

Part 4/30/73

## A Presidential Gift

The facts surrounding a tax deduction President Nixon has been taking since 1969 read more like a question on a first year law school examination than they do like a news story. But since it is the President's tax return, and since the deductions will eventually amount to a tax savings to Mr. Nixon of at least \$230,000 over five years, the facts, no matter how complex or bizarre, take on real significance. Essentially, Mr. Nixon—at least on his tax returns—claims that he made a gift to the United States in March 1969 of his papers worth \$570,000. But officials of the United States have yet to acknowledge or to receive the gift officially. Meanwhile the deductions go rolling on.

The story began developing in 1969 while the Congress was shaping the Tax Reform Act of 1969. Prior to that act, famous public figures, artists and other notables could value their papers, manuscripts or works of art at what they would bring on the market, give them to the United States, a university or a museum and then deduct the value of that gift from their income taxes. Presidents Eisenhower and Johnson and President-elect Nixon, as well as hosts of other well-known figures, had, prior to 1969, availed themselves of this tax shelter.

But, the course of the congressional debate in 1969 cast clouds over the future of that provision. Though no one knew what the shape of the act would be until final congressional action in December 1969, enough ominous sounds emanated from the Congress during the year to cause both former President Johnson and President Nixon to send aides and associates up to the Hill to lobby against any change in that provision. As Edward L. Morgan, then deputy counsel to President Nixon, remembers it, there was a "mad scramble at the White House . . . the feeling was we ought to fight it."

While both the President and the former President did "fight it," only the President decided to attempt to make a gift while the debate went on—President Johnson decided against doing so at a cost of several million dollars to his heirs. Ultimately, Congress decided that the cut off date for making such gifts was to be July 25, 1969. The big question about Mr. Nixon's gift is whether it was made before that date, or whether it has ever been consummated at all.

What is clear about Mr. Nixon's gift is that on March 26 and 27 of 1969, the President had 1,217 cubic feet of papers, books and memorabilia in dusty boxes shipped to the National Archives. President Johnson had done this in the past and had then had an appraiser come in from time to time and select, from the great bulk held

for him in storage, certain specific papers to be given to the United States. When this occurred, the gift would be memorialized by a deed signed by Mr. Johnson which contained language accepting the specified gift of papers for the United States and countersigned by an official of the General Services Administration. This was the procedure followed by the then President-elect Nixon in his 1968 gift to the government.

But it was not the procedure followed by Mr. Nixon in making his 1969 gift. In fact, he never signed the deed at all—only his deputy counsel, Mr. Morgan, did. Officials at the Archives have never officially acknowledged the gift because, although they have asked for the President's signature, they have never received it. GSA Administrator Arthur Sampson says the issue is still unresolved. Although the deed is dated March 27, 1969, GSA never received it until April 1970—about the time the President and other citizens would have been preparing their 1969 tax returns.

The only way GSA could tell which papers the President intended to give to the country is from a schedule attached to the March 1969 deed—only about a third of the material shipped to the Archives was included in the gift. The only trouble with that schedule is that Mr. Morgan, who signed the deed, can't remember whether it was attached to the deed when he signed it. GSA Administrator Sampson says there "is no way" the paper specifying the gift could have been prepared before November or December 1969 — well after the congressional deadline of July 25, 1969. The appraiser acknowledges that he could not have prepared the itemized schedule until late 1969 or early 1970.

The President's private lawyer in this matter, Frank DeMarco, of the California firm of Kalmbach, DeMarco, Knapp and Chillingsworth, acknowledges that the schedule specifying the gift wasn't actually prepared until around March 1970 and that this gift was handled differently from other presidential gifts, but he says it didn't matter. The gift became legal, he contends, when the papers were shipped to the Archives by the President with the intent of making a gift of some of them and retaining ownership of the rest, which were to be kept for him in storage.

How the appropriate officials of the United States were to know the President's unexpressed intention, or to know before the congressional deadline what specific papers he was giving the country and what papers he just wanted the archivists to store for him, Mr. DeMarco doesn't say. It is a puzzle for law students, their professors and perhaps others to ponder with some care.