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Why Aren't Those \$26.4M Speech Fees Taxable To Bill & Hillary Clinton?

The Bill, Hillary, and Chelsea Clinton Foundation has admitted collecting \$26.4 million in previously unreported fees from foreign governments and foreign and U.S. corporations for speeches. For tax purposes, who should be treated as the recipient of that money? We'll come back to that question, which is a pretty fundamental one. As with all things Clinton, the control of the story has been impressive. Sure, the Foundation should have been clearer about this, says the narrative. But it does such incredibly important work on HIV AIDS and other global initiatives.

Meantime, the State Department has [turned over](#) 900 pages of Mrs. Clinton's private emails relating to the Benghazi attacks. This isn't the first significant gaffe in the Foundation's reporting. The data has to be teased out, but the connections between a former President and Secretary of State hobnobbing with foreign government and corporate chieftains over rather clear U.S. policy issues raises Clinton-sized ethical issues. Were there implicit or explicit promises of positive action on such matters?



A lot of people would like to know. A 2008 ethics agreement required the Foundation to disclose its funding sources publicly. The Washington Post [reported](#) the long list of Clinton speeches with fees ranging from \$10,000 to \$1 million. Former President Clinton was the biggest earner for speeches,

giving three that brought in anywhere from \$500,000 to \$1 million. Numerous speeches to foreign and domestic companies were given by former President Clinton or Mrs. Clinton.

Mr. Clinton spoke to Thailand's Ministry of Energy, China Real Estate Development Group, Ltd, and Qatar First Investment Bank. Mrs. Clinton spoke to Goldman Sachs, Citibank and JP Morgan Chase, to name just a few. The Foundation admits much was not disclosed publicly because they were treated as revenue, not donations. The foundation has now provided [a listing of the speeches](#). The dollars are not all that clear, but the Foundation pledges continued updates.

The [disclosure](#) says Mr. and Mrs. Clinton *earned* big speech fees, and the [list](#) shows Bill, Hillary and Chelsea Clinton turning over between \$12 million and \$26 million. Anyone who has dealt with the IRS before might ask: how can one just assign the fees to the Foundation? Does that really work for tax purposes? Is there a contract that requires it? Do the Clintons pick and choose which fees they hand over and which they keep?

There may be good answers to these questions, but they are hardly silly questions. The assignment of income doctrine has been part of our tax law since the 1930s, if not before. It has long plagued taxpayers, in part because it is so tempting to try to send the tax problem to another person or entity. The earliest attempts by taxpayers to avoid income involved contracting away rights to receive income.

For example, in *Lucas v. Earl*, 281 U.S. 111 (1930), a husband and wife contracted to share income, gains, gifts, and so forth received during their marriage. The Supreme Court said that this kind of contract might well 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. A mere ten years later, another famous assignment of income case made it to the U.S. Supreme Court. In *Helvering v. Horst*, 311 U.S. 112 (1940), a taxpayer gave his son an interest coupon from a bond. The coupon entitled the son to receive an interest payment in the current year.

Notably, the taxpayer retained the bond. Again, this attempt at income shifting was not respected for federal income tax purposes. In the intervening 75 years, a huge number of taxpayers have been caught by the IRS over just these kinds of issues. In fact, 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. With litigation claims, lottery winners, and in just about every other context, there are limitations on [assigning claims](#).

For the Clintons, there may well be a legitimate way to structure their fees as they do. There is no question that they 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 strictly limited. Moreover, since speech fees would normally be sourced to the place where they give the speeches, they could end up taxed in numerous places. What's more, they could end up with no deduction at all for the charitable contributions that would probably be sourced to their residences.

A cursory tax exam might help clear this up. It all seems like a strange enough—and advantageous enough—structure that someone should be asking the questions. IRS, are you interested in this one? Perhaps there are some personal emails? If the assignment of income issue can be explained despite these issues, it should be. Otherwise, a fair number of wealthy people might be thinking about setting up their own foundations, so they too can 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. As with that private email server, the line between personal benefit and the public is arguably somewhat Clintonesque here. Any interest, IRS? Perhaps we can bring back Lois Lerner? For that matter, although it would be a big step down from being the likely next President, perhaps [Hillary Clinton should head the IRS, skilled with charities, transparency, and email?](#)

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