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Tax Alert



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House Oversight Probes Hillary Speech Fees To Clinton Foundation

Rep. Jason Chaffetz (R-UT), Chair of the House Committee on Oversight and Government Reform, has written [a letter to the Director of the Office of Government Ethics](#) about the troublesome speech fees Mrs. Clinton failed to disclose while she was Secretary of State. There were millions of dollars in speech fees not disclosed, allegedly because Mrs. Clinton had performed speeches on behalf of her Foundation. She may have thought they didn't have to be disclosed, but Mr. Chaffetz still [questions the ethics office over these speeches](#).

The Ethics in Government Act requires public figures to report outside income above \$200. Mrs. Clinton's speaking fees were much higher, but payments made directly to an organization may be OK. It appears that Mrs. Clinton directed speaking fees to the Clinton Foundation. But Rep. Chaffetz wants specifics about the Clinton speaking engagements, about who was interacting with the Office of Government Ethics, and where this 'no-disclosure-for-direct-pay' rule is written.



Rep. Chaffetz appears to be concerned with ethics and potential conflicts of interest, not with taxes. However, there are tax questions that seem just as interesting. Mrs. Clinton's financial disclosure forms show that she [reported](#) personal income of more than \$11 million for 51 speeches in 13 months. Yet she has not defined [how she and Mr. Clinton decide](#) which fees are personal income and which go directly to charity.

Normally, the IRS doesn't let taxpayers pick and choose. The Bill, Hillary, and Chelsea Clinton Foundation admitted collecting \$26.4 million in previously unreported speaking fees from foreign governments, foreign and U.S. corporations. For tax purposes, who is the recipient, and how late can the Clintons decide?

A 2008 ethics agreement required the Foundation to disclose its funding sources. The Washington Post [reported](#) the long list of Clinton speeches with fees ranging from \$10,000 to \$1 million. The Foundation admits much was not disclosed publicly because they were treated as revenue, not donations. When the Foundation belatedly provided [a listing of the speeches](#), the [disclosure](#) and [list](#) shows that Bill, Hillary and Chelsea Clinton turned over between \$12 million and \$26 million.

Anyone who has dealt with the IRS might ask: how can you just assign fees to the Foundation? Does the IRS allow it? Is there a contract that requires it? Do the Clintons choose which fees they hand over and which they keep? Before or after the speech? These are not silly questions.

The assignment of income doctrine is a tax no-no. The earliest attempts by taxpayers to avoid income involved contracting away rights to receive income. In [Lucas v. Earl](#), a husband and wife contracted to share

income and gifts received during marriage. The Supreme Court said that this kind of contract might be valid under state law, but not for tax purposes. When the husband performed services, even a contract didn't mean he wouldn't be taxed.

In [*Helvering v. Horst*](#), a man gave his son an interest coupon from a bond. The coupon entitled the son to receive an interest payment in the current year. Again, this attempt at income shifting failed. There are many other cases in which the IRS catches people trying to push income away from themselves and assign it to another person or entity. There are limitations on [assigning claims](#).

The Clintons would not want to receive the speaking fees personally and then hand them over to the Foundation. They would end up with a big tax bill, since charitable contributions are limited. Moreover, speech fees would normally be sourced to the place where they give the speeches. The Clintons could end up taxed in numerous places. That is one reason the lack of disclosure on these issues is so interesting.

A fair number of wealthy people might be thinking about setting up their own foundations. Others may want to pick which monies they want taxed to them and which to their charities. Some of those people might like the cushy private travel and other perks that go with it. The IRS calls it private inurement when private parties—especially founders—get big salaries or other outsize items that should be treated as income.

With Mrs. Clinton, any queries tend to get dismissed as unfair. But quite apart from disclosure, with all the grilling that Lois Lerner or others at the IRS might bring to bear on far smaller tax issues, it is curious why no one seems remotely concerned about this one.

For alerts to future tax articles, email me at Wood@WoodLLP.com. This discussion is not intended as legal advice.