# High Court expected to rule on Portland case

A decision is expected in June on the Portland (Ore.) Golf Club case before the U.S. Supreme Court.

On April 17, the rights of tax-exempt private clubs to consistent treatment on the taxation of investment income were argued before the U.S. Supreme Court by National Club Association tax counsel Leonard J. Henzke Jr. He was assisted by Allen Bush, counsel for Portland Golf Club, the petitioner.

The NCA said the culmination of a nine-year struggle with the IRS, the Portland case "will determine the level of fairness granted to private clubs in the taxation of investment income," as embodied in Revenue Ruling 81-69.

In enforcing Rev. Rul. 81-69, the IRS contended that tax-exempt clubs must show a profit motive before they can be allowed to offset losses from certain non-member activities, after allocation of overhead, against taxable investment income.

The IRS contends that most unrelated business does not demonstrate a profit motive, and therefore clubs should be taxed for investment income as if there were no counterbalancing losses.

"We have fought against this unjust interpretation since it surfaced in 1981," said NCA President George Squibb. Henzke asserted that many large, for-profit corporations never pay taxes as the result of paper losses but, nonetheless, stay in business by making real gains. Henzke implored the High Court to use, with clubs, the same economic profit standards applied to for-profit corporations.

Henzke further explained applicable Tax Code provisions, pointing out that the IRS's interpretation, embodied in Rev. Rul. 81-69, was not supported by the text of the Code.

"Congress is free to change this law, but neither the IRS nor this court have that power," Henzke said. "At the very least, clubs deserve the same freedom as other taxpayers to show they have made a real financial profit, even though for tax purposes they might show a loss."

Henzke argued there are conflicts between and among federal circuits. "The financial planning of clubs is in limbo. Our member clubs ask the court to settle this issue, telling them in dependable, absolute terms how the tax laws will be applied to their activities."

The government's attorney, Clifford M. Sloan,, argued that the Portland Club had failed to demonstrate a profit motive, which, in the IRS's view, is required by law.

# Vegas

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tent, by the amount of treated sewage it returns (known as return flow credits) to the river.

Nevada's annual 300,000 acre-feet Colorado River allocation could last into the next century, according to the CRC budget. But by returning effluent to the river, another 180,000 acre-feet could become available.

With the growth in the region (4,000 new residents migrate there monthly and water use was up 13.5 percent in the first two months of 1990), the commission is concerned that using that effluent on courses, rather than returning it to the Colorado River, could affect southern Nevada's future drinking water allocation.

In fact, CRC Chairman John Moran Jr. has stated his objection to more golf courses.

But that's a view "we were all very surprised to hear," said James Gans, director of the Clark County Sanitation District, which operates the district's sewage treatment plant.

"There is considerable question whether the the CRC even has the authority to regulate the use of treated water," Gans said.

Gans said there is a demand for more courses. The Las Vegas Valley Water District favors courses using effluent rather than potable (drinkable) water whenever possible, he added.

While most Las Vegas-area courses don't use effluent, four do and others are considering it, according to Wiliam Rohret, president of the Southwest Golf Course Superintendents Association and superintendent at 54-hole Sunrise Country Club.

Sunrise, Desert Rose, Showboat and Black Mountain in Henderson use effluent, also known as "gray water," said Rohret Another dozen or so facilities are on the drawing board, some of which would like to use gray water, he added.

There is a definite financial incentive to use effluent.

As a conservation measure, the water district will raise the price to major users of river water (read golf courses) by 30 percent, to around $1.10 per 1,000 gallons, effective Oct. 1.

Gray water is about one-fourth the cost at approximately 25 cents per 1,000 gallons, said Gans.

"That's one of the reasons superintendents would like to see more use of effluent," said Rohret.

Another reason is that superintendents want to see the area prosper, Rohret added.

"Las Vegas is built on tourism, and golf courses are a big part of tourism," said the Southwest GCSA official. "If we fail, the tourist industry fails.

"Things have just exploded around here in the last 10 years. Continued growth throughout the valley is dependent on water. What will restrict growth here is the availability of water. No one wants to run out. We'd like to work with the CRC on alternatives."

One of the alternatives most discussed is the construction of satellite sewage treatment facilities.

Smaller than the main facility in the eastern section of the valley, the satellite plants would be located in the western valley, where most new development is taking place.

"The water district would like to see something like that. They figure that electricity to pump the water makes up about 50 percent of the cost of getting it to the customer," Gans said.

Sanitation district studies show the capital costs of building satellite plants would raise the price of treated water to 70 to 75 cents per 1,000 gallons. But that's still well below the water district's charge of $1.10. Effluent and fresh water prices will likely go higher in the future, Gans said.

A CRC decision to ban the use of effluent on golf courses could have even greater effects on Laughlin, a tourist town located 90 miles south of Las Vegas.

"Las Vegas' growth looks slow compared to Laughlin," said Gans.

Laughlin is using two-thirds of its 10,000 acre-feet allocation. The remaining third is already promised to developers. That means the city is, in effect, out of water for future growth. Gans is hopeful more water may be made available. But there is a waiting list of proposed developments ready to drink that down.

There is one course, Emerald River, in Laughlin. It is paying $1.94 per 1,000 gallons for water, said Gans. But it can tap into effluent supplied by the sanitation district's $32 million treatment plant, scheduled to open in mid-1992.

"There's a lot of room for more courses in Laughlin. But it looks like the CRC will take the same stand there on effluent," said Gans.

Gans said he realizes the CRC is between a rock and a hard place in allocating water. "

"Rapid growth is placing a tremendous demand on a very small, finite supply," he said. "Yet current policy allows a gallon of water to be removed from the river only if a gallon of Colorado River water is put back in."

Other possibilities for getting water to the rapidly developing Las Vegas valley are being considered.

The Resource Conservation Group, made up of representatives of the seven states contiguous to the Colorado River basin, has discussed ways of getting water from the water-rich/cash-poor upper basin states (Wyoming, Colorado, New Mexico and Utah) to the water-poor/cash-rich lower basin states (Nevada, Arizona and California).

"Getting an allocation change from the the Department of the Interior is possible, but not probable," said Gans.

Building a water pipeline to import 300,000 acre-feet yearly from Nevada's northern counties to Clark County is also being considered. But the estimated cost of the 10-year project is $1.5 billion.

For now, conservation and effluent seem the solution, for both existing and new courses, according to water district conservation manager Linda Littell.

"Hopefully courses can reduce the turfgrass areas they have to irrigate," she said. "Their irrigation systems are already magnificently efficient, much more so than our residential users."