Pilla Talks Taxes

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THE IRS AT THE BREAKING POINT

The Agency Faces Potential "Catastrophic Collapse"

Anybody who deals with the IRS on a regular basis knows that the agency is in trouble. That is, IRS employees are less able now than at any time in the past to effectively and efficiently handle their work. The internal problems facing the IRS were greatly exacerbated by the 35-day government shutdown that began December 22, 2018. But the shutdown is not by any means solely responsible for the administrative problems the IRS now faces.

To put all this in better perspective, let me give you a "before" and "after" picture.

What The IRS Faced BEFORE the Shutdown

According to the National Taxpayer Advocate, the shutdown

> [C]ould not have come at a worse time for the IRS— facing its first filing season implementing a massive new tax law, with a completely restructured tax form. As I outline below, the IRS is entering the filing season inundated with correspondence, phone calls, and inventories of unresolved prior year audits and identity theft cases. National Taxpayer Advocate, 2018 Annual Report to Congress, vol I, pg vii (herein after "NTA Report").

Let's drill into these challenges in more detail.

1. Implementing the "postcard" tax return. The Tax Cuts and Jobs Act (TCJA) contained more than eighty changes to the tax code. And they were substantial. Among the most challenging was the Administration's demand to create a "postcard-sized" tax return." That necessitated the redesign of the three major personal income tax returns, Forms 1040, 1040A and 1040EZ.

Along with creating a new tax return, the IRS had to design and create six new schedules to go with the return. The reason is that while the Administration demanded that the 1040 form be "postcard-sized," apparently it didn't stop to think about all the supporting information that has to go with a tax return, such as Schedule A for itemized deductions, Schedule C for self-employed persons,

In this issue

"Dan Pilla probably knows more about the IRS than the commissioner of the IRS." Associated Press.

etc. Those forms were not eliminated. Thus the redesign of Form 1040 actually created more steps in the return preparation process than existed under the old design.

Nevertheless, the IRS had to churn out the new forms in time to get the design specs and coding to private tax prep software companies, and to reprogram its own computers to process the new forms, all well before the start of the 2018 filing season, which began the first of February 2019.

2. Handling cases in the fraud-detection program. In 2018, the IRS was overloaded with a record inventory of cases in its fraud-detection program. This is the system of filters used when processing tax returns to determine whether there is apparent identity fraud in connection with a return. In cases where a return is flagged, the system freezes the claimed tax refund until the legitimacy of the return is verified.

However, the NTA reports that the IRS's filters were such that of the returns flagged as potentially fraudulent, 81% were in fact legitimate. That high rate of "false positives" overloaded IRS processing staff. To make matters worse, the part of the process that was supposed to recycle flagged returns back through the system as new wage data came in from employers and the Social Security Administration completely failed. This failure required "the IRS to *manually upload* wage data and *manually process* frozen returns through the system. It was not until late July 2018 that the IRS had waded through all the frozen refund returns and determined which were legitimate and which were not." NTA Report, pg x.

This left tens of thousands of angry citizens—whose returns were perfectly legitimate—clamming for their refunds. As the NTA explains it:

> Not surprisingly, taxpayers did not take this lying down.TAS cases involving this issue increased by 287 percent from January 2018 through September 2018, and for the first time ever, the NTA Case Intake line experienced two-hour wait times, as taxpayers called desperate to figure out when their refunds would be released. Ibid.

On top of that, any return flagged due to potential ID fraud, which also claimed the Earned Income Tax Credit (EITC), were sent to Exam for verification of the EITC. Historically, the EITC has been a huge source of fraud and errors. The IRS looks at EITC claims carefully because the credit is "refundable." That is, qualifying citizens actually get more money back from the IRS than they paid in. The EITC is in fact a welfare program administered by the IRS through the tax code. Each year, approximately 26 million people get cash benefits worth about $64 billion through the EITC.

The problem is that IRS audit research into EITC cases indicates that about half of all EITC claims have errors. This is attributable to, a) fraud associated with the EITC precisely because it is a refundable credit, and b) honest errors due to the myriad of always-changing rules that govern the EITC. In any event, the IRS estimates that more than $18 billion in improper EITC payments go out every year.

The IRS's Exam function was ill-equipped to handle the influx of a massive number of EITC cases. In the first place, Exam was still overloaded with all of the EITC cases it was handling from the 2017 filing season (beginning in February 2018).

In the second place, the IRS has been coping with a significant attrition rate of personnel since 2010. The IRS lost about 28% of it tax examiner staff since then. As a result, the number of traditional face-to-face audits has fallen but the agency continues to make EITC audits a high priority because of the high incidence of errors and fraud in connection with the credit.

3. IRS faced its first filing season under the TCJA. The TCJA is widely referred to as the most sweeping tax reform in twenty years. For sure the eighty-plus changes to the code necessitated the rewriting of, or creation of, multiple tax forms, instructions, publications, regulations and notices. IRS employees across all functions were shifted to the Forms and Publications Office to help carry the load.

In addition, IRS Counsel attorneys were pulled off their regular workload to write new regulations interpreting the law. For example, the regulations under code §199A was a massive undertaking. This is the law that creates the 20% deduction for small business owners with "qualified business income." Those regulations alone comprise about 156 pages.

4. Coping with aging case management IT systems. At the core of the problem is the fact that the IRS, perhaps more so than any other government agency (due to the sheer number of people it touches and the volume of data it handles), is entirely dependent on its computers.

For about the past thirty years, the IRS has been trying to replace its key legacy systems, known as the Individual Master File and Business Master File systems. These programs store business and individual account information on a year-by-year basis. They are reportedly the oldest centralized databases in the entire federal government.

In addition, the IRS has been working to integrate sixty separate case management systems. At present, there is no single IRS computer system to allow employees to see at a glance where in the system (and who is responsible for it) a given case is at a given time. While the IMF system indicates, for example, that a particular taxpayer owes a specific amount for a certain year, and that such matter is in active collection status, other systems must be accessed to determine the status of the collection case and who particularly within the IRS is responsible for it. This seems bizarre to me, given that the agency has spent many billions of dollars over the past thirty years on Business Systems Modernization specifically to upgrade its computers.

Unfortunately, those many billions of dollars in upgrades didn't prevent the IRS's computers from crashing on April 15, 2018. The system went down for one day, requiring the IRS to announce a one-day filing extension because the agency was crippled. According to the NTA, the "crash prompted talk of the risk of a catastrophic systems collapse, and that risk does, indeed, exist." NTA Report, pg viii.

What is responsible for this? While it's true that the IRS has spent billions on computer upgrades over three decades, it's also true that modernization efforts have been mostly *ad hoc*. They have started and stopped, in part due to funding fluctuations, in part because engineering and programming personnel are routinely pulled from IT projects to deal with the constant barrage of legislative changes that are pumped out by Congress every year, and in part because the IRS is unable to paint a clear picture to Congress of the tech advances made in exchange for the money spent.

The NTA's conclusion on the basis of all of the forgoing is not at all surprising to me. She says, "The IRS is stretched to its breaking point." Ibid.

What the IRS Faced AFTER the Shutdown

Against this backdrop of a struggling, borderline overwhelmed government agency, the IRS faced even more caseload after the five-week shutdown ended. Consider the following:

1. There were 5 million pieces of mail that were not sorted or processed in any way, nor was the mail bundled for forwarding to the particular person or group within the IRS for action.

2. Some 80,000 citizens under EITC audit responded to IRS requests for information to verify their entitlement to the credit. None of the 80,000 responses was addressed by the IRS. None of the 80,000 people received their refunds in a timely manner.

3. The IRS's National Distribution Center (NDC) had 170,000 unprocessed orders for forms and data. The NDC handles both internal and external requests for forms, information and data needed by various individuals in the performance of their duties, both within the IRS and elsewhere.

And while the NDC was processing 11,000 orders per day, orders for Forms W-2 & W-3 were not fulfilled until mid-February 2019. The problem there is that the deadline for employers to file the forms is January 31. Thus, the IRS was unable to provide the forms needed by millions of employers to meet their employment tax return filing obligations.

4. By the time the IRS opened for business in late January 2019, its return processing inventory was up over 100% from the same time the previous year. No surprise there. While the IRS brought back roughly 45% of its workforce about one week before the shutdown ended, the onslaught of annual return filings already began. It would take the IRS many months to dig out from the backlog. Overall returns processing rates were down by 25.8%.

5. The level of services on the IRS's Accounts Management phone lines was deplorable. "Level of service" (LOS) refers to the percentage of people who get through to an IRS assister to have their issue addressed. In the first week after the shut down ended, the LOS was 36.8%, and that only after an average wait time of 32 minutes.

6. Matters were even worse on the IRS's Installment Agreement/Balance Due phone lines. These are the phones people call to either set up an installment agreement or get a payoff statement so they can pay what they owe. The LOS for these phones was an abysmal 12.8%, and that after an average wait time of 93 minutes. Within a week after the shutdown ended, some of the agency's phone lines began to loosen up, but not this one. Service degenerated ever further to the point where the LOS was just 6.7%. As pointed out by the NTA, "*This means for that week 93.3 percent of the taxpayers calling to make payment arrangements were unable to speak to a live assistor.*" NTA Report, pg xvi, emphasis in original.

She goes on to say,

> Make no mistake about it, these numbers translate into real harm to real taxpayers. And they represent increased rework for the IRS downstream, at a time when the IRS is already resource challenged. The IRS

> will be facing tough decisions as it revises its work plans for FY 2019 in light of the shutdown's impact. NTA Report, pg xvii.

The Impact on Taxpayers' Rights

It is an understatement of epic proportion to say that these facts have a negative impact on taxpayers' rights. The Taxpayer Bill of Rights declares that taxpayers have an absolute right to, among other things, "quality service" when it comes to dealing with the IRS. See code §7803(a)(3). Not only is that not the case given the above information, but decisions of IRS Counsel made long before this most recent shutdown ensured that such would not be the case during the shutdown.

The Anti-Deficiency Act implements Article I, §9, cl 7 of U.S. Constitution. That clause provides that, "No Money shall be drawn from the Treasury, but in Consequence of Appropriations made by Law." Specifically, 31 U.S.C. §1341(a)(1)(B) forbids any officer or employee of the United States to involve his government employer in a contract or obligation for the payment of money before an appropriation is made, unless otherwise authorized by law.

An exception to the rule is provided in 31 U.S.C. §1342. This section permits such activity "for emergencies involving the safety of human life or the protection of property." In 2013, the IRS's Office of Chief Counsel opined that "protection of property" refers only to "government property." See: Office of Chief Counsel, General Legal Services, *Points on Government Shutdown Issues Pertaining to National Taxpayer Advocate*, September 27, 2013. As such, during a government shutdown, including the most recent shutdown, the NTA or any other IRS personnel expressly couldn't act to protect "taxpayers' property" placed at risk because of the shutdown. The NTA expresses her frustration as follows:

> Thus, neither of these exceptions would allow [IRS] personnel to issue a refund or release a levy in order to allow the taxpayer to obtain access to funds to receive a life-saving operation, for example. Nor could the IRS use resources to release a levy where it is depriving the taxpayer of funds to pay for basic living expenses, even if the levy could leave the taxpayer homeless. NTA Report, pg xiii.

As such, tens of thousands of taxpayers were utterly defenseless during the shutdown. As the NTA explains it,

> The IRS's authority to collect revenue is not unconditional. It is conditioned on statutory protections, and a lapse in appropriations does not eliminate those protections. It is unconscionable for the government to allow its employees to *enforce* collection of taxes without the concomitant taxpayer rights protections enacted by Congress. Chief among those protections is the Taxpayer Advocate Service, along with statutorily mandated releases of levies where a taxpayer is experiencing economic hardship and withdrawals of notices of federal tax liens which were premature or otherwise not in accordance with administrative procedures, or in the "best interests of the taxpayer (as determined by the National Taxpayer Advocate) and the United States" or where it furthers the collection of tax or the taxpayer has entered into an installment agreement. NTA Report, pg xix, footnotes omitted; emphasis in original.

It's not as if the IRS, knowing that its agents couldn't take remedial action during the shutdown, stopped enforcement actions while the agency was on furlough. It did not. Recall that not every IRS employee went home during the shutdown. The IRS kept 9,946 employees on the job, about 12.5% of its workforce. Several thousand of those employees worked in either the audit or collection functions.

Moreover, thousands of notices were issued either immediately before or during the shutdown which have significant consequences if deadlines are missed. For example, the IRS issued 537,224 Notices of Deficiency alleging that a citizen owes additional taxes. Such a person has the right to file a petition with the U.S. Tax Court to challenge the notice, but the Tax Court was also closed during the shutdown.

Over 53,818 lien or levy Collection Due Process notices were mailed during the shutdown, all of which carry a firm statutory appeal right of thirty days in which to seek a Collection Due Process hearing. Missing the deadline means the IRS can levy and seize at will. Another 18,406 actual wage and bank levies were issued pre-shutdown, putting the subject citizens in a position where they could not get IRS personnel on the phone to release the levies.

Concerning audits, IRS personnel made 18,570 demands for supporting documents—each with a thirty-day deadline to comply—and each issued before the IRS closed up shop. Thus, all the deadlines expired while 88% of IRS personnel were not at work. Imagine the level of anxiety for people facing enforcement actions with nowhere to turn to get relief. The NTA explains it this way:

> When the IRS is shut down, it is impossible for

the taxpayer to get the information and assistance needed to move forward. With respect to notices of levy, if the taxpayer cannot contact the IRS and make other payment arrangements within 21 days of the issuance of the levy, the employer or financial institution must pay over the funds to the IRS. The 21-day period for over 18,000 levies expired during the shutdown. NTA Report, pg xx.

The IRS is in a Downward Spiral

The Internal Revenue Service touches the lives of just about every citizen, regardless of age and regardless of income level. Even the working poor with no income tax liabilities must file tax returns to get their refunds and to claim the EITC as well as other benefits. And don't forget about the Obamacare mandate that all citizens have health insurance, either through a private provider or a government marketplace—the penalties for which are administered by the IRS.

Indeed, Obamacare is the quintessential example of why the IRS is in a downward spiral when it comes to its ability to carry out its essential duties. For decades, the IRS has been victimized by "mission creep." That is, the IRS is being asked to do more work, much of which is unrelated to its core mission of tax administration and enforcement.

Moreover, the endless stream of new laws and administrative decisions puts more burdens on both citizens and the IRS. The growing labyrinth of rules and processes has reached the point of overload. For example, in 2018, the NTA produced a flowchart entitled, The Taxpayer Roadmap. It purports to map out the various phases of the "taxpayer experience" while interacting with the IRS. The chart is, in a word, mind-numbing. See the chart here:

https://taxpayeradvocate.irs.gov/roadmap

Never mind the breadth and complexity of the tax code itself, with its more than 5,900 law changes since 2001 (not even including the TCJA). The scope and complexity of the IRS's administrative systems, in which the average person is expected to interact, is so vast and intertwined that it is unreasonable to expect people to understand and function within this system. Average citizens generally have no clue where they're at in the process and even worse, the tax pros they hire are often buried in the quagmire of procedures.

This vast complexity creates an ongoing cycle of frustration for everyone, including the people in the IRS who are charged with administering it.

Make no mistake about it. The system is collapsing of its own weight. It's just a matter of time before it crumbles into an unrecognizable heap. The question is, what level of damage and injury will the collapse inflict on honest people?

THE 2019 PAUL R. TOM AWARD
And the Winner Is…

As you all know, we lost our good friend and colleague Paul Tom at the end of 2017. In our newsletter tribute to Paul in January 2018, I stated that his memory will live on in TFI through the annual presentation of the Paul R. Tom Award for Outstanding Contributions to the Mission and Goals of the Tax Freedom Institute. The 2018 Paul R. Tom Award—the very first—was presented to Paul posthumously through his wife, Melissa.

Over the past several months, the Advisory Board and I discussed candidates for 2019 Award. A decision was made and the award was announced on Monday, October 28, 2019, on the first day of the Defense Conference.


Dan Pilla

The award winner was determined on the basis of the model that was created by Paul Tom himself. Paul was selfless in giving his time to those who needed help. He was willing and anxious to contribute articles to the newsletter, which he did often. He was a speaker at past conferences. And, he was always present on the list-serve answering questions and giving guidance. He loved TFI and its members. He was completely dedicated to our mission as evidenced by the fact that he never missed a single conference. He even attended the 2017 conference at a time when he was quite ill.

On top of all that, Paul was my friend. I greatly valued that relationship and his counsel, which I leaned on regularly. I miss him every day. But as we march on, please help me to congratulate our first Paul R. Tom Award winner. We selected this person because she most closely resembles Paul's dedication and commitment to TFI.

AND THE WINNER IS…

Pattie Gentile, CPA, Attorney at Law
Consulting Member of TFI
Member since 1994


Pattie Gentile

It is my honor to present Pattie Gentile with the 2019 Paul R. Tom Award. Thank you for your dedication and commitment to this organization. Ironically, Patti was unable to attend the 2019 conference so I couldn't present her with the award personally. She had family issues that prevented her from attending for the first time in well over fifteen years (one of the factors considered in granting the award to her).

Patti's email response to the group and me reads as follows:

Wow! Thank you Dan, Jean, Mac, Steve and Scott! To be acknowledged as a TFI member who most closely resembles Paul's dedication and commitment is definitely an honor. I think of Paul often, the ways he contributed to our members, the passion he always had for this work, but most of all the type of person and professional he was—dedicated, loyal, ethical and honest—all wrapped up in his humor. I would laugh out loud in my office when reading his TFI emails!

Thank you again for the great honor!
Sincerely,
Pattie Gentile

END OF YEAR TAX PLANNING
Nine Simple Steps that Can Cut Taxes and Pain

With the end of the year fast approaching, you're probably wondering what you can do to cut your taxes. Remember: if you wait until April to start thinking about this, it's just too late. Here are some ideas to get you moving in the right direction now.

1. Consider paying state income taxes before December 31. Many people wait until April 15 to pay their state income taxes, since that's when they file their state tax returns. However, if you pay your state income taxes in 2020, you can't claim the deduction for those taxes until you file your 2020 tax return. That doesn't happen until April 2021. Thus, you have to wait an entire year before getting the tax benefit of the expense.

By paying your state taxes now, you get a deduction for those taxes in 2019. That means you get the benefit of the expense more than one year sooner than you'd otherwise realize.

Keep in mind, however, that the standard deduction for 2019 is double what it was prior to the Tax Cuts and Jobs Act. That means you may get a larger tax benefit by not itemizing, depending on your situation. It is also true that there is a $10,000 cap on what you can deduct for state and local taxes in 2019 and beyond. Thus, if you are already at the cap for 2019, it won't help to pay more state taxes this year. You have to look at your situation carefully.

2. Review your wage withholding or estimated payments. About 85% of all taxpayers get a tax refund when they file their tax returns. The average refund in 2019 was about $3,200. If you get a tax refund, it doesn't mean the government got religion and decided to give you free money. It means you paid more taxes than you owe. If you got a refund in 2019, you need to examine your withholding situation going into 2020 to make sure you don't overpay.

Whether you're an employee or you make quarterly estimated tax payments as a self-employed person, sit down now and do some preliminary calculations on your tax liability. Figure out if you overpaid. If so, you need to adjust Form W-4 (for wage earners) or your estimated tax payment pattern (for self-employed people).

Keep in mind that no law requires you to pay more taxes than you owe. For withholding purposes, you avoid under-withholding penalties if you pay either 100% of last year's tax (2018) or 90% of this year's tax (2019), whichever is *less*. Use that yardstick to guide you in adjusting your withholding.

3. Count your money now. Each year, millions of people are blindsided come April 15 with surprise tax liabilities they can't pay. Don't wait until March or April to start figuring your tax, especially if 2019 was a particularly good year for you. On the other hand, the Jobs Act cut taxes for about 80% of all taxpayers. And if you own a small business such as a sole proprietorship or

S corporation, you get the benefit of the 20% deduction under §199A. That reduced taxes considerably for most small business owners.

It is important for you sit down now and examine your 2019 financial situation. If there were substantial changes to your economic condition, that might increase your tax burden. If you don't have the money to cover the tax, you'll wind up as one of the 3-plus million taxpayers facing enforced tax collection actions.

Make sure you have a good handle on what you're going to owe. If you figure it out now, you have four and a half months to put together a plan to pay the tax. If you don't, you could be hit over the head in April. In my experience, it's that kind of shock that causes people to start making critical mistakes in how they handle their tax burdens. Often, it leads to years of hassle and harassment from the IRS.

4. Review your financial portfolio. One of the biggest problems with our tax system is the unfair treatment it affords to investment gains and losses. If you win with your investment, the IRS is standing next to you with its hand out to get "its share" of your success. If you lose, you are, for the most part, standing alone.

The reason is that capital gains are subject to tax in their entirety in the year they are realized. However, capital losses are subject to a $3,000 deduction cap in a given year. That means if you lose $15,000 in an investment, you can only deduct $3,000 at time. This means it will take you five years to fully write off your loss.

This is true unless you have *both* capital gains and capital losses *in the same year*. If that's that case, you offset your gains against your losses, plus you can take an extra $3,000 of loss. Suppose you have $10,000 of capital gains and $12,000 of losses. In that case, the first $10,000 of losses offset against the gains. Then, you get the additional $2,000 of losses as a deduction that can offset other income.

In order to best utilize this rule, you should consider selling investments that are down in 2019 so you can offset that loss against any investments that made money during 2019. This allows you to effectively increase the allowable capital loss deduction, thereby recovering your losses much faster than you otherwise would. You should talk with your investment advisor regarding this strategy.

5. Consider making equipment purchases. If you own a small business, now is the time to consider purchasing any equipment you might need for your business. A special tax code section creates an advantage for acting now.

Code §179 allows you to claim a full deduction for the cost of business tools and equipment that is placed in service in the year in question. Ordinarily, the cost of such equipment must be depreciated over the useful life of the equipment. For example, if you purchase a copier for $5,000, you would normally have to depreciate that copier over three years. In that case, you get a deduction of $1,667 for each of three years.

But under §179, you can fully expense up to $1,020,000 of equipment placed in service in 2019. This allows you to get the full benefit of the deduction in the year of the purchase, rather than having to spread the recovery over several years.

This is a huge benefit, thanks to the Jobs Act. And the deduction is indexed for inflation. So, for example, it will go up next year. In years past, the deduction has bounced up and down, and even was on the verge of expiring on numerous occasions. However, the Jobs Act's benefits to businesses include a huge bump for the purchase business tools and equipment.

Take advantage of this deduction in 2019 if your income was unusually high this year. The best way to offset that income for tax purposes but still get the benefit of the money is to buy equipment you need to more effectively operate your business.

6. Fund a Medical Savings or Health Savings Account. One of the best-kept secrets in tax planning remains the Medical Savings or Health Savings Account. These accounts allow you to set aside money that is earmarked to pay medical expenses not covered by insurance (other than the insurance policy itself). By placing the money in a specially designated savings account, contributions to the account are tax deductible, up to certain limits.

It works much like an IRA or 401(k), except that you don't have to pay taxes on the money when it's distributed, provided you use it for medical expenses that are not covered by insurance. You can fund this account right up to December 31, 2019, and get a deduction for the money you put in, even if it's not used for medical expenses in 2019. What's more, any money left in the account at the end of the year carries over to 2020 and remains in your account, under your control. You don't lose the money. It's always available to you.

Be careful with this, however, because there are a number of complicated rules that apply. First, you must not be covered by any other health plan, including

Medicare, in order to qualify. Next, your own insurance must be considered a high deductible health plan. The limits to what you can deduct are based on family size the health insurance plan itself. You most definitely need to consult with a health insurance specialist to see if this plan will work for you.

7. Fund a retirement account. An IRA, 401(k) or other retirement account can be funded anytime during 2019, and you'll get a deduction for the contribution (within limits) in 2019. In fact, for most retirement accounts, you have up to April 15 of the following year to contribute. You can get a deduction for the prior year simply by designating the contribution to apply to the prior year. That means a contribution made in 2020 can still apply to and be deductible in 2019.

8. Consider restructuring your business. There are millions of people operating small businesses in the form of sole proprietorships. And while this is probably the best way to start a new business, it may not be the best way to continue an existing business into the future. There are eight different forms of business entities available, including a small business corporation or partnership. Depending upon the nature of your business and other non-tax considerations, one or more of the available entities might be a better idea than continuing as a sole proprietorship. January 1 is generally the most convenient time to change the structure of an existing business.

But first you need to understand which entity is best for you. I have an entire chapter in my new book, ***Dan Pilla's Small Business Tax Guide***, to address this question. For the first time, business owners have a comprehensive guide to how each business entity works, and the pros and cons of each. If you are a small business owner, don't go another day without reading this material.

9. Catch up on your charitable contributions. If you make it a practice to give generously, make another contribution before December 31. This gives you further opportunity to cut taxable income and help those in need around you at the same time.

When making significant charitable contributions, note that you must have a contemporaneous acknowledgement from the donee organization if your contribution is for $250 or more. This applies to one-time contributions, not a total of contributions to a given organization over the span of one year. If you don't have the proper acknowledgement in hand by the time you file your tax return, the deduction is not allowed, even if you have your canceled check and even you get the statement later. That's why they call it a "contemporaneous acknowledgement."

How to Get More Help

If you need more help with end-of-the-year tax planning, you must consult one of the professional members of my Taxpayer Defense Institute (formerly Tax Freedom Institute). A list of the current consulting members is enclosed here. Also, you can go to my website, which is www.taxhelponline.com. Click on the Tax Freedom Institute logo and you'll be taken to a list of current consulting members.

Don't wait to take this action. If you do, you'll lose most of your opportunity to cut your taxes for 2019.

BERNIE SANDERS' WEALTH CONFISCATION PLAN

Nothing More Than Legalized Theft

In their bid for the Democratic Party nomination for President, Leftist candidates are falling all over themselves to outdo one another in their proposals to steal and spend other people's money. In addition to raising income taxes and creating a "wealth tax" (see the article to follow), the self-described socialist Bernie Sanders proposes to go quite a bit farther by legalizing the outright theft of corporate stock ownership and putting the federal government in control of all business decisions. He calls his plan the "Corporate Accountability and Democracy Plan."

It starts with the idea that Sanders would require American companies to provide at least 2% of their stock to workers annually until the employees own 20% of the company. Companies would have to do so by issuing new shares through so-called "employee ownership funds." Under this plan, employees would gain ownership rights in the company similar to those of institutional shareholders. The scheme would apply to, 1) all publicly traded firms, and 2) corporations with at least $100 million in annual revenue, or $100 million on their balance sheet.

Of course, that is the just starting point. As is the case with all government programs, they gradually—and then rapidly—creep forward until they affect all areas of life and society. There is no better example than that of income tax itself. When it was ratified in 1913, the lowest tax rate was

1% and it applied only to those making at least $25,000 per year—a very wealthy person in 1913. The highest rate was just 6%. Look at where we are at now.

Where will the confiscation and redistribution of corporate ownership interests end?

The plan would also ban stock buybacks. Sanders would alter Securities and Exchange Commission rules so that any large-scale corporate stock buyback would be treated as "stock manipulation," subject to hefty civil and criminal charges.

Sanders' scheme goes even further. Corporations mandated to provide stock shares to its employees would also need to obtain a "stakeholder charter" from the Commerce Department. Such a charter would require that the interests of all stakeholders—workers, customers, shareholders and the communities where they operate—must be considered when making decisions.

Under Sanders' vision, the federal government would have a say—and presumably veto power—over any decision a company makes. It portends federal government intervention in business decisions involving:

- Closing or expanding facilities,
- Hiring or laying off workers,
- Locating or not locating new facilities in a given community,
- Setting salaries, benefits and retirement plans, and
- Raising or lowering prices of goods and services.

Imagine the team of bureaucrats it will require to enforcement such rules.

It is interesting to see how the new-age phrase "stakeholder" has morphed over the past decade or so. It once was that a stakeholder was a person with a vested financial investment in an object or enterprise. Those who invested their own money in businesses, or purchased property, were "stakeholders" in that decisions regarding the business or property affected their investment. Such stakeholders therefore had a direct say in how the business or property was managed. We see this manifested in corporations in the form of shareholders (investors) carrying a right to vote on certain questions in direct proportion to the percentage of shares owned. The more skin you have the in game, the more control you have in its operations. Said another way, "He who pays the fiddler calls the tunes."

Nowadays, "stakeholders" are deemed to be anybody who can claim any interest—however remote—in an endeavor. Sanders and those of his ilk assert that employees are "stakeholders" in the companies they work for, and customers are "stakeholders" in the companies from which they purchase goods and services. And while it is certainly true that business decisions do affect the workforce, payroll and benefits of employees, it is likewise true that garden variety employees are not owners of the company. Workers hired to perform services for a company generally do not have any out-of-pocket investment in the business. If they did, they would be "owners." The success or failure of the business does not affect the balance sheet of the individual employee.

True also is the fact that while a failed business may lead to a period of unemployment for its former workers, those workers do not carry the debt of the company with them into unemployment. On the other hand, the investors put up their own cash to fund the operation. They lose all or part of their savings when the business fails. They probably granted personal guarantees on bank or SBA loans. They probably signed security agreements with vendors, suppliers and landlords. And in the case of the IRS and most states, unpaid employment and sales taxes become the personal liability of the company's "responsible officers" (generally the owners). The tax debt becomes collectible from that individual's personal assets, including his home and retirement accounts.

Not so with employees. While it is unfortunate and certainly disruptive when they lose their jobs after a company fails or downsizes, the fact is, they leave with no financial baggage following them. They can get a new job, start their own business (which happens often), or even retire—all without their former company's negative financial track record hanging around their necks.

Do such "stakeholders" have the right to make or influence decisions they are not financially responsible to pay for? I think not. You might say that it is "unfair" for investors alone to make such decisions when they unquestionably influence the employment status of it workers. But the fact is, no employee is under duress to work for a particular company. Any worker is free to go for any reason. For example, if an employee believes a company's operating policies jeopardize his personal financial future, he is free to leave and find another job.

And looking at it from the other side of the coin, nobody seems concerned when workers leave one job for another to seek better pay and benefits. And yet the loss of skilled and experienced employees is hugely disruptive and costly for businesses, especially small businesses. Will Sanders' plan mandate that key workers be compelled stay at their current company, with their salaries and benefits

"fixed" by government fiat for the benefit of all the other employees and customers? I doubt it.

The bottom line with Sanders' thinking is he believes that you simply do not have a property right in your investment. He believes that others, and most notably, the government, have an inherent right to dictate how you are going to operate your business without regard to your own best interests.

In connection with a company decision to shut down or close a facility, Sanders' plan would give workers a "right of first refusal" to buy it. I suppose the purchase price would be highly controlled—if not dictated—by the Commerce Department.

Even further interfering with the right to contract, his proposal would ban non-compete clauses in separation contracts. Such clauses are often a part of separation agreements under which a person who is bought out of his position in a company agrees not to compete with that company for a stated period of time, or within a given mileage radius. Such agreements are routinely enforced by the courts unless a clause is considered unconscionable due to excess duration or radius. And further yet, Sanders' scheme would eliminate mandatory arbitration clauses in contracts. This would essentially eliminate the option for non-judicial resolution of disputes between companies and their workers.

The plan also requires that 45% of the board of directors of corporations meeting the above criteria be elected by the firm's workers. While those workers would, under the plan, own 20% of the company, they apparently have the power to elect 45% of the board. Here we see further manifestation of the distorted "stakeholder" concept.

As part of his attack on U.S. businesses, Sanders would review—with an eye toward undoing—all mergers that took place during the Trump administration.

And to top it all off, Sanders has stated repeatedly that if elected President, he would push to repeal all of the corporate tax breaks enacted as part of the Tax Cuts and Jobs Act, which took effect January 1, 2018. Chiefly, he would return the corporate income tax rate to 35%, which it was prior to the Jobs Act, compared to its current rate of 21%. To boot, he continues to sing the Leftist hymn calling for the closing of "loopholes" and "eliminating tax havens" that allegedly lead to corporations "paying no taxes."

This plan is an all-out assault on our Constitutional right to private property and the right to contract. The plan outright *eviscerates* important constitutional limitations on government power. It would create unprecedented federal government power to control the market place and insert itself into the day-to-day decision making processes of private enterprises.

I'LL SEE YOUR DEMOCRATIC TAX INCREASE… AND TRIPLE IT!

By Dr. Merrill Matthews

Democratic Party presidential candidate Elizabeth Warren, who may be the new frontrunner in the presidential race, proposed a "wealth tax" last January. She would require households with assets above $50 million to pay a 2-percent tax on those assets, and 3 percent on assets above $1 billion.

Not to be outdone in the tax-increase scramble, Bernie Sanders recently said, in essence, he'll see Warren's tax 3-percent wealth tax and raise it to 8 percent.

Do we hear 10 percent?

There was a day when Democrats were reluctant to discuss huge tax increases. No more.

Last June, the Washington Times cited Democrat strategist Jim Manley as saying that the "tax-and-spend liberals" moniker didn't bother Democrats anymore. "'Democrats used to be scared of this kind of stuff, but not anymore.'"

He can say that again.

The Times article went on to say, "Mr. Manley said Democrats have grown tired of watching Republicans blow a hole in the federal deficit with tax cuts and then blaming the nation's fiscal woes on spending on entitlements and domestic programs."

But to dissuade voters from thinking that massive entitlement and domestic spending increases would also "blow a hole in the federal deficit," Democrats are returning to their call for pay-as-you-go (paygo) budgeting.

The Hill reported last year, "Nancy Pelosi (Calif.) and other top Democrats are vowing to abide by fiscally hawkish pay-as-you-go rules if they seize the majority next year (i.e., the 2018 election), rejecting calls from liberals who feel they'd be an impediment to big legislative gains."

Having won the majority in the House, have you heard anymore about paygo? We've seen this ploy before.

Back in the 2006 election, then-House Minority Leader Nancy Pelosi announced, "Democrats are committed to ending years of irresponsible budget policies that have produced historic deficits. Instead of piling trillions of dollars of debt onto our children and grandchildren, we will restore 'Pay As You Go' budget discipline."

How'd that work out? Once Barack Obama entered the White House, federal deficits and debt exploded and we heard no more about paygo—until Democrats needed to regain the majority.

Now the Democratic Party presidential candidates are unashamedly proposing huge new tax increases to pay for their massive increases in spending.

But this isn't about fiscal responsibility. Terms like "paygo" are just expressions Democrats use to make voters think they will be better stewards of the government purse.

They won't. Just look back at 2006.

Dr. Merrill Matthews *is a resident scholar with the Institute for Policy Innovation. www.ipi.org.*

NEW STATE SALES TAX LAWS EMERGING EVERY DAY

States Racing to Collect More Revenue

It seems every day that goes by another state adopts rules for collecting sales taxes from remote sellers. In the largest onslaught of new state laws governing remote sellers, fourteen separate laws went into effect in eleven states as of October 1, 2019. All measures are directly connected to the U.S. Supreme Court's decision in the case of *South Dakota v. Wayfair*. For my full discussion and analysis of *Wayfair*, see chapter 20 of my new book, ***Dan Pilla's Small Business Tax Guide***. The book is now available for immediate shipping.

The total number of states with some kind of law on the books to tax remote sellers is up to forty-three. In addition, thirty-six states now have "marketplace facilitator" laws on the books. A marketplace facilitator is a company that handles third-party sales on behalf of the likes of Amazon.

It is projected that all forty-five states that impose a sales tax will enact laws dealing with both direct sellers and marketplace facilitators by the end of 2020. Every state wants to get on board. There's no doubt about that. With state demands for revenue soaring along with that of the federal government, there's just no way they are going to leave such taxes on the table.

After *Wayfair* was handed down, many states quickly followed the South Dakota threshold for liability. That model requires that remote sellers with at least two hundred transactions or $100,000 in sales per year must pay SD sales tax. But many states have reexamined their strategy. Many have enacted laws requiring a much lower sales threshold for determining liability. In fact, a number of states entirely eliminated the "transaction threshold." Instead, they now focus on a single threshold tied only to annual sales.

Arizona, on the other hand, established a sales threshold that diminishes over time. For the remainder of 2019, remote sellers who sell more than $200,000 in the state are required to collect and pay AZ sales tax. The threshold shrinks to $150,000 for 2020, and $100,000 for 2021.

As I say in my ***Small Business Tax Guide***, if you have an Internet business selling products in other states, you must keep your eye on this issue very closely.

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