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IRS Probe Of Nixon Reopened Civil Tax Fraud Charge Weighed, Sources Report

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The Internal Revenue Service is investigating former President Nixon for civil tax fraud, according to informed sources.

The IRS concluded in March, 1974, that it did not have sufficient evidence to charge Nixon with civil tax fraud, but has reopened its investigation and now believes it can show that the former President had knowledge of a backdated deed claiming an illegal deduction for his gift of papers to the government, the sources said.

If fraud is proved against Nixon, he would be forced to pay \$222,121.45, which would be \$148,080.97 for a 1969 tax deficiency found by the IRS in 1974 plus a 50 per cent penalty for fraud of \$74,040.48.

Nixon had no legal obligation to pay the 1969 tax deficiency because the three-year statute of limitations had expired. However, fraud has no statute of limitations and makes the basic tax deficiency also collectable at any time.

Nixon could challenge a fraud assessment in court.

In 1974, Nixon paid \$284,706.16 in tax deficiencies and negligence penalties for his 1970-72 tax returns. He said he would pay the 1969 deficiency but has not, according to the sources.

President Ford's pardon of Nixon covers only criminal matters and would not apply to civil tax fraud.

Spokesmen for Nixon and the IRS declined to comment yesterday on the current investigation.

The IRS decision in 1974 that there was not sufficient evidence to charge Nixon with civil tax fraud was made before several key witnesses testified under oath.

Since then, IRS investigators believe they have gathered enough evidence to pinpoint Nixon's role in the backdating of the deed.

According to the public record, Nixon's vice presidential papers were not donated until April, 1970, nearly nine months after a tax reform act took effect eliminating the charitable deduction on papers donated after July 25, 1969.

The investigators say they have evidence that Nixon instructed his aides to lobby against the act.

Nixon, however, signed the act into law on Dec. 30, 1969.

The sources said that the IRS can build a case showing Nixon knew he was taking

a deduction no longer permitted by law when the backdated deed was submitted to the National Archives in April, 1970.

The sources said that the IRS has not developed any dramatic new evidence in the case but has been the beneficiary of an 18-month investigation by the office of the Watergate Special Prosecutor which, because of Nixon's pardon, could not bring a criminal case against the former President.

Others have been prosecuted for handling Nixon's taxes. Former White House aide Edward L. Morgan, who signed the backdated deed, pleaded guilty to tax fraud conspiracy on Nov. 8, 1974. Literary appraiser Ralph G. Newman was convicted on Nov. 12, 1975, of two counts of providing false information to the IRS in connection with the Nixon papers.

In October, 1975, a federal judge in Los Angeles dismissed charges against

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Nixon tax attorney Frank DeMarco Jr. who had been charged with obstructing investigations in the Nixon tax case.

It could not be learned yesterday if Mr. Ford or any of his top aides are aware of the civil fraud investigation of Nixon.

When President Ford pardoned Nixon he made it clear that he believed that Nixon should be freed from further government investigation.

The President could direct the IRS to drop the investigation. However, sources familiar with the case said that IRS Commissioner Donald C. Alexander has insisted that a full-scale probe be undertaken.

Alexander, who is currently under fire in the law enforcement community for cutting back IRS investigative work, has consistently strongly favored investigation of Nixon tax matters.

It was Alexander who forced the reopening of the Nixon tax audit in December, 1973, which led to the assessment against Nixon for his 1970-72 taxes.

Although two well-placed sources said that they expected Alexander to approve a civil tax fraud case against Nixon in the near future, one other source said he doubts the investigation will result in a case being brought.

"There is no smoking gun," this source said, "and let's face it, the case is really contrary to the spirit of the pardon." The source said that he doubts the White House wants this to happen in an election year.

Civil tax fraud is a very difficult charge to prove. The standard of proof is less than a criminal case and more than normal civil cases.

According to the IRS code,

"clear and convincing evidence is necessary in order to prevail on the fraud issue. Clear and convincing evidence need not be beyond a reason doubt (as in criminal cases), but must be stronger than mere preponderance of evidence (as in most civil cases)."

In a matter related to Nixon's taxes but apparently not known to federal investigators, reliable sources said recently that Nixon tried to halt the initial IRS audit of his tax returns.

This attempt was in May, 1973, while Nixon was President but before his taxes became a public issue.

At that time, according to the sources, Nixon was informed that his tax returns had been computer selected for audit because of the large deduction for his vice presidential papers.

Nixon felt he was being picked on by the IRS and insisted that the IRS should not audit him unless it had audited past Presidents.

Nixon was furious and ordered White House chief of staff Alexander M. Haig Jr. to call George P. Shultz, who as Treasury Secretary, was in charge of the IRS.

"What the hell is this," Haig

reportedly told Shultz, "the President of the United States being audited?"

Shultz told Haig that the IRS could not avoid doing the audit because of the large deduction.

Haig, according to the sources, then had Shultz prepare a report on IRS treatment of past Presidents.

According to the sources, the report showed that all Presidents back to Franklin D. Roosevelt had their tax returns audited and at least one paid an adjustment in excess of \$100,000.

Shultz gave the details to Haig who relayed the information to Nixon.

After that, the IRS proceeded with the first audit of Nixon's taxes. It was completed in 10 days and Nixon was given a form letter complimenting him on the accuracy of his returns.

According to law, the President is supposed to be treated like any other taxpayer.

Shultz, according to associates, felt he was being pressured. "There was a big blow-up," he said. "I got real thunder." He reportedly felt it

was improper, but did nothing about it because the IRS was allowed to go ahead with the audit.

After published reports questioned the validity of Nixon's deed donating his vice presidential papers, IRS Commissioner Alexander on Dec. 7, 1973, reopened the audit of Nixon's taxes.

Letters were hand-delivered to the White House notifying Nixon of this. The next day Nixon asked the Joint Committee on Internal Revenue Taxation to review his taxes.

Shultz and Alexander, according to the sources, felt that the President was trying to pre-empt the IRS, apparently calculating that he would get a better break from the congressional committee.

Shultz had further discussions with the White House over drafting an IRS press release to conceal the fact that the IRS, not the President, had initiated the reopening of the audit.

The Joint Committee found a total deficiency for the years 1969-72 of \$476,431—some \$40,000 more than the total deficiency of \$432,787.13 the IRS had found