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TAXATION - EXCISE TAXES - MEANING OF DUES OR MEMBERSHIP FEES UNDER THE FERERAL REVENUE ACTS

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TAXATION — EXCISE TAXES — MEANING OF DUES OR MEMBERSHIP FEES UNDER THE FERERAL REVENUE ACTS — The Winchester Country Club's by-laws provided for "annual dues" of fifty dollars which entitled the member to all the privileges of the club except golf. By paying fifty dollars more for "full privileges," members obtained the privilege of playing golf for a year. The club's practice was to bill members annually in advance, measured by the privileges previously held. If after such billing a member indicated that he did not want the golf privilege, no attempt was made to collect the charge. The federal government collected taxes on payments to the club for golf privileges on the ground that the payments were "dues or membership fees." After a claim for refund had been rejected, the club sued as agent for its members to recover the taxes paid. *Held*, the charges for golf privileges were taxable as club "dues or membership fees" within the meaning of the Revenue Act.[1] *White v. Winchester Country Club*, (U. S. 1942) 62 S. Ct. 425.[2]

The Treasury Regulations[3] issued under the Revenue Acts of 1921 and 1924 provided that extra charges imposed upon members for the privilege of using certain additional facilities of a club for a period of time were taxable as "dues or membership fees." However, in *Weld v. Nichols*[4] a district court held that semi-annual golf fees were not taxable on the ground that the words "dues or membership fees" covered only "fixed and definite charges applicable to all members of each particular class of membership." Subsequent decisions attempted to determine the meaning of a "particular class of membership" as used in that case.[5] In one case[6] in which a member elected to avail himself of golf privileges

[1] "There shall be levied, assessed, collected, and paid a tax equivalent to 10 per centum of any amount paid as dues or membership fees to any social, athletic, or sporting club or organization. . . ." 45 Stat. L. 864 (1928), now 26 U. S. C. (1940), § 1710(a).

[2] The district court had held that the golf privilege was not taxable. Winchester Country Club v. White, (D. C. N. Y. 1939) 30 F. Supp. 142, affd. (C. C. A. 1st, 1941) 117 F. (2d) 146.

[3] TREAS. REG. 43 (1922 ed.) (Part 2), art. 9; id. (1924 ed.) (Part 2), art. 9.

[4] (D. C. Mass. 1925) 9 F. (2d) 977.

[5] The subsequent Treasury Regulations were changed to conform to the Weld case. TREAS. REG. 43 (1926 ed.) (Part 2), art. 9; id. (1928 ed.), art. 40; id. (1940 ed.), § 101.41.

[6] Hardt v. McLaughlin, (D. C. Pa. 1936) 25 F. Supp. 684.

for a year, the golf fee was held taxable because by the club rules the privilege was automatically renewed until the member gave notice that he no longer desired the privilege. The court said that the member had become one of a "particular class of membership," since the obligation to pay was recurring unless notice to the contrary was given.[7] On the other hand, if the club waited for the member to exercise his option for each period before charging his account with the golf fee, then the fee was not taxable.[8] Thus the taxability of optional privileges under the doctrine of the *Weld* case depended upon whether there was a recurring obligation to pay for the privilege until notice was given that the member no longer desired it.[9] The Supreme Court in the principal case rejected the doctrine of the *Weld* case and held that payment for the right to make use of a club facility for an appreciable period of time constituted a "due or membership fee." This return to the test of the old Treasury Regulations[10] seems to be a more feasible test,[11] since taxability should not depend merely upon the mechanics of a particular club's finances.[12]

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[7] The same result was reached in a case involving monthly green fees. Foran v. McLaughlin, (C. C. A. 9th, 1932) 59 F. (2d) 158, cert. denied, 287 U. S. 637, 53 S. Ct. 87 (1932).

[8] Baltimore Country Club v. United States, (D. C. Md. 1934) 7 F. Supp. 607 (annual green fees); Williamson v. United States, (D. C. N. C. 1934) 12 F. Supp. 26 (semi-annual green fees); Philadelphia Cricket Club v. United States, (D. C. Pa. 1939) 30 F. Supp. 141 (annual green fees).

[9] The lower courts in applying the test of the Weld case to the principal case held that the golf fee was not taxable because the privilege was not a recurring obligation binding upon the member if he failed to give notice that he no longer wanted the privilege. Winchester Country Club v. White, (D. C. Mass. 1939) 30 F. Supp. 142, affd. (C. C. A. 1st, 1941) 117 F. (2d) 146.

[10] See Treasury Regulations cited in note 3, supra. The Court in the principal case said that even if it were assumed that the Treasury made a voluntary change in the Regulations before the 1928 act embodying the new doctrine of the Weld case so as to come within the scope of the cases applying the "re-enactment rule," the petitioner would not be aided because its claim covered a period after the 1930 decision of the General Counsel of the Bureau of Internal Revenue favoring the imposition of the tax. G. C. M. 7505, 9-2 CUM. BULL. 414 (1930). The Treasury Department had the power to make such a change for the period in question. Morrisey v. Commissioner of Internal Revenue, 296 U. S. 344, 56 S. Ct. 289 (1935); Helvering v. Reynolds, 313 U. S. 428, 61 S. Ct. 971 (1941).

[11] Congress was evidently dissatisfied with the doctrine of the Weld case because in § 543 of the Revenue Act of 1941 it is provided: "The term 'dues' includes . . . any charges for social privileges or facilities, or for golf . . . or other athletic or sporting privileges or facilities, for any period of more than six days. . . ." Revenue Act of 1941, § 543, Pub. 250, 77th Cong., 1st sess.

[12] See also Merion Cricket Club v. United States, (U. S. 1942), 62 S. Ct. 430, decided the same day as the principal case.