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Report Nixon May Pay State Taxes

San Clemente

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 knowledgeable White House official.

This official says that Mr. Nixon has considered himself a California resident throughout his presidency. He says that Mr. Nixon 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 state Franchise 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 principle 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," Bu-

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tler said. "I presume they'd accept it."

Butler said that California court cases have held 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 President'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 reexamining 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 residence in California," said the White House statement on the President's finances that was issued last December 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.

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 of 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 its own 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 a whopping $90,000. If, on the other hand, the board allowed all the deductions Mr. Nixon would owe only a few hundred dollars of state tax.

The state 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 Democratic 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 Republican candidate for governor who does not relish the decision.

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 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.

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