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Why Pay More?

By Anthony Lewis

On an income of more than $200,000, Richard M. Nixon paid $792.81 in Federal income tax for 1970. The next year he paid $878.03. Those figures, published in The Providence Journal-Bulletin, have not been challenged. They are about the same as a family of three with an income of $7,500 to $8,500 would ordinarily have paid.

How could the President earn so much and pay so little tax? The answer is that, like others in the higher brackets, he claimed large deductions. The largest was apparently for a claimed charitable contribution: the gift of some of his personal papers to the National Archives.

But there is a cloud over that deduction. Some tax experts believe that the transfer of Nixon papers to the Archives did not qualify as a deductible gift. At the very least, there were oddities about the transaction that make the tale worth telling.

Until 1969, a President or other eminent person who gave his papers to the nation got large tax benefits. He could deduct their full market value—what an expert thought they would bring if sold to collectors. Then, in the Tax Reform Act of 1969, Congress virtually eliminated such deductions. That section of the act became effective on July 26, 1969.

In March of that year, when the reform was widely anticipated, large quantities of Mr. Nixon's pre-Presidential papers were moved from the White House to the National Archives. They filled 1,217 cubic feet of boxes. A "deed" purported to give certain of

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those papers to the United States. But it was a curious deed, and a curious gift.

1. At the end of the deed there was typed, "Richard M. Nixon, President of the United States of America." But the document was actually signed by the President's deputy counsel, Edward L. Morgan. According to a notary's statement, he signed on April 21, 1969, but the document was dated March 27, 1969.

2. Mr. Nixon did not sign his own purported deed. Nor, to this day, has anyone from the General Services Administration signed the document to indicate acceptance. An official G.S.A. handbook requires both signatures on deeds of Presidential papers; when Mr. Nixon made an undoubted gift of other papers a year earlier, both he and a G.S.A. official signed the deed.

3. No one at the Archives heard of this purported deed until April, 1970, when it arrived there. Until then it was held by a private lawyer of Mr. Nixon's, Ralph DeMarco, in his California office.

4. The supposed deed did not describe the actual papers being given. It said they would be listed later, after "final sorting, classification and appraising."

5. An appraiser named Ralph Newman selected 392 cubic feet of documents out of the original 1,217 as the "gift," and put their value at $570,000. Mr. Newman said he completed the detailed valuation in early 1970 and could have had no way of knowing the figure in April, 1969.

6. The Archives learned precisely which papers were said to constitute the gift in a letter from Mr. Newman of March 27, 1970.

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This story was first told in articles by Nick Kotz in The Washington Post last June. A Washington organization called Tax Analysts and Advocates took an interest. It sought and eventually obtained from the G.S.A. copies of many of the documents involved, including the deed; these confirmed the main facts.

The tax group analyzed the applicable law. It concluded that the President had not made a valid gift of these papers before the deadline of July 26, 1969. Its reasoning can be only briefly summarized.

The Archives accepts papers both for storage and as gifts. The mere moving of Mr. Nixon's papers in March, 1969, was not clearly one or the other. To be a gift there had to be a legal document of transfer: a valid deed. But this deed was never signed by the supposed donor, and not delivered to the Archives until long after the critical date.

Tax cases also indicate that a gift is not legally made until it is accepted. In this case the G.S.A. has not shown its acceptance by a signature.

Finally, a donor who keeps effective control of the property has not really given it away. The fact that the particular documents here were not even selected before July 26, 1969, indicates that control had not then passed to the G.S.A.

Tax Analysts and Advocates urged the Commissioner of Internal Revenue, Donald C. Alexander, to have the President's tax returns audited on this issue. The statute of limitations has passed for the 1969 tax year, but the $570,000 deduction was so large that it was almost certainly spread forward into the 1970 and 1971 returns—accounting in good part for the nominal Nixon tax payments in those years.

Commissioner Alexander is still considering what to do about the curious affair of the President's papers. It could not be easy for him to scrutinize a President's tax return, but the alternative is to increase the already dangerous cynicism of ordinary people who cannot avoid their tax—and who pay Richard Nixon's salary.