two former presidential candidates most visibly associated with using it for their private business ventures, former North Carolina Sen. John Edwards (D) and former Speaker of the U.S. House of Representatives Newt Gingrich (R-GA)—could allow Trump to weasel out of paying his fair share in payroll taxes, which fund Social Security and Medicaid. Trump has admitted to using S corporations—a type of pass-through entity—for his various projects, which opens the door to reducing his tax bill even further.[23] Owners of S corporations are supposed to pay themselves a salary that is commensurate with the work they do on behalf of their companies.[24] This salary is subject to payroll taxes, unlike their allocated share of the S corporation's net profits.[25] As a result, S corporation owners have an incentive to pay themselves as little in salary as possible, reducing the amount in payroll tax they must pay while increasing the additional income they receive in the form of their S corporation's profits. The recent *New York Times* report strongly suggests that Trump may have done precisely that: It showed that he only declared $6,108 in wage and salary income in 1995 compared with $7.4 million in interest income.[26] Not only could Trump have taken advantage of the Gingrich-Edwards Loophole, but The Trump Organization's executive vice presidents—Trump's children Ivanka, Eric, and Donald Jr.—could have as well.[27]

Translations for tax shelter in every language

Donald Trump frequently boasts about the value of the Trump brand.[28] If he held Trump brand licenses in Trump companies that are located in tax haven countries, his U.S. companies selling Trump-branded products would pay royalties to those tax haven countries.[29] This would effectively enable him to shift income from the United States to tax havens and thereby reduce the amount of his income that would be subject to U.S. taxes.

Spoiling the spoiled

Trump could potentially avoid capital gains taxes on his properties and other capital assets forever—if he keeps reinvesting the money he makes from selling properties in more real estate. When someone sells an asset such as a property, the seller pays taxes on the proceeds that exceed what the seller paid for the asset originally. However, the seller can avoid paying that tax bill if they take the money realized from the sale and dump it into another similar asset, such as another piece of property.[30] Trump could move his money around to skirt paying as much in taxes as possible by pouring any real estate gains he has into new properties. Relatedly, the rest of the Trump family may at some future date also stand to benefit from a step-up in basis, meaning that the increase in value on those same investments, such as real estate holdings, would not be taxed to Trump's heirs either. Trump's heirs would never have to pay those taxes because they are allowed to "step up" the basis of their ownership in an inherited property to its value at the time of their inheritance. That is to say, if the Trump children sold the inherited property the very next day, they would not owe a dime of tax.[31]

Put another way, person A buys a parcel of land for $100,000 in 1975 that appreciates in worth to $300,000 in 2005. Unfortunately, person A dies that same year, and the parcel of land is inherited by person B, who then sells it in 2007 for $320,000. The good news for person B is that she only has to pay capital gains taxes on the $20,000 difference between the $300,000 2005 valuation and $320,000 selling price in 2007, meaning that the earlier $200,000 increase in value would not be subject to tax. As indicated in a prior CAP report, this is a key way through which the federal government effectively encourages intergenerational wealth inequality.[32]

Capital ways to get a lower tax rate

Similarly, Trump's tax returns may be hiding how much of his income is subject to capital gains and not labor income tax. At the federal level, capital gains income is taxed at a much lower top rate than labor income—23.8 percent for capital gains versus 39.6 percent for labor—meaning that the more that someone's income derives from capital gains rather than labor, the lower the person's overall tax rate is likely to be.[33] There is no question that lower tax rates on capital income favor the rich over low- and middle-income families.[34] According the Tax Policy Center, lower rates on capital gains and dividend income are "the main reason why the top 1 percent benefit disproportionately from tax preferences."[35]

Purposefully complicating tax returns

In using another tax-reducing trick available to the very rich—hiring sophisticated and creative professionals to handle tax returns—Trump, his lawyers, and his accountants may have made his tax return unnecessarily and excessively complicated. The goal of such a maneuver is to obscure any exotic tax tricks that would raise the ire or suspicion of the IRS. The IRS has been subject to repeated funding cuts that have greatly strained the agency's ability to conduct investigations of would-be tax cheats.[36] Trump may want desperately to keep his returns private because making them public would suddenly put a lot more eyes on his returns—and on any tax claims that may look questionable.

Conclusion

Until Donald Trump releases his tax returns, it will be difficult to know the precise approach he takes to ensure that he pays "as little as possible" in taxes.[37] Moreover, Trump's returns could provide an instructive example, highlighting just how many breaks exist for the wealthy few and how extensively the tax code accommodates people like Donald Trump.

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Endnotes

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