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THE TAX LAWYER

TAXES 2/09/2016

Hillary's Wall Street Speech Fees: Hers Or Clinton Foundation's?

The Ethics in Government Act requires public figures to report their outside income above \$200. Yes, that is a very low threshold. Mrs. Clinton's speaking fees were vastly more, reportedly a \$225,000 minimum per speech. In that light, her failures to disclose seem hard to comprehend. However, Mrs. Clinton directed some of her fees to the Clinton Foundation, which is arguably different.

Even so, there are legitimate tax questions whether this is allowed. Beyond that, were the assignments to the Foundation timely and correctly documented? Getting straight answers even to more basic questions can be tough, even for CNN. For example:

6 Anderson Cooper: "But did you have to be paid \$675,000 [for three speeches to Goldman Sachs]?"

Hillary Clinton: "Well, I don't know. That's what they offered."



Democratic presidential hopeful Hillary Clinton speaks at her primary night party February 9, 2016 at Southern New Hampshire University in Hooksett, New Hampshire. Clinton, who suffered a deflating if expected defeat to Bernie Sanders, put a brave face on the loss and admitted she had some work to do as the campaign moves south. (Photo credit: DON EMMERT/AFP/Getty Images)

Some observers believe it was *Hillary* doing the offering, and that [she is not truthful about her Wall Street speaking fees](#). Material [on her website](#) suggests \$225,000 as her minimum, with \$225,000 for 34 of 41 speeches. Mrs. Clinton's fees for the remaining speeches were at even higher prices. In total, she received \$9,680,000 for these speaking engagements in 2013.

Even so, it is a drop in the Clinton bucket. In all, there were [\\$153 million in Bill and Hillary Clinton speaking fees](#). Mrs. Clinton was paid dearly by Wall Street, suggesting a [conflict of interest](#) despite her recent distancing. No matter how much Mrs. Clinton hopes to lure Bernie Sanders voters, it must be hard at a \$225,000 a pop. And although few observers may be worried about the tax issues, they are nettlesome too.

Rep. Jason Chaffetz (R-UT), Chair of the House Committee on Oversight and Government Reform, wrote [a letter to the Director of the Office of Government Ethics](#) about the millions of dollars in speech fees Mrs. Clinton did not disclose. She may have thought speeches for the Foundation did not have to be disclosed, but Mr. Chaffetz still [questioned the ethics office](#). Rep. Chaffetz even wants to know where any 'no-disclosure-for-direct-pay' rule is written.

Mrs. Clinton's financial disclosure forms show that she [reported](#) personal income of more than \$11 million for 51 speeches in 13 months. Yet she has not defined [how she and Mr. Clinton decide](#) which fees are personal income and which go directly to charity. Normally, the IRS doesn't let taxpayers pick and choose. But this is no normal family, nor is it a normal charity.

The Bill, Hillary, and Chelsea Clinton Foundation admitted collecting \$26.4 million in previously unreported speaking fees from foreign governments, foreign and U.S. corporations. For tax purposes, who is the recipient, and how late can the Clintons decide?

A 2008 ethics agreement required the Foundation to disclose its funding sources. The Washington Post [reported](#) the long list of Clinton speeches with fees ranging from \$10,000 to \$1 million. The Foundation admits much was not disclosed publicly because they were treated as revenue, not donations. When the Foundation belatedly provided [a listing of the speeches](#), the [disclosure](#) and [list](#) shows that Bill, Hillary and Chelsea Clinton turned over between \$12 million and \$26 million.

Anyone who has dealt with the IRS might ask: how can you just *assign* fees to the Foundation? Does the IRS allow it? Is there a contract that requires it? Do the Clintons choose which fees to hand over before or after the speech? The assignment of income doctrine says that if you earn income yourself but try to assign the income to someone else, you are still taxed. This is so even if the money is collected by the assignee.

Several U.S. Supreme Court cases say this. In *Lucas v. Earl*, even a written contract did not work to shift income to someone else. In *Helvering v. Horst*, another attempt at income shifting failed. There are many other cases in which the IRS catches people trying to push income away from themselves and assign it to another person or entity. But the IRS enforces limitations on [assigning claims](#).

Apart from politics, it is understandable that the Clintons would 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. Moreover, speech fees would normally be sourced to the place where they give the speeches. The Clintons could end up taxed in numerous places. That is one reason the lack of disclosure on these issues is so interesting.

A fair number of wealthy people might be thinking about setting up their own foundations, particularly if they can pick which monies they want taxed to

them and which to their charities. Cushy private travel and other perks would be nice too. When founders get big salaries or other items that should be treated as income, the IRS calls it private inurement. Perhaps the IRS would care if the Tea Party were involved?

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