

Trump Taxes: White Whale Or Da Vinci Code?

By Robert W. Wood

How much does the American public care about Trump's tax returns? He is running for president, so the conventional answer is that Trump should release them. There is no legal requirement that he do so, but it is unheard of not to release them. Still, some people care a lot, and the latest entrant into this crowded field is Warren Buffett. He has now challenged Trump: I'll show my tax returns if you'll show yours. Buffett is under audit too.

It is hard to imagine that challenge will work, since Donald Trump is not your usual candidate. Maybe the break from tradition smarts the most, the fact he can say just about anything and move on. Trump has said he has "very big" tax returns.

In fact, he said, "I'm sure you've seen the picture where the returns are literally from the floor to up to here. They're extremely complex." He has also said that his financials "show I'm worth more than \$10 billion by any stretch of the imagination." But maybe they don't, and tax returns probably wouldn't show his net worth in any event.

His IRS audit defense would be a pretty good excuse in most situations, whatever the IRS or the public might say. A letter from Trump's tax lawyers confirmed there was still an ongoing tax audit for 2009 and subsequent tax years. The letter also said that the IRS audited 2002 through 2008 tax years too.

Those tax years were closed, according to his lawyers. Yet even closed years could be impacted by certain IRS actions on still open years. It is one thing to have a few IRS auditors reviewing the returns and proposing upward adjustments. It is quite another to having the *entire world* pick them apart and give the IRS new ideas.

If Trump did hand them over — which he probably will not — it is worth considering just how revealing (or how obtuse) they might be. Just get out an IRS Form 1040 and have a look. Let's start with the first two pages of a tax return, since some candidates provide only the first two pages of a tax return, not the whole enchilada. The first two pages have basic income detail and include summaries of deductions, but not too much more.

If Trump did that minimal disclosure, what would they show? They wouldn't show his net worth. Tax returns are about income for one year. They do not show an individual's net worth, not even Donald Trump's. They show income, but some years he may have a loss.

He could still rake in millions and have a tax loss. In fact, having a tax loss can be attractive. You let non-cash losses (for example, from partnerships) offset your cash income items. That's efficient. Still, it might make Trump look smaller than he wants to look.

Tax returns also won't show market values. Many real estate investors and developers get rich with appreciation in value that is not currently taxed. If Trump buys a building for \$50 million and it goes up in value to \$200 million, that \$150 million gain is not booked or taxed until it is sold. It doesn't really show up as income until he sells.

The tax returns might show big write-offs. Large income (say from rents, royalties, commissions), may be sheltered with big depreciation deductions. Depreciation is that assumed erosion in value that occurs every year. Depreciation is a tax concept, more than it is a real economic one. Depreciation deductions are valuable, and can shelter other income, which taxpayers like. As a building is *appreciating* in real dollar value, Trump can write-off a piece of its value every year as if it were going *down* in value.

The tax returns will show effective tax rates, and that could hurt any Presidential candidate. It sure hurt Mitt Romney, but then Romney is no Trump. A low effective tax rate wouldn't hurt Warren Buffett if he ran. Buffett has famously lamented the fact that he pays a much lower tax rate than his secretary.

Buffett has often said that the tax law should be changed so that he has to pay more. Trump probably wouldn't say that, but he could. Of course, no matter what Trump says he will probably never be as beloved as Warren Buffett seems to be.

Trump's effective tax rates may also not be too high. Trump echoes Warren Buffett and many other tax-savvy investors in saying that he pays as little tax as he can. Most of Trump's income is probably not ordinary income taxed at 39.6 percent. Most may be capital gain taxed at 20 percent (plus maybe the 3.8 percent Obamacare tax). If that is so, that could grate on some of his supporters.

Trump's tax returns would show charitable giving. But again, if he only releases the first two pages of his tax returns, there would be no detail. Charitable contribution deductions go on Schedule A, which is not part of the first two pages of an IRS Form 1040. It is possible that Trump's tax returns will reveal that he is not generous generally when it comes to giving to charity. They might even show that he is not generous specifically with respect to causes — such as Veterans — that Trump suggests he supports.

Another topic of speculation has been Trump's business connections, especially if it turns out that some of them are unsavory. Connections to likely subjects would not be apparent unless complete tax returns and schedules were released, and perhaps not even then. Ted Cruz once suggested that Trump's returns may show mafia ties. More recently, there have been suggestions that Trump might have connections to Vladimir Putin and/or Russian oligarchs. But we don't know.

Perhaps Trump's returns are aggressive, taking income tax positions on his tax returns in anticipation that they will get whittled down and compromised. Trump does complain that his tax returns have been perennially audited. He even has suggested that the IRS may have targeted him. It is worth noting that tax returns must be signed under penalties of perjury. They are not an opening offer.

But if Trump's 'art of the deal' applies to his taxes, will that hurt his image with his followers? It doesn't seem likely. Still, these tax returns have become such a big topic, that there is great curiosity about what they might reveal. In that sense, Trump may have once again shown that despite his terrible gaffes and his not infrequent vitriol, that he does know how to stir up a crowd.



Robert W. Wood is a tax lawyer with www.WoodLLP.com, and the author of "Taxation of Damage Awards & Settlement Payments" (www.TaxInstitute.com). This is not legal advice.