



Robert W. Wood

THE TAX LAWYER

TAXES 8/15/2016

Prediction: Clinton Foundation Will Pass IRS Investigation Just Fine

After considerable prodding, the IRS has said—seemingly begrudgingly—that it is [looking into the Clinton Foundation](#). Even before the latest email revelations, Republicans have criticized the Foundation and the unparalleled access they say donors have had to government policymakers. The unsavory “pay to play” label has often been used to describe the Foundation headed by a former President and Secretary of State. House Republicans formally asked the IRS to review whether the Clinton Foundation is complying with the rules governing its tax-exempt status.

More recently, [Judicial Watch](#) released a new batch of State Department emails showing [close and sometimes overlapping interests](#) between the Clinton Foundation and the State Department while Hillary Clinton served as Secretary of State. The [documents](#) raise new questions about whether the Clinton Foundation ever rewarded donors with access and influence at the State Department. It is a charge [Mrs. Clinton has faced in the past, and has always denied](#). Judicial Watch President Tom Filton said in a [press release](#) that Clinton “hid” the emails on purpose.



Democratic presidential nominee Hillary Clinton celebrates on stage with husband former US president Bill Clinton on the fourth and final night of the Democratic National Convention at Wells Fargo Center on July 28, 2016 in Philadelphia, Pennsylvania. (Photo credit: SAUL LOEB/AFP/Getty Images)

The newly released emails give new impetus to [Republican requests to audit the Clinton Foundation](#). IRS Commissioner Koskinen [wrote](#) that the IRS was looking into it. Mr. Koskinen is the same IRS official Republicans have been trying to impeach over the IRS targeting scandal. Mr. Koskinen denies any wrongdoing. As [discussed here](#), Rep. Marsha Blackburn (R-TN), lead the push for the IRS to investigate. One of the complaints dates to the [Peter Schweizer book, "Clinton Cash."](#) It says that Hillary's State Department funneled at least \$55 million to Laureate Education Inc. Laureate donated between \$1 million and \$5 million to [the Clinton Foundation](#).

Laureate denies that it has received any State Department grants despite what *Clinton Cash* says. Laureate contends that the \$55M in grants went to the International Youth Foundation, a non-profit organization that has no affiliation with Laureate and has been receiving State Department grants since 1999. However, Laureate's Chairman Douglas Becker is also chairman of the International Youth Foundation's board of directors. Although the allegations surrounding Laureate have been investigated by the [Washington Post](#) and [Politifact](#), the [debate continues](#).

It is hard to avoid some of the press, including the [report](#) that the Foundation gathered \$100 million from Gulf sheikhs and billionaires for unclear

promises. On a smaller scale, the Clinton Foundation [arranged a \\$2 million 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 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. The tax law says 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.”

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 tax exemption. The tax regulations say the burden of proof is on the organization to establish that it is *not* organized or operated for the benefit of private interests.

The Clintons have lead a very public life. Yet it is hard to escape the rise of their fortunes since leaving the White House. Peter Schweizer’s [“Clinton Cash”](#) argues that the many public and private deals the Clintons brokered put staggering sums in their pockets through lucrative speaking deals or via donations to the Clinton Foundation. The IRS could say that something was amiss. Others could continue to probe the alleged connections between the Foundation and the State Department, something that is more troubling.

However, it seems hard to imagine that this Foundation will face serious scrutiny. Even if there is official criticism, it will surely come post-election. Some questions relate to pay to play donations said to facilitate access to Mrs. Clinton. Moreover, there have long been complaints that the Clintons have not defined [how they decide to designate](#) speaking fees as their own income or as assigned to the Foundation. The tax system generally does not allow that kind of choice without tax consequences. In any event, the part of the IRS investigating the Clinton Foundation is the Exempt Organizations Division, the unit formerly run by Lois Lerner. She took the Fifth, retired and faced no charges over the targeting of conservative organizations.

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