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# IRS Tees Off on Golf Courses' Green Tax Claims

Clubs' use of environmental tax breaks is full of holes, government says

THE WALL STREET JOURNAL By Richard Rubin  
 14 hours ago



The golf courses at St. James Plantation, photographed during Curtis Richar...

Curtis Richardson doesn't play much golf these days. But there he was, tramping through the rough and scrutinizing each hole at courses along the North Carolina coast.

The director of the Duke University Wetland Center was collecting soil and water samples for a client he never expected: The Internal Revenue Service.

The IRS has been battling wealthy landowners, including golf

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James Plantation courses to score nearly \$8 million in conservation-related tax breaks.

“They were claiming every inch: the greens, the fairways, the tees, the boxes, the trails, even if they were paved,” said Mr. Richardson. “This just flies in the face of what a conservation area is.”

The IRS won vindication last month when the U.S. Tax Court ruled it was unimpressed by the courses’ natural splendor. In short, there were too many sand traps and not enough Venus flytraps.

“Patches of native vegetation and wildlife” don’t justify seven-figure tax breaks, wrote Judge Thomas Wells, putting a hole in the clubs’ tax strategy.

The ruling marked a green-jacket moment for the IRS in an odd corner of the tax code that pairs legal arcana with nitpicking inquiries into carnivorous plants and American alligators.

Politicians and taxpayers may bash the burdensome tax code, but its complexity isn’t just about brackets and rates. It also has to do with incentives like this, which despite wide bipartisan support, induce scientific squabbles over fairways and bird flyways.

Known as the conservation-easement tax break, the rule lets people claim a charitable deduction for giving away the right to develop land they still own and can use. The measure has encouraged protection of millions of acres of pristine land. It has also spawned litigation requiring judges to wade into dueling testimony from ecologists and appraisers.

Judges have, among other things, lowered the value of preserving the historic terra cotta facade of the Ritz-Carlton in New Orleans and told a Virginia landowner that building 30 houses instead of 62 didn’t count as open-space preservation. One case, though, did permit a Michigan couple to claim tax breaks for protecting a famous bald eagle roosting spot.

The cases involve few people and plenty of money. In 2012, the most recent year for which data are available, 1,114 taxpayers took an average deduction of \$872,250 based on the rule, according to the IRS, for a total of slightly less than \$1 billion. Numbers like that can pique an auditor’s interest.

Golf courses account for some of the more peculiar and contentious cases. Backers argue that the links protect land permanently and that environmentally friendly courses can save open space and preserve critical habitats. But the idea that 18 carefully manicured holes can lead to an environmental tax break has long bothered some government lawyers. They haven’t always been successful in pushing back.

The IRS’s first major attempt to challenge a golf course break—a \$30.6 million Alabama deduction—ended in an embarrassing bogey in tax court. The IRS had to concede that the course qualified for the break. That left the land’s value as a developable



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site as the only question, and the judge shaved nearly \$2 million from the deduction.

After that 2009 loss, the Obama administration tried another approach—getting Congress to ban golf course easements altogether. The golf industry helped beat back that idea, and the most recent tax law preserves an expanded version of the break that had lapsed at the end of 2014.

For now, the courts are the IRS's best hope for restricting golf-course easements.

The North Carolina ruling was a big win for the IRS and stands to affect future cases, said Nancy McLaughlin, a University of Utah professor who blogs about conservation-easement tax law.

Among others, the National Golf Club of Kansas City is waiting for a ruling from the tax court. The club's environmental expert cited the importance of fishless ponds for amphibian reproduction and noted the presence of marsh milkweed and red-eared sliders.

The Champions Retreat golf club in Evans, Georgia, meanwhile, is headed for trial against the government this year over a \$10.4 million deduction.

The North Carolina dispute dates to easements from 2003 and 2005 that the Members Club and Reserve Club at St. James Plantation donated to the North American Land Trust. The clubs and landowners claimed deductions and the IRS challenged them. Representatives for the land trust and the IRS declined to comment.

In 2011, Mr. Richardson, the Duke ecologist, got an ominous-seeming phone call from Atlanta. "I thought, 'Good Lord, why is the IRS chief attorney calling me at my house?'" he recalled.

The call had nothing to do with Mr. Richardson's tax returns and everything to do with his expertise on wetland restorations, including in the Florida Everglades and marshes of Iraq.

When he finally made a two-day visit two years later, Mr. Richardson was amazed at what he saw: high-end houses, a golf course near an estuary and land "pounded with fertilizers and herbicides." As he gathered soil and water and took photographs, he absorbed "really strange" glances from golfers—and saw some Duke retirees he knew.

Judge Wells agreed with Mr. Richardson's assessment, ruling the courses weren't the "significant relatively natural habitat" required by the IRS in such cases.

David Wooldridge, the lawyer for the Alabama and the North Carolina courses, thought he had compelling evidence to support the St. James Plantation deductions: Venus flytraps, pitcher plants—even his own expert on Carolina bays. None of that, though, was sufficient to persuade the judge, and that means a more difficult path for future taxpayers.

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"Now, the landowner's got to really sweat whether he's got enough," Mr. Wooldridge said.

That 10-foot putt for a tax break, in other words, doesn't look so easy anymore.

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