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Deducting 'Access Hillary' Donations To Clinton Foundation

There are still disputes over how much the Clinton Foundation was used as a gateway to the State Department. Some newly released emails suggest that bookings were on occasion at least enabled by donations. There may never be complete answers to the myriad factual questions this raises, nor precedent for the odd intersection of private and government interests. But no matter where you sit, some of it is troubling. The mere appearance of a kind of red carpet that could be bought, or at least rented for a time, with a purely voluntary donation is well, worrisome.

Taxes are hardly the first worry in the context of an election to the nation's highest office. Still, if you think about your own taxes, could you claim a tax deduction for a 'gift' to a private school that gets your kid in the door? Most taxpayers know the answer to that one, although the case law proves that some taxpayers have tried it. Parents claimed tax deductions for "voluntary" amounts paid to the private school their children attended. The parents' "contributions" were made with the expectation of receiving an education for their children in return for the cash. Thus, the amounts paid did not emanate from a "detached and disinterested generosity" and were not deductible. *Dejong v. Commissioner*, 309 F.2d 373 (9th Cir. 1962).



In the case of the Clinton Foundation, no one (including the IRS) may be worrying about the tax returns of these large (and in some cases foreign) heavyweights. Yet from a tax viewpoint, some of these big 'charitable contributions' might not have been charitable, and might not have been donations, not in a technical sense. The tax law requires a charity (including the Clinton Foundation) to operate *exclusively* for charitable purposes. It isn't clear if the law has been enforced quite so rigorously for the Clintons or for their donors. Donors are not supposed to get something in return.

There are exceptions, but it is hard to apply them here. For example, if you donate \$1,000 to charity and receive a \$100 dinner in return, your deduction is \$900. In other cases, though, you might not get a deduction at all. If you 'donate' to charity but have an ulterior motive, you might not get that charitable tax write-off. If your donations entitle you to merchandise, goods or services, you can only deduct the amount exceeding the fair market value of the benefits you received. If you pay \$500 for a charity dinner ticket but receive a dinner worth \$100, you can deduct \$400, not the full \$500.

The Supreme Court held that to be a gift, property must be transferred from a "detached and disinterested generosity, out of affection, respect, admiration, charity and like impulses." *Commissioner v. Duberstein*, 363 U.S. 278 (1960). Suppose that a real estate developer donates streets and sewers for a new subdivision to the city. When the developer claims the "gift" to charity, the IRS will say no. The transfer was motivated by a business deal. The developer avoided responsibility for future maintenance of the streets and sewers, and enhanced the value of what he kept. *McConnell v. Commissioner*, 55 T.C.M. 1284 (1988), *aff'd* without opinion, 870 F.2d 651 (3d Cir. 1989),

Does any of this mean that big donors to the Clinton Foundation are actually sweating? It seems unlikely. After all, many of them are probably foreign and may not be filing U.S. tax returns. And for those who are, so what if a 'donation' isn't tax deductible as a charitable contribution? If it was really a business deal, surely the 'donation' can be deducted elsewhere on the tax return as a business expense!

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