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The Tax Tale Thickens

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By Anthony Lewis

ABROAD AT HOME

WASHINGTON, Dec. 19—The financial information released by President Nixon has raised one especially puzzling question among tax specialists. It relates to his \$375,000 "gift" of papers, allegedly made in March 1969, and used thereafter as the basis for large tax deductions.

Mr. Nixon had given some papers to the Government before, or would have done so in a straightforward legal way, to some extent, and an official of the General Services Administration signed the deed of gift. Yet for months after he made the 1969 gift, which did not mention anyone but the G.S.A., the papers were not given to anyone, or another deed of gift was made.

When the papers were finally given to the G.S.A., they were given to the Internal Revenue Service, which has been unable to explain the mystery.

George Cooper, Prof. Cooper, a law professor at the University of California, Berkeley, who has written a book on tax law, says that the deed may have involved a "strategic deception" amounting to a criminal tax evasion.

The Cooper theory, as it has come to be known among some tax specialists, is one of a more serious allegation. It demands that the deed requires some "strategic" and details of the 1969 papers episode.

On March 20, 1969, 10 boxes of Mr. Nixon's presidential papers arrived at the National Archives. No explanation was given for their delivery. They were kept in an area reserved for documents, records or officials' papers, not with the permanent collection.

On April 21, 1969, Edward J. McGuigan, a White House counsel, signed a deed purporting to give a portion of those papers to the United States. Lawyers usually follow the practice of preparing a second gift of similar property they would simply refer to the first deed. The 1969 deed did not follow the one of Dec. 30, 1968, but it entirely omitted one crucial paragraph of the earlier document—a clause calling for an official of the G.S.A. to sign and give the papers to the G.S.A.

What can explain the peculiarity of that deed? Professor Cooper says they must have been a response to the particular legislative situation in 1969.

From the beginning of that year, tax reform was a big issue. On April 21—the very day that Mr. McGuigan signed the deed—President Nixon sent a tax reform message to Congress. Among other things, it called for a larger provision allowing the value of a gift of the full value of appreciated property given to charity. The deed of gift property, though, was not given to charity. It was given to the G.S.A.

The Senate, in passing legislation on the reform bill, made changes in gifts of property retroactive to Jan. 1, 1969. The final version, which did not pass until a House-Senate conference bill in December, made the provision retroactive only to July 25, 1969.

It is clear, the President's lawyers were faced with a dilemma. If they had the deed signed by McGuigan, the deed would be retroactive to all or part of 1969. Professor Cooper suggests that they did not want to make a gift of papers and then find that they got no tax benefits—so they tried to keep their intentions hidden.

They devised some papers to the Archives in a way that made no commitments. They wrote a deed that had no place for a G.S.A. signature and thus could be kept secret, as it was.

If Congress made the reform retroactive to Jan. 1, 1969, then they could destroy the deed. Mr. Nixon would still own the papers and, in due course, could send a truck to the Archives and pick them up. But if Congress picked a later effective date for the reform, as it did, he would produce his deed and say that it had been made before the deadline.

This is George Cooper's explanation of the mystery. If his suspicions are correct, if such a "scheme" was afoot, he argues, "then a conscious deception was involved which seems clear criminal tax evasion." Legally, that conclusion would require evidence of intent, presumably testimony from one or more of those involved.

The Joint Congressional Committee on Internal Revenue Taxation, which is now making a thorough examination of the President's returns, will want to question Mr. McGuigan. Mr. De Marco about the mystery of the 1969 deed. In any case, it is the committee that Professor Cooper looks to when he says: "There is a case of tax conniving in the Nixon return that goes beyond ordinary avoidance and deserves to be investigated as willful evasion."