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IRS, Committee Charted New Waters

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The combined forces of the Joint Congressional Committee on Internal Revenue Taxation and the Internal Revenue Service traveled in uncharted areas of tax law to arrive at President Nixon's tax bill of $432,787 plus interest.

Working together since last December, the committee staff and the IRS immersed themselves in the law of presidential property, where experts freely admit there are no final answers, and such novel questions as whether a President realizes personal income when his family travels on personal business in government aircraft.

How the IRS resolved these and other questions remained a secret last night even after the committee staff released its massive report giving its own conclusions.

It was the White House, not the IRS, that disclosed that the IRS had gone along with the committee staff on the bulk of the staff's proposed accounting. The White House statement also disclosed that the IRS had a report of its own, which, according to the statement, "rebuts any suggestion of fraud on the part of the President."

IRS Commissioner Donald C. Alexander withheld comment last night on the White House disclosures, including the news that Mr. Nixon would pay the amount called for by the IRS.

Thus it could not be learned whether the IRS accepted the staff view on a basic ,sharply contested issue: to what extent does a public official actually own official documents so that he can take a personal tax deduction when he gives them to the United States?

The staff said it was willing to accept the principle of personal ownership because of its long history of aparent acceptance by government.

But that did not end the inquiry into the validity of the gift of pre-presidential papers. The staff found the gift defective for tax purposes, chiefly because of the restrictions Mr. Nixon put on access to the documents deposited in the National Archives.

According to the staff, the restrictions were not clear until 1970, well after the July, 1969 ,cutoff for tax deductions under tax reform legislation, and so the gift was not complete in 1969 without the deed that specified the restrictions. The deed was missing and the burden was on the taxpayer to produce it.

The restrictions played another critical role in the committee staff's novel analysis. By denying free access until some time in the future, the donor was giving away not a current—and currently tax deductible—gift, but a "future interest" in the the papers, deductible some time in the future.

As unusual as the staff reasoning was when applied to a President, it was in keeping with developing IRS policy on personal property. Donations of real estate are handled differently, but the IRS is loathe to permit a taxpayer to take a current tax deduction on, for example, a painting that continues to hang on his wall but will go to a museum later.

In proposing that Mr. Nixon pay at least $27,015—and perhaps twice that amount — for the use of government aircraft by his family and friends, the staff freely admitted that it was in virgin territory.

"The staff recognizes," the report said, "that the question of tax treatment for the personal use of government airplanes is a matter on which there has been no clear policy in the past."

In addition, the staff conceded that it had made "no examination" of the way Mr. Nixon's predecessors had treated the question.

The report disclosed that Mr. Nixon's tax attorneys, Kenneth W. Gemmill and H. Chapman Rose, wrote Chairman Russell B. Long (D-La.) as late as Monday protesting inquiries into certain travel expenses.

"We find it difficult to believe that your committee seriously intends such a departure from past practice," the lawyers wrote.

In the absence of legal precedent, the staff concluded that President Nixon should be treated like a corporation official or employee who may be permitted to take his family along on a business trip. The IRS considers such fringe benefits as free family travel to be extra income to the official or employee, the report said.

Gemmill and Rose were especially adamant that a family traveling at no charge with the President did not produce income for the chief executive. The staff, however, went on to estimate that for all Mr. Nixon's flights, he should add $37,530 to his four-year taxable income if three persons accompanied him.

The IRS refused to say last night to what extent, if any, it agreed with this part of the report. But in any event, future presidents may have to face up to the precedent set yesterday by the committee staff.