



## Robert W. Wood

THE TAX LAWYER

---

TAXES 11/21/2015

# Clinton Foundation Admits Speech Fees Are Not Donations. Will Hillary Amend Her Own Taxes Too?

The Clinton Foundation has amended its tax filings for 2010, 2011, 2012 and 2013. In a [highly structured statement](#), Foundation President Donna Shalala explained that this was all *voluntary*. The updated returns can be found at [Clinton Foundation amendments](#). It follows the revelations earlier this year that millions of donations were omitted and misclassified. There was no suggestion that these monies would be taxed to the Clinton Foundation, or to Mr. or Ms. Clinton. Even so, it was still embarrassing.

Revenue from speeches was one of the delicate errors. Bill, Hillary, and Chelsea Clinton all gave speeches in 2010, 2011, and 2012. The money was reported as charitable contributions in the original filings. Actually, of course, the speech fees were payments for services. The Foundation notes that correction in its press statements. It is curious, since it would seem to be something the Foundation was aware of when it made the original incorrect filings. After all, the Foundation did not send any donor acknowledgement letters to these speech hosts, and that suggests they were purely fees-for-services and not donations from the start.



Yet the elephant in the room with the speech income is really *whose* income it is. Can the Clintons turn their backs on income and have the Foundation take it? Is there a contract, or is it just *ad hoc*, with some fees going in one pocket, others into another? Tax law normally requires considerably more formality. The assignment of income doctrine has been part of our tax law since the 1930s.

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 it. 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 this contract might be valid under state law, but not for tax purposes. When the husband performed services, a contract doesn't mean he isn't taxed.

In [\*Helvering v. Horst\*](#), 311 U.S. 112 (1940), a father gave his son an interest coupon from a bond. The coupon entitled the son to receive interest, but the father retained the bond. Again, this attempt at income shifting failed. 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 be a legitimate way to structure their fees. 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. But end runs in taxes are closely scrutinized. Besides, speech fees are normally sourced to the place where they are given. The Clintons could end up taxed in numerous states and countries. What's more, they could end up with no deduction at all for the charitable contributions that would probably be sourced to their residences.

It all seems strange enough—and advantageous enough—that someone should be asking the questions. 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 seems fuzzy.

*For alerts to future tax articles, email me at [Wood@WoodLLP.com](mailto:Wood@WoodLLP.com). This discussion is not intended as legal advice.*