

OLYMPIAN'S MEDAL AND MONEY EXEMPTION: HOW CONGRESS'S ADDITION TO INTERNAL REVENUE CODE SECTION 74 DOES VERY LITTLE FOR VERY FEW

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I. INTRODUCTION

Olympic athletes put an enormous amount of time and effort into their craft, representing the best in the world within their field of sport. If the athlete's work pays off, he will achieve his ultimate dream of winning an Olympic medal. The medal, most likely priceless to the athlete, represents not only countless hours of training, but a substantial investment into themselves, both financially and temporally.¹ While the medal may be priceless to the winning athlete, the United States government, namely the Internal Revenue Service (hereinafter I.R.S.), places an exact value on the medal in order to tax the athlete as a prize or award included in gross income.²

Taxing an Olympic athlete on the value of their medal was the case prior to the exclusion from income that came with the legislation of Internal Revenue Code (hereinafter I.R.C.) § 74(d) by way of the United States Appreciation for Olympians and Paralympians Act of 2016.³ The exception allows many Olympic athletes, as well as Paralympic athletes, to exclude the value of medals as well as the cash prize given by the United States Olympic Committee (hereinafter U.S.O.C.), from gross income for tax purposes.⁴

In contrast, consider an athlete, who competes and wins a medal in the Pan American Games (hereinafter Pan Am Games).⁵ Should the athlete win

¹ Luke Kerr-Dinnen, *Olympic Gold Medals Aren't Worth as Much as You Think*, USA TODAY (Aug. 14, 2016, 11:22 AM), <http://ftw.usatoday.com/2016/08/how-much-is-an-olympic-gold-medal-worth-cost-sell-gold-prices>.

² *Olympic Medal? Well Done, Now Pay Your Taxes: Uncle Sam*, NBC NEWS (Feb. 19, 2014, 1:52 PM), <https://www.nbcnews.com/storyline/sochi-olympics/olympic-medal-well-done-now-pay-your-taxes-uncle-sam-n33651>.

³ *Obama Ends 'Victory Tax' on Some U.S. Olympic Medalists*, ESPN (Oct. 7, 2016), http://www.espn.com/olympics/story/_/id/17740769/obama-ends-victory-tax-some-us-olympic-medalists.

⁴ I.R.C. § 74(d) (West 2018).

⁵ See generally *Topics Pan American Games*, ESPN (July 2, 2015, 12:29 PM), http://www.espn.com/oly/topics/_/page/pan-american-games; *Pan American Games History*, PAN AM. SPORTS ORG., <http://www.paso-odepa.org/en/pan-american-games> (last visited Oct. 26, 2017) (Pan Am Games, like the Summer or Winter Olympic Games, hold events every four years, consisting of summer-type events).

a medal at the Pan Am Games, there is no exclusion from income for the value of the medal he receives, contrasting the preferable treatment the Olympic athlete receives.⁶ While the athlete's training regimen, time commitment, and financial expense, for the Pan Am Games may mirror that of the Olympic games,⁷ I.R.C. §74(d) gives the Pan Am Games athlete no exclusion from income.⁸

Now consider a law school student who submits a paper for publication with a possible cash prize award. The student has no doubt invested a considerable amount of time, as well as a financial investment in the paper. The student's financial investment comes in the form of tuition, fees, required texts, and supplemental texts in order to gain a thorough understanding of the law on which he is to write and comment.⁹

Like an Olympic athlete spending considerable time training, in order to reach their body's peak performance, the student spends a considerable amount of time researching, writing, and checking forms of footnotes, in order to deliver a clear and considered argument for scholarly thought or debate.¹⁰ However, much like the winning athlete competing in the Pan Am Games, the law student who wins a cash prize for a contest must include the winnings in income.¹¹

This note will first look at Congress's ability to tax prizes and awards, beginning with the Sixteenth Amendment to the U.S. Constitution, which allows a tax on income. Next, an examination of the evolution of the I.R.C., as well as case law will show how gross income currently and previously included prizes and awards. Additionally, this note will examine the background of I.R.C. § 74(d) and reasoning behind its enactment. Next, this note will consider the possible tax related issues for Olympic athletes. The goal of this note is to propose alternative language to I.R.C. § 74 for all individuals receiving prizes or awards, and remove uncertainty from the amount included in an award winner's income.

⁶ I.R.C. § 74(d) (West 2018) (§ 74(d) excludes "the value of any medal awarded in, or any prize money" for "Olympic and Paralympic medals and prizes" only.).

⁷ See generally Val Maloney, *Marathon Training: Interview With A Pan Am Runner*, WHY I RUN, <http://www.whyrin.com/marathon-training-interview-pan-am-runner/> (last visited Dec. 18, 2017).

⁸ I.R.C. § 74(d) (§ 74(d) excludes "the value of any medal awarded in, or any prize money" for "Olympic and Paralympic medals and prizes" only.).

⁹ See generally *Tuition/ Costs of Attendance*, U. NOTRE DAME, <http://law.nd.edu/admissions/cost-of-attendance-and-financial-assistance/tuition-cost-of-attendance/> (last visited Dec. 20, 2017) (Notre Dame Law School website containing a breakdown of costs a law student may expect to incur when pursuing a law degree).

¹⁰ See generally Renwei Chung, *What You'll Wish You Had Known Before Starting Law School – Your Schedule*, ABA FOR L. STUDENTS (Feb. 3, 2016), <https://abaforlawstudents.com/2016/02/03/what-youll-wish-you-had-known-before-starting-law-school-your-schedule/>.

¹¹ I.R.C. § 61.

II. BACKGROUND

U.S. citizens and businesses paying tax based on income was not the initial source of revenue for the U.S. government.¹² Even once an income tax system was in place, prizes and awards created confusion and debate with inconsistent court decisions.¹³ Those inconsistent decisions were the basis for I.R.C. § 74 and corresponding regulations.¹⁴

A. History of the Income Tax

Until the ratification of the Sixteenth Amendment in 1913, Congress' power to tax income was unclear.¹⁵ Prior to the Sixteenth Amendment, an income tax had been used temporarily as an emergency measure to fund the Civil War.¹⁶

The power to tax, originally set out in Article I, Section VIII, Clause I of the United States Constitution, states: "The Congress shall have power to lay and collect taxes, duties, imposts and excises."¹⁷ The Sixteenth Amendment grants Congress the ability to tax on the basis of income.¹⁸ The Amendment provides Congress with the "power to lay and collect taxes on incomes, from whatever source derived, without apportionment among the several States, and without regard to any census or enumeration."¹⁹

Even though the Sixteenth Amendment enables Congress to tax "incomes, from whatever source derived,"²⁰ it does not explicitly grant the power to tax prizes or awards, much less Olympic medals. Winners of prizes and awards, even after the Sixteenth Amendment, might have argued prizes and awards did not constitute income, and hence were nontaxable. This

¹² *The History of Income Taxes*, I.R.S., <https://www.irs.com/articles/the-history-of-income-taxes> (last visited Oct. 10, 2018) (Up until 1802, the nation was mainly supported by taxes on goods (such as tobacco, carriages, sugar, and spirits).)

¹³ Bruce I. Kogan, *The Taxation of Prizes and Awards-Tax Policy Winners and Losers*, 63 WASH. L. REV. 257, 269 (1988).

¹⁴ *Id.* at 271.

¹⁵ 47A C.J.S. *Internal Revenue* § 12 (West 2018) ("Congress has had power to lay and collect income taxes from the time of the adoption of the Constitution, but prior to the adoption of the 16th Amendment to the Constitution, effective February 25, 1913, this power was subject to the requirement that direct taxes be apportioned among the several states according to population.")

¹⁶ Erik Jenson, *The Taxing Power, the Sixteenth Amendment, and the Meaning of "Incomes,"* 33 ARIZ. ST. L.J. 1057, 1093 (2001).

¹⁷ U.S. CONST. art. I, § 8, cl. 1.

¹⁸ Benjamin G. Barokh, *The Meaning of "Incomes" in the Sixteenth Amendment*, 15 GEO. J.L. & PUB. POL'Y 409, 416-17 (2017).

¹⁹ U.S. CONST. amend. XVI.

²⁰ *Id.*

argument seems especially true as legislative history reports of the Sixteenth Amendment do not mention prizes or awards.²¹

Dictionary meanings of income, at the time of the Sixteenth Amendment, all seemed to point to “an increase in monetary wealth.”²² While income likely included an athlete’s cash winnings within the language of the Sixteenth Amendment, a prize winner might have argued income did not include prizes and awards of tangible personal property, such as a medal or a belt, and instead only money received.²³ However, taxpayers who wished to exclude an item or money from income, even at that time, must have cited a statutory authority for the exclusion.²⁴

Prior to 1954, the judiciary often gave conflicting results on what constituted income from prizes or awards.²⁵ These conflicting views were one of the reasons for the passage of the I.R.C. of 1954.²⁶ Congress passed the I.R.C. of 1954, and with it definitions for income, as well as what prizes or awards are excluded from income.²⁷ With language similar to the current version of § 74, prizes and awards were generally included in gross income with exceptions for those “in recognition of religious, charitable, scientific, educational, artistic, literary, or civic achievement.”²⁸ Additionally “the recipient [must have been] selected without any action on his part to enter the contest or proceeding” and “not required to render substantial future services as a condition to receiving the prize or award.”²⁹

While the aforementioned exclusion from income existed for certain prizes and awards, there has not been an exception for athletic achievement until the United States Appreciation for Olympians and Paralympians Act of 2016.³⁰ In past years, Olympic athletes representing the United States were

²¹ S. PRT. No. 99-87 (1985).

²² Barokh, *supra* note 18, at 423.

²³ *See generally id.* at 422, (discussing the definition of Income, from BLACK’S LAW DICTIONARY (2d ed. 1910)).

²⁴ Kogan, *supra* note 13, at 260 (discussing the Tariff Act of 1913, Pub. L. No. 16, § 2, 38 Stat. 114 (1913)) (“The broadly inclusive definition of income set forth in the 1913 Act was prefaced by an exceptive clause: ‘That, *subject only to such exemptions and deductions as are hereafter allowed*, the net income of a taxable person shall include. . . .”).

²⁵ Meghan Kearns, *Getting the Gold but Losing the Money: Taxing Olympic Cash Prizes*, 12 WILLAMETTE SPORTS L.J. 68, 84 (2014).

²⁶ *Id.* at 86.

²⁷ I.R.C. of 1954, ch. 736, § 74(a), 68A Stat. 24, *amended by* Pub. L. No. 99-514, Title I, §§ 122(a)(1), 123(b)(1), 100 Stat. 2085 (1986).

²⁸ I.R.C. §74(b) (West 2018) (originally enacted as of Aug. 16, 1954, c. 736, 68A Stat. 24, with no requirement of “transfer[] by the payor to a governmental unit or organization”).

²⁹ Tayler L. Green, *Taxing Prizes and Awards: Proposed Amendments to Section 74 to Treat Meritorious Achievements Equitably*, 70 SMU L. REV. 509, 515 (2017) (discussing § 74, 68A Stat. at 24).

³⁰ I.R.C. § 74 (West 2018) (amending I.R.C. § 74 (2016) (prior to the United States Appreciation for Olympians and Paralympians Act of 2016, exclusion for prizes and awards were available for

taxed not only on any cash prize they received from the U.S.O.C., but on the value of the medal they received as well.³¹

Much like income, there is little doubt today of the Federal Government's power to tax an individual on the basis of a prize or award received. While a taxpayer may have argued against being taxed on a prize or award after a reading of the Constitution alone, statutes, specifically those within the I.R.C., clarify prizes and awards are indeed to be considered income and excludible only under certain circumstances.³²

B. History of Taxing Prizes and Awards

Prior to Congress' enactment of § 74 in 1954, there was confusion among taxpayers as to whether prizes were income, and hence includible in gross income, or a gift, meaning excludable from income.³³ Early federal income tax laws provided no guidance as to the taxability of prizes and awards.³⁴ Adding to taxpayer's confusion, courts gave inconsistent guidance regarding the taxability of prizes and awards.³⁵

Exclusions for prizes and awards did not apply at the outset of the Sixteenth Amendment.³⁶ Beginning in 1913, taxpayers were generally able to exclude income only if under a specific statutory exception.³⁷ Case law during the period of 1913 to 1954 often looked at whether prizes or awards were gifts, one of the statutory exclusions of income in existence at the time.³⁸

“religious, charitable, scientific, educational, artistic, literary, or civic achievement[s]” as opposed to athletic achievements).

³¹ Samantha Goewey, *Taxing The Gold: The Tax Treatment of Olympians*, 24 SETON HALL J. SPORTS & ENT. L. 179, 181 (2014) (discussing I.R.C. § 74 as existed in 2013, prior to the amendment concerning Olympians).

³² See I.R.C. § 74(a) (West 2018) (“Except as otherwise provided in this section or in section 117 (relating to qualified scholarships), gross income includes amounts received as prizes and awards”).

³³ Kogan, *supra* note 13, at 269.

³⁴ *Id.* at 259.

³⁵ *Id.* at 262.

³⁶ § 74, 68A Stat. at 24 (1954) (§ 74 was not enacted until 1954, years after the ratification of the Sixteenth Amendment.).

³⁷ Kogan, *supra* note 13, at 260.

³⁸ *Id.* at 260; Tariff Act of 1913, Pub. L. No. 16, § 2, 38 Stat. 114 (1913).

1. Case Law for Taxing Prizes and Awards

In *Washburn v. Commissioner*, decided in 1945, a taxpayer answered her phone and found she had won the “Pot O’ Gold,” entitling her to \$900.³⁹ The company sponsoring a radio contest dialed the taxpayer’s phone number, by random chance, and awarded the taxpayer a cash prize.⁴⁰ The court concluded, without difficulty, the taxpayer received a gift and therefore was not subject to tax, as a gift did not constitute income.⁴¹

The court’s decision in *Washburn*, that the prize was not taxable, was based upon the cash received not being a gain from capital or labor.⁴² Additionally, the taxpayer received the prize “without expectation or effort,” the prize was not won as a “result of a wager,” nor did the prize involve any subsequent obligation from the taxpayer.⁴³ Lastly, the court looked to the telegram accompanying the cash payment which labeled the payment as an “outright cash gift.”⁴⁴

It should be stated the decision in *Washburn*, as well as the decision in *McDermott v. C.I.R.*, discussed next, were both prior to the Supreme Court’s decision in 1955 in *C.I.R. v. Glenshaw Glass*.⁴⁵ The Supreme Court, in *Glenshaw Glass*, expanded the definition of income as “the gain derived from capital, from labor, or from both combined,”⁴⁶ where the taxpayer has an “undeniable accessions to wealth, clearly realized, and over which the taxpayers have complete dominion.”⁴⁷

In *McDermott*, also decided in 1945, the court specifically addressed the taxability of a prize or award received through meritorious achievement, as opposed to random chance, as was the case for the taxpayer in *Washburn*.⁴⁸ In *McDermott*, a law professor received a cash prize by the American Bar Association for writing the top essay on the Association’s selected topic in 1939.⁴⁹ The professor’s tax liability depended upon whether the cash awarded to him would be considered “gross income,” as defined by the I.R.C. in force during 1939, or if the award was considered a gift.⁵⁰ Here, “gross

³⁹ *Washburn v. Comm’r*, 5 T.C. 1333, 1334 (1945).

⁴⁰ *Id.*

⁴¹ *Id.*

⁴² *Id.*

⁴³ *Id.*

⁴⁴ *Id.*

⁴⁵ *Washburn v. Comm’r*, 5 T.C. 1333 (1945); *McDermott v. Comm’r*, 150 F.2d 585 (D.C. Cir. 1945); *Comm’r v. Glenshaw Glass Co.*, 348 U.S. 426 (1955) (both *Washburn* and *McDermott* were decided ten years prior to the decision in *Glenshaw Glass*).

⁴⁶ *Comm’r v. Glenshaw Glass Co.*, 348 U.S. 426, 430 (1955) (quoting *Eisner v. Macomber*, 252 U.S. 189, 207 (1920)).

⁴⁷ *Comm’r v. Glenshaw Glass Co.*, 348 U.S. 426, 431 (1955).

⁴⁸ *McDermott v. Comm’r*, 150 F.2d 585 (D.C. Cir. 1945).

⁴⁹ *Id.* at 586.

⁵⁰ *Id.* at 587.

income” included “gains, profits, and income . . . from professions . . . or . . . from any source whatever.”⁵¹ The court, listing several policy based reasons, ultimately decided the award was not taxable.⁵²

The court explained plain English dictated that the American Bar Association was giving the professor a prize, as opposed to paying for the essay.⁵³ Specifically, the court pointed to the purpose of the prize being to “arouse the ambition [of writers and] incite their best endeavors,” as opposed to simply giving a cash amount to successful writers.⁵⁴ Prizes for an achievement in writing were said to benefit both the writer and the community and were found to differ from prizes for “puzzles, guessing contests and publishers’ contests operated for commercial purposes.”⁵⁵

The court found one difference when differentiating between income and prizes being income is counted upon in advance, while a prize may never occur.⁵⁶ Additionally, the essay writer’s motive is not a “hope of immediate financial gain” but a devotion to scholarship, as opposed to the winner of a prize based upon a game of chance.⁵⁷ The court found the publication of an outstanding essay, with additional rewards, both tangible and intangible, were the writer’s main motivation.⁵⁸ The opinion of the court ended with a policy reason for finding the winnings of a scholarly essay as nontaxable.⁵⁹ The “wise and settled policy,” established at the time, showed not taxing authors of scholarly work would in turn encourage more authors to engage in said work.⁶⁰

2. Congress Takes Action on Taxing Prizes and Awards

Congress sought to end confusion with I.R.C. of 1954, § 74, specifically by taxing most prizes and awards, and exempting “only [those with] significant humanitarian or public achievement.”⁶¹ In 1984, Congress once again overhauled the I.R.C., placing an additional restriction on the exclusion of prizes and awards from income, essentially requiring prize winners to

⁵¹ *Id.*

⁵² *Id.* at 587–88.

⁵³ *Id.*

⁵⁴ *Id.* at 588, (citing *Almy v. Jones*, 21 A. 616, 618 (R.I. 1891)).

⁵⁵ *McDermott v. Comm’r*, 150 F.2d 585, 588 (D.C. Cir. 1945).

⁵⁶ *Id.*

⁵⁷ *Id.*

⁵⁸ *Id.*

⁵⁹ *Id.*

⁶⁰ *Id.*

⁶¹ Kogan, *supra* note 13, at 271.

assign or donate their prize in order to avoid income tax.⁶² This restriction on a prize or award remains in effect today.⁶³

Currently, I.R.C. § 74 provides three additional exceptions for exclusion of prizes and awards, separate from the exclusion from gross income for medal-winning Olympians.⁶⁴ The first exception includes scholarships received as described in I.R.C. § 117.⁶⁵ The second exception includes certain employee achievement awards,⁶⁶ limited to \$400 under a non-qualified plan award, and \$1,600 under a qualified plan award.⁶⁷

The third exception allows a recipient to exclude certain prizes or awards only after donating the prize or award to a qualifying organization, and after meeting certain qualifications.⁶⁸ First, the prize or award must be received in recognition of either a “religious, charitable, scientific, educational, artistic, literary, or civic achievement.”⁶⁹ Second, the recipient must not have taken any action to enter the contest or proceeding.⁷⁰ Third, the recipient must not be required to provide “substantial future services as a condition to receiv[e] the prize or award.”⁷¹ Lastly, the prize or award must be transferred either to a qualifying charitable organization or a governmental organization, as described by I.R.C. § 170(c). The most common examples of the third exception are Nobel and Pulitzer Prize winners.⁷²

In contrast to prizes or awards received for a religious, charitable, scientific, educational, artistic, literary, or civic achievement, prizes or awards in recognition of athletic achievement are generally ineligible for the exception.⁷³ Courts have concluded prizes and awards received by an athlete are not for civic achievement and thus would not meet the requirement of I.R.C. § 74(b).

⁶² Kearns, *supra* note 25, at 85 (“In 1986, Congress once again amended the tax code through the Tax Reform Act of 1986. Section 74 was changed dramatically by adding a fourth prong to the test, which allowed the taxpayer to relinquish the right to the prize prior to actual receipt of it. The law, which is still in effect today, says the prize or award is taxable income and should be reported as gross income unless the taxpayer assigns it to charity. Under the revisions, Nobel Prizes or Pulitzer Prizes are taxable, even though they had never been taxed prior to the 1986 reforms.”).

⁶³ I.R.C. § 74 (b) (West 2018).

⁶⁴ *Id.* § 74 (a).

⁶⁵ *Id.* § 74.

⁶⁶ *Id.* § 74 (c).

⁶⁷ *Id.* § 274 (j).

⁶⁸ *Id.* § 74 (b).

⁶⁹ *Id.*

⁷⁰ *Id.* § 74 (b)(1).

⁷¹ *Id.* § 74 (b)(2).

⁷² H.R. REP. NO. 114-762, at 3 (2016).

⁷³ *Id.* (Congress’s explanation of the United States Appreciation for Olympians and Paralympians Act of 2016 included the following discussion of I.R.C. § 74: “Examples of awards that may qualify for the third exception if the monies associated with the award are timely donated include the Nobel and Pulitzer prizes. In contrast, prizes or awards in recognition of athletic achievement are generally ineligible for the exception.”).

3. Case Law for Athletic Achievement Prizes and Awards

Courts have consistently held athletic achievements do not fall within any of the seven categories of exemption of I.R.C. § 74(b).⁷⁴ While athletes have mainly argued their achievement is civic or artistic, courts disagree and find the awards includible in gross income.⁷⁵ In *Simmons v. United States*, a fisherman caught a specially tagged fish, carrying a \$25,000 cash prize.⁷⁶ The taxpayer argued the contest served a civic purpose in that it “popularize[d] the recreation and resort facilities” of the state in which the contest took place.⁷⁷ The court disagreed, calling the taxpayer’s argument “a considerable flight of fancy,” and concluded the actual purpose of the contest was “to stimulate the sale of American beer.”⁷⁸ The court further explained the purpose of the contest was irrelevant.⁷⁹ Looking to the statute and its legislative history, the court found only the character of the recipient’s achievement relevant to determining if the award qualified for exemption.⁸⁰ The civic achievement exclusion of I.R.C. § 74(b) “implies positive action, exemplary, unselfish, and broadly advantageous to the community.”⁸¹ The court went on to say, had the fisherman “captured and destroyed a killer whale terrorizing the Maryland seashore,” perhaps then a civic achievement would have been achieved and thus the award would qualify for an exemption.⁸²

In *Hornung v. C.I.R.*, a professional football player received a Corvette automobile for being named the outstanding player in the league championship game.⁸³ The taxpayer argued two points: (1) the Corvette was a gift, which qualified as excludible from income under the then current I.R.C. § 102(a), and (2) the taxpayer received the automobile as a nontaxable prize or award under the then current I.R.C. § 74(b).⁸⁴ As to whether the Corvette was a gift, the court found no detached and disinterested generosity as the motivation by the donor, thus disqualifying the automobile as a gift.⁸⁵

⁷⁴ See *Simmons v. United States*, 308 F.2d 160 (4th Cir. 1962); *Hornung v. Comm’r*, 47 T.C. 428 (1967); *Wills v. Comm’r*, 411 F.2d 537 (9th Cir. 1969).

⁷⁵ See *Simmons v. United States*, 308 F.2d 160 (4th Cir. 1962); *Hornung v. Comm’r*, 47 T.C. 428 (1967); *Wills v. Comm’r*, 411 F.2d 537 (9th Cir. 1969).

⁷⁶ *Simmons v. United States*, 308 F.2d 160, 161–62 (4th Cir. 1962).

⁷⁷ *Id.* at 162.

⁷⁸ *Id.* at 162–63.

⁷⁹ *Id.* at 163.

⁸⁰ *Id.*

⁸¹ *Id.*

⁸² *Id.*

⁸³ *Hornung v. Comm’r*, 47 T.C. 428, 429 (1967).

⁸⁴ *Id.* at 435.

⁸⁵ *Id.*

Additionally, the court found the football player did not receive the automobile as a prize in recognition of either educational, artistic, scientific, or a civic achievement.⁸⁶ The taxpayer made several arguments for the automobile prize as one fitting the definition for exclusion in § 74(b), including: educational recognition as the game of football was taught across college campuses, artistic recognition because the game of football requires a degree of artistry, scientific because the skills a football player possesses are based upon techniques founded in scientific principles, and civic achievement since the President possessed an interest level in the taxpayer leaving the Army to allow participation in the championship game.⁸⁷ Ultimately the court rejected all the taxpayer's arguments and interpreted education, artistic, scientific and civic achievement, within § 74(b), to mean "genuinely meritorious achievements" not achieved in an athletic event or by an athlete.⁸⁸

In *Wills v. C.I.R.*, the court, like the court in *Simmons* and *Hornung*, did not find athletic achievement the same as a civic achievement capable of exclusion from tax.⁸⁹ The taxpayer, Maurice Wills, a professional baseball player, broke the record for most stolen bases, and played in the All Star game where he won "player of the game" honors.⁹⁰ Additionally, the taxpayer received several "Athlete of the Year" recognitions from different publications.⁹¹

Following the final game of the 1962 season, an automobile agency awarded Mr. Wills with a MG automobile, with a fair market value of \$1,731, after being elected "most popular Dodger."⁹² Additionally, sportswriters and sportscasters throughout the country awarded Mr. Wills with the S. Rae Hickok belt, valued at \$6,038, awarded to the outstanding professional athlete of the prior year for his accomplishment of excellence in athletics.⁹³ The court determined Mr. Wills both received the awards with no action on his part, and was not required to render any future services as part of receiving the awards.⁹⁴ Instead, the court focused on the issue of whether the two awards qualified under any of the exceptions under the previous I.R.C. § 74(b), which, at that time, did not require the recipient to transfer the award to a charity or governmental entity.⁹⁵

⁸⁶ *Id.* (§ 74(b) requires prize to be received in recognition of either educational, artistic, scientific, or a civic achievement in order to qualify for exclusion from income.)

⁸⁷ *Id.* at 436.

⁸⁸ *Id.* at 437 (quoting *Simmons v. United States*, 308 F.2d 160 (4th Cir. 1962)).

⁸⁹ *Wills v. Comm'r*, 411 F.2d 537, 542 (9th Cir. 1969).

⁹⁰ *Id.* at 539.

⁹¹ *Id.*

⁹² *Id.*

⁹³ *Id.*

⁹⁴ *Id.*

⁹⁵ *Wills v. Comm'r*, 411 F.2d 537, 539 (9th Cir. 1969).

Ms. Wills sought to have the court find his awards were due to civic or artistic achievements.⁹⁶ However, the court ultimately concluded the automobile, awarded for popularity, and belt, awarded for athletic skill, were includible in Mr. Wills' gross income as neither popularity nor athletic skills were seen as religious, charitable, scientific, educational, artistic, or civic achievements.⁹⁷ The United States Appreciation for Olympians and Paralympians Act of 2016 is the first, and currently only, exemption from income for prizes and awards for athletic achievement.⁹⁸

C. United States Appreciation for Olympians and Paralympians Act of 2016

Prior to the United States Appreciation for Olympians and Paralympians Act of 2016, American Olympians were taxed on the value of the medal they received, as well as any cash earnings stemming from winning or participating in the Olympics.⁹⁹ If the prize or award is tangible personal property, as opposed to a cash award, the amount included in income is the fair market value of the property.¹⁰⁰ In the *Wills* case, mentioned above, the athlete included a value of \$6,038 in his 1962 taxable income for the belt that sportswriters awarded to him, based upon the Commissioner's valuation.¹⁰¹ The belt in *Wills*, the S. Rae Hickok belt, consisted of an eighteen-carat gold buckle with four 1/3rd carat, South African diamonds.¹⁰²

The fair market values for Olympic medals, as calculated by the Americans for Tax Reform, are \$675 for gold, \$385 for silver, and \$5 for bronze.¹⁰³ The prices calculated by the American for Tax Reform are based on commodity prices.¹⁰⁴ Conversely, Olympic medals have sold for far greater prices than those values calculated by the Americans for Tax Reform, although some with great historical significance.¹⁰⁵ Medals and Olympic

⁹⁶ *Id.* at 541-42.

⁹⁷ *Id.* at 541.

⁹⁸ I.R.C. §74(d) (West 2018).

⁹⁹ Michael Cohn, *Schumer Proposes to Exempt Olympic Medals from Taxes*, TAX PRO TODAY (Aug. 12, 2016, 11:00 AM), <https://www.taxprotoday.com/news/schumer-proposes-to-exempt-olympic-medals-from-taxes?feed=0000015e-f319-dca8-a7fe-fb3f124b0000>.

¹⁰⁰ 26 C.F.R. § 1.74-1(a)(2) (2017) ("If the prize or award is not made in money but is made in goods or services, the fair market value of the goods or services is the amount to be included in income.")

¹⁰¹ *Wills v. Comm'r*, 411 F.2d 537 (9th Cir. 1969).

¹⁰² *More Than a Belt, a Work of Art. The Jewel of The Sports World in More Ways Than One.*, HICKOKBELT.COM, <http://hickokbelt.com/about/history/#WorkOfArt> (last visited Jan. 14, 2018).

¹⁰³ Hugh Johnson, *Win Olympic Gold, Pay The IRS*, AMERICANS FOR TAX REFORM (July 31, 2012, 1:49 PM), <https://www.atr.org/win-olympic-gold-pay-irs-a7091>.

¹⁰⁴ *Id.*

¹⁰⁵ Karen Rosen, *Olympic Medals Hit The Market In Record Number*, USA TODAY (Sept. 17, 2014 11:36 AM), <https://www.usatoday.com/story/sports/olympics/2014/09/16/olympic-medals-auction-collectors/15736857/>.

memorabilia have been sold by auctioneers as well on the online auction site eBay.¹⁰⁶ The gold medal won by Jesse Owens in 1936 Summer Olympics sold for \$1,470,000 in 2013.¹⁰⁷ Two different Gold medals, won by the 1980 “Miracle On Ice” Winter Olympic Ice Hockey Team, have recently sold for over \$250,000.¹⁰⁸ Ingrid O’Neil, an auctioneer of Olympic memorabilia, estimates the values of Summer Olympic medals at a far higher price than the aforementioned commodity values: \$10,000 for gold, \$8,000 for silver, and at least \$5,000 for bronze.¹⁰⁹ Additionally, O’Neil estimates Winter Olympic Medals at a higher price due to the scarcity of fewer athletes and events.¹¹⁰ In addition to the Olympic medal, the U.S.O.C. awards the athlete a cash honorarium: most recently \$25,000 for gold, \$15,000 for silver, and \$10,000 for bronze.¹¹¹

An attempt to eliminate tax liability for Olympic athletes is not a new concept.¹¹² In 2012, Republican Senator Marco Rubio, introduced a bill which would have allowed Olympians to exclude the value of their medals from their taxable income, as well as the cash honorarium awarded to athletes by the U.S.O.C.¹¹³

Senator Rubio reasoned “[a]thletes representing our nation overseas in the Olympics shouldn’t have to worry about an extra tax bill waiting for them back home.”¹¹⁴ Additionally, Senator Rubio labeled the tax code a “complicated and burdensome mess that too often punishes success,” calling the tax on Olympic medal winners “a classic example of this madness.”¹¹⁵ Critics of the tax burden on Olympians believe medal-winning athletes could

¹⁰⁶ Rose Palazzolo, *Olympic Medals for Sale at Auctions*, ABC NEWS, <http://abcnews.go.com/Sports/story?id=100405&page=1> (last visited Oct. 10, 2018).

¹⁰⁷ Rosen, *supra* note 105.

¹⁰⁸ *Id.*

¹⁰⁹ *Id.*

¹¹⁰ *Id.*

¹¹¹ Amber Phillips, *Congress Is About to Give Olympians a Tax Break*, WASH. POST (Sept. 22, 2016), https://www.washingtonpost.com/news/the-fix/wp/2016/08/15/olympic-gold-medalists-may-be-about-to-score-another-win-congress-looks-ready-to-give-them-a-tax-break/?utm_term=.0c8bd3d0a908.

¹¹² Stephen Dinan, *Rubio Bill Eliminates Federal Tax On Olympic Medals*, WASH. TIMES (Aug. 1, 2012), <http://www.washingtontimes.com/news/2012/aug/1/rubio-bill-eliminates-federal-tax-olympic-medals/>.

¹¹³ *Id.*

¹¹⁴ Daniel Strauss, *Rubio Bill Outlaws Taxes on Gold Medal*, HILL (Aug. 1, 2012, 07:07 PM), <http://thehill.com/blogs/blog-briefing-room/news/241639-sen-rubio-introduced-olympic-medal-tax-exemption-bill>.

¹¹⁵ Sunlen Miller, *Sen. Rubio: Don't 'Punish' US Olympians with Taxes on Medals and Prize Money*, ABC NEWS (Aug. 1 2012), <http://abcnews.go.com/blogs/politics/2012/08/sen-rubio-dont-punish-us-olympians-with-taxes-on-medals-and-prize-money/>.

face a tax bill of nearly \$9,000.¹¹⁶ Additionally, those critics point out U.S. athletes face a competitive disadvantage when compared to athletes of other nations.¹¹⁷ They point to the fact that the U.S. is one of the few nations to impose a “worldwide” tax on its taxpayers, meaning income earned outside the country.¹¹⁸

The 2012 bill would have been effective for medals won after December 31, 2011, in time to benefit medal winners in the London Summer Olympics.¹¹⁹ Senator Rubio believes everyone could agree tax law punished Olympians for achieving athletic excellence.¹²⁰ He believes the 2012 proposed bill would have righted that wrong.¹²¹

Even though the bill seemed to have bipartisan support, as evidenced by President Obama endorsing the bill, the 2012 version of Olympian income exclusion never even received a hearing in the Senate.¹²² A variety of possible reasons are cited for the bill's demise, including the committee chair having other priorities,¹²³ Congress running out of time during the legislative session, lack of interest among lawmakers and constituents, or possibly a holdout among members of Congress for broader tax reform which never came.¹²⁴

The bill proposed by Senator Rubio in 2012 differed slightly from the 2016 bill.¹²⁵ Senator Rubio's bill would have added a new section to I.R.C. § 74 which would have read: “(d) EXCEPTION FOR OLYMPIC MEDALS AND PRIZES.—Gross income shall not include the value of any prize or award won by the taxpayer in athletic competition in the Olympic Games.”¹²⁶

¹¹⁶ Johnson, *supra* note 103 (The author calculated the tax of \$8,986 on gold medalists by adding the \$25,000 cash honorarium for a gold medal and the value of a gold medal, \$675, then multiplying by a tax rate of 35%).

¹¹⁷ *Id.*

¹¹⁸ *Id.*

¹¹⁹ Strauss, *supra* note 114.

¹²⁰ *Id.*

¹²¹ *Id.*

¹²² Phillips, *supra* note 111.

¹²³ Rudy Takala, *Lawmakers to IRS: Stop Taxing Olympic Medals*, WASH. EXAMINER (July 5, 2016, 12:01 AM), <http://www.washingtonexaminer.com/lawmakers-to-irs-stop-taxing-olympic-medals/article/2595397>.

¹²⁴ Phillips, *supra* note 111.

¹²⁵ S. 3471, 112th Cong. (2012); H.R. 6267, 112th Cong. (2012); I.R.C. § 74(d) (Comparing actual language from bill in 2012 that did not become law to enacted bill from 2016).

¹²⁶ S. 3471, 112th Cong. (2012); H.R. 6267, 112th Cong. (2012).

In contrast, the bill from 2016, which became law, reads:

“(d) EXCEPTION FOR OLYMPIC AND PARALYMPIC MEDALS AND PRIZES.-

(1) IN GENERAL.--Gross income shall not include the value of any medal awarded in, or any prize money received from the United States Olympic Committee on account of, competition in the Olympic Games or Paralympic Games.

(2) LIMITATION BASED ON ADJUSTED GROSS INCOME.--

(A) IN GENERAL.--Paragraph (1) shall not apply to any taxpayer for any taxable year if the adjusted gross income (determined without regard to this subsection) of such taxpayer for such taxable year exceeds \$1,000,000 (half of such amount in the case of a married individual filing a separate return).”¹²⁷

The report accompanying the 2016 bill shares similar concerns lawmakers seemed to have in 2012.¹²⁸ The Committee on Ways and Means believes the tax paid by Olympians imposed an unfair tax burden upon them and thought it important to provide immediate relief from unfair taxes.¹²⁹ The Committee also believes Olympic and Paralympic athletes perform a patriotic service, worthy of favorable tax treatment.¹³⁰ Additionally, the Committee mentioned athletes may “earn little or no money from participation in their chosen sports and often defer pursuit of careers outside sports.”¹³¹ The bill was meant to provide an incentive for athletes to represent the country on a global scale at the Olympics.¹³²

The bill passed both the House and Senate with ease, passing the House by a vote of 415-1.¹³³ The Senate faced even less opposition, where the bill passed unanimously.¹³⁴ President Obama signed the bill into law October 7, 2016.¹³⁵ The effective date, December 31, 2015, meant Olympians who won medals in the 2016 Summer Olympics in Rio de Janeiro, Brazil, were able to take advantage of the tax break when filing the 2016 tax return in 2017.¹³⁶ Although the new law enables athletes to exclude from income the medal and

¹²⁷ I.R.C. § 74(d) (West 2018).

¹²⁸ H.R. 5946, 114th Cong. (2016).

¹²⁹ *Id.*

¹³⁰ *Id.*

¹³¹ *Id.*

¹³² *Id.*

¹³³ United States Appreciation for Olympians and Paralympians Act of 2016, H.R. 5946, 114th Cong. (2016).

¹³⁴ United States Appreciation for Olympians and Paralympians Act of 2016, S. 2650, 114th Cong. (2015-2016).

¹³⁵ United States Appreciation for Olympians and Paralympians Act of 2016, H.R. 5946, 114th Cong. (2016).

¹³⁶ *Id.*

cash honorarium, the I.R.C. already provided several provisions to reduce the risk than an Olympic athlete would owe income taxes.¹³⁷ The I.R.C. takes into account the manner and source of funds a taxpayer receives,¹³⁸ as well as expenses a taxpayer incurs,¹³⁹ to make sure a taxpayer has the ability to pay the tax due.

III. TAX TOPICS RELATED TO OLYMPIC ATHLETES

The tax consequences for an athlete, much like for any taxpayer, can be significant. This is especially true for American Olympic athletes as they are “individual entrepreneurs more than athletes in other nations.”¹⁴⁰ An athlete may want to consider answering certain questions concerning tax consequences before pursuing certain routes to fund their dream of participating in the Olympics. Additionally, whether the athlete's participation in an event or sport is engaged in for profit or simply a hobby can have an effect on the expenses they may or may not deduct.¹⁴¹

A. Funds Received by an Athlete

Athletes may receive funds from a variety of sources. Depending upon the source and nature, those funds may be includible¹⁴² or excludable from gross income.¹⁴³ Furthermore, those funds includible in gross income may be taxed at different rates.¹⁴⁴ Income is taxed at different rates depending upon the amount of income received, as well as the type of income received.¹⁴⁵ Depending on the type of income, and the taxpayer's income

¹³⁷ See I.R.C. § 162, 212 (West 2017).

¹³⁸ See I.R.C. § 101-140 (West 2018).

¹³⁹ See *id.* § 162, 212.

¹⁴⁰ Kanyakrit Vongkiatkajorn, *Why Some American Olympians Had to Crowdfund Their Way to Rio*, MOTHER JONES (Aug. 6, 2016, 10:00 AM), <http://www.motherjones.com/politics-/2016/08/olympic-american-athletes-rio-money-costs-usoc/>.

¹⁴¹ IRC § 183: Activities Not Engaged in For Profit (ATG), I.R.S., <https://www.irs.gov/pub/irs-utl/irc183activitiesnotengagedinforprofit.pdf> (last visited Oct. 10, 2018) (In general, if a taxpayer has hobby income and expenses, the expense deduction should be limited to the hobby income amount.”).

¹⁴² I.R.C. § 61.

¹⁴³ *Id.* § 101-140.

¹⁴⁴ 1040 Instructions, I.R.S., Cat. No. 24811V (Dec. 15, 2016), <https://www.irs.gov/pub/irs-pdf/i1040gi.pdf>.

¹⁴⁵ See generally 1040 Tax Tables, I.R.S., Cat. No. 24327A (2016), <https://www.irs.gov/pub/irs-pdf/i1040tt.pdf> (The United States progressive tax rate system uses higher rates of tax for corresponding higher amounts of income. Additionally, capital gains and qualified dividends are taxed at a lower rate when compared to ordinary income.)

level, the rate may be zero, meaning no tax liability at all.¹⁴⁶ Relatedly, some funds received may not be classified as income but rather as a gift, again equating to zero tax liability for the recipient.¹⁴⁷ While § 74(d) allows an Olympic athlete to exclude the value of their medal and the cash honorarium they receive as an award,¹⁴⁸ this is not the only money or funds an athlete may receive capable of being excluded from gross income.¹⁴⁹

1. Athlete's Earned Wages

Not every athlete is able to generate the income of Michael Phelps or LeBron James.¹⁵⁰ Many athletes have part-time, or even full-time jobs in order to finance their dream of being an Olympic athlete.¹⁵¹

Income received by an athlete for working a part or full-time job will be taxed, much like any other American could expect.¹⁵² The athlete will most likely have tax withheld from each paycheck and receive a W-2 from their employer for the services rendered.¹⁵³ Alternatively, if the athlete is instead classified as an independent contractor, he may be responsible for keeping track of payment received and then making estimated quarterly payments to the Federal Government, with income tax consequences similar to that if they were classified as an employee.¹⁵⁴ At year end, the payer would provide a 1099 form to the athlete, provided the total amount paid exceeds \$600.¹⁵⁵

Ultimately, if an athlete funds their Olympic dream by working a part-time or full-time job, the tax consequences regarding income they face will be the same as a non-athlete.¹⁵⁶ Compensation received, either as an employee or independent contractor, will be subject to income tax, as well as

¹⁴⁶ See generally Exemptions, Standard Deductions, and Filing Information, I.R.S. Pub. No. 501, Cat. No. 15000U (Jan. 2, 2018), <https://www.irs.gov/pub/irs-pdf/p501.pdf>. (Taxpayers with income below \$10,350 in 2016 have no taxable income after deducting the standard deduction, \$6,300, and personal exemption, \$4,050).

¹⁴⁷ I.R.C. § 102 (West 2017).

¹⁴⁸ I.R.C. § 74 (d) (West 2018).

¹⁴⁹ *Id.* § 101-140.

¹⁵⁰ Ashley Eneriz, *How Athletes Get Funding for the Olympics*, INVESTOPEdia (Aug. 15, 2016, 1:28 PM), <http://www.investopedia.com/news/how-athletes-get-funding-olympics/>.

¹⁵¹ Eneriz, *supra* note 150.

¹⁵² Taxable and Nontaxable Income, I.R.S. Pub. No. 525, Cat. No. 15047D (Jan. 16, 2018).

¹⁵³ *Id.*

¹⁵⁴ Self-Employment Tax (Social Security and Medicare Taxes), I.R.S., <https://www.irs.gov/businesses/small-businesses-self-employed/self-employment-tax-social-security-and-medicare-taxes> (last visited Jan. 8, 2018).

¹⁵⁵ Instructions For Form 1099-Misc, I.R.S., Cat. No. 27982J (Oct. 12, 2017), <https://www.irs.gov/pub/irs-pdf/i1099misc.pdf>.

¹⁵⁶ See Taxable and Nontaxable Income, *supra* note 152.

Social Security and Medicare withholding¹⁵⁷ or self-employment tax, which effectively mirrors Social Security and Medicare withholding of W-2 employees.¹⁵⁸

2. Gifts and Support

In contrast to payment received for an athlete's labor, athletes may receive funds from friends, family, or supporters.¹⁵⁹ Those funds received from friends, family, or supporters, are most likely viewed as a gift by the I.R.S.¹⁶⁰ So long as the transferor transfers the funds to the athlete voluntarily, and without any consideration or compensation, the athlete would consider the funds a gift.¹⁶¹ Consequently, if the athlete receives the funds as a gift, he is able to exclude those funds from gross income for tax purposes.¹⁶² Additionally, if the athlete is considered a dependent, as may be the case for minor athletes or athletes attending college,¹⁶³ funds received from parents or guardians in connection with supporting the athletic related expenses, would likely be viewed as support and as such would not be taxable as income to the dependent athlete.¹⁶⁴

3. Funds Received from U.S.O.C.

Similar to funding received from supporters, many athletes receive funds from the U.S.O.C.¹⁶⁵ The United States is one of the only nations with an Olympic committee that does not offer federal government support to athletes.¹⁶⁶ Instead, donors provide funding with private, tax deductible,

¹⁵⁷ (Circular E), Employer's Tax Guide, I.R.S. Pub. No. 15, Cat. No. 10000W (Dec. 19, 2016), <https://www.irs.gov/pub/irs-pdf/p15.pdf>.

¹⁵⁸ Self-Employment Tax (Social Security and Medicare Taxes), *supra* note 154.

¹⁵⁹ Jeremy Quittner, *How Olympians Are Funding the Expensive Road to Rio*, FORTUNE (Aug. 4, 2016), <http://fortune.com/2016/08/04/olympians-funding-rio-expenses/>.

¹⁶⁰ *See Comm'r v. Montague*, 126 F.2d 948, 951 (6th Cir. 1942).

¹⁶¹ *See id.*

¹⁶² I.R.C. § 102 (West 2018).

¹⁶³ *Id.* § 152 (noting a student under the age of 24 may potentially be categorized as a dependent).

¹⁶⁴ *See* I.R.C. § 71(c)(1) (2016) (repealed 2017) (as payment received by a former spouse, for support of a child is not included in income, it follows a child receiving support from a parent would not include support in income.); *see generally* Tax Rules for Children and Dependents, I.R.S. Pub. No. 929, Cat. No. 64349Y (Jan. 23, 2018), <https://www.irs.gov/pub/irs-pdf/p929.pdf> (Support is defined as “[a]ll amounts spent to provide the child with food, lodging, clothing, education, medical and dental care, recreation, transportation, and similar necessities.”).

¹⁶⁵ Quittner, *supra* note 159.

¹⁶⁶ *Team USA Fund*, TEAM USA, <https://www.teamusa.org/us-olympic-and-paralympic-foundation/team-usa-fund> (last visited Feb. 28, 2018).

donations to the Team USA Fund overseen by the U.S.O.C.¹⁶⁷ Once athletes qualify for the Olympics, the U.S.O.C. covers expenses for the athlete's flights and accommodations.¹⁶⁸ The United States Federal Government does not provide any funding to the Olympic athletes or committee.¹⁶⁹ Instead, the U.S.O.C. is responsible for fundraising amounts for American Olympic athletes, with those funds being used for athletes' travel expenses, training facilities, and training costs.¹⁷⁰

Interestingly, the U.S.O.C. plays a larger role than simply providing financial assistance to athletes.¹⁷¹ The Committee holds exclusive control over representing American athletes' association with the Olympics.¹⁷² Additionally, the U.S.O.C. also holds exclusive rights to the words "Olympic" and "Olympiad," as well as the use of Olympic-related symbols within the United States.¹⁷³

4. Advertising and Crowdfunding as a Source of Funds

Still, some athletes find even more creative ways to generate income, including auctioning off their body for advertising.¹⁷⁴ More recently, some have turned to crowdsourcing efforts on websites such as GoFundMe.com to pay for equipment, shoes, training, and supplements.¹⁷⁵ The I.R.S., in an information letter, states "the income tax consequences to a taxpayer of a crowdfunding effort depend on all the facts and circumstances surrounding that effort."¹⁷⁶ The information letter further states that crowdfunding revenues are generally includible in taxable income if the funds are not "loans that must be repaid . . . [or] gifts made out of detached generosity and without any 'quid pro quo.'"¹⁷⁷ Additionally, the letter points out "a voluntary transfer without a 'quid pro quo' is not necessarily a gift for federal income tax purposes."¹⁷⁸ Lastly, the letter states "crowdfunding revenues must

¹⁶⁷ *Id.*

¹⁶⁸ Quittner, *supra* note 159.

¹⁶⁹ Vongkiatkajorn, *supra* note 140.

¹⁷⁰ *Id.*

¹⁷¹ *Id.*

¹⁷² *Id.*

¹⁷³ 36 U.S.C. § 220506 (2018).

¹⁷⁴ Eneriz, *supra* note 150 (noting that "Nick Symmonds, a track athlete, earned over \$11,000 after he auctioned his skin on eBay as temporary-tattoo canvas for sponsors").

¹⁷⁵ *Id.* (noting "American decathlete Jeremy Taiwo started a GoFundMe account to raise \$15,000 to pay for equipment, shoes, training, supplements, chiropractic care, and more. . . . Taiwo raised over \$53,000").

¹⁷⁶ I.R.S. INFO. LTR. 2016-0036 (Mar. 30, 2016).

¹⁷⁷ *Id.*

¹⁷⁸ *Id.*

generally be included in income to the extent they are received for services rendered or are gains from the sale of property.”¹⁷⁹

For athletes, no matter what the source, funds received very likely end up funding their attempt to be a medalist, at the Olympics. The funds may keep the athlete afloat by helping them pay for personal necessary expenses (rent, groceries, and utilities), or the funds may directly assist the athlete in their athletic endeavor by paying for equipment, shoes, training, and supplements. While athletes already may exclude some of the funds received from gross income, aside from the winnings provided for in I.R.C. § 74(d), many expenses incurred by an athlete may be netted against those funds received deemed includible in gross income in order to lower their taxable liability.

B. Athlete's Expenses

Any taxpayer would prefer to deduct, from their income, all expenses they incur whether the expense assists in producing income or simply a personal expense. However, athletes, like any American taxpayer, are limited by the I.R.C. to what expenses may be deducted.

1. Is the Athlete Engaged in a Business or Hobby?

Before deciding what expenses are actually deductible for income tax purposes, there must be a determination as to whether the athlete is engaged in a business transaction entered into for profit, or if they are competing in the event simply as a hobby as the I.R.C. treats deductions differently between the two possibilities.¹⁸⁰ Tax deductions, much like the physical ability of individuals, are not created equal.¹⁸¹ Two American Olympians may compete in the same event, with similar training regimens, and incur similar expenses. However, their tax returns may differ significantly depending upon how tax law views their role as an athlete.¹⁸² Just as there are different types of athletes at the Olympics, there are different tax

¹⁷⁹ *Id.*

¹⁸⁰ Kelly Phillips, *Yes, Olympic Wins Are Taxable (And Should Stay That Way)*, FORBES (Feb. 11, 2014, 11:27 PM), <https://www.forbes.com/sites/kellyphillipserb/2014/02/11/yes-olympic-wins-are-taxable-and-should-stay-that-way/#1ba206bc72ce>.

¹⁸¹ Kelly Phillips, *All Tax Deductions Are Not Created Equal*, AOL.COM (Mar. 8, 2011, 10:05 AM), <https://www.aol.com/2011/03/08/all-tax-deductions-are-not-created-equal/>.

¹⁸² Phillips, *supra* note 180.

consequences for athletes depending on factors beyond simply the amount of revenue or expense incurred during their career.¹⁸³

Before beginning to determine whether a Olympic sprinter can deduct charges for a masseuse, he must determine if the career he is “carrying on” is a “trade or business.”¹⁸⁴ If the athlete is determined to compete as a “trade or business,” then an analysis would begin as to what expenses are deductible.¹⁸⁵ Conversely, if the athlete is not “engaged in [the activity] for profit” and instead merely engaged in a hobby, there may be a deduction allowed, however that deduction will be limited.¹⁸⁶

When determining if an individual, in this case an athlete, is engaged in a business or a hobby, the I.R.S. often looks to whether the activity is engaged in for profit.¹⁸⁷ The I.R.S. examines nine factors to determine whether an activity is engaged in for profit including:

1. Manner in which the taxpayer carries on the activity.
2. The expertise of the taxpayer or his advisors.
3. The time and effort expended by the taxpayer in carrying on the activity.
4. Expectation that assets used in activity may appreciate in value.
5. The success of the taxpayer in carrying on other similar or dissimilar activities.
6. The taxpayer's history of income or losses with respect to the activity.
7. The amount of occasional profits, if any, which are earned.
8. The financial status of the taxpayer.
9. Elements of personal pleasure or recreation.¹⁸⁸

Additionally, it is presumed that an activity is engaged in for profit if a profit is produced in at least three of the last five years.¹⁸⁹ Should the athlete be engaged in a business, deductions for expenses are generally preferred when compared to expenses for an athlete merely engaged in a hobby.¹⁹⁰

¹⁸³ *Business or Hobby? Answer Has Implications for Deductions*, I.R.S., <https://www.irs.gov/newsroom/business-or-hobby-answer-has-implications-for-deductions> (last visited Jan. 8, 2018).

¹⁸⁴ I.R.C. § 162 (West 2018).

¹⁸⁵ *Id.*

¹⁸⁶ *Id.* § 183.

¹⁸⁷ *Five Basic Tax Tips About Hobbies*, I.R.S. (Aug. 6, 2014), <https://www.irs.gov/newsroom/five-basic-tax-tips-about-hobbies>.

¹⁸⁸ 26 C.F.R. § 1.183-2 (2017).

¹⁸⁹ *Is Your Hobby a For Profit Endeavor?*, I.R.S. (June 2008), <https://www.irs.gov/newsroom/is-your-hobby-a-for-profit-endeavor>.

¹⁹⁰ I.R.S. FACT SHEET 2007-18 (Apr. 2008) (explaining deductions for hobby activities are claimed only as itemized deductions limited to the amount of income from the hobby, with additional limitations, as opposed to deductions for a taxpayer engaged in a business, in which ordinary and necessary deductions may be claimed against other income).

2. *Business Expenses*

The I.R.C. does not offer clear guidance on what expenses are allowed for athletes specifically.¹⁹¹ The initial starting point for determining what expenses are allowed as a deduction against an athlete's earnings or winnings is I.R.C. § 162, titled "Trade or business expenses."¹⁹² Also relevant are expenses found in I.R.C. § 212, titled "Expenses for production of income," however, § 212 expenses are generally thought to be investment expenses.¹⁹³ In regards to § 162 expenses, a taxpayer is "allowed as a deduction all the *ordinary* and *necessary* expenses paid or incurred during the taxable year in carrying on any trade or business. . . ."¹⁹⁴ The statute specifically lists three items as being ordinary and necessary, including:

- (1) a reasonable allowance for salaries or other compensation for personal services actually rendered;
- (2) traveling expenses . . . while away from home in the pursuit of a trade or business; and
- (3) rentals or other payments required to be made as a condition to the continued use or possession, for purposes of the trade or business"¹⁹⁵

The statute does little to answer what can be considered either *ordinary* or *necessary*.¹⁹⁶ Additionally, Treasury Regulations do little as well to expound upon the statute, offering no specific guidance to athletes as to what expenses qualify.¹⁹⁷ Even case law acknowledges what is considered *ordinary* and *necessary* can be problematic: "[t]here is not and probably cannot be any exact definition of the term 'ordinary and necessary' and each case must be determined on the basis of its own facts and circumstances."¹⁹⁸ While statutes and regulations may not always be clear on what is ordinary or necessary, legal scholars make arguments for the deductibility for a wide

¹⁹¹ See I.R.C. § 162; *id.* § 212 (noting neither § 162 or § 212 discuss what expenses are allowed for athletes specifically, § 162 allowed as a deduction all the ordinary and necessary expenses paid or incurred during the taxable year in carrying on any trade or business).

¹⁹² I.R.C. § 162; Alan Pogroszewski & Kari Smoker, *My Tax Accountant Says I Can Deduct My Hot Tub. He's the Expert - Should I Question Him? An Overview of Tax Deductions for Professional Athletes and the Responsibility of Tax Preparers Who Sign Off on Their Returns*, 25 MARQ. SPORTS L. REV. 435, 437 (2015).

¹⁹³ Robert Wood, *Business Or Investment?*, FORBES (Aug. 15, 2011, 8:28 AM), <https://www.forbes.com/sites/robertwood/2011/08/15/business-or-investment/#2015d15234b0>.

¹⁹⁴ I.R.C. § 162(a) (emphasis added).

¹⁹⁵ *Id.* § 162(a)(1)-(3).

¹⁹⁶ *Id.* § 162 (The statute does not define the terms ordinary or necessary.).

¹⁹⁷ Treas. Reg. § 1.162-1 (2017).

¹⁹⁸ *Jones v. Comm'r*, 242 F.2d 616, 620 (5th Cir. 1957) (quoting MERTENS, LAW OF FEDERAL INCOME TAXATION, § 25.09).

assortment of expenses under § 162 many would not first think as deductible expenses for an athlete.¹⁹⁹ Deductible expenses, according to legal writers, should include a variety of deductions, from the seemingly unrelated cost of financial advisors fees,²⁰⁰ to the seemingly athletic related cost of fines imposed by a league.²⁰¹

Athletes incur increased costs when compared to a nonathlete, for example, increased costs of a strict and complex diet and nutrition.²⁰² Are these costs *ordinary* and *necessary* to their trade or business? Are the costs of a proper diet for a high-level athlete deductible as a tax expense, or the costs of a dietician assisting the athlete in fueling their body for peak performance, or the costs of a personal chef preparing those meals? These questions only begin the analysis for what an athlete may deduct. Whatever the case may be, ordinary and necessary, and thus deductible or nondeductible, it is important to note the I.R.C. provides these deductions for all taxpayers, which includes Olympic athletes.²⁰³

3. Hobby Expenses

Although an athlete competing in a sport as a hobby is subject to a less favorable tax consequence, when compared to an athlete competing in a sport as a trade or business, not all is lost to hobby taxpayers, although there are significant limitations and barriers.²⁰⁴ First, in order for taxpayers to deduct expenses for a hobby they must itemize their deductions,²⁰⁵ meaning in order for hobby expenses to be beneficial, itemized expenses for the hobby must exceed the standard deduction.²⁰⁶ Additionally, hobby expenses are only deductible to the extent of hobby income, and many, if not all, expenses

¹⁹⁹ See Pogroszewski & Smoker, *supra* note 192 at 437.

²⁰⁰ *Id.* at 445 (discussing 26 C.F.R. § 1.162-17).

²⁰¹ *Id.* at 456.

²⁰² *Eating Like an Olympian: The Diets of the World's Greatest Athletes*, ABC NEWS (Aug. 11, 2016, 7:57 AM), <http://abcnews.go.com/Entertainment/eating-olympian-diets-worlds-greatest-athletes/story?id=41288094>.

²⁰³ I.R.C. § 162 (West 2018) (noting the statute does not limit or disqualify any taxpayer(s) based on the type of industry of the trade or business).

²⁰⁴ See *Five Basic Tax Tips About Hobbies*, *supra* note 187 (explaining “Generally, you can only deduct your hobby expenses up to the amount of hobby income. If your hobby expenses are more than your hobby income, you have a loss from the activity. You can’t deduct the loss from your other income”).

²⁰⁵ *Tax Tips for People Who Earn Income from a Hobby*, I.R.S., <https://www.irs.com/articles/tax-tips-people-who-earn-income-hobby> (last visited Jan. 28, 2018).

²⁰⁶ *Itemizing vs. Standard Deduction: Six Tips to Help You Choose*, I.R.S. Tax Tip 2014-29 (Mar. 10, 2014), <https://www.irs.gov/newsroom/itemizing-vs-standard-deduction-six-tips-to-help-you-choose> (noting “[The taxpayer would] choose the [deduction] that allows [them] to pay the lower amount of tax”).

related to the hobby are only deductible for the amount exceeding 2% of adjusted-gross-income.²⁰⁷

With the limitations, floors, and the standard deduction all in mind, deducting expenses as a hobby may have seemingly harsh consequences, as illustrated in a footnote example from a Law Journal Article discussing the 2012 Proposed Olympic Tax:

Taxpayer participates in swimming as a hobby, and over the course of 2012 had swimming expenses of \$800. If Taxpayer's adjusted gross income (AGI) in 2012 was \$80,000, Taxpayer would not be able to write off any expenses associated with their swimming hobby because such expenses amounted to less than 2% of their total AGI. To meet the 2% floor rule, Taxpayer would have to have swimming expenses of more than \$1,600. Further, Taxpayer would only be eligible to write off those swimming expenses, which exceeded \$1,600 during 2012.²⁰⁸

The footnote, failed to mention consideration of the standard deduction.²⁰⁹ In the example, should the athlete have expenses over \$1,600, deducting those expenses would only benefit the athlete should those expenses, as well as any other allowable itemized deductions, total more than the applicable standard deduction.²¹⁰ Additionally, besides the 2% floor limit above adjusted-gross-income, the ceiling for expenses is the total revenue from the hobby.²¹¹

While athletes, like any U.S. citizen with income, look to deduct expenses against income in order to lower their tax liability, other prizes athletes receive are not included in income for reasons outside § 74(d): some prizes are valueless and thus not included in income as there is no “gain derived from capital, [or] from labor,”²¹² other prizes may not be included in income due to the athlete lacking “complete dominion” over the prize.²¹³

²⁰⁷ *Tax Tips for People Who Earn Income From a Hobby*, *supra* note 205.

²⁰⁸ Kathryn Kisska-Schulze & Adam Epstein, *Taxing Missy: Operation Gold and the 2012 Proposed Olympic Tax Elimination Act*, 14 TEX. REV. ENT. & SPORTS L. 95, 118 n.159 (2013).

²⁰⁹ *Id.* at 95.

²¹⁰ *Hobby or Business? IRS Offers Tips to Decide*, IRS Small Business Week Tax Tip 2017-04, I.R.S. (May 3, 2017), <https://www.irs.gov/newsroom/hobby-or-business-irs-offers-tips-to-decide>.

²¹¹ *Five Basic Tax Tips About Hobbies*, *supra* note 187 (noting “Generally, you can only deduct your hobby expenses up to the amount of hobby income. If your hobby expenses are more than your hobby income, you have a loss from the activity. You can’t deduct the loss from your other income”).

²¹² *Comm’r v. Glenshaw Glass Co.*, 348 U.S. 426, 430 (1955) (quoting *Eisner v. Macomber*, 252 U.S. 189, 207 (1920)).

²¹³ *See id.* at 431.

C. How Other Prizes and Awards Escape Being Included in Gross Income

While athletes receive a cash award from the U.S.O.C., and a medal from the International Olympic Committee which undoubtedly have a substantial value, the same cannot be said for winners of many other prizes, specifically the Pan Am Games.²¹⁴ Athletes who receive medals in the Pan Am Games receive no cash prize.²¹⁵ Additionally, the value of the medal, if based on the intrinsic value of the metal used in the production of the item, is substantially less than the used in the production of an Olympic medal.²¹⁶ For example, a gold medal won at the Pan Am games, would likely only be worth \$80,²¹⁷ as contrasted to \$675 for a gold medal won at the Olympics.²¹⁸

With no cash prize being awarded for a triumphant athlete at the Pan Am Games, and the relatively small value of a winning medal, there is little if any income to exclude from gross income.²¹⁹ Adding text to the Prizes and Awards Exclusion from Income section of the I.R.C. to include Pan Am Games athletes would likely have no effect on tax revenue as there is no income to exclude.²²⁰

Another award that could create a taxable event is winning the Heisman Trophy. The Heisman Trophy is an award given each year to the top outstanding college football player.²²¹ While Olympic medal winners receive their medal free of any obligations or constraints, and are generally free to do what they wish with their award, including selling their medal,²²² that is not the case for Heisman Trophy winners.²²³ A college football player lucky enough to win the Heisman Trophy must sign an agreement stating they cannot sell the trophy.²²⁴ Heisman Trophy winners are likely not responsible for a tax bill once winning the award due to not having “complete dominion”

²¹⁴ Alex Ballingall, *Winning Pan Am Gold Isn't Going to Make You Rich*, THE STAR (July 22, 2015), <https://www.thestar.com/news/gta/panamgames/2015/07/22/winning-pan-am-gold-isnt-going-to-make-you-rich.html>.

²¹⁵ *Id.*

²¹⁶ *Id.*

²¹⁷ *Id.*

²¹⁸ Johnson, *supra* note 103.

²¹⁹ See *Comm'r v. Glenshaw Glass Co.*, 348 U.S. 426, 430 (1955) (quoting *Eisner v. Macomber*, 252 U.S. 189, 207 (1920)) (a prize with no value would not be seen as a “gain derived from capital, from labor, or from both combined”).

²²⁰ See *id.*

²²¹ *Heisman Trust Mission Statement*, HEISMAN, http://heisman.com/sports/2014/9/15/GEN_0915145605.aspx. (last visited Sept. 25, 2018).

²²² Rosen, *supra* note 105.

²²³ Arash Markazi, *If Heismans Could Talk: Strange Stories About What Where Trophies Wind Up*, ESPN (Dec. 11, 2015), http://www.espn.com/college-football/story/_/id/14339214/heisman-trophy-ales-strange-stories-happens-statues-awarded.

²²⁴ *Id.*

over the award.²²⁵ Should football players have to include the Heisman Trophy in their income, they would likely face a sizeable tax bill as many trophies have sold for over \$250,000.²²⁶

D. Arguments in Favor of the Exemption for Athletes

Those in favor of granting Olympians an exemption for their medal and honorarium from gross income often point to the large tax bill athletes face when they return home.²²⁷ Senator John Thune, a Republican from South Dakota, said through his twitter account, the bill would eliminate taxes waiting for athletes upon their return home.²²⁸

A Congressman from across the aisle, Democratic Senator Chuck Schumer, believes the Act is simply a matter of fairness, as American Olympic athletes are at a disadvantage when compared to International athletes.²²⁹ Additionally, Senator Schumer pointed to the fact that the U.S., unlike several other countries, does not subsidize the costs of training for an Olympic athlete.²³⁰

Legislators proposing the bill believe that while comprehensive tax reform is still needed, it is important to eliminate current unfair taxes.²³¹ Those legislators believe the tax Olympians must pay upon winning at the Olympics imposes an unfair burden.²³² Republican Representative Robert Dold, of Illinois, believed the Act might even improve athletes chances of winning by enabling them to “remain focused on fulfilling their Olympic and Paralympic dreams without the fear of getting a huge tax bill in the mail.”²³³

²²⁵ See *Comm'r v. Glenshaw Glass Co.*, 348 U.S. 426, 431 (1955) (noting that because Heisman winners are unable to sell their trophy, they would not be seen to have complete dominion over the trophy, thus failing the income test from *Glenshaw Glass*).

²²⁶ Jim Rutledge, *7 Heisman Trophies Have Been Sold as Sports Collectibles*, ANTIQUEWEEK.COM, <http://antiqueweek.com/ArchiveArticle.asp?newsid=2689> (last visited Feb. 24, 2018).

²²⁷ Zoe Thomas, *For US Olympians, Gold Medals Come with a Hefty Tax Bill*, BBC BUS. REP. (Aug. 17, 2016), <http://www.bbc.com/news/business-37099066>.

²²⁸ Mike Leischner, *Thune's Olympic Tweet Falls Short of Gold*, BIG COUNTRY 92.5 KTWB (Aug. 11, 2016, 10:16 PM), <http://ktwb.com/news/articles/2016/aug/12/thunes-olympic-tweet-falls-short-of-gold/>; Senator John Thune (@SenJohnThune), TWITTER (Aug. 11, 2016, 7:04 PM), <https://twitter.com/SenJohnThune/status/763919046739832832>.

²²⁹ *Congressman Explains His Lone Vote in Support of Olympic 'Victory Tax'*, NBC SPORTS (Oct. 2, 2016, 10:51 AM), <http://olympics.nbcsports.com/tag/jim-himes/>.

²³⁰ *Id.*

²³¹ H.R. REP. NO. 114-762, at 2 (2016).

²³² *Id.*

²³³ *Congressman Explains His Lone Vote in Support of Olympic 'Victory Tax,' supra* note 229.

E. Arguments Against the Exemption for Athletes

There are several arguments opposing the United States Appreciation for Olympians and Paralympians Act of 2016, both practical and policy based. Critics claim the actual tax effect of the Act does very little to actually lower an Olympian's tax bill.²³⁴ Other critics claim Congress should focus their attention on other matters besides tax breaks for athletes.²³⁵ Additionally, critics have stated the bill simply “exploit[s] public confusion about how taxation of marginal income works.”²³⁶

Democratic Senator Jim Himes, of Connecticut, claims the Act is “bad policy.”²³⁷ Senator Himes was the only Congressman to vote against the Act²³⁸ and described his vote against the tax break for Olympians as “[a] lonely, lonely moment,”²³⁹ as well as further complicating an already complicated tax code.²⁴⁰ He further criticized the Act as a “feel-good bill,” with no end in sight as to who should receive exemptions.²⁴¹ The Senator explained giving tax breaks because it feels good, for example, to Nobel Prize winners, inner-city teachers, and astronauts, is no way to make tax policy.²⁴²

While the Americans for Tax Reform may have argued Olympians face a tax bill of \$9,000 upon returning home,²⁴³ fact checkers claim this is not the case, or at least only in rare cases for high-income athletes.²⁴⁴ Their findings state an athlete of even the highest income level, is unlikely to pay a bill of \$9,000 on winnings once business expenses have been deducted, which shouldn't be much of a challenge since “[a]ny accountant worth their salt

²³⁴ See Goewey, *supra* note 31, at 198 (noting “Realistically, using the applicable 2012 income tax rate schedule, an Olympic winner would be required to pay taxes totaling approximately \$1,852.50 for gold, \$525 for silver, and \$25 for bronze, on the monetary value awarded. When the fair market value of the medals is added to the taxpayer's gross income, the Olympian's tax burden merely increases from \$1,852.50 to \$1,953.75; \$525 to \$563.50; and \$25 to \$25.50, for gold, silver and bronze winners, respectively”).

²³⁵ Juliet Marcur, *Tax Break for Olympic Heroes? A Sole Lawmaker Says No*, N.Y. TIMES (Sept. 27, 2016), <https://www.nytimes.com/2016/09/28/sports/olympics/american-athlete-tax-break-vote.-html>.

²³⁶ Matthew Yglesias, *Tax the Olympians: Sen. Marco Rubio and President Obama Team Up for a Ridiculous New Tax Break for Olympic Medal Winners*, SLATE (Aug. 7, 2012, 4:03 PM), http://www.slate.com/articles/business/moneybox/2012/08/tax_breaks_for_olympic_medals_a_terrible_idea_whose_popularity_shows_why_tax_reform_is_unlikely_.html.

²³⁷ *Congressman Explains His Lone Vote in Support of Olympic 'Victory Tax,' supra* note 229.

²³⁸ United States Appreciation for Olympians and Paralympians Act of 2016, H.R. 5946, 114th Cong. (2016), <https://www.govtrack.us/congress/votes/114-2016/h546>.

²³⁹ Marcur, *supra* note 235.

²⁴⁰ *Congressman Explains His Lone Vote in Support of Olympic 'Victory Tax,' supra* note 229.

²⁴¹ *Id.*

²⁴² *Id.*

²⁴³ Johnson, *supra* note 103.

²⁴⁴ Louis Jacobson, *Do Olympic Medalists Owe Up to \$9,000 to the IRS?*, POLITIFACT (Aug. 11, 2016, 7:16 PM) <http://www.politifact.com/truth-o-meter/statements/2012/aug/01/americans-tax-reform-/do-olympic-medalists-owe-9000-irs/>.

should be able to get the rate of tax on medal winnings much below \$9,000, and maybe even to zero.”²⁴⁵

Lastly, some point to the fact that even though the I.R.C. does impose a tax upon medals for returning Olympic athletes, the I.R.S. has rarely pursued collection for the imposed tax.²⁴⁶ While athletes were previously responsible for the tax that came with winning a medal, unless they sold the medal for a profit, they rarely ran the risk of receiving a notice from the I.R.S.²⁴⁷

IV. ANALYSIS OF THE TAX POLICY OF UNITED STATES APPRECIATION FOR OLYMPIANS AND PARALYMPIANS ACT OF 2016

There seems to be little justification for an exemption from income for prizes and awards for Olympic athletes in terms of policy. What places the status of an Olympic athlete, albeit representing his or her country, over the status of an elementary school teacher who is awarded a plaque and a gift card for “Teacher of the Year?” There is no doubt the teacher serves the betterment of the country by choosing to engage in the education of children. Shouldn't tax policy promote endeavors in which a noble cause is pursued, especially one that may enrich the lives of others?

Additionally, consider a scientist who wins a cash prize to further his work in cancer research, or a law student who wins an essay contest on the subject of criminal justice reform. The aforementioned examples are noble endeavors in which society stands to benefit at least as much, if not more than, from the actions of a few Olympic athletes.

The 2016 bill seemed to have improved upon the 2012 bill, by closing the tax loophole present, meaning athletes already in a higher tax bracket would not be able to exclude their Olympic winnings.²⁴⁸ Had lawmakers not added the additional language to the 2016 bill, one might envision high-profile athletes not paying tax on any of the earnings received during their time at the Olympics. The House added the limitation to the exclusion on athletes with income over \$1,000,000, thus allowing the Federal Government

²⁴⁵ *Id.*

²⁴⁶ *Taxes and Our Returning Olympic Heroes*, WOLTERS KLUWER (Aug. 22, 2016), <http://news.cchgroup.com/2016/08/22/taxes-and-our-returning-olympic-heroes/>.

²⁴⁷ *Id.*

²⁴⁸ I.R.C. § 74(d) (West 2018); S. 3471, 112th Cong. (2012); H.R.6267, 112th Cong. (2012) (language in the 2016 bill contains a limitation for exclusion for athletes with gross income exceeding \$1,000,000, whereas the 2012 proposed bill had no such limitation).

to tax medals, and the honorarium, by high-income earning athletes such as Michael Phelps or LeBron James.²⁴⁹

Not only was no consideration given to an athlete's existing income in the 2012 bill,²⁵⁰ but one could see how accountants and lawyers might get their Olympian clients to exclude even more income by having sponsors pay bonuses for winning medals. For example, suppose a shoe manufacturer stipulated an athlete would collect a sizeable bonus upon winning a medal at the Olympics, or for only attending the Olympics. Because the 2012 bill excludes awards "won by the taxpayer in athletic competition in the Olympic Games,"²⁵¹ one might interpret the statute as any award received due to Olympic achievements, including money not awarded by the U.S.O.C.

If athletes are truly "punished" upon winning a medal,²⁵² what should one label the tax liability a Nobel Prize winner faces upon receipt of their medal? While recipients may avoid inclusion of the prize or award in gross income under § 74(b), the recipient must transfer the award or prize to a charity or government entity.²⁵³ The provision for prizes and awards received then donated for "religious, charitable, scientific, educational, artistic, literary, or civic achievement" seems to do little more, in effect, than allow a charitable deduction already allowed under I.R.C. § 170.²⁵⁴ The provision within § 74(b) likely benefits recipients when considering effects it may have on tax calculations using adjusted-gross-income. Excluding the prize or award would decrease the recipients adjusted-gross-income, as opposed to having it included in adjusted-gross-income and subtracting the amount as a charitable deduction.²⁵⁵

Besides policy, there seems to be little justification for an exemption from income for prizes and awards for Olympic athletes in terms of actual tax liability imposed upon Olympic athletes. As stated earlier, athletes may already receive funds that are excluded from income.²⁵⁶ Additionally, the expenses an athlete incurs are able to be netted against any funds that are actually included in income.²⁵⁷ Considering the expenses they incur, and the relatively modest amount the statute actually exempts, the exclusion from

²⁴⁹ *Congressman Explains His Lone Vote in Support of Olympic 'Victory Tax,' supra* note 229.

²⁵⁰ S. 3471, 112th Cong. (2012); H.R. 6267, 112th Cong. (2012).

²⁵¹ S. 3471, 112th Cong.; H.R. 6267, 112th Cong.

²⁵² Dinan, *supra* note 112.

²⁵³ I.R.C. § 74(b)(3) (West 2018).

²⁵⁴ *Id.* § 74(b), 170 (noting both charitable deductions and the exclusion of income from § 74(d) would ultimately decrease an individual's taxable income).

²⁵⁵ William Baldwin, *How to End-Run the AGI Tax-Grabs*, FORBES (Feb. 21, 2017, 10:00 AM), <https://www.forbes.com/sites/baldwin/2017/02/21/how-to-end-run-the-agi-tax-grabs/#72d061ef6607> (explaining "Adjusted gross income--line 37 of the 1040--drives all manner of penalties, surtaxes and phaseouts of benefits.").

²⁵⁶ Quittner, *supra* note 159.

²⁵⁷ I.R.C. § 162, 183.

income for Olympic athletes is likely a small benefit to a small number of individuals. Athletes with expenses to match their winnings may have no need to make use of § 74, as the I.R.C. already provides for provisions enabling them to limit their tax liability to what many would call their net income, especially if they are engaged in a trade or business.²⁵⁸

This note has reviewed money received and money spent by an athlete which may be categorized to increase or decrease their tax liability. The provisions in the I.R.C. discussed are not exclusive to athletes but to all U.S. taxpayers. If Olympic athletes truly face sizeable costs when compared to their earnings, the I.R.C. currently provides for tax relief, even without considering the exemption within § 74(d). However, rather than striking out the exemption of § 74(d), this note proposes legislation to expand the exception(s) from income for prizes and awards to other noble causes, be it competing in any athletic event or winning the Nobel Prize.

V. A PROPOSAL FOR MODIFICATION OF I.R.C. § 74

The tax code currently contains provisions enabling American Olympians, as well as any other individual receiving income, to deduct expenses they incur against the income they earn.²⁵⁹ Logically, should an Olympian have a tax bill waiting on them when they return, they must have incurred winnings exceeding their expenses as taxpayers are generally taxed on income which exceeds expenses.²⁶⁰ What makes an Olympic athlete more deserving of a tax break than a Nobel Prize winner? I.R.C. § 74 allows the Olympic athlete to keep their medal and cash honorarium, while the Nobel Prize winner must give up their award in order to avoid income taxes.²⁶¹

Rather than force prizewinners to give up their award, this note proposes amended legislation to allow prizes and award winners to exclude the value of their gift, rather than be forced to sell their award to pay the tax bill. This exception would allow not only Olympians, but also any prize or award winners pursuing a noble endeavor to exclude from income their prize or award. This sort of tax policy would encourage taxpayers' endeavors in pursuit of goals beneficial to America as a whole, whether those endeavors be enriching the lives of others through medical breakthroughs or even enhancing community spirit through athletic accomplishments.

²⁵⁸ See I.R.C. § 162 (West 2018).

²⁵⁹ See *id.* § 162, 183.

²⁶⁰ See generally U.S. CONST. amend. XVI.

²⁶¹ I.R.C. § 74 (Comparing § 74(d), which allows an Olympic athlete to exclude the prize from income while allowing the athlete to keep the prize, with § 74(b), which allows a recipient of a prize to exclude the prize from income only if transferred to a charity or government unit.).

Additionally, the exclusion would apply whether or not the recipient had taken any action in order to be considered for the prize or award. Lastly, the language proposed would not allow taxpayers with substantial income to exclude the value of a prize, this provision would make LeBron James responsible for a tax bill upon winning an Olympic medal,²⁶² as well as President Barack Obama for his Nobel Peace Prize.²⁶³ Thus, I.R.C. § 74 should read as follows:

(a) General rule

Except as otherwise provided in this section or in section 117 (relating to qualified scholarships), gross income includes amounts received as prizes and awards.

(b) Exception for certain prizes and awards

(1) Gross income does not include amounts received as prizes and awards made primarily in recognition of religious, charitable, scientific, educational, artistic, literary, civic, or athletic achievement. Prizes and awards received by an employee from an employer do not apply to this paragraph, any exceptions between employers and employees are covered by paragraph (c).

(2) Limitation based on adjusted gross income

(A) In general

Paragraph (1) shall not apply to any taxpayer for any taxable year if the adjusted gross income (determined with regard to this subsection) of such taxpayer for such taxable year exceeds \$1,000,000 (half of such amount in the case of a married individual filing a separate return).

(B) Coordination with other limitations

For purposes of sections 86, 135, 137, 199, 219, 221, 222, and 469, adjusted gross income shall be determined after the application of paragraph (1) and before the application of subparagraph (A).

(c) Exception for certain employee achievement awards

(1) In general

Gross income shall not include the value of an employee achievement award (as defined in section 274(j)) received by the taxpayer if the cost to the employer of the employee achievement award does not exceed

²⁶² *The NBA's Highest-Paid Players 2017*, FORBES, <https://www.forbes.com/pictures/mli45fhdd/1-lebron-james/#2dc45af85d5e> (last visited Mar. 5, 2018) (noting with a salary of \$31 million in 2017, LeBron James would not be eligible to exclude prizes or awards from income as it exceeds the limitation in this note's proposed modification).

²⁶³ Norm Eisen, *President Obama and Vice President Biden's Tax Returns*, WHITE HOUSE PRESIDENT BARACK OBAMA (Apr. 15, 2010, 12:20 PM), <https://obamawhitehouse.archives.gov/blog-/2010/04/15/president-obama-and-vice-president-biden-s-tax-returns> (noting in 2009, when President Obama won the Nobel Peace Prize, President Obama and First-Lady Michelle Obama reported joint-income of over \$5 million. The proposed modification in this note to I.R.C. § 74 would not allow President Obama to exclude the value of the Nobel peace prize from income).

the amount allowable as a deduction to the employer for the cost of the employee achievement award.

(2) Excess deduction award If the cost to the employer of the employee achievement award received by the taxpayer exceeds the amount allowable as a deduction to the employer, then gross income includes the greater of—

(A) an amount equal to the portion of the cost to the employer of the award that is not allowable as a deduction to the employer (but not in excess of the value of the award), or

(B) the amount by which the value of the award exceeds the amount allowable as a deduction to the employer.

The remaining portion of the value of such award shall not be included in the gross income of the recipient.

(3) Treatment of tax-exempt employers

In the case of an employer exempt from taxation under this subtitle, any reference in this subsection to the amount allowable as a deduction to the employer shall be treated as a reference to the amount which would be allowable as a deduction to the employer if the employer were not exempt from taxation under this subtitle.

(4) Cross reference

For provisions excluding certain de minimis fringes from gross income, see section 132(e).

VI. CONCLUSION

Olympic athletes do not face a punishment for winning a medal, rather they are taxed on income they earn, much like any other American taxpayer.²⁶⁴ Additionally, athletes are able to net expenses against income to arrive at a net taxable income.²⁶⁵ I.R.C. § 74(d) now makes an exception for a prize or award for athletic achievement.²⁶⁶ However, the exception is limited to Olympians and Paralympians.²⁶⁷ This exception, unlike the exception within I.R.C. § 74(b) for religious, charitable, scientific, educational, artistic, literary, or civic achievements, does not force the athlete to relinquish control of their prize or award.²⁶⁸ In order to promote noble endeavors, taxpayers who receive a prize or award for noble achievements should receive the same bene

²⁶⁴ I.R.C. § 61 (West 2018) (noting “gross income means all income from whatever source derived”).

²⁶⁵ *Id.* § 162, 183.

²⁶⁶ *Id.* § 74(d).

²⁶⁷ *Id.*

²⁶⁸ *Id.*