

**NEWS ANALYSIS: BARBARA
BUSH DIDN'T PLAN IT RIGHT,
EITHER.**

In the locker room scene in the movie *Wall Street*, which satirized the greedy 1980s, the Ivan Boesky-like villain, Gordon Gekko, played by Michael Douglas, explains his social climbing efforts to the movie's antihero, young Bud, played by Charlie Sheen. The nouveau riche Gekko recounts that he has tried to buy his way into that bastion of New York City's WASP establishment, the board of the Bronx Zoo. "Ya gotta understand about WASPs," Gekko tells Bud. "Dey love animals. Dey hate people."

It may be that many other Americans also feel that way, since Barbara Bush made more money from a book about a dog than Hillary Clinton has made so far from a book about children. Like Mrs. Clinton, Mrs. Bush gave most, but not all, of her royalties to charity. And like the Clintons, the Bushes failed to get good tax advice beforehand, so that more money went to satisfy tax obligations and less money went to charity than might otherwise have been the case, according to certified public accountant Steven Bankler of San Antonio.

A couple of weeks ago, *Tax Notes*, presented an article which argued that Hillary Clinton could have better fulfilled her statement -- that she would give all her book royalties to charity -- by donating her copyright to a private foundation. (See *Tax Notes*, May 5, 1997, p. 616.) She could have avoided self-employment and some income tax if she had donated her copyright to a private nonoperating foundation before the book was published.

From the response that the Hillary Clinton article has engendered, it seems that poorly advised first ladies are keeping back some royalty money for income and self-employment taxes. (The *Washington Post*, May 7, 1997, p. A19.) The point is that keeping back large amounts of money for taxes is unnecessary if competent tax advice is sought before the royalties start coming in. (George and Barbara Bush paid \$25,000 for tax advice in the year *Millie's Book* was published; there's a job for some of our readers there somewhere.)

No one has gotten the tax planning right, according to Bankler. Barbara Bush did create a private foundation to handle her royalties from *Millie's Book*, but she failed to donate her copyright to it beforehand, so her royalties were run through the Bush tax return in 1991 and subjected to income and self-employment taxes.

The Bush Deal

In 1991, Mrs. Bush earned \$889,176 of royalties from *Millie's Book*, and did not report any expenses associated with those royalties. (George Bush earned a paltry \$1,359 from his book *Looking Forward* that year -- an indication that he did not have a lot to look forward to.) Mrs. Bush paid \$10,247 in self-employment tax on her royalties; her self-employment income appears

to be underreported by \$100,000, but there was a \$125,000 cap on taxable self-employment income in effect then. (The Clinton administration persuaded Congress to remove the cap in 1993.)

George and Barbara Bush donated \$818,803 to charity, of which \$789,176 went to the Barbara Bush Foundation for Family Literacy, a private foundation. Another \$28,950 went in small amounts to 47 different charities, including the Ducks Unlimited Foundation and two organizations using the name Desert Storm. The couple's blind trust donated \$677 to charity. There should have been a deduction for a charitable contribution of the roughly \$13,000 in interest and dividends from the Henry G. Freeman Jr. Pin Money Fund for the sitting first lady; first ladies usually give that money to charity. George and Barbara Bush did not report any pin money fund income on Schedule B, however, for 1991 or any previous year of the Bush presidency.

After Mrs. Bush's self-employment tax, \$880,288 of the \$890,535 total royalties earned by the couple was available for charitable donation. They kept back \$61,485, which is somewhat more than enough to pay a 1991 federal income tax at the highest marginal rate on the \$156,575 of charitable contribution deductions that the first couple was required to carry forward. (Bush earned the enduring antipathy of anti-tax Republicans when he agreed to raise the maximum tax rate on earned income from 28 percent to 31 percent in 1990.)

According to Bankler's analysis, it does not appear that the couple earned interest on Mrs. Bush's royalties, since their 1991 reported interest income does not vary significantly from what they reported in prior years. This indicates that Mrs. Bush may have promptly paid the royalties over to her private foundation.

Similarities

Like the Clintons, George and Barbara Bush could not have done anything different to get around the 50 percent of adjusted gross income limitation on charitable deductions contained in section 170(b)(1)(A), even if Mrs. Bush gave the copyright to a foundation beforehand, and assuming that the donation was valued at the present value of the first year's royalties. But the use of a non-operating foundation, meaning one that pays out all of its contributions, would preclude the application of the tighter 30 percent limit of section 170(b)(1)(B).

If, as one reader suggests, the correct amount of the deduction of a self-created copyright to a private foundation would be zero, then Mrs. Clinton and Mrs. Bush could have kept all of the royalty income, and all of the resulting tax conundrums -- like the charitable contribution deduction limits -- off of their returns by donating their copyrights before their books were published. (See the letter to the editor on p. 1011 of this issue.)

For the year that a big donation is made, the 50 percent limit means that a cash-poor taxpayer may want to hold some money back to cover the tax due on the amount that must be carried forward, as those who say the Clintons did it right have argued. But this does not mean that the taxpayer never has the benefit of the charitable deduction, nor does it require holding back the large amount that the Clintons held back, Bankler observed. The Clintons held back \$117,559 -- far more than the \$76,749 of charitable deductions they carried forward, and roughly four times

as much as they needed to hold back for income tax on that amount. And next year, the Clintons will enjoy a tax benefit from the charitable deduction they carried forward.

-- Lee A. Sheppard

Relevant Code Sections

Section 170 -- Charitable Deduction

Copyright © Tax Notes Today®. Tax Analysts Inc. All rights reserved.