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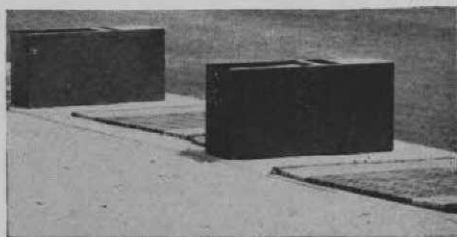
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## **Court Rules Club Is Non-Profit Corporation; Orders Tax Refund**

By WILLIAM JABINE

It is the real purpose of a golf club, and not its particular scheme of organization, that determines the amount of Federal income and excess profits taxes that it pays. This was the decision reached by the U. S. District Court for the Western District of Missouri last year in an action brought by the Hillcrest CC, Kansas City, to recover taxes assessed under the theory that the club was a business corporation. The court directed the return to the club of \$20,147.14.

When the Hillcrest started operations its course and clubhouse were owned by a corporation known as the Hillcrest Investment Co. In 1933, during the depression, that corporation succumbed and a new corporation was formed to permit the club to continue operations. As the club itself could not hold real property under Missouri law the new company was incorporated under the State's Manufacturing and Business Corporation Act and a provision was included permitting the paying of dividends. Although no dividends ever were paid, federal tax officials assessed the new corporation as a profit making organization empowered to distribute profits.

The club brought suit for recovery of taxes paid, relying on the provision of the tax law that exempts from certain taxes "clubs organized and operated exclusively for pleasure, recreation and other non-profitable purposes, no part of the net earnings of which inures to the benefit of any shareholder."

### **Nonprofit Purpose**

After declaring that the sole question was whether or not its form of organization made the club a business corporation, the court said that evidence showing the real purpose of the club was admissible and stated: "The record in the instant case shows that the plaintiff was in fact organized for a nonprofit purpose; i. e., to operate a golf and country club for the pleasure and recreation of its members."

The court then went on to discuss previous decisions bearing on the point of issue, and said: "Under these cases in determining whether a corporation was 'organized exclusively' for the purpose within the exemption statute, extrinsic evidence is admissible to show the real purpose for which the corporation was



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organized and that purpose is not to be determined solely from the articles of incorporation and the by-laws, but from a consideration of all of the evidence including the particular circumstances surrounding incorporation, the purpose and intent of the incorporators, the amendments to the articles of incorporation or changes in the by-laws and the activities and operations of the corporation as well as those of any predecessor organization.

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"With this premise there can be no question but that under the evidence presented plaintiff was 'organized and operated' exclusively for pleasure, recreation and other nonprofit purposes, no part of the net earnings of which inured to the benefit of any private shareholder and under these circumstances the plaintiff is entitled to the exemption claimed."

### Busy Schedule

The 1958 Northern California golf calendar lists 89 men's golf tournaments for the period from Mar. 14 through Nov. 9. Also on the docket are 12 Junior Boys' tournaments, four Junior Girls' tournaments and 10 events for women.

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