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THE TAX LAWYER

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### Trumping The Donald's \$5M Offer For Obama Docs

Aging men should be forgiven for admiring [The Donald's coiffe](#) and maybe even his braggadocio. But few may forgive his latest gambit, the [YouTube video](#) revealing that he will donate \$5 million to a charity of President Obama's choice if the President, in return, "opens up and gives his college records and applications...and if he gives his passport applications and records." This is not an unlimited offer. To qualify, Mr. Obama must provide the demanded documents by 5:00 p.m.

on October 31, 2012. See [Donald Trump Obama announcement: Trump will give \\$5M to charity if Obama releases records.](#)

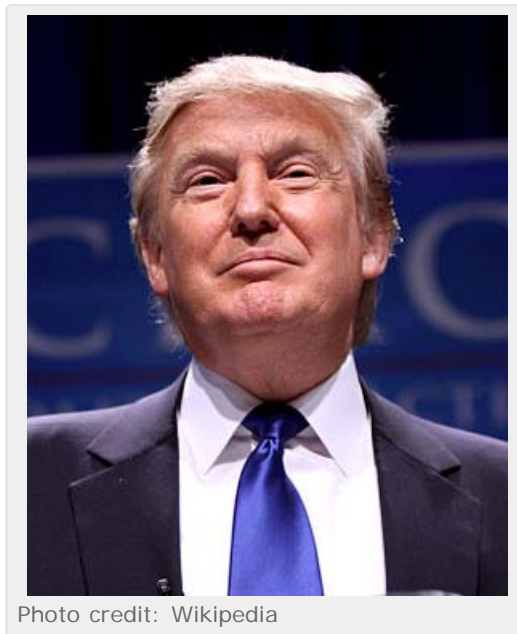


Photo credit: Wikipedia

Tax lawyers, especially aging men losing their hair, should be forgiven for looking past the numerous other aspects of this latest little Trump tempest in a teapot to taxes. Surely Mr. Obama will ignore [Mr. Trump's offer](#), but if he didn't, who is taxed? Could The Donald deduct the payment? Is there any taxable income to the President?

The tax law tries to get a piece of just about everything. Even so, I don't see any income to Mr. Obama. If he did produce the documents he would not be selling them. He would merely be revealing them in exchange for a donation. You don't have income when you do a walk-a-thon for charity, even if your miles end up causing someone else to pledge money.

But the [charitable contribution](#) that Mr. Trump is surely assuming he would get on the off-chance that Mr. Obama complies is another matter. Can Mr. Trump deduct the \$5 million if he gives it to Mr. Obama's chosen charity? Whether or not it seems fair, probably.

After all, if it is a [501\(c\)\(3\) charity](#) as seems likely, Mr. Trump will have his check and the tax qualification. In fact, the only thing that could go wrong would be the line of tax cases known as the *quid pro quo* cases. In effect, Mr. Trump's deduction—or at least part of it—could be jeopardized if he is getting something in return.

His public statement that he is only donating the money in exchange for the President's documents makes it explicit. Still, most of the *quid pro quo* cases involve developers donating property to a City in exchange for a permit on another parcel or some other perk. If the facts come out, the developer can't deduct the full value of the donated land. Only the difference between the donation and the permit would count.

But The Donald's case would be more nuanced, like [his hair](#). Mr. Trump isn't getting a building permit or anything else tangible that can be valued. He would only get the coveted Presidential documents released. Yet if the IRS could show Mr. Trump benefitted and value it, his deduction might get a haircut.

Of course, this is **awfully** hypothetical. Indeed, Mr. Obama seems unlikely to be moved to action no matter which charity he would want to benefit. As for Mr. Trump, even if (as seems likely) there's ultimately no \$5 million gift to charity, there's another tax angle.

I would bet that **some** expenses associated with this gambit end up on his tax return as business expenses. After all, there surely must be some respect in which even this latest from The Donald helps to enhance Mr. Trump's illustrious—and hard to define—brand.

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