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Accent on management

by Ken Emerson

Revenue Ruling 69-232: How it affects clubs

The Internal Revenue Service has issued in recent months a series of revenue rulings designed to clarify its position on various types of income which, it feels, are not appropriate to private golf clubs. The latest of these is Rev. Rul. 69-232, which is concerned with the manner in which a country club disposes of real estate.

While the Income Tax Regulations provide that a club which engages in business, such as selling real estate, is not organized and operated exclusively for non-profitable purposes, there are certain exceptions, acknowledges IRS. Even though a profit is realized, the sale of property will not cause a golf club to lose its exemption, provided the sale is incidental and meets certain tests.

The service will consider all the facts and circumstances of a sale before deciding whether or not it may be cause for loss of exemption. Included in these considerations are: 1) The purpose of the club in purchasing the property; 2) The use the club makes of the property; 3) The reasons for the sale, and 4) The method used in making the sale.

Rev. Rul. 69-232 then cites the following three examples.

A club purchased the building and land that it had occupied under a lease for several years and continued to use the property for club purposes. Within a short

time the members realized that ownership of the property was impractical because the club's income was insufficient to support its activities and the carrying charges on the property. For this reason the property was sold as a single unit. The club realized a profit from the sale. After the sale the club leased other facilities for its purposes. The proceeds from the sale were used to furnish its new club facilities.

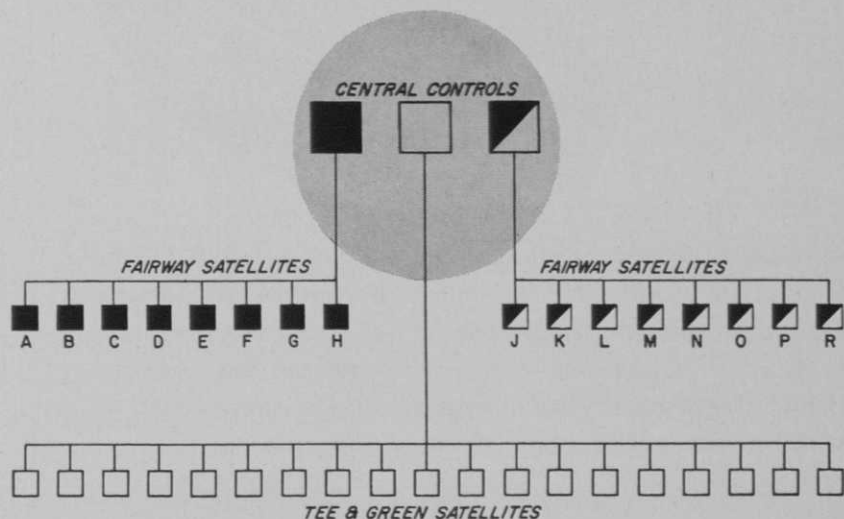
It is held that the sale of the property under the circumstances described was incidental within the meaning of the regulations. The club originally purchased the property for social purposes. It could not have continued to operate for these purposes unless it sold the property. The facts indicate that the club sold the property primarily to eliminate the financial burden imposed by ownership, not to derive a profit. Therefore, the sale did not jeopardize its the exempt status.

A club needed a site for a golf course, clubhouse and other club facilities. In order to obtain the best site for the golf course, the club had to purchase a larger tract of land than it needed because the landowner refused to sell less than the entire property. After the golf course, the clubhouse and other facilities were built, excess land remained. The

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Emerson

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club could have sold the property in a single unit. However, it decided to subdivide the land into building lots, make improvements on the lots and offer them for sale. Sales of the lots brought in substantial profits.

The club was not compelled to dispose of the excess land in the manner described. Its only purpose in electing to do so was to increase the profit to be derived from the sale of such land. Under these circumstances, the purpose of the club in subdividing and improving the land was to produce a profit. Therefore, it is held that the disposition of the land was not an incidental sale of property within the meaning of the regulations. Accordingly, the club is not entitled to retain its exemption.

A golf club owned and occupied land in the suburbs of a large city. As the city expanded, the value of city property greatly increased. But taxes and maintenance costs also increased. Many of the club facilities had become antiquated and needed replacement. Most of the members had moved farther out in the suburbs so that the close-in location was no longer important. Consequently, the club sold the property to land developers at a profit. The club then used the proceeds to purchase land and build a more modern clubhouse and golf course farther out in the country.

It is held that this sale was incidental within the meaning of the regulations. The primary purpose of the sale was not to make a profit, but to lower the club's overhead and improve its facilities by moving to a more suitable location. There is no requirement in the law that a club must continue to occupy uneconomical and outdated premises in order to continue its exemption. Therefore, the sale did not adversely affect the exempt status of the club. □

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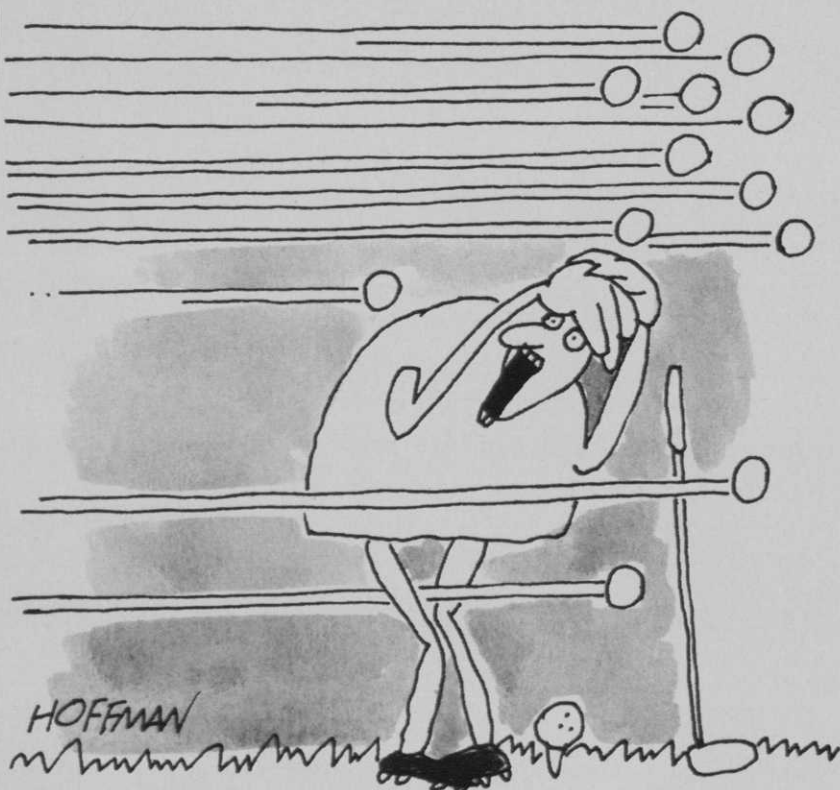
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For more information circle number 206 on card

Backfire from the golf boom — Lawsuits

While pondering the profits to be made from the continuing increase in the number of golfers, also consider the probable effect these inexperienced players will have on your club's accident rate



Although golf is not a body-contact sport, the number of accidents occurring related to the game is relatively high.

Ten years ago, there were less than 6,000 golf courses in this country and approximately four million golfers who played about 81 million rounds of golf annually. At that time, The Institute for Safer Living, Wakefield, Mass., estimated that 14,000 persons were seriously injured on golf courses; about 10,000 of these were injured as the result of being struck by golf balls, which can reach velocities around 150 miles an hour. About 52 per cent of the victims were players. Nearly 4,000 were young bag carriers, and more than 3,000 were course workers.

Approximately 10 per cent of the injuries were attributed to being struck by clubs. A high proportion of these accidents resulted from careless practice swings near the first tee.

A decade ago, there was national resistance to the use of golf cars on the course. At most clubs,

only the aged or those with medical certificates were permitted to operate them. Actually, there were less than 1,200 cars in operation on America's golf courses. Only 7 per cent of the golfing accidents were attributed to golf car mishaps.

By 1970, the American Golf Car Manufacturers' Assn. estimates that there will be 200,000 vehicles roaming the national fairways. Obviously, with that many more golf cars in operation, and because the National Golf Foundation predicts by next year there will be more than 10 million regular golfers playing 250 million rounds annually over more than 10,000 different layouts, the golf car accident rate will increase considerably.

This prediction brings many new, inexperienced players into the game—golfers unfamiliar with the dangers of the game and with the operation of golf cars. Consequently, the clubs may be drawn into more lawsuits as a result of their activities.

Rarely is a new player asked if

By JOHN F. GLEASON Jr.

he knows how to drive a golf car or where he is to operate it on the course. Frequently, golf car accidents result from lack of knowledge of the operation of these 1,000 to 1,300-pound vehicles. Many accidents are due to mechanical failure, even when the golf cars are operated by players who know the dangers connected with them.

The golf car boom may tend to check the percentage of caddies who are injured because cars appear to be crowding the bag-toters out of business. In 1966, the Institute recorded that 6,500 caddies were injured—one third of them seriously. Most of the boys were struck by flying golf balls. A number were killed while carrying steel clubs during lightning storms. Many of the caddie tragedies could have been avoided if players had taken greater care in checking their location before swinging.

By way of conservative projection it is not inconceivable to predict that with increased golf course construction, slow play and conjunction, plus the influx of inexperienced players, more than 60,000 persons will be disabled on American golf courses this year by flying golf shots, careless backswings and other unknown causes.

Moreover, moving golf cars will boost injury statistics greatly.

What is more sobering are the amounts at which these lawsuits are now being settled. Not only is there an increased frequency in severe golf car injuries, but the courts are awarding settlements in amounts which far outpace the amount of money which modern golf tournaments are giving in prizes. Unfortunately, safety information on play, car operation, caddie procedures and the dangers of lightning, while available to clubs, does not seem to get into the hands of those golfers who need guidance the most.

Only within the last two or three years have the leading, fi-

nancially-sound country clubs taken a serious look at the structural conditions of their golf course walking bridges, also frequently used for golf cars.

Today, only a small percentage of the country clubs have carefully engineered and instituted paved roadways on the course to decrease golf car mishaps. One large, well-endowed midwestern country club still permits golf cars to be driven down a 250-foot hill, despite the frequent spilling of vehicles on this slope. Many members and guests have been seriously disabled and lawsuits have ensued, placing insurance policies in jeopardy of cancellation.

Recently, a lady on the West Coast, whose fall from a defective golf car resulted in brain injuries, sued the country club where she was a member for \$750,000.

Her case was settled for \$200,000.

This settlement was followed by the headline story of an Albany, N.Y., surgeon who was awarded a \$453,000 judgment by the state Supreme Court. The court released his playing companion, also a physician, from responsibility for brake failure when the 1,000-pound golf car slammed into the surgeon's right leg. A blood clot formed which made its way through the bloodstream into one of the victim's lungs.

An operation was required to remove the clot, brain damage followed, and he lost the use of his hands.

In this unfortunate case, the driver had had experience operating these vehicles. The court held the firm from which the country club leased golf cars large-

continued



ILLUSTRATED BY SANDY HOFFMAN

LAWSUITS

continued

ly responsible for its failure to maintain safety checks of the brakes during its regular weekly service inspections. However, had the club been the outright owner of the faulty golf cars, it may have been held liable.

Injuries resulting from faulty car maintenance appear to be as frequent as those resulting from careless operation.

However, people involved in golf car accidents are not the only ones whose suits are recorded on the court dockets. Injuries resulting from wild tee shots appear with regular and understandable repetition. The courts moreover tend to impute golfing defendants for their actions, regardless of experience or ability.

Even an 11-year-old boy—termed an “infant” defendant—was held accountable recently for injuries to another player when his iron shot off a par-three hole and struck another player in the knee.

The New York court hearing the case concluded that a golfer is obliged to use reasonable care to avoid injuring other players. Furthermore, the court observed, a golf ball is a dangerous missile which can cause serious injury if it hits someone in flight.

In some ways, the court noted, hitting a golf ball can be more dangerous than firing a gun or throwing a stone, since one is likely to have more control over the direction of a gunshot or a thrown stone than over the flight of a golf ball.

The court agreed with the youth that all golfers assume ordinary risks when they venture onto the course, but it concluded that all players have the right to rely on other players' adherence to standards of care and the avoidance of reasonable, foreseeable risks.

Finally, it concluded, even an

11-year-old golfer should be held to the normal standards of care, as adults are, when permitted on the links. Moreover, it is conceivable that a club could find itself a co-defendant in such a liability action for exercising poor judgment in allowing youngsters to play golf without proper supervision.

Ordinary care, however, is not construed to players alone in many golf course injuries. Four years ago, a Kentucky Appellate Court heard the case of a woman who had lost an eye after being struck by a golf ball while riding in an automobile along the club's private driveway. She held the club negligent because the position of the driveway to the fairway was a built-in hazard. The lady was awarded a \$25,000 judgment.

An unusual case was reviewed by the courts in New Mexico. In order to speed up the melting and clearing of a heavy snow drift, water was poured on the snow. A layer of ice formed on the grassy incline approach to one of the greens. A player slipped on the ice, sustaining serious injuries. The court ruled that the same duty of care is required by a golf course to its players as a merchant owes to his customers.

At a country club in Canada, one golfer was killed and two others seriously crippled when the elevator carrying them uphill to the next tee fell. Failure to maintain safety checks on the lift might clearly substantiate negligence on the part of the golf club in this tragedy. Big golf tournaments which attract large galleries frequently create serious hazards for those who pay to see others play.

At a Ladies' Professional Golf Assn. tournament held in Michigan a few years ago, a 140-foot suspension bridge collapsed under the weight of 50 spectators, sending 15 of the patrons to the hospital.

Injuries to spectators at big golf tournaments, of course, are

not infrequent. In the 1965 National Open play-off in St. Louis, two women were injured by erring shots struck by one of the contestants on the same hole.

Frequently, when these accidents occur, everyone is sued. At another large tournament in Ohio, a lady was seriously injured. She sued the player and the tournament sponsor, the country club where the event was held.

Players who have been injured have also taken recourse against the golf course which held the championship. A well-known LPGA touring professional won a judgment against an Iowa country club recently. She suffered neck and back injuries when she hit an iron pipe buried beneath a sand-trap as she blasted out.

An assistant professional at a Pennsylvania country club was awarded a large settlement from the country club where he was employed. While giving a lesson, he was struck in the head by a ball driven from the first tee. In his petition, he contended that the practice tee was in a dangerous location in relation to the first tee. The courts agreed.

Frequently, country clubs find themselves defendants in cases where members and guests are injured inside the clubhouse, largely due to falls. Clubhouse employees are also injured on the job, but usually the compensation for their injuries and lost wages are covered by state Workmen's Compensation benefits.

The same relationship exists with golf course workers who are injured while cutting greens, fairways or performing other outside duties about the golf course. One superintendent recently stated that perhaps the most dangerous piece of equipment used at his course is the rotary mower. He takes particular care in instructing his men in the use and hazards of this implement.

Despite all the warnings about playing golf during lightning storms, hundreds of heedless play-

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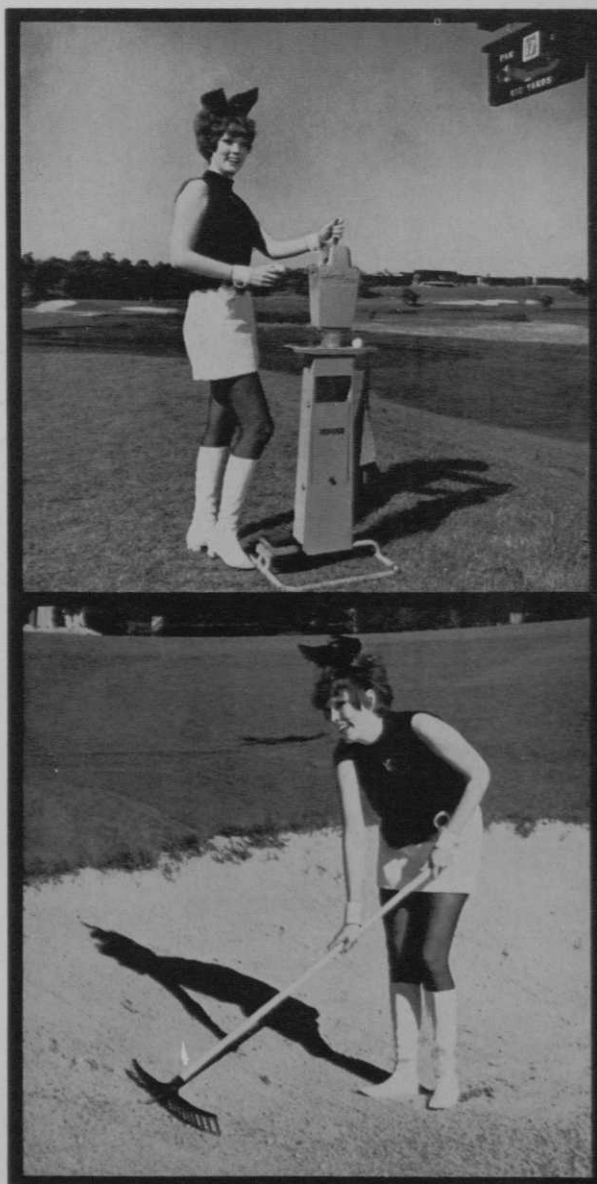
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LAWSUITS

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ers are killed each year on this country's fairways. Carrying golf clubs during an electrical storm—or permitting youthful caddies to tote one's golf clubs—is perhaps golfdom's most inexcusable tragedy. In many instances, a country club might be held accountable for permitting a caddie

to venture onto the course when lightning appeared eminent.

In recent years, many country clubs have taken steps to properly ground the storm shelters and certain key trees under which players seek protection in an electrical storm.

Some clubs have gone a step further by posting signs, warning golfers to avoid bringing steel golf clubs into the shelters with them.

Lightning has also taken its toll of golf course workers. Every year the newspapers carry stories about young boys who are struck and killed by lightning while cutting greens.

Until the golf industry and golf course management join forces in an all-out effort to make all golfers fully cognizant of the dangers connected with the actual playing of this game, the recount of the injuries related in this article will continue.

Much praise is due to various parts of this vast industry for their efforts to make everyone safety-minded. But unfortunately, the efforts have not kept pace with the game. □

Mr. Gleason is an insurance consultant to country clubs. He does not sell insurance, but reviews and advises on the protection afforded by their insurance policies.

Next month, Mr. Gleason will discuss the various forms of insurance which protect the club against public liability lawsuits and employee injuries.

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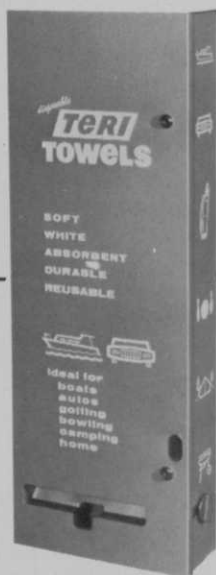
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