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Would Bill And Hillary's Clinton Foundation Withstand IRS Scrutiny? You Decide

Will the Clinton Foundation *ever* be questioned by the IRS? Republicans have requested it, but it seems pretty unlikely that the IRS would touch this issue. In fact, perhaps it is even *more* unlikely *because* of those requests! In that sense, asking whether the Foundation could stand up to scrutiny may be pointless.

Besides, it is difficult to tease out the facts, with undisclosed donations, speeches, amended tax returns, and administrative expenses. Mostly, there is hyperbole about how lofty the goals, how altruistic the founders, and how successful the fundraising. Still, it is hard to avoid some of the press, including the recent report that the Foundation gathered $100 million from a variety of Gulf sheikhs and billionaires in mysterious ways. And for what promises?

On a smaller scale, it was recently revealed that the Clinton Foundation arranged a $2M pledge to a firm owned by Bill's 'friend.' Perhaps it should be no surprise that the Clinton Foundation helped Hillary and Bill's friends. Yet the law is very clear that charitable organizations with public charity tax exemptions must benefit the *public* interest. In fact, the law requires the charity to operate *exclusively* for charitable purposes.

Even without knowing how the Clintons got from point A to point B, they were "dead broke" on leaving the White House. Their finances since exploded, with well over $100 million in earnings since that time and a vast net worth. Yes, part of it comes from those speeches that no one is talking about.

Not too long ago, Lois Lerner of the IRS headed the tax exempt organizations unit of the IRS. She was a key figure in the still unresolved IRS targeting scandal. Of course, Lois Lerner took the Fifth and retired from the IRS. In that climate, it seems hard to imagine the IRS would audit. But if the IRS *did* ask, how would mere mortals be treated by the IRS? Consider these examples.

In *Wendy L. Parker Rehabilitation Foundation, Inc. v. Commissioner*, the Tax Court upheld the IRS's position that a foundation formed to aid coma victims, including a family member of the founders, was not entitled to tax exemption. Approximately 30% of the organization's net income was expected to be distributed to aid the family coma victim. The court found that the family coma victim was a substantial beneficiary of the foundation's funds. It also noted that such distributions relieved the family of the economic burden of providing medical and rehabilitation care for their family member and, therefore, constituted inurement to the benefit of private individuals.

The IRS also says this:

> ‘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.”

The IRS adds 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."

The IRS says that even a *small* amount of private inurement is fatal to exemption. In *Spokane Motorcycle Club v. U.S.*, net profits were found to inure to private individuals where refreshments, goods and services amounting to $825 (representing some 8% of gross revenues) were furnished to members. The IRS says that "if inurement can result from an insider receiving a *little* benefit, it follows that inurement *must* result when the insider receives virtually all of the benefits of the organization's operations."

If you want to read more from the IRS about private inurement, check out this IRS link, and this one too. Section 1.501(c)(3)-1(d)(1)(ii) of the tax regulations states that the burden of proof is on the organization to establish that it is *not* organized or operated for the benefit of private interests. Peter Schweizer's book "Clinton Cash," argues that the many public and private deals the Clintons brokered put staggering sums in their pockets, through lucrative speaking arrangements or by donations to the Clinton Foundation.

So how would the Clintons do on proving no private inurement? Well, at least there would probably be no emails.

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