High Court to hear tax case

Decision critical to golf industry

A 10-year court battle that clubs nationwide have waged over a tax ruling may soon be resolved.

The U.S. Supreme Court has agreed to hear the case of Portland Golf Club v. Commissioner of Internal Revenue, in which the club is challenging the Internal Revenue Service's interpretation of the law governing the deductibility of losses generated by non-member activities.

The IRS has argued, since issuing its Revenue Ruling 81-69, that clubs' losses generated by non-member activities can not be deducted against profits from other non-member activities unless there was a profit motive for the activity that produced the loss.

Clubs and the National Club Association, which has been working for nearly a decade to reverse the IRS position, contend that it is enough that the activity be undertaken for economic gain.

The distinction between economic gain and profit motive arises from the fact that financial accounting rules sometimes differ from tax accounting rules.

The U.S. Courts of Appeals have differed as to which is the correct interpretation.

NCA legal counsel Tom Walsh said: "Above all, the court needs to settle this long dispute so clubs can plan appropriately. With the lower courts splitting on this issue, we really do not know the state of the law. It needs to be decided. We will be working closely with the Portland Golf Club to make the strongest case possible."

The court may order oral arguments to be held as early as April, which would allow for a decision before it adjourns in the summer.

The appeal is being made possible by a NCA fund-raising drive.

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consumption by 10 percent in the Southwestern state.

While applauding the legislation's intent, groups like the Arizona Golf Association say there is not enough flexibility in the new law.

While five acres per hole may be excessive for an executive course (less than 5,000 yards), it can create problems for a championship-length (over 6,200 yards) facility. Championship courses have been built on 90 acres. But such "target" courses cater to the better player and prove difficult to the average (particularly older) one, according to a letter from AGA's Public Awareness & Research Committee to the D.W.R.

"Ninety acres is more than sufficient to build a golf course," said AGA Executive Director Ed Gowan. "The problem is that people with handicaps above 12 or 14 have a hard time playing a course like that in less than six hours. It's not conducive to the resort golfer. It's not conducive to the child golfer. A private club can exist with it. But to ask a resort to do so is kind of unfair.

"...The resort player who comes here is not the regular player. For the occasional or resort player, 90 acres doesn't work. Let's say there is a resort here built primarily for visitors, like Japanese executives who have little time to play, where the level of expertise is somewhat less than you might expect from local players. You're looking at very long rounds and (the resort) not being financially viable."

The most recent attempt to build a public course within the 90-acre limit was architects Pete and P.B. Dye's joint effort on the Karsten course at Arizona State University, said Gowan. Twelve acres still need to be eliminated from the facility which already includes 50- and 70-yard carries to fairways.

"It's just not reasonable to expect to take 12 acres away and not impact play," said Gowan.

Architects have been adjusting their designs to what they knew would be the new restrictions for some time. Greg Nash, who has designed seven courses at Sun City West, recently completed work on an 180-acre course there that has only 82 acres of actual turf with the remainder in re-vegetated desert landscape

Realizing the new restrictions were coming, Nash approached the developers with his plan for a target course six years ago. "At that time, they (developers) said there's no way we'll ever build that type of a course," the Phoenix-based architect said. "Now what they have at Sun City is six all-turf courses and this one. Basically it's a function of they're saying we don't want to do it, but D.W.R. says we have to do it. So far it's been very well received."

Opponents argue that the state's mid-1990s goal of 4.6 acre-feet per acre (af/a) per year water allocation (down from 5.0 af/a in 1985) doesn't take into consideration the varying water needs of maximum-use areas (tees, fairways and greens) versus moderate (proximate rough) and low-use areas, according to the P.A.R. To meet