taxnotes® international

Volume 96, Number 3 ■ October 21, 2019

Wealth Tax Proposals — Taxation or Confiscation?

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Reprinted from *Tax Notes International*, October 21, 2019, p. 215

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To the Editor:

Do the Democratic Party presidential candidates' wealth tax proposals cross the line from taxation to confiscation, and if so, does this stem from a failure to analytically correlate and integrate the proposals with existing U.S. tax on income and estates?

Elizabeth Warren would impose a wealth tax on U.S. individuals (single or married) with assets exceeding $50 million, while Bernie Sanders's plan would apply to married couples with assets above $32 million or individuals with assets above $16 million.

In Warren's case, the tax would start at 2 percent and move to a 3 percent rate for billionaires. That, she says, would raise $2.75 trillion over 10 years to help pay for her programs.

Sanders's rates would range from 1 percent to an astonishing 8 percent for asset values exceeding $10 billion. Sanders projects $4.35 trillion over 10 years to help pay for his programs. And to protect the ambit of the tax, Sanders would impose an "exit" tax (for those who give up U.S. citizenship and move abroad) of 40 percent on the first $1 billion of value and 60 percent on value above $1 billion.

Warren has suggested that her 2 percent tax would be painless to the payer and, with the benefits it could provide, would be a win-win situation.

Superficially that may be correct. But dig a little deeper into the resulting overall U.S. tax system that would emerge and the fundamental defects become evident. The deeper one digs, the more evident the defects become. This may be illustrated using Warren's proposal.

Suppose a young NBA star is talented enough to earn the going high (but not top) compensation of, say, $35 million a year and does so for 15 years while earning $5 million a year in endorsements. Imagine the player lives in California or New York City. With state and local taxes no longer being deductible for federal tax purposes, and with the Obama healthcare tax of 3.8 percent, the individual will pay over 50 percent on the 15-year income of $600 million: 53.49 percent in New York and 54.1 percent in California.

Using a rounded-down rate of 50 percent, that $600 million becomes $300 million. Assume conservative investments that yield low (or even negative) interest rates so that there is no net growth after modest current consumption.

If the player dies prematurely, does not have a surviving spouse, and leaves the estate to a child, there will be federal estate tax (mostly at a rate of 40 percent) of just under $120 million (aside from any net state and local inheritance tax). This leaves his child with, say, $180 million (or less) out of what was $600 million before tax. Assume the surviving child is 15 years old.

Then assume an Elizabeth Warren wealth tax of 2 percent is applied to $130 million (the excess of $180 million over $50 million). If there is no asset value growth, in 50 years (by the time the child is 65 and would like to retire from what may have been a career with modest earnings) there will have been about $83 million (63.6 percent of $130 million) of wealth tax, leaving about $97 million out of the original $600 million earned by his father.

In this situation, $503 million of the NBA player's earned $600 million has gone to the government: It would seem confiscatory enough under current law (individual taxes of $300 million plus estate tax of $120 million, reaching $420 million or 70 percent of the original $600 million), but Warren's tax of $83 million puts the total U.S. tax burden at $503 million or 84 percent of the $600 million. This is beyond any reasonable level. It has the hallmark of expropriation without compensation.

As a Canadian observer, with a Canadian federal election scheduled on the date this issue of *Tax Notes International* is published (October 21) that sees the left-wing parties (the New

Democratic Party and the Green Party) seeking to emulate Warren and Sanders with their own wealth tax of 1 percent (applied to assets over $20 million), I wonder what the comparative would be if the NBA star were a Canadian citizen/resident playing for the Toronto Raptors with U.S.-source income taxable in the United States.

While the income tax would be comparable (the highest combined Canadian federal and Ontario tax rate would be about 53 percent), there is no estate tax in Canada and no income tax at death unless there is unrealized asset appreciation. With a 1 percent wealth tax for, say, 50 years on $280 million (the excess of $300 million over $20 million) or $110 million, the child would be left at age 65 with roughly $190 million compared to the $97 million under U.S. laws. Better than the U.S. child but still confiscatory in nature, being about 68 percent of the original $600 million.

As for Sanders's astonishing 8 percent rate, apart from its stark contrast to the rate range (0.85 to 2.5 percent) in the only other OECD countries that impose a wealth tax (Norway, Spain, and Switzerland), it is jarring to see that without regard to growth, that rate would wipe out about two-thirds of the asset value to which it would apply in only 13 years.

That, separate from the integrated U.S. tax effects described above, characterizes Sanders's proposals as akin to confiscation, not taxation.

Prognosis? There seems to be little chance the two left-wing parties will win the October 21 Canadian election. Therefore we should not see a wealth tax in Canada anytime soon. Warren, with a current lead in the polls over Sanders and a proposal that is less extreme, seems to have the best chance of bringing a wealth tax into the United States. But she would not only have to win the presidency but, as well, she would need a Senate takeover by her party and retention of control of the House. Finally, her proposal would have to withstand a wide range of scrutiny, including that of the type set out above, or of the type framed by the following excerpt from a comment in one of Canada's two national newspapers, the *National Post*, on left-wing tax proposals: "They [the New Democratic Party] have unearthed a number of new revenue sources that would qualify as 'morally sanctioned theft' — in the words of American conservative writer David Horowitz — the dividing up of what others have created." ■

Sincerely,
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October 11, 2019