PERSPECTIVE

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Trump's Pay Donation Shows Common Tax Problem

By Robert W. Wood

Can you turn down pay and have the Internal Revenue Service respect it? We'll come back to that question. Before he was elected, President Donald J. Trump suggested 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."

Then, post-election, President-elect Trump said he would turn down his $400,000 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." CBS news anchor Lesley Stahl reminded him that it was $400,000 per year, he replied, "No, I'm not gonna take the salary. I'm not taking it."

Now he has done it, at least in part. It turns out that it may not be legally possible to actually f*orgo* presidential pay. But donations are another matter. White House press secretary Sean Spicer announced that the president donated his first three months of salary to the National Park Service. The check came to $78,333.32.

Donating pay is rare, but John F. Kennedy donated his presidential salary, as did Herbert Hoover. But the practice is still unusual, and the mechanics can matter a great deal. After all, donations can be messier from a tax viewpoint than you might think.

The circumstances in which you can turn down pay to which you are entitled — and have the IRS respect it — are pretty few. Two tax doctrines, constructive receipt, and the assignment of income doctrine, can stand in the way. Suppose that you earn income and then tell your client to pay your ex-spouse, your child, or even your favorite charity?

As long as you don't touch the pay, you're not taxable, right? Wrong. The assignment of income doctrine which is part of the tax law says you are still taxable. What if you refuse to accept the money altogether — or if you ask to be paid next year? Same result. The constructive receipt doctrine kicks in, and again, you are still taxed.

You can end up taxed on some or all of the money, even if you immediately give it all to someone else. It can be a bitter reminder that gross income and net income aren't the same. There are various limitations that can make charitable giving not a matter of simple math. You could end up giving the money away, but unable to deduct it all in that year.

Restrictions on charitable donations apply for all of us. The amount you can deduct as charitable contributions cannot exceed 50 percent of your adjusted gross income. And there are other limits too. The figure is 30 percent for private foundations. If your contributions are more than those limits, you can carry over those deductions for up to five years. You can carry over the unused amount to the next tax year, but in the meantime, you are paying tax on money that you gave away.

That may be one reason why many charitable contributions are made at year-end. At that point, people generally have a much better idea what their overall gross and adjusted gross income might be. Of course, that is also the time of year when you may be hunting for tax deductions.

The real home run, of course, would be if you could turn down pay and have it go directly to your chosen charity, without having you *first* take it into income, and *then* deduct it. But that may not be possible here. President Barack Obama famously did it with the money from his Nobel Peace Prize.

He took advantage of a special IRS rule that allows such direct gifts to charity in certain cases. Normally, though, the tax consequences of regifting can be problematic. You can get stuck with all the income and have limited deductions. That was one reason why Obama arranged to have his $1.4 million Nobel money go *directly* to charity.

He was able to accept the award, but in advance, to direct that he would not personally take the prize money. If he had collected his prize money and *then* donated it to a qualified charity, he wouldn't have been able to write off the entire $1.4 million. There is no suggestion that this could work with wages, not even wages of a President.

That means Trump's situation is less clear, even if those dollars are small for a billionaire. And speaking of billionaires, what about simply dialing *back* your compensation? Does that work? Yes, you can do that, as long as it is *prospective* — meaning that you haven't yet rendered the services.

For example, a savvy CEO might agree to work for $1. Volunteering to take a nominal $1 salary can be tax savvy and look good too. After all, stock growth and capital gain is taxed much more favorably. At times, Mark Zuckerberg has had one of Facebook's lowest salaries, but 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 also examples.

Compensation tied to stock value is attractive to both sides, a good deal for both company and executive. In the past, even some elected officials have taken the $1 challenge, including former Mayor Michael Bloomberg, former Gov. Arnold Schwarzenegger, and former Gov. Mitt Romney.

So, as you hunker down this year over your tax returns, remember: *how* you do things matters a lot at tax time. *How* you do things can matter as much as *what* you do. Restrictions on deductions, what is itemized, what limits and phase-outs apply, and the dreaded alternative minimum tax, can all play a part in tripping you up.

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