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### Trump Diverted Money To His Foundation, Says Report; You Mean Like Clinton Foundation?

A bombshell [Washington Post story](#) says that Donald Trump directed monies owed to him to his Donald J. Trump Foundation. The allegations are serious, suggesting a finagling of income tax and charity rules. The story is worth reading in its entirety, although the details may not be as salacious as the headline. One payment was \$400,000 from Comedy Central for Trump's appearance at a roast.

The other involved \$1.9 million paid to the Trump Foundation from a ticket broker, allegedly for goods and services. The two "donations" totaling \$2.3 million, according to the *Post* story. Tax experts quoted by the *Post* correctly noted that shifting income away from Trump and to his Foundation can be dicey or worse, especially if it was done intentionally. At a minimum, the practice is sloppy. It comes on the heels of the revelation that [Trump used \\$258,000 from his charity to settle legal problems](#).



That too was at least sloppy. The *Washington Post* notes that the assignment of income doctrine means the original earner—say that was Trump—is still taxable on it even if he said “please pay/donate to my Foundation” instead. The *WaPo* story says that New York Attorney General Eric Schneiderman is investigating the Trump Foundation. Often, even with taxes, ignorance can be a defense. Yet as Trump, his advisers and staff try to dig out from this issue—and from the debate—it is curious that the Clinton Foundation may have a similar issue.

It might even have an issue on a vastly larger—practically global—scale. Like Trump’s tax returns, Hillary Clinton has still not released her speech transcripts. Arguably, though, the money trail from Hillary’s speeches might actually be more important than what she said and to whom. The money was big for Bill and Hillary, as was its tax treatment. Some money was Hillary’s, and some was assigned to the Bill, Hillary, and Chelsea Clinton Foundation. As the *Post* noted about Trump, normally, you can’t assign income.

The assignment of income doctrine has long plagued taxpayers, in part because it is so tempting to try to send the tax problem to another person or entity. Notably, the Clintons have not defined [how they decide to designate](#) their speaking fees as income versus charity work. When Hillary made a speech, suppose that she told the sponsor to send the cash to the Clinton Foundation. Is that the same as Trump’s issues? No one seems to care how the Clintons did this, or whether it was effective for tax purposes. Given the big and repetitive numbers, that seems surprising.

For tax purposes, who should be treated as the recipient? Bill and Hillary ‘assigned’ boatloads of speech fees to the Clinton Foundation. Mrs. Clinton’s financial disclosure forms show that she [reported](#) personal income of more than \$11 million for 51 speeches in 13 months. The [disclosure](#) says Mr. and Mrs. Clinton earned large speech fees. The [list](#) shows Bill, Hillary and Chelsea Clinton turning over between \$12 million and \$26 million.

Anyone who has dealt with the IRS might ask how you can ‘assign’ those fees for tax purposes. Is there a contract that requires it? Do the Clintons choose which fees they hand over, and which they keep? These are not silly questions. In [Lucas v. Earl](#), the Supreme Court would not honor an assignment for tax purposes. Similarly, in [Helvering v. Horst](#), a man gave his son an interest coupon from a bond, but the father kept the bond. Here, too, the court refused to respect this attempt at income shifting.

The Clintons surely did not want to receive 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. Plus, speech fees would normally be sourced to the place delivered, which could mean that they would end up being taxed in numerous places. If the assignment of income issue can be explained despite these issues, it should be. Maybe Trump's problem on this point will make someone ask: 'how about the Clinton Foundation?' It may even turn out that [the Clinton and Trump Foundations have something in common](#).

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