

Nixon Tax Break on Papers Is Challenged by Law Group

7/31/73
W. Post

By Morton Mintz
Washington Post Staff Writer

A \$570,000 tax deduction claimed by President Nixon for a gift of pre-presidential papers was challenged yesterday by a public interest tax law firm.

The firm, Tax Analysts and Advocates, said that public confidence in the integrity of the Internal Revenue Service may depend upon how the IRS resolves "the very serious questions" that have arisen about the deduction.

Thomas F. Field, executive director of the firm, in a letter to IRS Commissioner Donald C. Alexander, proposed the appointment of independent tax auditors to examine Mr. Nixon's tax returns. This would be similar to the appointment of Special Watergate Prosecutor Archibald Cox by Attorney General Elliot L. Richardson, the organization said.

Field based his letter on a 16-page study made by Ira L. Tannenbaum, director of Tax Advocates, who concluded that the President was not entitled to the \$570,000 deduction.

If the President was in a 50 per cent tax bracket, the deduction, if spread over the maximum allowable period of six years, was worth \$285,000 in tax savings.

Tannenbaum began the study last month after The Washington Post published an interview with President Nixon's personal tax attorney, Frank DeMarco Jr.

DeMarco acknowledged that he legally executed a gift of the papers with procedures markedly different from those followed for previous presidential gifts.

The undisputed basic points of reference in the case are the Tax Reform Act of 1969 and the three IRS requirements for the making of a gift that qualifies for a deduction.

The 1969 law limited tax deductions for gifts of letters and memoranda by federal officials to the cost of the paper on which they

were written rather than assigning them the value given them by collectors of such memorabilia.

The criteria for a valid gift are that the donor must possess the intent to give; that the gift must be either physically transferred with control relinquished to the recipient, or it must be formally deeded by the giver to the receiver, and that the recipient must accept.

The effective date of the 1969 law was July 25. DeMarco said that the gift was legally made four months earlier and consequently qualified for tax deductions that the law had not yet eliminated.

DeMarco's assertion was based on President Nixon's transfer of 1,217 cubic feet of pre-presidential documents to the National Archives on March 27, 1969.

The papers, intended for deposit in an eventual Nixon presidential library, included files on the 1959 visit to the United States of then Soviet Premier Nikita S. Khrushchev and Mr. Nixon's general correspondence as Vice President.

Privately, archives officials had raised questions about the gift because the President did not sign the deed; because the deed was not delivered until April, 1970, nine months after the effective date of the 1969 law; and because the deed was never accepted by the archives as a formal, written document.

In contrast, Presidents Eisenhower and Johnson each had turned over papers with a signed, formal deed that also was signed by the administrator of the General Services Administration. GSA operates the archives.

DeMarco, a partner of Herbert W. Kalmbach, the President's personal lawyer and former fund-raiser, of Newport Beach, Calif., said in the interview that no such deed was necessary in Mr. Nixon's case because he had sent the papers to the archives in March with the intention of making about one-third of them a gift.

The deed delivered to the

archives in 1970, although dated March 27, 1969, actually was prepared some days afterward and notarized on April 21, 1969, DeMarco acknowledged. The deed was signed by Edward Morgan, then deputy counsel to the President, purportedly on March 27.

DeMarco, who granted the interview at the direction of the White House, said Morgan had phoned him earlier in the same month to say the President wanted to make a gift in 1969 "of about \$500,000 value." DeMarco then phoned a Chicago appraiser, Ralph Newman, to ask him to "segregate papers worth about \$500,000 as a gift."

Tannenbaum, in the Tax Analysts study, contended that the papers had been neither delivered nor accepted in a valid manner.

He said that IRS agents and their superiors would be "extremely reluctant to audit the returns of the President . . . as if he were an ordinary taxpayer."

For that reason, he said, he recommended an independent audit that would assure ordinary taxpayers that "Americans in positions of power and high visibility are being assessed correctly."

Under the Freedom of Information Act, Tax Advocates sought relevant documents, including the deed, from the GSA, but its requests went unanswered, it said.

If former Sen. John Williams (R-Del.) had had his way, the Tax Reform Act's provisions for gifts of papers would have been retroactive to Jan. 1, 1969.

Williams, in debate on the law in July, 1969, said he considered official papers the property of the government and, in any event, "junk" in many cases. He tried to prevent dozens of officials—including former President Johnson, former Vice President Hubert H. Humphrey, legislators and other officials—from trimming their taxes by taking deductions for gifts of papers.