Nixon Seen Ready to Pay Calif. Tax

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SAN CLEMENTE, Jan. 11—President Nixon is anticipating a ruling from the state Franchise Tax Board that he is a California resident, and he has privately expressed his willingness to pay state income taxes, according to a White House official.

This official says Mr. Nixon has considered himself a California resident throughout his presidency. He says that the President was accepting the advice given him by his accountants and legal experts when he failed to pay state income taxes.

However, Mr. Nixon's principal attorney in the White House negotiations with the Frachise Tax Board says that he still takes the position that the President is not a resident "for income tax purposes."

"It's a matter of definition," says attorney Dean S. Butler of Los Angeles. "The President's principal domicile is in California. He is clearly a resident for purposes other than state taxes."

Butler said he knows nothing of any offer by Mr. Nixon to pay state income taxes, but suggested that the President may simply have been expressing his personal opinion about willingness to pay state taxes.

"I don't know what the state would do if a person wanted to make a contribution when he didn't actually qualify for residency," Butler said. "I presume they'd accept it."

Butler said that California court cases have held that a person can legally be a resident for purposes of voting, divorce and other matters yet not be a resident for income tax purposes. One element of the complex California law stressed by Butler is Mr. Nixon's long absence from California.

"The Presiden's absence is more than a temporary or transitory absence," Butler said.

Depending on rulings by the U.S. Internal Revenue Service, which now is re-examining Mr. Nixon's tax returns for at least the first four years of his presidency, there is a possibility that the President actually could save on overall tax liability by becoming a California resident for income tax purposes.

This is because the President avoided paying capital gains taxes on the May 31, 1969, sale of his New York City apartment.

"A profit of $142,912 was realized on the sale, but under the law, capital gains tax was deferred because of the subsequent purchase of a new resi-

See TAX, A11, Col. 1

Nixon Eyes Paying State Tax

TAX, From A1

dence in California," said the White House statement on the President's finances that was issued last Dec. 8.

Mr. Nixon presumably will have to pay these taxes if the IRS finds that the San Clemente home is not his principal residence under the law.

The position taken by the President's attorneys is that the federal and state rulings about residence are based on different legal criteria.

"I think the two definitions do not relate and neither would be determinative of the other," Butler said.

It is unclear how much additional tax the President will have to pay if the state Franchise Tax Board finds he is a state resident. This is because the board would then have to make its own determination on the legality of Mr. Nixon's deductions for his vice presidential papers and on his failure to pay capital gains taxes on the resale of the major portion of his San Clemente property to Robert Abplanalp and C. G. (Bebe) Rebozo.

The board usually allows the deductions granted by the IRS, but sometimes makes independent determinations in controversial cases.

If the board disallowed the deductions for the papers and held that Mr. Nixon should pay capital gains taxes, his state liability for the first four years of his presidency would be $90,000. If, on the other hand, the board allowed all the deductions, Mr. Nixon would owe only a few hundred dollars.

The board has never confronted these issues, because Mr. Nixon has never paid state income taxes as President.

Martin Huff, the board's chief administrative officer, is a highly respected professional and the first certified public accountant to hold his position. A partisan state Democratic legislator who is also expert in tax matters said recently that he believes Mr. Nixon has evaded state income taxes but would change his mind if Huff determined otherwise.

However, the final decision will not be up to Huff, although his recommendation could prove decisive. The board's members include state Finance Director Verne Orr, a Reagan appointee who probably will side with Mr. Nixon, and William Bennett, a liberal Dtmocratic critic of the administration who has already indicated that he thinks the President should pay state taxes.

Most likely, the deciding vote will be cast by Chairman Houston Flournoy, a Replblican candidate for governor who does not relish the decision.

The decision would be avoided, presumably, by a negotiated settlement in which the President agreed to pay state income taxes.

The White House official who discussed the issue this week insisted that Mr. Nixon never had any intention of avoiding California income taxes. He conceded that the President had "taken an interest" in such significant deductions as the one he received for his vice-presidential papers, but said the President had left matters such as his state income taxes "up to the accountants."

One puzzling aspect of the President's failure to pay state income taxes is that the amounts involved would be very small if the federal deductions were allowed, and virtually nothing at all in 1970 and 1971. However, the filing of California returns would subject the President to checks on the federal deductions by the state Franchise Tax Board.

An unfavorable state ruling on the permissibility of key deductions would be damaging to Mr. Nixon's contention that he has properly met all questions of tax liability.

The President's principal accountant, Arthur Blech of Los Angeles, would not comment on the report that Mr. Nixon is now willing to pay state income taxes.

Blech said he was cooperating fully with the state board, with representatives of the IRS and with the congressional Joint Committee on Internal Revenue Taxation, which arrived here this week to look at his files.

Blech said the committee and the IRS were working together "as one," and that he had made his files available to them. He said he also would appear before the joint committee in Washington within three weeks to answer questions.

"I want to see a clear-cut decision one way or the other," Blech said.

President Nixon has said he will accept the opinion of the Joint Committee on the key questions of deductions for his vice presidential papers and the payment of capital gains taxes on the resale of his San Clemente property. If the committee says he owes additional taxes in either case, he has promised to pay them.

Since the President invited the committee to inspect his returns, the IRS has re-opened the question of Mr. Nixon's tax liability and is now studying his returns. The IRS is not limited to the two questions which Mr. Nixon asked the committee to consider, and it could ask for back tax returns if it suspected that fraud was involved.

There has been no intimation from the IRS that it does, in fact, suspect fraud.