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Does Clinton Foundation's Pay-For-Play Violate IRS Tax Law?

[The New York Times has reported](#) intriguing trades by the Clinton Foundation. This isn't the first brouhaha over the Foundation's handling of speeches, politicking, country-hopping and tax return reporting omissions. They are causing some rekindled memories of the Whitewater era. [The Times reports](#) that Bill Clinton repeatedly turned down Czech model Petra Nemcova's Happy Hearts Fund event. Then, with a little prompting, she directly offered the foundation \$500,000 for appearing. [The cash intrigue has been called 'distasteful.'](#)

On the other hand, the Bill, Hillary & Chelsea Clinton Foundation [has reportedly raised \\$2 billion](#), and is lauded for good works around the world. It was Sue Veres Royal, the former executive director of Ms. Nemcova's charity who said the Clintons needed a quid pro quo. Deborah Sontag wrote the story in the Times, noting that:

“ When charities select an honoree for their fund-raising events, they generally expect that the award recipient will help them raise money by attracting new donors. But the Happy Hearts Fund raised less money at the gala featuring Mr. Clinton than it did at its previous one. Further, it is extremely rare for honorees, or their foundations, to be paid from a gala's proceeds, charity experts said — as it is for the proceeds to be diverted to a different cause.



It is not clear that such deals by and among charities violate the tax law. Each organization is tax-exempt, and each should be able to claim the proceeds as public donations. The latter is important for tax-exempt organizations that have to be careful not to run afoul of IRS private foundation rules. On the other hand, anything that looks unseemly or that smacks of implicit or explicit horse trading by the Clintons is bound to hurt.

At the very least, it may suggest that horse trading by the Foundation is the norm. Could something have been promised to foreign governments in exchange for donations? How about foreign companies? These are not silly questions to be asked of America's ultimate power couple. It does not help that other controversies have hit the foundation's record-keeping and massive contributions from oppressive foreign governments.

Curiously, one report on the [Clinton Foundation's trades](#) suggests that the Happy Hearts Fund may be much more worried about the Times article than the Clinton Foundation. The former said that Ms. Veres Royal has violated a confidentiality agreement and threatened suit. Perhaps the Clinton Foundation simply has bigger issues, including the admission that it collected \$26.4 million in previously unreported fees from foreign governments and foreign and U.S. corporations for speeches.

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 it is possible for the Clintons to pick and choose which fees they hand over and which they keep, if that is indeed what is occurring.

The assignment of income doctrine has long been part of our tax law. In general, it prevents taxpayers from sending income to another person or entity. The tax law is full of examples of

unsuccessful attempts to avoid income or [assign claims](#). On the surface, it looks as though the Clintons are doing just that. 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.

After all, they would end up with a big tax bill, since charitable contributions are strictly limited. If anything, the Clintons are savvy. Besides, 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 tax deduction for the charitable contributions that would probably be sourced to their residences.

If the IRS looks into this—which seems unlikely—it might consider 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 items that should be treated as income. As with the Clintons' private email server, the line between personal benefit and the public purpose seems blurred. One thing though that is crystal clear is that [Hillary Clinton is highly skilled with charities, transparency, and email](#).

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