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Copy Hillary Clinton: Transfer Powerball Tickets Now Before Win, Avoid Taxes

With the Powerball jackpot cresting a staggering $1.5 billion, it is easy to get caught up in lottery fever. Odds are long, but you can always dream! Of course, even if you beat the long odds and win, you'll have taxes to pay. But can you avoid them?

Since some states give you a break, you can try moving, but it's too late by the time you win. Besides, the biggest tax hit is from the IRS. If you win big you'll pay the top 39.6% federal rate. Paying tax isn't optional either. An IRS Form W-2G will report your winnings. The lottery will make sure you pay by withholding the money and sending it to the IRS for you.

How about avoiding taxes via gifts to charity, family, and friends? Only gifts to charity qualify for a deduction, and the math favors the government. Paying tax and *then* claiming a deduction isn't always efficient. As for gifts to family and friends, you can't generate an income tax deduction by those transfers. In fact, you can double up taxes, even triggering gift tax too.

The income tax is your first issue if you are a winner. You can be taxed even if you split the money with family, friends or co-workers unless you are careful.

Some of that turns on timing. Consider the unfortunate case of *Dickerson v. Commissioner*. There, an Alabama waitress won a $10 million jackpot on a ticket given to her by a customer as a tip. Nice tip!

But the Tax Court held the waitress liable for gift tax when she transferred the winning ticket to a family corporation. The case lead some people to conclude they shouldn't assign litigation claims in a waffle house. But lottery players might take a page from the book of an unlikely source: Secretary Hillary Clinton's speech fees.

Ms. Clinton and her husband Bill both command hefty speech fees, and both are in demand. When the Clinton Foundation finances and speech disclosures were being scrutinized, a list revealed that the Clintons turned over between $12 million and $26 million of speech fees to their Foundation. Did they report that income and then claim deductions for gifts to the Foundation?

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. Instead, they *assigned* the fees to the Foundation as the earner of the fees in the first place. 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?

Think about lottery tickets too. The assignment of income doctrine has been part of our tax law since the 1930s. The earliest attempts 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. Notably, the taxpayer retained the bond. This attempt at income shifting was also struck down by the courts. In these cases and others over the last 75 years, many taxpayers have been tripped up by the IRS.

Many people try to push income away from themselves and assign it to someone else. With litigation claims, lottery winners, and in other contexts, there are limitations on assigning claims. But a $2 ticket is worth only $2 until the drawing. So transfer it *before* it's a winner. Give the ticket to a family member *now*, and you just gave then $2 even if the ticket turns out to be worth $1.5 billion.

Want to divide the winnings 6 ways with 5 of your friends? Write it up *now* before the ticket wins, and the split should be respected for tax purposes. And hopefully instead of being a winner facing suits by friends, co-workers, family, hopefully you will steer clear of that too.

It can seem that the taxes on winning tickets are an unavoidable downside of the lottery. It can seem even worse if friends, family or co-workers claim a share of the loot. So consider taking a page from Hillary's playbook and assigning the ticket *before* it's a winner.

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