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How 'Access To Hillary' Could Impact Clinton Foundation Donations

New emails—new to us at least—suggest that the Clinton Foundation was on occasion a go-to place for bookings with the Secretary of State. It is too soon to say if the red carpet to the Foundation was also a cushy path to the State Department. The facts are still coming out, and there are differing views on just how much of this occurred. But the *appearance* does seem striking, and the snippets we've seen are hardly flattering.

In the context of an election to the highest office in the country, this raises vastly bigger and more important issues than tax issues. Still, taxes matter too, and the tax details of this are disturbing on their own. 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, it might matter if they parleyed their 'donations' into something better than a set of Downton Abbey DVDs.

In fact, it could mean that some of these big 'charitable contributions' really weren't charitable and weren't donations, not in a technical sense. The tax law requires the charity to operate *exclusively* for charitable purposes. Normally the IRS really means *exclusively*. It isn't clear if the law has been

enforced quite so rigorously for the Clintons. Here, though, we are talking about the donors. And for donors, you can't get something in return.

For example, if you donate $1,000 to charity and get 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.

In *Commissioner v. Duberstein*, 363 U.S. 278 (1960), 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." And tax deductions get denied too. In *Dejong v. Commissioner*, 309 F.2d 373 (9th Cir. 1962), parents claimed tax deductions for "voluntary" amounts paid to the private school where their children went. 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.

In *McConnell v. Commissioner*, 55 T.C.M. 1284 (1988), aff'd without opinion, 870 F.2d 651 (3d Cir. 1989), a real estate developer donated streets and sewers for a new subdivision to the city. When the developer claimed the "gift" to charity, the IRS said 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.

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.