RIGDON, INC. Trussville Country Club 7905 Roper Road Trussville, AL 35173-3105, Taxpayer, v. STATE OF ALABAMA DEPARTMENT OF REVENUE.	'	STATE OF ALABAMA DEPARTMENT OF REVENUE ADMINISTRATIVE LAW DIVISION DOCKET NO. S. 02-337

FINAL ORDER

The Revenue Department assessed Rigdon, Inc. (ATaxpayer@), d/b/a Trussville Country Club, for State and City of Trussville sales tax for July 1998 through June 2001. The Taxpayer appealed to the Administrative Law Division pursuant to Code of Ala. 1975, '40-2A-7(b)(5)a. A hearing was conducted on August 13, 2002. Robert Walthall represented the Taxpayer. Assistant Counsel Wade Hope represented the Department.

ISSUE

The Taxpayer operates the golf course at Trussville Country Club in Trussville, Alabama. The issue in this case is whether the Trussville Country Club golf course is a public golf course. If so, the Taxpayer is subject to the gross receipts tax levied on places of amusement at Code of Ala. 1975, '40-23-2(2), and thus liable for the tax in issue.

FACTS

Cahaba Valley Country Club (now Trussville Country Club) opened as a public golf course in the 1960's. It remained a public course through the 1980's.

In 1990, Chris Rigdon (ARigdon@) and his brother formed Rigdon, Inc. for the purpose of making the Club a private country club. Rigdon, Inc. has managed the Club=s golf course since that time pursuant to a management contract with the Club.

The Cahaba Valley Country Club, Inc. incorporated as a private country club in 1991. The Club=s constitution and bylaws adopted at that time provide in part as follows:

(1) The Club is organized as a non-profit corporation for the purpose of promoting social activities, games, and physical exercise among its members;

(2) The Club is governed by a Board of Governors that meets monthly;

(3) The Club shall have officers consisting of a president, vice president, secretary, and treasurer;

(4) Membership shall consist of resident members, nonresident members, junior members, company members, and widows;

(5) The Club shall charge an initiation fee and monthly dues as set by the Board. The current resident member initiation fee is $350. Monthly dues are $125;

(6) Prospective members must apply for membership to the Board. An application will be rejected if two Board members vote no;

(7) Members may be suspended or removed from membership for failing to pay dues, fines, and/or assessments;

(8) Guests of members are allowed to use the golf course and facilities; and

(9) Members of other private country clubs may play the golf course by paying a green fee and other applicable charges.

Cahaba Valley Country Club subsequently changed its name to Trussville Country Club. The Club also joined the Birmingham Golf Association (ABGA@) in the early 1990's. The BGA is a 501(c)(3) organization comprised solely of private golf clubs in the Birmingham area.

Before 1990, when the course was public, the prior operators regularly obtained the annual business license needed for a public golf course. When the Taxpayer began managing the Club in 1991, it renewed the same license annually through the years in issue.

The Taxpayer applied to the Department for refunds of State and City of Trussville sales tax for August 1991 through August 1994. The Taxpayer claimed that as a private club, it was not subject to the gross receipts tax levied at '40-23-2(2). The Department reviewed the Taxpayer=s records and granted refunds of the sales tax the Taxpayer had paid on initiation fees, monthly dues, and golf cart rentals. The Taxpayer claims it also received a refund from Jefferson County.

The Department subsequently determined that the Taxpayer was operating a public golf course during the subject period, and thus was subject to the '40-23-2(2) tax. It consequently assessed the Taxpayer on its cart rental fees, practice ball fees, green fees, and tournament fees. The Department contends that the Taxpayer is operating a public golf course because:

(1) The Department examiner was told during the audit that anyone could play the golf course;

(2) The Taxpayer was listed in the Bell South Yellow Pages for one or more years as a public or semi-private course;

(3) The Taxpayer obtained the business license needed to operate a public course during the subject years;

(4) The Club participated in a Hewitt Trussville High School fund raiser for the Alabama Lung Association by allowing nonmembers to play the golf course at a reduced rate; and,

(5) Other public golf courses have memberships and fixed dues.

Concerning the Department=s claim that anyone can play the golf course, Rigdon testified that only members and their guests can play. Prospective members not invited by a member can also play, but not more than twice, and only if they are interested in joining. In that case, a member is assigned as the prospective member=s host. Rigdon testified that some individuals wanting to play have been turned away, and that some applicants have been denied membership in the Club.

Rigdon claims that the Yellow Pages made a mistake in listing the Club as a public or semi-private course, and has agreed to correct the mistake in the future. That claim is supported by a letter from a Yellow Pages representative. Rigdon has

not paid the Yellow Pages because of the mistakes.

Rigdon explained that he was unaware when he renewed the Taxpayer=s annual business license that the license was for a public golf course. He simply continued to renew the license that the prior operators had obtained.

Rigdon agreed to participate in the American Lung Association fund raiser only to help the charity and Hewitt Trussville High School. Any person using the privilege card was required to play with or be sponsored by a Club member, and the number of rounds that could be played was limited.

Finally, concerning the fact that some public courses have membership lists and may charge a monthly fee, the Taxpayer contends that Ait is unreasonable to compare any public club membership format with the membership format of the Club and other private clubs.@ Taxpayer=s Brief at 4.

ANALYSIS

Golf courses open to the public are subject to the gross receipts tax levied at '40-23-2(2). *State, Dept. of Revenue* v. *Teague*, 441 So.2d 914 (Ala.Civ.App. 1983). This case involves the question of what constitutes a public golf course.

While the *Teague* case involved the same general issue, it does not provide guidelines for distinguishing between a taxable public course and a nontaxable private course. Dept. Reg. 810-6-1-.125.01 defines the phrase Agolf course open to the public@ to include Aany golf course . . ., which allows the public to use one or

more of its facilities for a fee.@ That general statement is not very helpful. The regulation also specifies certain activities that will not cause an otherwise private golf course to be public. Those activities include (1) allowing reciprocal play by members of other private clubs; (2) allowing guests to play either with or without being accompanied by a member; and, (3) holding invitational or charity tournaments.

The Trussville Country Club has all the trappings of a private club. It has officers and an elected Board of Governors. Individuals must apply for membership and be accepted by the Board. The Club is a member of the BGA, which is comprised solely of private clubs. Members must pay an initiation fee and monthly dues, etc. But despite the above, the Club would still be operating a public golf course within the scope of '40-23-2(2) if nonmembers are allowed to play an unlimited number of times without restriction. Like most private clubs, Trussville County Club allows guests of members to play its golf course. The Department recognizes in Reg. 810-6-1-.125.01 that allowing guests to play either with or without a member will not cause an otherwise private club to be public.

Trussville Country Club also allows prospective members that are not invited guests to play, but no more than twice, and only if they are interested in joining the Club. I question the Club=s practice of randomly assigning a member as the sponsor of a prospective new member wishing to play the course.[1] If the golf

[1]Rigdon testified that a member was assigned as the host of a prospective

professional at the Club routinely assigns a member sponsor to every person that wants to play the course, without limit, then in substance the golf course is open to the public. However, if the Club follows its stated policy and allows only (1) true invited guests of members to play (presumably an unlimited number of times), and (2) prospective members to play no more than twice (over a reasonable period), then the Club is not operating a public course.

The Department=s case is based substantially on the fact that the Department examiner was told that anyone could play the course. The Department examiner noted in his audit report that in reviewing the Club=s guest register, he discovered that on some days, many more guests than members played the course. But that fact is not conclusive because one member can sponsor several guests on a given day. The Department=s claim that anyone could play was also rebutted by Rigdon, who testified that some individuals wanting to

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member because someone had to be responsible for the prospective member=s actions. I doubt, however, that an assigned host that may have never before met the prospective member would willingly pay for any damages caused by his or her Aguest.@ Nor do I believe the Club would attempt to hold the member responsible.

play have been turned away.

While the other facts relied on by the Department may suggest that the course is public, they were for the most part satisfactorily explained by Rigdon. He testified that the Yellow Pages ads were incorrect. That claim is supported by a letter from a Yellow Pages representative. The Taxpayer continued to renew its business license as a public course only because Rigdon was unaware that it was a public course license. Although not a charity tournament, the American Lung Association privilege card benefitted a charity, and thus does not disqualify the Club as a private course, see Reg. 810-6-1-.125.01(1)(d).

Finally, the fact that some public courses have Amembers@ that pay monthly fees has no bearing on whether the Club=s course is private or public. Some public courses may allow individuals to pay a lump-sum monthly or annual amount for the privilege of playing the course. That amount, whether deemed a membership fee or not, is solely for the right to play the course. It does not make the person paying the amount a member of a private club. The distinction between a lump-sum amount paid for the privilege of playing a public course and private club dues was explained in *State of Alabama v. Craft Development Corp., d/b/a Cotton Creek Club*, S. 91-142 (Admin. Law Div. Order on Rehearing 11/22/91), as follows:

> Finally, a lump-sum annual green fee is not the same as private club dues. Green fees paid to play on a public course, whether on a per play basis or on an annual lump-sum basis, are derived from the operation of the public golf course and are taxable. Private club membership dues are derived from membership in the private club, not for use of the golf course, and are not taxable even though one of the benefits of membership is open access

to a (golf) course.

If the Department had presented evidence that nonmembers other than true guests or prospective members were allowed to play the course without restriction, the Club would be operating a public course. The Department could have perhaps obtained such evidence by interviewing and/or subpoenaing various of the nonmembers listed in the Club=s guest register. If various nonmembers confirmed that they regularly played the course at will, without being invited by a member, then the course would be public. No such evidence was offered.

Based on the evidence submitted at the August 13 hearing, I find that the Club operated a private golf course during the subject period. Consequently, the receipts of the Club were not subject to the '40-23-2(2) tax.[2] The final assessments in issue are

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[2]Arguably, '40-23-2(2) is sufficiently broad to include all places of amusement or entertainment, not just public places of amusement. The levy is on Aevery person . . . in the business of conducting or operating places of amusement or entertainment, ...@ The statute then lists a number of specific activities subject to the tax, including Agolf courses.@ Not until the thirteenth line of the statute is the word Apublic@ used in the following phrase A. . . *or* any other place at which . . . entertainment is offered to the public *or* place or places where an admission fee is charged, . . .@ (emphasis added). Use of the conjunction Aor@ indicates that the levy applies to more than just a Aplace at which . . . entertainment is offered to the public. . . .@

A green fee paid by a nonmember at a private golf course is an admission fee to play the course. I see no rational distinction for purposes of the statute between a green fee paid by a nonmember at a private club course and a green fee paid by the same individual at a public course. In either case, the course is a Aplace . . . where an admission fee is charged@ for entertainment, or at least amusement, depending on the skill of the golfer. Consequently, a reasonable interpretation of the statute would require that green fees paid to play any golf course in Alabama are taxable. Initiation fees and monthly dues paid by private club members would still not be subject to the tax, see *Craft Development*, *infra*,

dismissed.

This Final Order may be appealed to circuit court within 30 days pursuant to Code of Ala. 1975, '40-2A-9(g).

Entered October 30, 2002.

BILL THOMPSON
Chief Administrative Law Judge

bt:dr
cc: J. Wade Hope, Esq.
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James Browder

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and, of course, private club members do not pay green fees to play their home course. The above interpretation follows the language of the statute, would fairly tax all green fees alike, and would eliminate the problem of having to determine if a golf course is Aopen to the public.@

Having stated the above, I must add that the Department=s long-standing interpretation is that if a club is private, then green fees paid by guests at the club are not subject to the tax. Further, although the statement was perhaps gratuitous because the issue was not in dispute, the Court in *Teague*, 441 So.2d at 915, stated that Aprivate golf courses such as those maintained by private membership country clubs are not subject to the gross receipts tax on green fees.@ Finally, '40-23-2(2) is a tax levy, and must be narrowly construed against the Department. ***State v. Calumet and Hecla, Inc.***, 206 So.2d 354 (Ala. 1968). Consequently, unless and until the Legislature amends the statute, green fees paid by nonmembers at private clubs cannot be taxed.