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IRS Reverses Dues Ruling, Then Agrees to Tax Refund

Government makes settlement on 20 per cent excise charged Midwestern club on food and drink

A rather prolonged struggle between a Midwestern country club and the internal revenue service over the right of the latter to collect a 20 per cent excise tax on a supplementary dues issue was settled this summer when IRS decided not to contest an action started by the club in a U.S. District Court to reclaim the tax. The revenue service returned more than $1,000 in taxes and interest to the club in what it termed an "administrative settlement".

The basis for the litigation was established in 1959 when directors of the club decided that additional and needed operating income could be realized by charging members supplementary dues if they did not spend $15 per month from April through December on green fees and house charges. The assessment was to amount to the difference between the $15 and the sum actually spent by the member on these items. The 20 per cent excise tax, it was explained, was to be paid only on the extra dues charge.

Before this rule was put in effect, the club asked the internal revenue service if it was correct in assuming that the excise tax did not apply to expenditures for food, drink, etc. since these were, in effect, voluntary. The member had the choice of foregoing them and paying the entire $15 in the form of supplementary dues, if he chose to do so.

Not Subject to Tax

The IRS ruled that if the member paid an amount required by the club for continued membership, the assessment was subject to tax. However, it stated that amounts paid for food and drink are not subject to tax unless the club has a mandatory minimum expenditure rule or by-law covering such items.

A little more than a year after this the IRS reversed itself. It said that after a re-study of the case it had decided that where there is a requirement for a monthly minimum expenditure, whether for food or supplemental dues, or a combination of the two, the amount involved constituted a mandatory minimum charge. Thus, the entire $15 was taxable.

Liability Incurred

In the spring of 1961, members of the Midwestern club approved a resolution suspending the expenditure provision of the club rules (it had been increased to $20 by this time). In view of the recent IRS ruling, though, the club had incurred

Club attorneys contend that assessment can be made on a required contribution but not a required purchase

a tax liability of a little more than $1,000 on the alleged supplementary dues the revenue service said it owed. This was paid under protest.

In the meantime, other clubs in the area, concerned with the revocation of IRS's original ruling, agreed to share the expense of litigation involving the supplemental dues issue.

Actual vs. Threatened Dues

In a brief filed with a U. S. District court, the club argued that an assessment (which it recognized is legally subject to the excise tax) is a required contribution and not a required purchase. The latter, it pointed out, is not taxable. It further contended that the revenue code does not say that the threat of an assessment shall constitute dues, but states that only an actual assessment shall constitute dues. The IRS commissioner, the club declared, was not interpreting the revenue code, but attempting to introduce legislation, something that he doesn't have the power to do.

The club's brief went on to state that the only U.S. Supreme Court decision touching on the subject of dues (White vs. Winchester CC, 315 U.S. 32, 86 L. Ed. 619 (1941) says that a purchase wherein a member receives equivalent value for his money is not considered dues. Dues, the court added, connote a fixed payment for repeated and general use of common club facilities regardless of how often such facilities are used.

In Purchase Category

Minimum charges, the club contended, are clearly in the purchase category; to come under the dues category, a by-law would have to provide that a member be supplied, upon payment of a certain sum, with all the food or drink he desired. He would then be paying for repeated and general use of a club facility rather than paying for an individual item.

After the brief had been filed, the IRS petitioned the Court for dismissal of the action without prejudice, agreeing to refund the tax paid by the club, plus interest, in what it called an administrative settlement.

Dismissal without prejudice, the club's attorneys explained, means that the issue may never be litigated again. However, since the government withdrew and no judgment was made in the case, it is technically possible for the IRS to assess a tax in another or different month and again take the issue into court. No judicial precedent has been set in the district in which the club is located because of the settlement made by IRS.

No Chance for Success

The club's attorneys, in attempting to interpret the reasons for the internal revenue service's request for dismissal of the case, said that the administrative decision to withdraw the tax claim indicates that IRS didn't feel it had a reasonable chance for success in defending an excise tax levied upon monies spent for food and drink under a supplemental dues program. Thus, a District Court judgment was avoided or at least delayed since a similar issue hasn't been litigated elsewhere in the U.S.

The attorneys also speculated that the commissioner of internal revenue wishes to protect his ruling as it now stands relative to minimum spending. If it were held to be erroneous by a U.S. District Court, country clubs throughout the country would be encouraged to disregard the IRS ruling and refuse to pay excise taxes on money actually spent, such as for food and drink, under minimum spending programs.

No Test Judgment

The attorneys concluded that because of the administrative settlement, the club has no right to insist upon a test judgment in the case. The fact that the money was refunded and the internal revenue service asked for dismissal, makes the case a moot issue.

The last previous celebrated tax case that involved a country club came in 1958 when Congressional CC of Washington, D.C. received a ruling from IRS stating that minimum charges to members have to be kept on a voluntary basis if they are to be excise tax free. The Congressional ruling, incidentally, took in minimum charges on food and drink as well as other club services, but apparently it wasn't questioned by the club. This probably was because every effort was made to keep the minimum charge plan on a voluntary basis.