

### NEWS ANALYSIS

## Analyzing Hillary Clinton's Latest Tax Returns

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Given the unpopularity of both presidential candidates, some readers just want to know who's going to win so they can prepare to deal with the fallout. We have the answer for you! And you can even vote in the poll!

It's *Family Circle* magazine's uncannily accurate cookie recipe poll, inspired by Hillary Clinton's infamous remark about housewives. Since its inception in 1992, the recipe poll has predicted the winner of the White House all but once. The Clinton camp has submitted a chocolate chip oatmeal recipe, while Melania Trump submitted star cookies made with sour cream and egg whites. In 2012 Michelle Obama's dark/light chocolate chip cookies prevailed over Ann Romney's M&M cookies (*USA Today*, Aug. 18, 2016).

The recipes are absolutely emblematic of the candidates. The Clinton cookie recipe is the same one Hillary Clinton gave to *Family Circle* in 1992 after making that remark. It calls for poll-tested chocolate, but also healthy oatmeal to appeal to the left. Melania Trump's recipe might be her own, given that sour cream is used in a lot of Eastern European cooking. Or it might be the family chef's, because working with powdery confectioner's sugar takes some skill. Cookies are not foolproof — they are easy to turn into hockey pucks. Not that the kids notice or care.

As this article was being written, former President Bill Clinton announced that should Hillary become president, the \$2 billion Clinton Foundation would stop taking donations from foreigners and corporations. Somehow it was acceptable for the foundation to take money from foreigners and companies that had business before the State Department while Hillary Clinton was running it, but this will stop if she becomes president. Were the foundation to follow through, it would lose more than half its donors (*The Washington Post*, Aug. 20, 2016). (Related coverage: p. 1202.)

There's more. The former president would resign from the foundation board and daughter Chelsea would stay on. He would stop giving lucrative

speeches to private groups and foreign governments if his wife becomes president. He didn't stop giving speeches while she was secretary of state, only stopping when she declared for president. He also announced that the Clinton Global Initiative, an annual shindig for people who can write large checks, will have its last meeting next month. President Obama will not attend — his administration disapproved of these gatherings.

Not all Clinton entities are on board with the cessation of foreign donations. The foundation's largest program, the Clinton Health Access Initiative, will make its own decision about donors. That entity accounts for two-thirds of the foundation's spending, and 60 percent of its donations are foreign (*The Boston Globe*, Aug. 19, 2016). The Canadian Clinton Giustra Enterprise Partnership — a big part of the bad optics — will continue independently (Reuters, Aug. 19, 2016).

The Clinton response falls short of the demand by *The Boston Globe* that the foundation stop accepting all donations immediately and be shut down if Hillary Clinton were to win. "Even if they've done nothing illegal, the foundation will always look too much like a conflict of interest for comfort," the paper intoned. The editorial noted that contrary to promises to Obama, the foundation didn't name its donors or get State Department clearance before accepting donations from foreign governments (*The Boston Globe*, Aug. 16, 2016).

"If the foundation's donors are truly motivated by altruism, and not by the lure of access to the Clintons, then surely they can find other ways to support the foundation's goals," the *Globe* editors wrote, recommending the foundation's activities be handed over to another established charity. "But as long as either of the Clintons is in public office, or actively seeking it, they should not operate a charity, too." Foundation President Donna Shalala said that some foundation functions would be spun off (*Politico*, Aug. 23, 2016). "I'm trying to make sure the good work continues as we wind it down," Hillary Clinton told MSNBC.

*The Huffington Post* was even more blunt in a two-inch headline five days later: "Just Shut It Down" (*The Huffington Post*, Aug. 21, 2016). *New York* magazine griped that Hillary Clinton "has not fully grasped the severity of her conflict of interest problem." "The Clinton Foundation needs to die,"



Associated Press

Outside a Cape Cod fundraiser, where the real Cher helped raise \$1.5 million – roughly a single day's campaign spending.

political commentator Jonathan Chait wrote (*New York*, Aug. 19, 2016). And these were the friendly publications!

*The New York Times* queried what the donors who have already given might expect in the way of favors from a Clinton presidency, pointing to the Russian uranium deal approved by the State Department, among other agencies (*The New York Times*, Aug. 21, 2016, p. A1; and Apr. 23, 2015). Public Citizen and the Campaign Legal Center called on the Clintons to sever all ties with the foundation (*The Hill*, Aug. 6, 2016).

What's this got to do with tax? The Clintons may be the first couple in history to try to justify money of questionable provenance by paying taxes on it. Their tax returns are straightforward. The sources of their income are not. The Clintons' latest release of returns covered the last three years. (Prior analysis: *Tax Notes*, Aug. 10, 2015, p. 587.)

As for The Donald, as president he could likewise be a bundle of conflicts of interest. *The New York Times* estimated that loans on his properties are \$650 million, roughly double the minimum amounts shown on his Federal Election Commission filings (which classify things as "over \$50 million"). Moreover, partnerships in which he is a passive investor owe an additional \$2 billion of nonrecourse debt to lenders that include UBS, Deutsche Bank, and the Bank of China (a government-owned commercial bank). FEC rules only require disclosure of debt that is recourse to the candidate (*The New York Times*, Aug. 20, 2016, p. A1).

## Tax Returns

The Clintons have a spot of real estate debt too. Despite the millions sloshing through their bank accounts since Bill Clinton left office, they still haven't paid their \$1 million of remaining mortgage debt. The Clintons deducted \$41,000 of mortgage interest last year and a like amount in the previous two years. "Since the reenactment of the Pease amendment, their itemized deductions were reduced by \$309,000, eliminating the deductibility of their mortgage interest," said Steven Bankler of Steven Bankler CPA Ltd.

How is it possible for the Clintons to still have a mortgage when the pair has earned \$237 million since Bill left office, mostly in speaking fees?

The bulk of this amount, \$150 million, was earned since 2007. Since Hillary's last presidential run, the Clintons have paid \$48 million in federal income taxes and given \$16 million to charity, mostly to their foundation. Over the past 15 years, they paid a combined effective rate of federal and New York state taxes of 41 percent, with their effective rate ranging from 37 percent to 46 percent.

The pair earned nearly \$7 million from speeches in 2015. For 2015 they paid \$3.6 million in federal income taxes, \$98,000 in property taxes, and \$1.4 million in state income taxes on adjusted gross income of \$11 million, which included \$3 million from Hillary's memoir *Hard Choices* (at the high end, New York state taxes are levied on gross income).

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The Clintons are not alternative minimum tax payers because they are in the topmost bracket. The AMT now mostly hits their supporters — high-salaried residents of high-tax states. Vice presidential candidate Sen. Tim Kaine, D-Va., is an AMT taxpayer because his wife has a high-paying job.

Last year's income was a big drop from the \$28 million in AGI the Clintons reported for 2014. That year they paid \$10 million in federal income taxes and \$3 million in state income taxes, and deducted \$3 million given to their foundation.

Every year they fail to give the maximum deductible amount to the foundation and make few other charitable contributions. Their donations hover around 10 percent of their gross income. The Clintons are subject to charitable contribution limits. Gifts to foundations are limited to 30 percent of AGI (section 170(b)(1)(B)). Bankler, who has reviewed all of the Clintons' disclosed tax returns, recalled that the couple used to be very creative

with their charitable donations. (Prior analysis: *Tax Notes*, Apr. 4, 1994, p. 18.)

Every year the Clintons deduct \$3,000 of capital loss. They are still working off the capital loss remaining from Bill's 2008 disposition of his interests in Yucaipa partnerships for a \$726,000 capital loss. He had a complicated relationship with California billionaire Ron Burkle's Yucaipa in the early 2000s. Every year he gets a \$200,000 presidential pension and some pocket money from the state of Arkansas.

Bill's 2014 Schedule C shows \$10 million earned from speaking, on which he paid 7 percent to the Harry Walker Agency. He also deducted \$62,000 of associated wages and \$376,000 of travel expenses. He made \$36,000 from his memoir *My Life and Back to Work*, but not much from *Giving*. Sales of politicians' books tend to drop off drastically after the year of publication; he made \$110,000 in royalties the year before.

**How is it possible for the Clintons to still have a mortgage when, since Bill left office, the pair earned \$237 million, mostly in speaking fees?**

Another Schedule C for him showed \$6 million of consulting income was from a couple of for-profit educational ventures, GEMS (\$2 million) and Laureate Education (\$4 million). He deducted \$250,000 from this income as a consulting fee. Latin-America-focused Laureate, which was founded by a Democratic party donor, gave at least \$1 million to the foundation. That Laureate is being investigated by several governments may be the reason the Clinton campaign is not attacking Trump University, which is being sued by some dissatisfied students. Bill earned nearly \$18 million from Laureate as honorary chancellor between 2010 and 2015, when Hillary declared (CNN, Aug. 23, 2016).

That year, 2014, was the only year Hillary's speaking income equaled Bill's. She paid 7 percent to her agent and deducted \$814,000 in travel expenses and \$82,000 in associated wages. Her book *Hard Choices* earned nearly \$6 million in 2014, reduced by \$310,000 of associated wages. She makes around \$10,000 each year from her previous memoir, *Living History*, and next to nothing from *It Takes a Village*.

The Clintons had \$27 million AGI in 2013, of which \$7.5 million was foreign source. They paid \$2.5 million in New York state income taxes and gave \$3 million to the foundation.

One of Bill's 2013 Schedules C showed \$13 million of speaking fees. He paid 6 percent of that to his agent and incurred \$2 million of travel expenses.

Another Schedule C for him showed \$5.6 million of consulting income from GEMS and Laureate Education, reduced by \$62,000 of consulting fees and \$100,000 of wages, which might be for an assistant.

Hillary filed a Schedule C showing nearly \$10 million of speaking fees, reduced by commissions of only 3 percent, \$200,000 of travel expenses, and wages of \$372,000, perhaps for Huma Abedin and others whom she pays herself. Another Schedule C showed \$3 million from her publisher Simon & Schuster Inc., reduced by \$123,000 of wage expense.

Nearly half the couple's more than \$4 million of business expenses was allocated to foreign income, indicating that a lot of Bill's trips were foreign. The Clintons paid \$100,000 in creditable foreign taxes to India and slightly more than \$500 to others. While the OECD model treaty precludes withholding, the "Other Income" article of the India-U.S. treaty appears to permit it. Bill Clinton has his own sentence in the OECD commentary that says he is not an entertainer (para. 3 of the article 17 commentary). (Prior analysis: *Tax Notes*, Jan. 11, 2016, p. 151.)

The Clintons' investments are boring. Every year, they earn interest of a tiddly \$26,000 on a JPMorgan Chase & Co. account holding somewhere between \$5 million and \$25 million, according to Hillary's FEC disclosure. They are invested in Vanguard's 500 Index fund, according to their FEC disclosure, which puts their holding at somewhere between \$5 million and \$25 million. The 2015 return shows \$84,000 of dividend income from this fund. On the basis of the reported income, the value of the Vanguard holding is more than \$16 million.

The Clintons live lavishly, maintaining two houses and personal staff. Hillary's designer pantsuits do not come cheap. She was recently excoriated for speaking about inequality while wearing a \$12,000 Armani tweed jacket. Nonetheless, it's hard to fathom what they're doing with their money. They seem to be spending as much as \$3 million annually — without having The Donald's toys and serial marriages. Hillary is not spending her own money on the current campaign, although she wrote off \$13 million she lent to her 2008 presidential campaign.

Where did the money go? They've earned \$237 million. Nearly \$100 million went out the door in federal and state income and property taxes. They gave \$23 million to charity, mostly to their foundation, well below the deductible limit. They paid down \$4 million of mortgage debt. They owed \$2 million in legal expenses and settlements when Bill left office. They make no retirement plan contributions whatsoever. They should still have roughly \$100 million in investible assets, but they appear to have only half of that. No foreign accounts are reported.



## Speech Sponsors

One would think that the Clintons wouldn't want to put the nature of their staggering income in play, but the campaign used customary tax return disclosure as an opportunity to slag Trump for refusing to release his tax returns. Tax is, after all, political.

During Hillary Clinton's tenure at the State Department, Bill Clinton gave 220 speeches, earning \$50 million, with department clearance (Associated Press, May 12, 2015). Between leaving the department in 2013 and announcing her presidential run, Hillary earned \$21 million from speeches, many of the hosts of which were banks. Bill didn't stop giving speeches until his wife declared for the presidency in April 2015.

The Clintons' gross income since Bill left office:

- 2001: \$16 million
- 2002: \$9 million
- 2003: \$8 million
- 2004: \$20 million
- 2005: \$18 million
- 2006: \$16 million
- 2007: \$21 million
- 2008: \$5 million
- 2009: \$10 million
- 2010: \$13 million
- 2011: \$15 million
- 2012: \$20 million
- 2013: \$27 million
- 2014: \$28 million
- 2015: \$11 million

Foreign donations are not permitted in U.S. presidential campaigns. Hillary's May 2015 financial disclosure forms list sources of speaking income for 2014. She gave 51 paid speeches in 2014; that's one per week. She gave six speeches in 2015 before declaring. Nearly every industry is represented, but the list of hosts is heavy on the financial, entertainment, and medical industries.

Most 2014 hosts paid Hillary's standard rate of \$225,000, although some have paid as much as \$400,000. The Massachusetts Conference for Women got a 10 percent discount — otherwise, all sponsors paid at least the standard rate. Although she is known to have lavish travel demands, she pays some of her own travel expenses. There is no readily discernible reason for differentials in honoraria.

Tech firms pay more — then again, some are monopolies so they are flush. Canadians pay more. She cut quite a swath through Canada. Hosts included Canadian Imperial Bank and TD Bank, the lenders on TransCanada's controversial Keystone XL pipeline, who bankrolled 18 speeches by both Clintons.

Bill's speeches while Hillary was at the State Department are being scrutinized for connection with favors. He gave speeches to UBS and Barclays shortly after the banks had been sanctioned by the U.S. government — in UBS's case, for its agents assisting tax evasion. He gave lucrative speeches to United Arab Emirates and Thai government entities. Although the State Department drew the line at an invitation to China from Chinese officials, he gave other speeches to Chinese hosts while his wife ran the department.

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When she became secretary of state, Hillary promised Obama that she would not personally and substantially participate in any matter involving the foundation, the Clinton Global Initiative, or parties represented by either. The foundation promised Obama that it would keep a list of donors and allow the State ethics office to review increases in foreign donations and new donor countries. The foundation promised not to create conflicts of interest or the appearance of conflicts. These promises were violated by Hillary's aides and the foundation (PolitiFact, Aug. 24, 2016).

The Associated Press connected the dots. Reviewing Hillary Clinton's State Department calendars, it discovered that at least 85 of the 154 private citizens or groups who met or talked to her during the first half of her tenure donated or pledged to the foundation or its programs. Those 85 donors contributed roughly \$156 million. AP found that at least 40 donors gave more than \$100,000 each, and 20 donors gave more than \$1 million. Hillary also met with representatives of 16 foreign governments that donated \$179 million to the foundation, but meeting with them is part of the job anyway (AP, Aug. 24, 2016).

Indeed, one critic argued that the foundation was essentially imposing a toll charge on foreign government actors who should have had free access to the State Department if not to the secretary (*The American Conservative*, Aug. 24, 2016). Surely the crown prince of Bahrain, who went through the foundation for his request, is in that category. The prince contributed \$32 million to the Clinton Global Initiative. Apparent payment for access raises an interesting question under the Foreign Agents Registration Act. To the extent that the foundation and its people were asking for favors from State on behalf of foreigners, they would have to register under that act (22 U.S.C. section 611 et seq.).

Meanwhile, Hillary is halfway to her goal of raising \$1 billion for her campaign, assisted by celebrities on both coasts. Since declaring, she has raised \$327 million and spent \$268 million. She spent \$100 million in the last two months alone — a cash burn rate exceeding \$1 million a day. Trump has raised \$128 million — including his \$52 million loan to his campaign — and spent \$90 million for the period ending July 31 (*The Hill*, Aug. 24, 2016). ■