George Cooper

Mr. Nixon's Taxes

It is time somebody spoke out against the notion that President Nixon's tax behavior is simply a grander version of what everybody does. My experience as a tax lawyer indicates that is not so. There is a level of tax conniving in the Nixon returns that goes beyond ordinary avoidance and deserves to be investigated for willful evasion.

Some things on the President's returns are probably wrong but not in a way that would deceive an ordinarily astute revenue agent. An example is taking a deduction for all the expenses of Key Biscayne even though some substantial portion of the property must have been used by his family and himself for personal purposes. That claim is obviously vulnerable on its face in light of general public knowledge about the President and his family and, although the President may have stretched a point more than the facts justified, he does not seem to have concealed anything critical.

But as to other aspects of the matter, the President's actions do not seem quite so innocent. Most notable was his handling of the deduction for papers given to the National Archives. Here there is significant evidence of deception. The President was confronted with a dilemma in 1969 with regard to these papers. He must have known that a reform bill was pending which could cut off his deduction, and therefore he was anxious to move quickly to make the gift before it was too late. But there was a significant risk that the reform would be made retroactive to the beginning of 1969, in which case a gift of the papers would lose them without gaining any compensatory deduction.

The steps the President took in this situation enabled him to play it both ways. He made no formal commitment to give up the papers but rather took some preliminary but non-commital steps in March, 1969, while preparing a formal Deed of Gift covering an undesignated portion of the papers. This Deed was kept secret in California. If the reform law had been made retroactive to January 1, 1969, as in fact the Senate bill was, this secret deed could have been legally destroyed and the President could have asserted continuing ownership over all the papers. But after the final bill turned out to be retroactive only to July 25, 1969, he then attached a listing of specific papers to the Deed, still dated March 27, 1969, and released it.

There is nothing on the President's tax returns indicating any of this. The return simply says the gift of papers was made as of March 27, 1969. This statement, in light of all the facts indicating that the President seems to have maintained legal ownership until 1970, is misleading at best. There is nothing on the face of it to indicate that the statement might be questioned and indeed, if an agent did question it he could be shown a Deed of Gift dated March 27, 1969. This would certainly make any but the most suspicious agent think that a formal legal commitment had been made on March 27. Who would think that such a document had been carefully held back for a year or that the specific listing of papers was not attached until after July 25?

A leading tax law authority has described tax evasion as "subterfuge, camouflage, concealment, some attempt to color obscure events, or to make things seem other than they are." If the events described above are simply an instance of innocent oversight, this standard has not been violated. On the other hand if any scheme was afoot to produce the Deed of Gift only if a reform bill with a favorable retroactive date was passed, but to destroy it if a Senate-type bill retroactive to January 1 was passed, then a conscious deception was involved which seems clear criminal tax evasion. Even in the absence of such a devious scheme, the act of completing and releasing the Deed of Gift after July 25, 1969, while representing it as if it had been a finished and defined product months earlier, could be viewed as a deliberate attempt to mislead the Internal Revenue Service. The tax code provides severe civil and criminal penalties for such action.

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The President's handling of his claimed place of residence also indicates highly questionable behavior. For Federal tax purposes San Clemente was his principal residence, so as to minimize capital gains taxes. But for state tax purposes, the District of Columbia was his residence to take advantage of a special exemption there. Either claim is plausible on its face but the two claims are inconsistent when put together and suggest that one or another of the taxing authorities was misled.

When I was in tax law practice, we would stretch a point for a client, but we did not try to stretch the same point in two inconsistent ways on two different tax returns, in part because we thought it poor tactics to do so, but also because of the ethical questions it would raise. And, more important, we did not think it proper to rely on documents with undisclosed misleading dates in situations where the date was critical.

The President apparently has different ethical standards and the Joint Committee on Internal Revenue Taxation may soon give him cause to regret it. I would also hope that the House Judiciary Committee and Special Prosecutor Leon Jaworski are considering the criminal implications of this tax maneuvering. But in the meantime everyone ought to be told that the President's tax law ethics are not merely the American way.