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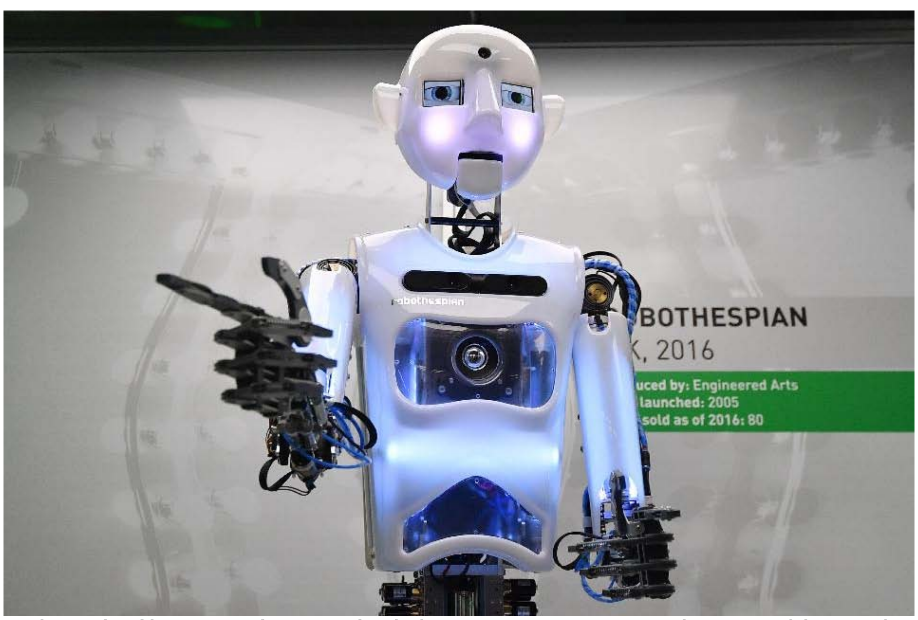
Actually, Robots Could Face IRS With Trump-Like Tax Savvy

Bill Gates made billions with Microsoft, but recently made a widely-publicized anti-tech message. He commented that after all, robots should pay taxes too. If robots take jobs, he suggested, one way to level the playing field might be if all those robots had to pay taxes just like the rest of us:

> “Right now, the human worker who does, say, $50,000 worth of work in a factory, that income is taxed and you get income tax, social security tax, all those things. If a robot comes in to do the same thing, you’d think that we’d tax the robot at a similar level.”



A robot produced by Engineered Arts named ‘Robothespian’ UK, 2016 is on view at the ROBOT exhibition at the Science Museum in London on February 7, 2017. (Photo credit: BEN STANSALL/AFP/Getty Images)

You can read more about Bill Gates calling for income tax on robots, see the video on Quartz, or the written interview in its original form. Then, like me, you can start wondering about the specifics. But just think of it: robots *surely* will be like the rest of us, trying to pay as little as we legally can. The tax system is notoriously complex, and perhaps Robots will be good at the system. It is no coincidence that H&R Block now partners with IBM Watson for machine intelligence. According to TechCrunch, you can let Watson find tax deductions, using its natural language processing to parse the 74,000-page federal tax code.

TechCruch says “these are just the sorts of problems that machines tend to outperform humans in solving.” Sure, there are tax credits and tax deductions. But what about bigger stakes? It is commonly said that tax lawyers spend approximately a third of their time trying to convert ordinary income into capital gain. The line between capital gain and ordinary income has always been important.

Throughout much of the history of our tax law, most taxpayers have been allowed to pay a decidedly lower rate on capital gain. Today, the 15% or 20% rate (depending on income) still results in a huge rate preference. After all, the top ordinary income rate is 39.6%. You can think of it as kind of a half price deal. The capital gain classification is also important to basis.

The corollary to capital gain treatment is generally basis recovery even before one has gain. Then too, there are capital losses to consider. Individual investors often find themselves trapped with large accumulated capital losses from which they can benefit only at a painfully slow pace, able to offset a mere $3,000 of ordinary income per year. Some taxpayers find themselves arguing for capital gain treatment for an income item not because they are trying to reap the advantage of the 15% or 20% rate. Rather, they are seeking to soak up accumulated losses, losses that might otherwise languish until the next ice age.

For entities, the focus on capital gain is mixed. S corporations, in my experience, seem preoccupied with it. Their shareholders benefit from the flow-through of these items on their Schedules K-1. That also is true with limited liability companies and partnerships. C corporations do not receive a tax rate preference, but even they can care about the distinction. Thus, the distinction between capital and ordinary remains vital, not just for planners and those handling tax controversies, but for lawmakers, too.

One need look no further than the carried interest debate to find fierce discussion. Of course, that discussion is not so much about whether capital gain treatment and rate preferences are a good idea, but rather about precisely what should be capital and what should be ordinary. As for

President Trump, he claimed that he ‘brilliantly’ used tax laws to get out of paying them. Not long before his election, a report claimed that he had not paid taxes for 18 years due to a $916 million loss dating to 1995. Robots now have something to shoot for.

For alerts to future tax articles, email me at Wood@WoodLLP.com. This discussion is not legal advice.