

NCA asks Treasury Dept. to ax three tax proposals

GOVERNMENT UPDATE

Saying "you should grab your pocketbook whenever people talk about 'reforming' tax laws," National Club Association legal counsel Tom Walsh has filed comments with the U.S. Department of the Treasury urging it to reject three proposals concerning unrelated business income taxes (UBIT) of private clubs.

The proposals were part of a suggested revision of UBIT that was drafted by the staff of the House Ways and Means Committee. The committee had requested the Department of Treasury's views.

Walsh criticized the committee staff's proposal, saying, "This proposal shows why you should grab your pocketbook whenever people talk about 'reforming' tax laws. It seems clear that the committee staff lumped together various proposals, even though some of them clearly violate the basic principle of UBIT: that tax-exempt and profit-seeking entities should be treated equally when they undertake taxable activities.

"The staff has been overly swayed by the profit-seeking sector's argument that current tax laws give tax-exempts an unfair advantage."

NCA's primary objection was to the proposal to codify the Internal Revenue Service's Revenue Ruling 81-69. That ruling would prohibit clubs from using losses from one unrelated activity to offset income from another unrelated activity.

NCA said this limitation would unfairly impose a special limitation on clubs' taxable activities that is not imposed upon the taxable activities of profit-seeking organizations.

Walsh said, "The heart of the

Lease

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managing director.

"The city's lawyers believe the lease is legal," said Jung.

Duran said Mayor Frank Fasi believes the councilors' actions may have held down the number of bids and kept them from reaching as much as \$150 million. Fifty queries were received prior to the bid submission deadline.

Five of the nine council members must approve the arrangement. Otherwise, the city retains the course, which has yet to see a single round, even though it's been ready for play since April 1.

"It looks beautiful," said Duran.

Jurigi posted a \$10-million, non-refundable deposit with its \$111-million bid, which breaks down to \$107 million for the lease and \$4 million for the land.

Jurigi is a Fuji City-based, family-owned company that operates one of Japan's largest paper companies and Jurigi Golf and Country Club in Fuji City, said Jung. The company, headed by Chairman Ryoei Saito, also has bank holdings in Hawaii.

The \$111 million bid amounts to one-sixth of the city's annual operating budget and one-third of its capital budget, said Jung.

matter is the IRS's contention that clubs must show that their unrelated business activities are undertaken with a profit motive."

NCA has argued that if such activities were taxed as businesses, clubs must automatically be considered to be operating with such a motive. NCA also argued that, at the very least, clubs should be allowed to prove their profit motive by showing that they made a financial profit even though they claimed a tax loss.

These arguments support the

position which the Portland Golf Club has taken in its Supreme Court case involving the profit motive test. NCA has supported this effort through contributions from its members, and its tax counsel will argue the case April 16.

NCA also criticized a proposal to hamstring a club's ability to create a separate taxable subsidiary to handle its unrelated business activities. By doing so, clubs would then be able to offset unrelated business losses against unrelated business gains. The Ways and

Means Committee staff proposal would not allow that alternative. NCA pointed out that the staff's position would contradict UBIT's purpose, by unfairly handicapping clubs.

Finally, NCA questioned the staff proposal to limit the allocation of overhead expenses to unrelated activities. Under that proposal, clubs would only be able to allocate their fixed expenses if more than 25 percent of the total use of the facility were for unrelated business purposes.

If that proposal were adopted, clubs would be foreclosed from allocating their overhead expenses to unrelated activities unless those activities were so pervasive that a club's tax-exempt status would be endangered.

Walsh said that predicting the Treasury's response was impossible. He added, "At the very least, we hope that Treasury officials will take a close and honest look at these proposals. If they do, they'll surely see that tax-exempt clubs would be unfairly harmed by them."

