

Tax Ruling Could Cost Nixon \$302,000

By Lou Cannon

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President Nixon, struggling to free himself from what he called "a year of Watergate," expects to face an income tax opinion that could cost him more than a quarter of his \$988,522 net worth, according to informed sources.

White House officials say that Mr. Nixon has reconciled himself to receiving an opinion from the congressional Joint Committee on Internal Revenue Taxation declaring that he incorrectly—but not necessarily fraudulently—took a \$576,000 income tax deduction on his vice presidential papers in 1969.

Mr. Nixon on Dec. 8 asked the committee to thoroughly review the propriety of this deduction and the additional question of whether he should

have paid capital gains taxes on the sale of land adjoining his San Clemente home. The Internal Revenue Service concurrently has launched its own investigation of tax liability, but Mr. Nixon has promised to abide by the committee's opinion even if there is no adverse finding by the IRS.

According to White House sources, the President decided several weeks ago to await the joint committee's opinion before he paid any taxes. These sources say that Mr. Nixon has concluded that he would be asked to pay some back taxes, and that this conviction was strengthened by the recent findings of California Secretary of State Edmund G. (Jerry) Brown Jr.

It was Brown who learned that a deed giving the papers to the government had been back-dated by Mr.

Nixon's attorney. Brown's detective work was reminiscent of the way evidence was once uncovered against an old Nixon adversary.

Brown, like U.S. Rep. Nixon of a quarter century ago, is a young and striving officeholder who has been accused of playing partisan politics with legal issues to enhance his own career. Every political poll taken in the past year on the California governor's race has shown that Brown is far and away the Democratic frontrunner for the nomination.

Brown's answer to charges that he is merely headline-hunting in the DeMarco matter is the same, in effect, that Mr. Nixon gave to his detractors in the Hiss case: Look at the facts.

What follows are the facts as they

See TAXES, A9, Col. 1

TAXES, From A1

are known in the case of the vice presidential papers and the issues in dispute:

A generation ago Alger Hiss was convicted of perjury and Mr. Nixon's political future secured by evidence linked to Hiss through the tracing of an old Woodstock typewriter.

It was another distinctive typeface that led Brown and his deputies to confront Nixon tax lawyer Frank DeMarco Jr. with the accusation that the deed conferring the gift of the vice presidential papers was not signed until April 10, 1970. The date on the deed was March 27, 1969.

DeMarco, a member of the California law firm of Kalmbach, DeMarco, Knapp and Chillingworth, says that the 1970 deed was a replacement for an old deed, which he claims has been lost.

What follows are the facts as they are known in the case of the vice-presidential papers and the issues in dispute:

Celebrities of every sort, including politicians, until 1969 frequently took huge tax deductions on the gifts of their personal papers and memorabilia to public institutions. Presidents Eisenhower and Johnson were major beneficiaries of such deductions, as was Vice President Hubert H. Humphrey. Another beneficiary was Secretary of State Brown's father, two-term California Gov. Edmund G. (Pat) Brown.

In 1969 Congress moved to close this loophole, an issue of such financial magnitude to both Mr. Nixon and Mr. Johnson that their representatives lobbied for an-

other year of deductions. The lobbying was so intense that then-Sen. John Williams (R-Del.) attempted to impose a retroactive Dec. 31, 1968, deadline because of reports "that ex-President Johnson may be planning to deduct the value of certain materials he is deeding to his presidential library."

The legislation finally was passed in December of 1969 with a compromise deadline of July 25, 1969, written into the final version of the bill. Deductions of gifts made before July 25 were to be fully permitted; deductions after that date were to be disallowed.

Long before July 25 the President's staff was working to transfer materials in anticipation of a cutoff.

Some 1,217 cubic feet of Mr. Nixon's pre-presidential papers were transferred to the National Archives on March 26 and March 27, 1969. These included papers intended by the President as a gift to the country for eventual inclusion in a Nixon library and other papers merely turned over to the archives for custody. Among the papers were files on then-Soviet Premier Khrushchev's 1959 visit to the United States and Mr. Nixon's general correspondence as vice president.

General Services Administration records confirm the transfer of the papers, but the date of their appraisal remains in dispute.

Originally, White House spokesmen said that Chicago appraiser Ralph Newman made the selection of 392 cubic feet of records out of the 1,217 cubic feet of material in April 1969. This was contradicted by GSA Administrator Arthur Sampson, who said in two inter-

views last June that the actual segregation of records did not occur until November, when the \$576,000 estimate of the material intended as a gift was made by Newman.

DeMarco said in a deposition given to Secretary of State Brown last week that he did not receive a full statement of the inventory from Newman until March, 1970. In an interview with the Los Angeles Times, DeMarco also said he had "some question" about whether Newman had told him the truth.

"It may very well be that he wasn't at the archives on the dates he told me he was there," DeMarco said. Newman has declined to comment.

The date at which the actual material intended as a gift was segregated from the papers transferred to the archives has been a thorny point for the joint congressional committee—and one that some tax attorneys think may be sufficient to disallow the deduction regardless of any questions about the deed.

Section 170 (a) of the Internal Revenue Code provides these criteria for a valid gift: The donor must intend to make a gift, the gift must be physically transferred with control relinquished to the recipient; or the gift must be formally deeded by the donor and the recipient must accept it.

To qualify as a gift under this section of the Revenue Code, the actual papers donated by Mr. Nixon would have had to be segregated by the July 25 cutoff date and under full control of the National Archives rather than of Mr. Nixon.

In a June, 1973, interview

with Nick Kotz of The Washington Post, DeMarco made clear that Mr. Nixon intended to make some restrictions on the gift in a manner that showed that the President retained considerable control over the papers. Some tax attorneys believe that this control means that Mr. Nixon did not actually make a gift within the meaning of the law.

The main purpose of the deed, De Marco said, was to restrict use of the papers during Mr. Nixon's presidency, to retain the President's exclusive right to use the papers for writing books and to show that the papers eventually should go to a Nixon library.

Both in June and now, DeMarco minimized the importance of the deed in showing the validity of the gift. He maintained that the transfer of the papers demonstrated Mr. Nixon's intent to make a gift and said the deed was useful "because I felt there were more papers than \$50,000 (worth) and we weren't going to give the other papers."

The deed finally was delivered to the archives in April, 1970. It bears a March 27, 1969, date and was signed by Edward L. Morgan, then deputy counsel to the President.

DeMarco said in the June interview that he prepared the deed sometime in April, 1969, and that Morgan signed it and that (DeMarco) notarized it on April 21, 1969. The signing purportedly took place in a Los Angeles hotel.

In January of this year, Secretary of State Brown's deputy, Thomas Quinn, learned that the typeface on the deed supposedly signed in April, 1969, was that of a

new IBM Selectric typewriter that was not purchased by the DeMarco law firm until it moved its Los Angeles offices in July, 1969.

The discovery, like many in the Hiss case, apparently was accidental. Brown, who commissions notary publics, learned from an article in the St. Louis Post-Dispatch that DeMarco apparently did not keep the customary datebook of transactions used by California notaries.

A brief investigation by Brown's office determined that DeMarco, who notarizes only a few documents a year, kept duplicate records of each notarized transaction and that this was sufficient to comply with California law. But in the process of this investigation, Quinn also learned about the change in typewriters.

Quinn says he confronted DeMarco with the information and that the attorney then admitted the deed had been notarized at the White House on April 10, 1970. DeMarco calls this "a technical violation" even though the notarization says the deed was signed in California on April 21, 1969.

However, DeMarco insists that the 1970 deed was a re-typing of a deed first written in 1969. This statement is supported by a deposition given under oath to Brown by DeMarco's former secretary, who recalls typing a similar document in 1969.

According to Brown, DeMarco gave the explanation that he wanted the typeface on the final deed to conform with the typeface used on an accompanying "Schedule A" since the work was being performed for the President of the United States and he wanted it to be "just right."

Schedule A is the document that describes the material being donated. DeMarco has said that he could not prepare a completed Schedule A until March, 1970, because he lacked the appraisal from Newman.

In the June interview with The Washington Post, DeMarco said that the original deed contained another Schedule A that stated that the gift consisted of "private pre-presidential papers of Richard Nixon of the approximate value of \$500,000 delivered to the National Archives on March 27, 1969. A detailed schedule to be attached hereto upon final sorting, classification and appraisal."

The unanswered question raised by DeMarco's latest account is: What became of the original deed? DeMarco himself says he doesn't know what happened to it,

and that it can't be found.

Another unanswered question is: What became of Nixon's own knowledge of Nixon's own knowl-

See TAXES, A11, Col. 1

TAXES, From A9

edge. It is on this point that White House officials are adamant that Mr. Nixon was "in the hands of his lawyers" and that he was too preoccupied with the presidency to bother about the preparation of his tax returns.

"He was like any busy executive, only more so," said one highly placed White House aide. "When questions were raised about his deductions it was the first he had ever heard about them."

DeMarco says that he came to the White House on April 10, 1970, for an appointment with President Nixon to discuss his tax returns for that year.

According to the account he gave Brown, DeMarco first met with Morgan, who signed the deed. DeMarco then notarized it with the April 21, 1969, date.

After leaving Morgan, DeMarco met with the President for half an hour and Mr. Nixon signed the tax return. DeMarco then proceeded upstairs in the White House, where Mrs. Nixon also signed the return.

The deduction for the vice presidential papers was far and away the President's most significant tax deduction. DeMarco, citing attorney-client privilege, has declined to reveal whether he discussed this deduction with the President.

The White House has not revealed the contents of the discussion, other than to say that Mr. Nixon did not authorize DeMarco to claim attorney-client privilege. Deputy press secretary Gerald L. Warren also said that DeMarco had not informed the President of any back-dating of the deed.

DeMarco has been critical of Brown for attempting to make political capital of the misdated deed.

"All of this fuss about me and my notary stamp seems to have fallen right on top of his announcing his candidacy for governor," DeMarco said.

A source close to the joint congressional committee, while not directly critical of Brown, also mentioned his gubernatorial candidacy.

This source suggested that

Brown, because his only connection with the case is his jurisdiction over notaries, had focused the issue on the deed rather than on the circumstances surrounding the transfer of the papers.

"The deed is only one element of this and it may not be the most important one," this source said. His comment reinforced the belief that the deduction may be disallowed not because of the misdated deed but because the papers had not been segregated by the July 25 cutoff date.

This would be preferable from the White House point of view, since it would be more likely to be interpreted as a mistake rather than as a deliberate attempt to claim a deduction improperly.

The effect of an adverse ruling on the vice presidential papers deduction could be a financially staggering one to Mr. Nixon. The President already has saved \$235,000 because of this deduction, and his "carryovers" of the deduction in future tax years could enable him to

save an estimated \$50,000 more.

If he had to repay the \$235,000 along with an estimated \$37,000 in interest, his net worth would be reduced by \$272,000 from its present \$988,522.

Mr. Nixon also could face a capital gains tax estimated at \$30,000 if the committee decides he should have paid a tax when he sold back the land surrounding his San Clemente villa to millionaire industrialist Robert Abplanalp and C. G. (Bebe) Rebozo. Abplanalp made the loan that enabled the President to buy the property in the first place.

Within the White House, there have been discussions about whether the President should attempt to head off the political repercussions of an adverse ruling announcing on his own that he will give up the deduction and pay back taxes.

This suggestion apparently has been discarded, both for practical and politi-

cal reasons. It would involve the redoing of every one of Mr. Nixon's tax returns since he became President and it also would appear in the words of one official, "politically foolish" if Mr. Nixon paid one amount only to find that the committee had decided that he owed a larger amount.

Accordingly, said this source, Mr. Nixon will await the report of the joint congressional committee and abide by its decision—as he promised last December.

There is little question within the White House, however, that the President ultimately will be called upon to pay back federal taxes.

This view was reinforced last week by a comment of Sen. Russell Long (D-La.), chairman of the joint congressional committee. "The more I learn about the matter," said Long, "the more it seems to me that we will ask the President to pay some back taxes."



EDMUND G. BROWN JR.
... traced backdated deed