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For Trump, Incredible Tax-Free $3.7 Billion Sale Would Be Tax Savvy

President Elect Trump and his businesses are synonymous. Yet everyone agrees some kind of change is needed before he takes office. Some contend that a passive—or at least *more* passive—role would be acceptable, with his children or strangers running the companies. Others want flat out divestment. As with many issues, the sometimes uncontrollable President Elect has given mixed signals.

He has tweeted that he would leave his businesses *in total* to reduce his potential conflicts of interest as President. Yet, he has also suggested that he would just take a passive role, or reduce some holdings, and not others. After talk that even sounded divestment-like in scope, he has now backtracked. Insiders say that Trump intends to keep a stake in his business after all. And so it goes.

This may *appear* to be disorganized, but it does not seem too far fetched to think that Mr. Trump may be playing to the crowd. His holdings are vast, and he doubtless will not want to backtrack too far from some of the leave-my-business hyperbole. But leaving and selling may be two different things. And self-described tax savvy Trump may not be able to resist the allure of a tax-free deal.

How is that possible? It is not some play on the $916 million Net Operating Loss that was outed pre-election by the New York Times. Rather, it is a product of the ethics rules designed to make sure private citizens who go into government do not have conflicts of interest once they get there. This is standard fare for Cabinet picks.

One might even think that some of them might even see the tax deferral the law allows them as an astonishingly good perk of a government job. The Ethics Reform Act of 1989 tries to ensure that federal employees will not be participating in government actions in which they have a private financial interest. Curiously, the President and Vice President are not covered with the same mandatory sweep.

However, covered by the conflicts rules and covered by the tax-free benefits seem to be different. The President could apparently come under the tax-free selling rule with a written determination that divestiture is reasonably necessary to comply with any Federal conflict of interest statute, regulation, or rule. Whatever that means. Reasonably necessary seems to be a judgment call. Besides, it is fuzzy as to exactly who makes these determinations. Indeed, is it one determination, or one per asset, or something else?

It may not matter in the end. Some reports say that most Americans are OK with Donald Trump keeping his business. Maybe, but the current climate suggests that few would complain if the President were to apply the conflict law to himself. That would mean, like his Cabinet picks, that he could take advantage of section 1043 of the tax code, which covers sales of property to comply with conflict-of interest requirements. The law does not mean it is a complete bar to tax *ever*.

But one essentially can sell the conflict-worrisome assets tax free, and roll the tax-free sales proceeds into something else. Think of it a little like a tax-free 1031 exchange of real estate. That is something with which Mr. Trump is no-doubt familiar. Mr. Trump surely has bigger issues on his mind. But for a candidate who repeatedly touted his tax-expertise, the stars seem to be aligning on this too.

Of course, Mr. Trump is hardly predictable. He could change course multiple times on the Trump businesses and brand. Yet already the set-up for a tax free divestment deal might be coming. In fact, when Mr. Trump suggested that he would get out *entirely*, the ethics people themselves—the Office of Government Ethics—even tweeted praise for his get-out remarks. With no prodding, the ethics police seem to be pushing for a complete divestment, not just a passivity band aid. That would probably be good for Mr. Trump's focus on his new job. Yet this could also be another piece of evidence suggesting that Mr. Trump is just as tax savvy as he said he was.

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