

property taxes: WHAT CAN BE DONE BEFORE THEY DEVOUR OUR CLUBS!

by KEN EMERSON

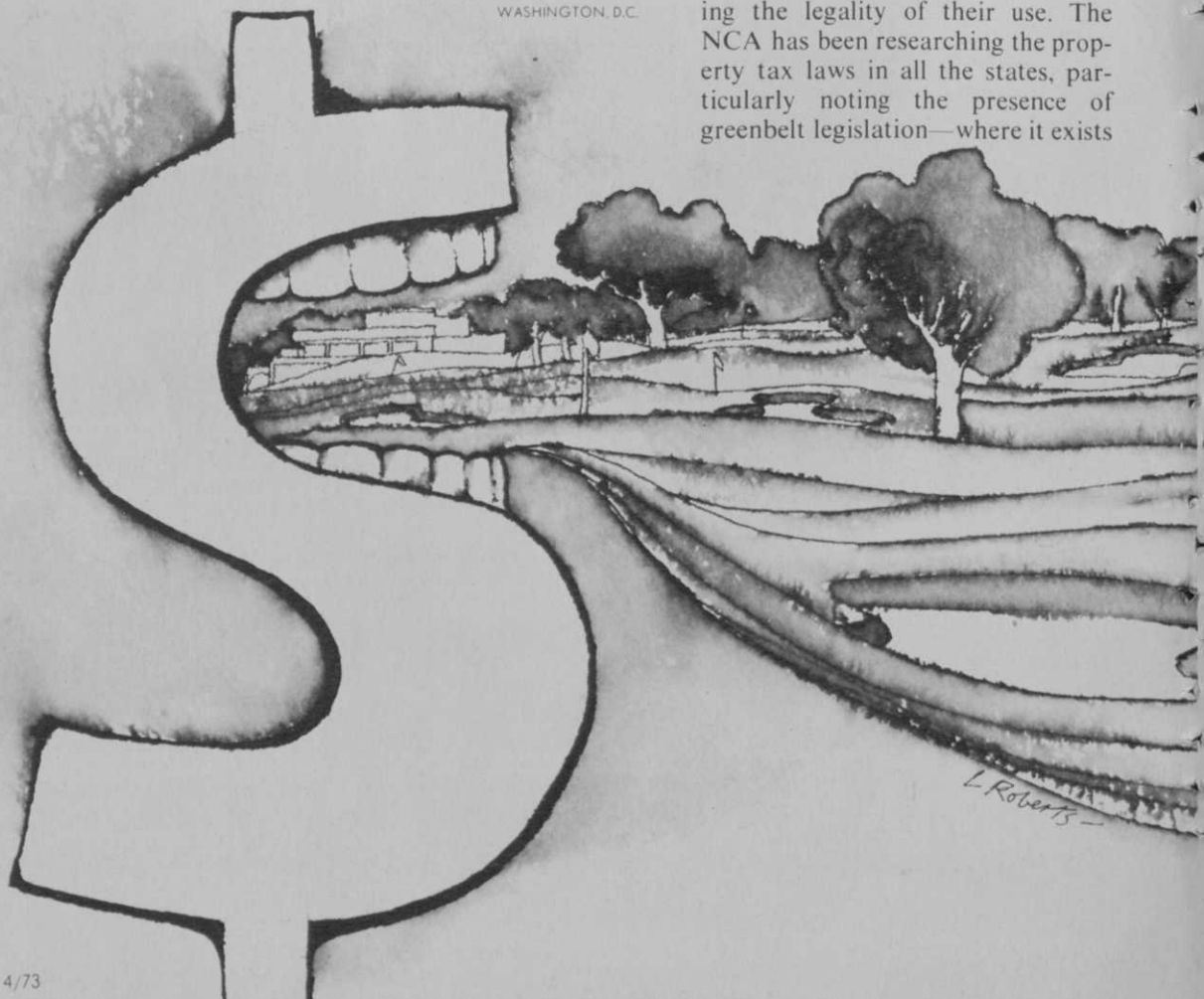
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Federal guidelines must be drafted to create a standard and equitable system of taxing golf course property. Such standards should recognize the inherent value of a course to its environs

The initial misunderstanding of the place of privately owned golf courses in the property tax picture has been brought into focus with the help of a number of groups and publications. GOLF and GOLFDOM Magazines, for example, published in 1970 articles that exposed the problem and proposed several possible solutions. Even earlier, in 1968, GOLFDOM called attention to the problem when it published an article by the National Club Assn., which predicted the coming crisis.

CLIMATE FOR CHANGE

Now, many states are scrutinizing their real estate tax policies because of recent court decisions questioning the legality of their use. The NCA has been researching the property tax laws in all the states, particularly noting the presence of greenbelt legislation—where it exists



—and the possibility of enactment where it does not.

The need and purpose of this kind legislation is gradually coming into focus.

For example, the Urban Land Institute, Washington, D.C., notes, "... the golf course . . . creates premium taxable value around the course's perimeter. The increment which accrues to the adjacent property begins to deteriorate as soon as the golf course is destroyed."

"It is clear that all privately operated recreational facilities provide, in part, an essential public service and this must be recognized in assessment practices and procedures. A recommended concept is one of a private recreational land use designation perhaps formalized by a modification of the existing zoning ordinances to create a special private recreational zone." So writes John R. White, M.A.I., in an article in "The Appraisal Journal," January, 1972, published by the American Institute of Real Estate Appraisers.

President Nixon's Advisory Commission on Inter-governmental Relations (ACIR) has made a preliminary study of property tax structures in the various states. Some of their findings are:

□ Property taxation, as used by

the states, is remarkably uneven;

□ The property tax is easily the most unpopular of the many revenue producers;

□ There is a clear public preference for state sales taxes over property taxes;

□ Despite the fact that it has grown more slowly than the state sales and income taxes, property taxes have grown faster than the value of the property or the average income;

□ There is a widespread feeling that the property tax is detrimental to urban development;

□ The states are beginning to take action to relieve extreme property tax overburdens.

In writing an open space property tax law, the Minnesota State Legislature notes, "the public policy of this state would be best served by equalizing tax burdens upon private outdoor recreational, open space and park land within this state through appropriate taxing measures to encourage private development of these lands which would, otherwise have to be provided by governmental authority."

Under the Minnesota Act, private outdoor recreational land is taxed according to its actual use. In a related case a Minneapolis District Court ruled that golf courses must be taxed as "unique proper-

ties" when a county tax assessor found the fair market value of a club's property to be \$2,589,510 rather than the \$675,000 stipulated by the club.

In ruling against the assessor, the court clearly expressed the concern of many conservationists when it said, "Intelligent community planners concern themselves with long-range programs for insuring that an expanding city provides for adequate parks and other recreational land."

The court also emphasized the recent trend toward the elimination of privately owned golf courses as a result of the acquisition of lands by communities for public purposes and the increase of taxes to the point where clubs are forced to sell their properties and move. The court then states, "In the one case land is taken off the tax rolls; in the second case, while more taxes may be realized by newer and higher uses of the land, open space is forever lost to the community."

In a speech delivered last year before the Cleveland District Golf Assn., Robert W. Miller of Ohio State University dealt with the environmental problem at even greater length.

THE ECOLOGY

He pointed out that even the small-

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er cities in European countries are aware of their need to preserve acreage for producing green, growing plants and that there are many advantages from an ecological viewpoint favoring preserving open spaces and golf courses in and near metropolitan areas. These include:

□ An acre of turf produces about 20,000,000 grams of oxygen a year. The average man consumes about 860 grams of oxygen a day. Therefore, an acre of grass produces enough oxygen to supply the needs of 65 people for one year.

□ Green plants collect large amounts of dust on their pubescent (small hair-like structures) leaves. Dust from leaves is washed to the surface by rain. There is no doubt that growing vegetation can significantly reduce the dust content of the air. Tall vegetation is even more efficient in dust removal than green plants, though all green plants are great dust collectors.

□ Growing vegetation reduces the content of many undesirable gases in the atmosphere. Plants use CO₂ and water in their growth processes and carbon monoxide and other gases are absorbed to a lesser extent.

□ Growing plants are effective in absorbing harmful radiation reaching the earth's surface. Conversely, much harmful radiation is absorbed and transmitted to the ground level of cities by haze and smog.

□ The average annual temperatures in cities is about two degrees F. higher than in rural areas, which means that on hot days, the temperature is several degrees higher in cities. Green, growing vegetation will help keep temperatures down. The temperature of asphalt on a hot summer day will reach 130 degrees F., whereas the temperature of growing grass is 90 degrees F. or less. An acre of turf in a city will produce about the same affect as a 70 ton air conditioner.

□ Rural areas receive considerably more rain than do urban areas. Establishment of greenbelts will not equate the rainfall pattern to surrounding rural areas, but it will help to modify them.

□ Vegetation, especially hedges, trees and other high plants, muffles sound. Plants are a practical way of reducing noise pollution in and

around metropolitan areas.

NEW RESEARCH

Given such clearly expressed and deeply felt concern over the property tax problem, the NCA began a close search of the property tax laws in the 50 states to determine what steps could be taken to preserve the nation's dwindling recreational resources. Legal work was completed under the direction of the association's general counsel Jack P. Janetatos.

Although there is no absolute uniformity among the laws of the various states, there are similarities in some areas. The basis of property valuation is generally established by statutory means, the authority to tax usually comes from the state constitution, and both constitutional and statutory provisions are frequently interpreted by case law.

The individual variations among states are so frequent, however, that separate commentaries are required for the various options open to clubs and recreational landowners in each state.

These problems of lengthy content and the need for individual commentaries, as well as the additional problem of prospective changes by current and future state legislature, presented difficulties in planning the format for the new study. Accordingly, "Country Club Property Taxes" will be released as an 8 1/2 by 11 inch loose-leaf notebook with individual state tabs.

Each state's analysis will include the basis of evaluation, constitutional provisions, statutory provisions, case interpretations, if any, and NCA comments, as well as copies of the individual constitutional and state laws that apply. The loose-leaf format will make it possible to add more material as it becomes available.

The best way to illustrate the extent of the work and its value to clubs and other possible users is to reproduce abstracts from several of the state listings. These follow.

State: Texas

Basis evaluation: "True and Full Value in Money" (statutory).

I. Constitutional provisions: "Taxation shall be equal and uniform . . . All property . . . shall be taxed in proportion to its value. . . ." Art. VII, Sec. 1. Uniformity has been

held satisfied when the value of property of the same class is ascertained by reference to the same standard (case citation). Classification is allowed where reasonable and equal within the class (case citations).

"No property shall be assessed . . . at greater value than its fair cash value." Art VII, Sec. 20.

II. Statutory provisions: Real estate is value at its "true and full value in money" (Art. 7174, R.C.S.). Defined as fair market value in cash at a private sale. Art. 7149 (case citations).

III. Comments: Under the market value standard founded both the statute and case law, current use valuation is not the logical result in developing areas. There is no protective legislation for recreational areas. Although there appears to be no constitutional bar to direct legislation, the provisions for current use valuation for agricultural land, passed in 1965, were made by constitutional amendment. Art. VII, Sec. 1-D. Either the agricultural provisions could be broadened to cover recreational and open space land or direct legislation could be passed.

State: Delaware

Basis evaluation: "True Value in Money" (statutory); "Highest, Best and Most Valuable Use" (case law).

I. Constitutional provisions: Art. 8, Sec. 1—All taxes must be uniform upon the same class. Art. 8, Sec. 7—Assessments must include the value of land, buildings and improvements.

II. Statutory provisions: 9 Del. C. Sec. 8307: All properties subject to assessment shall be assessed at its true value in money" (Sec. 8307 (a)).

Case interpretations: "True Value in Money" has been defined as present actual fair market value, taking into consideration all the usual elements of market value (case citations). Property may be classified for the purpose of taxation, and a valid basis for differentiating may be used and nature of property (case citations).

III. Comments: There is no protective legislation for clubs, as there is for agricultural and forest lands (Sec. 8336), and clubs will be

continued on page 20

TAXES from page 18

caught in rising assessments where valuation can be based on sales of comparable property (a *de facto* highest and best use standard) or on a market value assuming the highest and best use, as sanctioned by case law. Protective legislation is highly desirable, and not foreclosed by the constitutional interpretations.

State: Illinois

Basis evaluation: "Fair Cash Value" (statutory).

I. Constitutional provisions: Art.

IX, Sec. 4: (a) "... taxes upon real property shall be levied uniformly by valuation ascertained ..." as provided by law. (b) "counties with a population of more than 200,000 may classify ... real property for the purpose of taxation. Any such classification shall be reasonable, and assessments shall be uniform within each class ... Real property used in farming in a county shall not be assessed at a higher level of assessment than single family residential real property in that county."

II. Special problems: The constitution of Illinois, 1870, has been replaced by the constitution of 1970, effective July 1, 1971, in which there are substantial changes. The new provisions clearly condone classification for tax purposes, providing the classifications are reasonable and taxes are levied uniformly within each class.

III. Statutory provisions: S.H.A. 120, Sec. 501. Real property is to be taxed as its "fair cash value," estimated at the price it would bring at a fair, voluntary sale (case citation).

IV. Comments: Clubs are not protected from assessment increases resulting from the rise in sale value of adjoining land. There are two ways in which this could be remedied; both require legislation.

State: New York

Basis evaluation: "Full Value" (statutory); "Best available Use" (case law).

I. Constitutional provisions: There is no standard uniformity clause in the New York State Constitution. The only prohibition is against assessment at more than "full value" (Art. XVI, Sec. 2). A uniformity requirement, however, is implied from the general tax policy of the state. The legislature has the exclusive power to tax and classify (case citations).

II. General statutory provisions: "All real property ... shall be assessed at the full value thereof."

III. Special statutory provisions: One special provision may provide relief from the general valuation scheme outlined above. Current use valuation is possible through section 247 of the General Municipal Law, which authorizes municipal acquisition of open space land. This provision has been used to create a scenic easement under a contract to seize physical improvements. In this way, the club retains title and use and gains a current use valuation.

IV. Comments: The problem with this approach is that there is no assurance that a scenic easement may be obtained on satisfactory terms. Also, contracts will differ among municipalities and some clubs will be forced to carry a heavier burden. This is, currently,

continued on page 22

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TAXES from page 20

the only special provision for the current use assessment in the New York statutes available to clubs. A simpler, uniform statute could achieve the same goals and be of much more protection to clubs. However, until more protection is secured, the clubs should try to negotiate for scenic easements rather than face a continually rising valuation.

State: Indiana

Basis evaluation: "True Cash Value" (statutory).

I. Constitutional provisions: Art. X, Sec. 1. The General Assembly shall provide for "uniform and equal rates of assessment and taxation" and "just evaluation." Case interpretation of this provision has held that the uniformity requirement is satisfied where all property is assessed at its true cash value and the same rate is applied to all property. Classification has been allowed as long as the classes are treated uniformly within each class.

II. Statutory provisions: Property Assessment Act of 1961, Chapter 319, Laws 1961, Sec. 109—

Property is assessed at 33.3 per cent of its "true cash value." Sec. 1403—Land is to be classified on the basis of many factors, including size, location, use, productivity, or earning capacity, accessibility, the usual factors taken into consideration in determining "true cash value."

III. Comments: Under the general statutory scheme of Indiana law, classification is constitutionally permissible. For full protection, special legislation is needed. One method would be the use of special provisions similar to those now used for forest lands. Perhaps the most feasible solution is legislation simply limiting the valuation to present use with the usual safeguard provisions of continuity and default.

CONCLUSION

It would seem evident from all of the above that the best approach to special greenbelt legislation would be to seek approval for a separate classification of recreational land for one or more of the following reasons.

1. The maintenance and enhancement of the conservation of natural or scenic resources.
2. To promote conservation of soils, wet lands, beaches or tidal marshes.
3. Protection of natural streams and water supply.
4. Enhancement of abutting or neighboring parks, forests, wildlife reserves, nature reservations or sanctuaries and other open spaces.
5. Enhancement of recreational opportunities.
6. Preservation of historic sites.
7. Promotion of orderly urban or suburban development.
8. Preservation of the environmental qualities of the land.

In order to determine the best approach for your own state, a careful inspection of your state constitution, pertinent state laws, case histories and local ordinances will be necessary. Given the proper preliminary research, effective legislation can and should be introduced.

Now is not too early to seek the preservation of a dwindling national resource. □

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