Introduction and Summary of Recommendations of Report on the President's Taxes

Special to the New York Times

WASHINGTON, April 3 — Following is the introduction and summary of recommendations of the report on President Nixon's taxes issued today by the staff of the Congressional Joint Committee on Internal Revenue Taxation:

Introduction

On Dec. 8, 1973, President Nixon made public his tax returns and asked the Joint Committee on Internal Revenue Taxation to examine whether two transactions, a gift of his papers claimed as a deduction in 1969 and the sale of 23 acres of land at San Clemente, were correctly reported on his tax returns. The full text of the letter dated Dec. 8, 1973, which President Nixon wrote to Chairman Wilbur D. Mills is as follows:

"Dear Mr. Chairman:

"Recently there have been many questions in the press about my personal finances during my tenure as President.

"In order to answer these questions and to dispel public doubts, I am today making public a full accounting of my financial transactions since I assumed this office. This accounting includes copies of the income tax returns that Mrs. Nixon and I have filed for the years 1969-72; a full, certified audit of our finances; a full certified report on the real and personal porperty we own; an analysis of our financial transactions, including taxes, from Jan. 1, 1969, through May 31, 1973, and other pertinent documents.

"While these disclosures ar the most exhaustive ever made by an American President, to the best of my knowledge, I recognize that two tax-related items may continue to be a subject of continuing public questioning. Both items are highly complex and in the present environment, cannot easily be resolved to the public's satisfaction even with full disclosure of information.

"The first transaction is the gift of certain pre-Presidential papers and other memorabilia which my wife and I claimed as a tax deduction of $576,000 on our 1969 return and have carried forward, in part, in each subsequent year. The second item in question is the transfer by us, through the Title Insurance and Trust Co., to the B. C. Investment Co. of the beneficial interest in 23 acres of land in San Clemente, Calif., in 1970. I have been consistently advised by counsel that this transaction was correctly reported to the Internal Revenue Service. The I.R.S. has also reviewed these items and has advised me that they were correctly reported.

"In order to resolve these issues to the full satisfaction of the American people, I hereby request the Joint Committee on Internal Revenue Taxation to examine both of these transactions and to inform me whether, in its judgment, the items have been correctly reported to the Internal Revenue Service. In the event that the committee determines that the items were incorrectly reported, I will pay whatever tax may be due. I also want to assure you that the committee will have full access to all relevant documents pertaining to these matters and will have the full cooperation of my office.

"I recognize that this request may pose an unusual challenge for the committee, but I beieve your assistance on this matter would be a significant public service.

"With warmest regards,

"Sincerely,

RICHARD NIXON."

On Dec. 12, 1973, the Joint Committee on Internal Revenue Taxation met in executive session and decided to conduct a thorough examination of the President's income tax returns for the years 1969 through 1972 and to submit a report to the President and to the Congress on it findings.

A Broader Inquiry

The committee decided not to confine its examination to the two items mentioned by President Nixon in his letter quoted above, but rather to examine all tax items for the years 1969 through 1972. (President Nixon's tax returns for these years are reproduced in exhibits XI-4 in the Appendix.) The committee believed that the broader examination was necessary in part because various items on a tax return are often so interrelated that distortions result if a comprehensive review is not made. Probably more important, however, is that so many questions have been raised about the tax returns of the President for these years that the committee believed the general public can only be satisfied by a thorough examination of the President's taxes. From the standpoint of the tax system alone, this confidence of the general public is essential since ours is basically a voluntary assessment system which has maintained its high level of effectiveness only because the general public has confidence in the basic fairness of the collection system.

At its meeting, the committee instructed its staff to conduct a thorough examination of the President's tax matters for the years 1969-1972 and to prepare a report to the committee on its findings. This is that report.

The staff first would like to thank the Internal Revenue Service for its fine cooperation in the examination of these returns. In every respect, the staff found the Internal Revenue Service cooperative and helpful. About the same time President Nixon asked the joint committee to examine his returns, the Internal Revenue Service began an examination of the President's return for 1970 and reopened the years 1971 and 1972 (the general statute of limitations having expired on the 1969 return). The staff has exchanged information with the Internal Revenue Service in numerous cases, and the two also have conducted many joint interviews. However, the conclusions reached in this report are those of the staff alone and in no way are intended as indicative of any re-examinations made by the Internal Revenue Service.

Taxpayer's Responsibility

Generally, it is the responsibility of the taxpayer to substantiate his deductions or to show why other items should not be included in his return. However, in this case, because of the office held by the taxpayer, it has not been possible to call upon him for the usual substantiation. The unique position of the Presidency has also raised other questions in these returns which the staff comments on at the appropriate points in this report. Although the staff has not been able to contact the taxpayer in this case, he has been represented by counsel, Kenneth W. Gemmill and H. Chapman Rose. The counsel have been helpful in the staff examination of the President's returns, and they have supplied most of the information requested.

(Footnote 1)

In its examination of the President's tax returns, the staff conducted approximately 30 interviews with persons involved in different aspects of the President's tax matters. In a number of cases, this represents more than one interview with the same person. In addition, the staff has made contact with numerous other possible sources

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MEMORANDUM

THE WHITE HOUSE

WASHINGTON

February 6, 1969

TO: THE PRESIDENT

FROM: JOHN EHRLICHMAN

SUBJECT: CHARITABLE CONTRIBUTIONS AND DEDUCTIONS

As you know, we arranged for the maximum 30% charitable gift-tax deduction in 1968 by donating a portion of your papers appraised at the necessary amount to the United States. Again this year you are in a position to make charitable contributions up to 30% of your adjusted gross income. Of this 30% maximum deduction, 20% can be for any charitable enterprise designated in the code. For over 20%, up to a maximum of 30%, the gift must be to a governmental entity for a public purpose. This would include a gift of your papers.

I would suggest that we arrange a schedule of charitable contributions from sales of your writings, so that each year you can give to those charities you select 20% of your adjusted gross income. The remaining 10% will be made up of a gift of your papers to the United States. In this way, we contemplate keeping the papers as a continuing reserve which we can use from now on to supplement other gifts to add up to the 30% maximum.

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Regarding the gift of proceeds from publication of the preface to SIX CRISES by LADIES'HOME JOURNAL, we are arranging for LADIES' HOME JOURNAL to pay the proceeds directly to Boys Clubs of America and Young People of America, Inc., the organization which supports Jimmy McDonald. While we will have to account for these proceeds in gross income, the amount will be deductible as a charitable contribution.

(1) Good

(2) Let me know what we can do on the foundation idea -

A memorandum from John D. Ehrlichman, when a White House aide, to President Nixon. At the end of the memo, which is part of the joint committee's report, are two notes from Mr. Nixon. They read, "Good," and "Let me know what we can do on the foundation idea."

of information, has on two occasions sent staff members to California to consider various tax issues, and on another occasion has sent staff personnel to New York to carry out the examination. This is in addition to information staff received through numerous investigations made by the Internal Revenue Servce personnel. Finally, the staff has employed experts to help it appraise the value of the San Clemente property—an engineering firm and an appraisal firm, both in California. The staff believes that it has conducted an extensive examination.

As is true in any examination of a tax return, however, it is not possible to give assurance that all items of income have been included. The staff report contains recommendations on two categories of income which it believes should have been included but were not; namely, improvements made by the Government to the San Clemente and Key Biscayne properties which the staff believes primarily represent personal economic benefits to the President, and economic benefits obtained by family and friends from the use of Government aircraft for personal purposes.

The staff did not examine the President's income tax returns for years prior to 1969. In the course of its examination of the returns for 1969-1972, however, the staff found that because of interrelationships of prior years' returns it was necessary to consider a limited number of items relating to prior years' returns, since they affect the returns for the years in question. In addition, the staff has limited its recommendations to income tax matters, although in this examination it found instances where the employment taxes were not paid and gift tax returns not filed.

No Conclusion of Fraud

The staff has made no attempt in this report to draw any conclusions whether there was, or was not, fraud or negligence involved in any aspect of the returns, either on the part of the President or his personal representatives. The staff believes that it would be inappropriate to consider such matters in view of the fact that the House Judiciary Committee presently has before it an impeachment investigation relating to the President, and that members of the Joint Committee on Internal Revenue Taxation, along with members of the House and Senate, may subsequently be called upon to pass judgment or any charges which may be brought as a result of that investigation. The staff believes that neither the House nor the Senate members of the joint committee would want to have prejudged any issue which might be brought in any such proceedings.

The staff in preparing this report recognizes that an examination by a committee staff, possibly with the publication of the recommendations does not retain for the taxpayer his usual rights of review which are available to him under the appellate procedure in the Internal Revenue Service and through the court. For this reason, the staff has attempted to examine matters with great care before making a recommendation which will result in greater tax payments. At the same time, however, the staff has attempted to follow the standards which it believes, under the law, are required to be applicable to taxpayers generally, and the staff has not withheld recommendations because of the office of the taxpayer involved. The staff, in any case, believes it should be emphasized that this is a report only. It is not a demand for payment of taxes. Any tax payment is a matter for consideration by the taxpayer and the Internal Revenue Service.

SUMMARY OF RECOMMEN

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The report which follows is divided into 10 separate parts. Each of these deals with one or more major questions with respect to the tax returns of the President. In most cases the report indicates first the scope of the examination of law which may be involved. This is followed by a summary of staff recommendations, and finally the staff presents an analysis of these recommendations.

The staff recommendations would make the following increases in the President's taxes for the years involved:

	Proposed Deficiency	Interest(1)	Deficiency Plus Interest
1969	$171,055	(2)	(2)$171,055
1970	93,410	$16,638	110,048
1971	89,667	10,547	100,214
1972	89,890	5,224	95,114
Total	$444,022	$32,409	$476,431

(1) Interest to April 3, 1974.

(2) Since 1969 is a closed year and any payment by the President would be voluntary, the staff did not include an interest payment for the deficiency in this year. However, if interest were to be included, the amount would be $40,732.

Improvements and Trips

Should the President decide to reimburse the Government for the General Services Administration improvements which the staff believes were primarily personal in nature, he would pay $106,-262. In addition, if he should decide to reimburse the Government for the amount determined by the staff to represent the cost for the personal trips of his family and friends, this would amount to $27,015. On the other hand, if the President were to receive reimbursement for the expense which he paid for the table located in the Cabinet Room in the White House for which the staff believes the Government should have paid, the amount he should receive would be $4,816.84. If the President were to make the reimbursements referred to above, he would be allowed to take deductions in the year of the payments, since the amounts were treated as taxable income in the years under examination in which they occurred.

The major causes of the deficiencies resulting from the staff examination are set forth below.

[1]

The charitable deductions ($428,018) taken for a gift of papers from 1969-1972 should not, in the staff's view, be allowed because the gift was made after July 25, 1969, the date when the provisions of the Tax Reform Act of 1969 disallowing such deductions became effective. The staff believes that in view of the restrictions and retained rights contained in the deed of the gift of papers, that the deed is necessary for the gift. The deed (dated March 27, 1969) which purportedly was signed on April 21, 1969, was not signed (at least by all parties) until April 10, 1970 and was not delivered until after that date. It should also be noted that this deed was signed by Edward Morgan (rather than the President), and the staff found no evidence that he was authorized to sign for the President. In addition, the deed stated that its delivery conveyed title to the papers to the United States and since the deed was not delivered until after April 10, 1970, it is clear that title could not have been conveyed by way of the deed until after July 25, 1969. Furthermore, because the gift is so restricted, in the opinion of the staff, it is a gift of a future interest in tangible personal property, which is not deductible currently under law, even if the gift was valid in all other respects; that is, it had been made and the deed delivered prior to July 25, 1969. President Nixon's 1968 gift of papers contains the same restrictions as the second gift so that in the staff's opinion it, too, is a nondeductible gift of a future interest. As a result, the staff believes that the amount of the 1968 gift in excess of what was deducted in 1968 is not available to be carried over into 1969.

[2]

In 1970, no capital gain was reported on the sale of the President's excess San Clemente acreage. The staff believes that there was an erroneous allocation of basis between the property retained and the property sold and that a capital gain of $117,835 should have been reported.

[3]

The staff believes that the President is not allowed to defer recognition of his capital gain on the sale of his New York City cooperative apartment because it does not view the San Clemente residence in which he reinvested the proceeds of the sale (within one year) as his principal residence. Also, the staff believes this gain is larger than the $142,912 reported on the 1969 tax return, because the President's cost basis should be reduced by the depreciation and amortization allowable on the New York apartment resulting from its use in a trade or business by Mr. Nixon. The staff determined that the amount of depreciation and amortization allowable is $8,936. The staff measures the total capital gain at $151,848, which in its view should be reported as income in 1969.

[4]

The staff believes that depreciation on the San Clemente house and on certain furniture purchased by the President, business expense deductions taken on the San Clemente property, as well as certain expenditures from the White House "guest fund" are not proper business expenses and are not allowable deductions. These deductions totaled $91,452 during the years under examination. In the case of the purchase of part of the furniture, however, the staff believes the Government should reimburse President Nixon for his expenditure.

[5]

In the case of capital gain on the sale of the Cape Florida development lots in 1972, 60 per cent was reported by President Nixon and 40 per cent was reported by his daughter Patricia. The staff believes the entire amount should be reported as income to the President. Thus, in the view of the staff, he should report $11,617 (this is the amount allocated to his daughter from the installment payment in 1972) as a capital gain in 1972 and the remainder of the gain in 1973. On this basis, Mrs. Cox should also file an amended return and not include any of this gain for 1972 (or in 1973). Also, on this basis President Nixon could deduct as interest part of the payment he made in 1973 to Patricia on the money she loaned him. She, of course, should report the interest as income in 1973.

[6]

The staff believes President Nixon should declare as income the value of flights in Government planes taken by his family and friends when there was no business purpose for the furnishing of the transportation. The staff was given no information about family and friends on flights where the President was a passenger. However, for other flights the first-class fare costs of his family and friends are estimated to be $27,015 for the years 1969 through 1972. From April, 1971, through March, 1972, and again after Nov. 7, 1972, President Nixon paid for most of such travel expense himself.

[7]

The staff believes that President Nixon should declare as income $92,298 in improvements made to his Key Biscayne and San Clemente estates. The only improvements taken into account for this purpose, the staff believes, were those undertaken primarily for the President's personal benefit.

[8]

The staff believes the President should be allowed an additional $1,000 in sales tax deductions.

[9]

The staff believes that $148 of gasoline tax deductions should not be allowed for 1969 through 1971. However, the staff has determined that an addition $10 in gasoline tax deductions is allowabe for 1971.

[10]

Several other income items should be reported on President Nixon's tax returns, although these are entirely offset by deductions and hence do not increase taxable income.

Footnote—1) The exceptions are listed here.

(1) The chairman of the joint committee requested information on flights taken by the President and his family on Government airplanes. This information was supplied only with respect to flights where the family were passengers but the President was not.

(2) Because of the absence of the normal contact with the taxpayer, toward the end of its investigation the staff also submitted a series of questions for consideration by the President. The questions submitted relate to issues still not fully answered after many interviews were conducted with other persons, involved in one way or another with the President's tax matters. These questions are shown in the Appendix, Exhibit XII-1. The staff recognizes that these questions were submitted late in the examination period and that this may well account for fact that the staff has not yet received an answer. It is still hoped, however, that answers will be forthcoming and that these can be made public.

(3) The staff also requested information from the President's representatives with respect to a so-called "special projects fund." The staff was made aware that certain expenditures out of this fund possibly had been made for personal items of the President relating to his San Clemente residence. For this reason, the staff requested a statement from the President's representatives on which of the expenditures made out of that fund were for the President's personal benefit. On April 1, 1974, the President's counsel responded to this request and indicated that on the basis of an investigation there was found only one possible occasion on which a personal expense of President Nixon was paid out of the special projects fund. This was for $6.30, which was a reimbursement for an expenditure for light bulbs at San Clemente. The staff has no way to verify whether these were all the expenditures made other than the letter.