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One Beneficiary of GOP's Tax Bill: President Trump

The big tax cut moving through Congress as part of a health bill could potentially save the president millions

By
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WASHINGTON—The first big tax cut moving through Congress under President Donald Trump would likely benefit the president himself, potentially saving him millions of dollars in taxes on his rental income next year and even more money on other income if he wins a second term.

Mr. Trump's decision to continue owning his businesses as president without running them expands the tax's effect on him and thus makes him benefit more from the proposed repeal, which would take effect in 2018, according to accountants and tax lawyers.

"In terms of his rental income, he would have been largely unaffected by repeal" if he were still a private citizen, said Tony Nitti, an accountant at Withum Smith & Brown. "There's no just practical way he can qualify as a real estate professional now that he's president of the United States."

The repeal of the 3.8% tax—known as the net investment income tax—is the largest tax cut contained in the Republican health-care bill moving through the House. It would reduce federal revenue by $157.6 billion over a decade, with most of that boost flowing to the top 1% of households.

Repealing the tax was part of the GOP health agenda long before Mr. Trump won the party's nomination.

It is impossible to know how much Mr. Trump would actually benefit because he hasn't released his tax returns and because his financial disclosures appear to conflate revenue and income in places.

But a previous Wall Street Journal review of his financial disclosures found that he had an estimated 2016 pretax income of $160 million, with $83.6 million of that coming from rental income. That would yield an annual tax savings of $3.2 million on rental income alone if the investment income tax were repealed.

The White House and a Trump Organization spokeswoman declined to comment. Mr. Trump’s representatives criticized the 2016 analysis, saying the income number was wrong.

Congress created the net investment income tax in the 2010 health law with two aims: to pay for the expansion of health insurance coverage and to subject what Democrats called “unearned income” to the same 3.8% tax imposed on top earners’ wages. It includes rent, capital gains, interest and dividends.

The tax, which applies to individuals with incomes over $200,000 and married couples with incomes over $250,000, took effect in January 2013. For instance, Democratic presidential candidate Hillary Clinton paid $3,517 because of the tax in 2015, according to her tax return.

But the tax’s structure also created a gap, one that the Obama administration tried but failed to close. Wage earners and investors paid it, but business owners could avoid the 3.8% tax on their profits, as long as they were actively involved in their businesses.

That is likely the gap Mr. Trump fell in before he became president, assuming his adjusted gross income was high enough.

He would have paid the investment income tax on any stock sales and some other income but likely avoided it on his business profits, which flow through to his personal tax return and are taxed as ordinary income.

“Up until he became president, he would have met the definition of being an active real estate professional,” said Joe Perry, partner-in-charge at the accounting firm Marcum LLP. Now, as president, “he would probably not meet the definition.”

Two different rules apply, depending on the underlying income. “He’s going to get hurt on both angles,” Mr. Nitti said.

Mr. Trump’s rental income, from office towers and retail stores he owns, is immediately subject to the tax. That is because owners of real estate who don’t meet certain tests about how much time they spend on the business don’t qualify and thus have to pay the tax.

“The case law has proven that it is extremely difficult for anybody with a full-time job outside the real-estate world to meet the real estate professional test,” Mr. Nitti said.

Mr. Trump’s other income—from hotel operations, branding deals and golf courses—likely wouldn’t face the tax until 2022, if he is still not actively running them. That is because of a different rule in the tax law for business profits, which says they are treated as active income if the taxpayer was active in five of the previous 10 years.

“He would be considered to be active for the next five even though he turned over management” of his business operations to his sons, said Mark Leeds, a tax partner at Mayer Brown LLP.

Beyond Mr. Trump, the repeal of the 3.8% tax is likely to deliver significant tax cuts very high-income households, according to an analysis by the nonpartisan congressional Joint Committee on Taxation.

In 2022 alone, the repeal would cut taxes by $10.8 billion for households making at least $1 million. That would be 69% of the total tax cut that year.

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