

STATUS OF CADDIES VARIES AMONG STATES

by

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THE place of the caddie in the game of golf has been the stimulus for a great deal of thought and constructive action by golfers in recent years. The innumerable instances when individual golfers have sought to befriend and aid a caddie are part of the grand legend of the game. Group assistance, such as the highly successful caddie scholarship program, has also been effectively used by golfers to aid the caddie.

As golfers, aware of the caddies role in golf, we generally realize his importance to the regular golfer, particularly in tournament play, and to the occasional or week-end golfer. This relationship is important, vital, and worthy of continued effort to strengthen and maintain it.

Deserves Attention

There is one phase of this relationship which may not have received the careful thought it deserves. We refer to the relationship existing between the player, the country club and the caddie, with respect to Federal and State unemployment insurance legislation. For the benefit of all, this matter deserves attention.

It is not the purpose of this article to discuss the advisability of including or excluding caddies from the provisions of the Federal Social Security Law, or State Unemployment Insurance Law, but to point out that in many states the question would appear to be unsettled. It should, therefore, receive the attention of golf clubs in those states to ascertain their exact legal status in this connection, either through their local golf association, or in such other manner as might seem advisable.

Some golfers may not know that Federal Social Security and State Unemployment Insurance Laws establish a system for the amelioration of unemployment

hardship. They undertake, in conjunction, to pay unemployment benefits to those who, through no fault of their own, are out of work. Such laws have also provided various classes or groups of employees that are excluded from the application or benefit of such laws.

Questions For Consideration

In regard to unemployment, the questions which golfers, as well as golf clubs, should give adequate consideration are:

- (1) Are caddies in your state in an exempt or excluded class?
- (2) Are caddies in your state employees of the club or the operator of the course where the caddies go regularly or occasionally to offer their services?
- (3) Are the caddies employees of the player who, under a quite universal practice in most states, pays the caddie fee himself, either directly or indirectly, through a charge to the player's club account?

Insofar as the Federal Social Security Agency is concerned, that agency published in 1936, soon after the effective date of the law, a regulation that where services are performed by caddies for members of the club and *they are compensated either directly or indirectly for such services by the club members, the club will not be required to pay the tax imposed by Section 901, Title IX of the Social Security Act with respect to such payments to the caddies even though the caddies may be its employees.* If, however, caddies perform any services for the club for which the club itself compensates them, the club is subject to the tax imposed by Section 901 of the Act with respect to such employment.

Regulation Clear

This regulation is clear and has been in effect since the date of publication. So far as is known, no doubt or conflict has arisen over its application, accordingly creating an exemption of the caddie from the provisions of the Act, so that golf clubs have not been required to include caddie fees paid by its players or members as subject to the Act.

In determining how the forty-eight states have treated the subject of unemployment insurance, following issuance of the cited regulation by the Federal Social Security Agency, we find that the District of Columbia, Florida, Georgia, Idaho, Illinois, Indiana, Mississippi, New Jersey, New York, South Carolina, Utah, Wisconsin, and Wyoming, have either by express statute, administrative regulation, or Attorney General's opinion, publicly stated that caddies are excluded from their respective unemployment insurance laws.

Thirty-five states have never published any regulation on this matter, nor has anything been published which indicates that they have ever levied an assessment on any club for unemployment insurance purposes or on fees paid to caddies by the player.

Controversy In California

This leaves one state, California, in which the question is now in controversy. A brief report on the situation existing in California may be helpful in emphasizing the reason for devoting attention to this matter.

In 1935, the State of California adopted an unemployment insurance law. Early in January, 1936, soon after the law had become effective, the Unemployment Commission, as it was then designated, issued a published regulation that caddies were to be included under the Act. Golf clubs were to pay the unemployment tax upon caddie fees received by caddies from the players. No effort, however, was made to enforce this regulation, and no club paid any tax upon such caddie fees between 1936 and 1938, when the same Commission published a ruling that caddies were excluded from the provisions of the Act and that

clubs would not have to pay assessments upon their earnings.

A short time later, the Commission made an order that the matter was open, to be dealt with in administrative opinions issued by the Commission. In 1941 and 1943, the Commission, in cases involving two golf clubs, one in Northern and one in Southern California, issued an opinion in each case, holding that caddies were not employees of these clubs and that the club did not have to pay assessment.

California Statute

In 1943, the Legislature of the State of California enacted a law, in language similar to the New York statute, providing that anyone carrying a golf player's clubs was excluded from the Unemployment Insurance Act. This measure, however, was given a pocket veto.

The Department of Employment and golf clubs throughout the State accepted the Unemployment Commission's opinions on these two cases as determinative of the question, even though the legislative enactment was not signed. The facts pertaining to the handling of caddies at golf courses throughout the State were practically identical with the practice followed at the two golf courses in which the decisions had been rendered, as disclosed by evidence introduced at the hearings before the opinions were rendered.

From 1941 until 1952, the Department of Employment did not notify any golf club in the State of California that they considered caddies employees of the club, hence subject to the provisions of the Unemployment Insurance Law.

Early in 1952, however, the Department of Employment sent auditors into six clubs in Southern California. An audit was performed on caddie fees paid during the three years prior to the time of the audit.

Clubs Assessed

Following completion of these field audits, the six clubs were notified that they were being assessed in amounts varying from \$500 in one case, over \$5,000 in one, over \$6,000 in another, over \$7,000 in another, over \$8,000 in one, and over

\$19,000 in another, for unemployment taxes upon the fees paid by players to caddies at these clubs during the three-year term.

The Department of Employment had not indicated to any of the clubs that they were classifying caddies as the club's employees, and that the club should make the withholdings from the fees received by caddies. The assessment was made retroactive for three years, and, of course, during that time the club had no opportunity to make a withholding and to accumulate from withholding the fund that was required under the Unemployment Insurance Act. They also had no opportunity to keep the necessary books showing the names of players paying the caddie fee and the caddie.

Question Before Courts

If the Department of Employment's assessments are upheld by the courts, the clubs will have to pay the assessment out of their own funds. The California Unemployment Insurance Appeals Board has upheld the assessment, and in two of the cases, the question is now under submission in the Superior Court of Los Angeles County. An action has been filed for a court determination on the question of the other four cases, so that a final decision concerning the liability of these country clubs for this assessment will have to be decided by the courts.

The courts in most states have held that caddies are subject to any Workmen's Compensation Law the state may have, if they are, of course, injured while caddying. However, these decisions should not necessarily be determinative of the issue under unemployment insurance laws, because, in practically all clubs, the caddie fee is paid by the player, not by the club. Most unemployment insurance laws impose a dual requirement of first, an employer, and secondly, a payment of the wage by that employer, before liability can be established.

Clubs Advised

There is no way of determining the attitude of those states in which there is no published statement on the matter, other than requesting from the appropriate state

agency a determination of the golf club's liability for payment of any tax or assessment the state might claim should be paid or collected from caddie fees paid by players to a caddie. If it is deemed advisable to allow the question to remain in doubt rather than to seek a determination of the club's liability, that, of course, is up to the club. However, the clubs are now advised of this possible liability.

In states where doubt exists concerning determination of this matter, the easy and simple solution is to have the State Legislature enact a statute similar to that enacted in the State of New York some years ago. This statute specifically exempts the caddie from the provisions of the State Unemployment Insurance Act. All possibility of a liability being suddenly asserted against the clubs is then removed.

Golf Luck

*As a golfer I'm not one who cops the money,
I shall always be a member of the dubs.
There are times my style is positively funny;
I am awkward in my handling of the clubs,
I am not a skillful golfer, nor a plucky,
But this about myself I proudly say—
When I win a hole by freaky stroke or lucky,
I never claim I played the shot that way.*

*There are times, despite my blundering behavior,
When fortune seems to follow at my heels;
Now and then I play supremely in her favor,
And she lets me pull the rankest sort of steals.
She'll give to me the friendliest assistance.
I'll jump a ditch at times when I should not.
I'll top the ball and get a lot of distance—
But I don't claim that's how I played the shot.*

*I've hooked a ball when just that hook I needed,
And wondered how I ever turned the trick.
I've thanked my luck for what a friendly tree did,
Although my fortune made my rival sick.
Sometimes my shots turn out just as I planned 'em,
The sort of shots I usually play,
But when up to the cup I chance to land 'em,
I never claim I played 'em just that way.*

*There's little in my game that will commend me.
I'm not a shark who shoots the course in par;
I need good fortune often to befriend me.
I have my faults and know just what they are.
I play golf in a desperate do-or-die way,
And into traps and trouble off I stray.
But when by chance the breaks are coming my way,
I do not claim I played the shots that way.*

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