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Dear Clinton Foundation: If A Charity Enriches Its Founders, Is It Still A Charity?

It must be said that the Clinton Foundation has done good works. In fairness, it should also be said that Bill and Hillary Clinton may well have intended only the best and most charitable goals, both when they started out, and since then in the Foundation's operations. They may never have intended to reap big personal benefits from the Foundation and their stewardship. Yet intent may not be that relevant. With a swirl of confusing facts about allegedly undisclosed donations, big speeches, pay-to-play, amended tax returns, and administrative expenses, a few eyebrows are still up. It's no wonder.

No matter how lofty the goals or how altruistic the founders, some basic questions still ought to be considered. There is no question that the Clintons and their organizations are immensely successful when it comes to fundraising. As just one example, there are [reports](#) that the Foundation collected \$100 million from Gulf sheikhs and billionaires. It is not unfair to ask whether there were any promises made. Those are really political questions more than they are tax questions.



It pales by comparison, but it may not be unimportant that the Clinton Foundation reportedly [arranged a \\$2 million pledge to a firm owned by Bill's 'friend.'](#) It seems predictable that the [Clinton Foundation would help Hillary and Bill's friends.](#) From one viewpoint, there is nothing wrong with that. And

yet, charitable organizations with the highest public charity IRS tax exemption must benefit the *public* interest. Not only that, but the charity must operate *exclusively* for charitable purposes. That standard is unforgiving. And that is where the question of private inurement to Bill and Hillary Clinton gets much more interesting. How did they do it?

The Clintons were described as “dead broke” on leaving the White House. Their finances quite literally exploded after that. The power couple has collected well over \$100 million in earnings since that time, building a vast net worth. Part of their income comes from lucrative [speeches that no one is talking about](#). Questions of private inurement or private benefit may seem less serious for a political candidate than email security concerns. Still, the IRS normally polices the *exclusively charitable* issue pretty well. And after all, it is hard not to notice that the Clintons became wealthy.

Peter Schweizer’s book [“Clinton Cash”](#) does more than intimate that the Clintons personally collected staggering sums. And any income connection to the *public* Foundation is sensitive. Many charities get tripped up on these kinds of private inurement issues. And the scale with the Clintons is decidedly off the charts. Often—if not most of the time—the problem is the founders themselves who end up getting enriched. And it may not be the bulk of they money. The IRS states that:

6 any transaction between an organization and a private individual in which the individual appears to receive a disproportionate share of the benefits of the exchange relative to the charity served presents an inurement issue. Such transactions may include assignments of income, compensation arrangements, sales or exchanges of property, commissions, rental arrangements, gifts with retained interests, and contracts to provide goods or services to the organization.”

Even a *small* amount of private inurement can lead to the loss of the charity’s tax exemption. Perhaps the law should be otherwise, but these issues are real. And sometimes the enforcement can seem harsh. For example, in [Spokane Motorcycle Club v. U.S.](#), refreshments, goods and services amounting to \$825 (representing some 8% of gross revenues) were furnished to members. That was too much for the IRS.

The IRS says that “a common factual thread running through the cases where inurement has been found is that the individual stands in a relationship with the organization which offers him the opportunity to make use of the

organization's income or assets for personal gain." And make no mistake, the burden of proof is on the organization to establish that it is *not* organized or operated for the benefit of private interests.

After considerable prodding, the IRS has said—seemingly begrudgingly—that it is [looking into the Clinton Foundation](#). The IRS investigation of the Clinton Foundation will almost surely not be completed until after the election. Even fierce critics of the Foundation and of the Clintons may not be expecting the IRS report card on the Foundation to end up being too critical. Yet even if the results are entirely post-election, it is worth asking how this will turn out.

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