5-1-2014

Taxing The Gold: The Tax Treatment of U.S. Olympians

Samantha Marie Goewey

TAXING THE GOLD: The Tax Treatment of U.S. Olympians

Samantha Goewey

I. INTRODUCTION

The Olympic Games is one of the oldest athletic competitions in the world. It originated in ancient Greece and was revived in the late 19th century.[1] Every two years, with the summer and winter games alternating, representatives of hundreds of countries compete in the Olympics, with hopes of bringing home a gold medal.[2]

When the Games are played, controversies inevitably arise pertaining to athletes and events, which involve a myriad of issues, rules, and regulations.[3] One such controversy was recently kindled during the Summer Olympics in London in perfect timing with the lighting of the torch – the tax treatment of American Olympians under the United States Internal Revenue Code (the Code). On August 1, 2012, Congressman Aaron Schock (IL-18) and Senator Marco Rubio (R-FL) proposed The Olympic Tax Elimination Act (H.R. 6267 and S. 3471, respectively), a bill that would eliminate taxes on prizes and awards won by U.S. Olympians.[4] As support for their proposal, the members of Congress reasoned that our Olympians are nobly representing America when they compete in the Games, and thus should be honored with a tax-free prize.[5] This has

---

[1] *Olympic Games*, Encyclopedia Britannica, http://www.britannica.com/EBchecked/topic/428005/Olympic-Games (last viewed Sept. 22, 2012).
[2] *Id.*
[3] *Id.*
[4] H.R. 6267, 112th Cong. (2012); S. 3471, 112th Cong. (2012); Press Release, Senator Marco Rubio, Senator Marco Rubio Introduces Bill to Eliminate Tax On Olympic Medal Winners (Aug. 1, 2012) (http://www.rubio.senate.gov/public/index.cfm/2012/8/senator-rubio-introduces-bill-to-eliminate-tax-on-olympic-medal-winners); Press Release, Congressman Aaron Schock, Shock and Rubio Team Up to Eliminate Federal Tax on Olympic Medals (Aug. 1, 2012) (http://schock.house.gov/news/documentsingle.aspx?DocumentID=305515).
[5] Marco Rubio, *Marco Rubio: Olympic Medals Shouldn't be Taxed*, USA TODAY (Aug. 13, 2012, 8:23 PM), http://www.usatoday.com/news/opinion/editorials/story/2012-08-13/Olympic-Tax-Elimination-Rubio/57040234/1.

been received throughout the political realm with reactions ranging from brutal criticism to passionate support.[6] At the heart of the issue is Section 74 of the United States Internal Revenue Code, which the bill would modify.[7]

The income tax laws in the United States have evolved since their enactment in 1913.[8] The most recent tax reform took place in 1986, when many provisions were added or modified.[9] One of the provisions that underwent alteration was Section 74, which addresses the tax treatment of prizes and awards.[10] Section 74(a) mandates, generally, that gross income includes all amounts received as prizes and awards.[11] Currently, United States Olympians, like all American citizens, are required to pay taxes on their prizes and awards.[12] Specifically, they must add the value of the cash prize and the fair market value of the medal to their gross income in order to determine their tax liability.[13]

According to the Americans for Tax Reform website, the medals are valued at approximately $675 for gold, $385 for silver, and $5 for bronze[14]; and the cash prizes are $25,000 for gold, $15,000 for silver, and $10,000 for bronze.[15] In an absolute worst case

---

[6] *See generally* Len Boselovic, *Politicos Pander to Medal Winners*, Pittsburgh Post-Gazette, Aug. 12, 2012, http://www.post-gazette.com/stories/business/opinion/heard-off-the-street-politicos-pander-to-medal-winners-648691/; *See generally* Richard Simon, *No Taxes on Olympic Medals, Outraged U.S. Lawmakers Demand*, LOS ANGELES TIMES, Aug. 2, 2012, *available at* http://articles.latimes.com/2012/aug/02/nation/la-na-nn-bill-exempt-taxes-on-medal-winnings-20120802.

[7] I.R.C. § 74 (2013).

[8] *See generally* Bruce I. Kogan, *The Taxation of Prizes and Awards -- Tax Policy Winners and Losers*, 63 WASH. L. REV. 257 (1988) [hereinafter Kogan].

[9] Tax Reform Act of 1986, Pub. L. No. 99-514, 100 Stat. 2085 (1986) [hereinafter TRA86].

[10] *Id.*; I.R.C. § 74 (amended 1986).

[11] I.R.C. § 74 (amended 1986).

[12] *Id.*

[13] *Id.*

[14] *Win Olympic Gold, Pay the IRS*, AMERICANS FOR TAX REFORM, Jul. 31, 2012, http://www.atr.org/win-olympic-gold-pay-irs-a7091; *see also* Kim Peterson, *Not Much Real Gold in Olympic Medal*, MSN MONEY, Jul. 30, 2012, *available at http://money.msn.com/top-stocks/post.aspx?post=4ca66d5a-e067-4b78-923a-9f437ed6fa4e.*

[15] Nanette Byrnes and Kevin Drawbaugh, *Will U.S. Olympic Medalists Get a Tax Break?* REUTERS, Aug. 2, 2012, *available at* http://www.reuters.com/article/2012/08/02/us-oly-usa-tax-idUSBRE8711O020120802.

scenario, using the 35% top income tax rate for 2012[16], which is not applicable to most Olympic athletes, an Olympic winner would be required to pay taxes totaling approximately $9,000 for a gold, $5,500 for a silver, and $3,500 for a bronze.[17]

The Olympic Tax Elimination Act aims to remove the tax liability that Olympians owe on prizes and awards.[18] Our current tax law contains many loopholes that are often hard to understand and apply.[19] As Section 74 has evolved, Congress has tried to create an even playing field for all winners of prizes and awards, thereby condemning any potential loopholes.[20] The Olympic Tax Elimination Act, if enacted, would create the exact type of exemption that Congress has tried to prevent throughout the evolution of Section 74.[21] The very members of Congress who support this bill concede that it would create a loophole specifically designed only for U.S. Olympians.[22] Thus, we are faced with the question, why should Olympians receive a tax benefit when all other U.S. citizens are required to pay taxes on "income from whatever source derived?"[23] More specifically, what makes Olympians more worthy of a tax benefit than Nobel Prize winners, Pulitzer Prize winners, World Cup champions, and the like?

This note first examines the history and evolution of Section 74, pertaining to the taxation of prizes and awards. This note then focuses on the specific area of athletic prizes and awards, and whether such prizes have historically been excludable from gross

---

[16] Tax rates increased in 2013. The current top rate is 39.6%. For purposes of this note, we will use the 2012 tax rates, because The Olympic Tax Elimination Act was proposed in 2012, and the Olympic medalists to whom this Act would apply retroactively received their awards in 2012.
[17] *See infra* note 143 for a more realistic and precise calculation of an Olympic athlete's tax burden.
[18] H.R. 6267, 112th Cong. (2012); S. 3471, 112th Cong. (2012).
[19] *See generally* I.R.C. (amended 1986).
[20] TRA86, *supra* note 9.
[21] *See generally*, H.R. 6267, 112th Cong. (2012); S. 3471, 112th Cong. (2012).
[22] Richard Simon, *No Taxes on Olympic Medals, Outraged U.S. Lawmakers Demand*, LOS ANGELES TIMES, Aug. 2, 2012, *available at* http://articles.latimes.com/2012/aug/02/nation/la-na-nn-bill-exempt-taxes-on-medal-winnings-20120802
[23] *See generally* I.R.C. § 61 (2013).

income under Section 74(b). In Section III, this note reviews The Olympic Tax Elimination Act, and the reasons for its proposal. Following an overview of the proposed bill, in Section IV, this note reviews an array of political opinions ranging from emphatic support to outright disapproval of the bill and its implications. In Section V, this note argues that the bill should not be passed, and examines the potential implications of the bill.

II. HISTORY OF SECTION 74 OF THE U.S. TAX CODE

a. *The Original Section 74*

Before the changes promulgated by the Tax Reform Act of 1986,[24] Section 74 of the Internal Revenue Code provided an incentive to taxpayers who directly benefitted society through their accomplishments;[25] awards and prizes were excludable from gross income if they were awarded for certain prescribed achievements.[26] The original Section 74 specifically mandated a three-prong test to determine if prizes and awards were excludable from income: (1) the award must be "made primarily in recognition of

---

[24] TRA86, *supra* note 9.

[25] I.R.C. §74 (1982) (amended 1986).

[26] I.R.C. § 74 (1982) (amended 1986). Before the modifications enacted by TRA86, section 74 of the Internal Revenue Code provided as follows:

(a) General Rule. -- Except as provided in subsection (b) and in section 117 (relating to scholarships and fellowship grants), gross income includes amounts received as prizes and awards.

(b) Exception. – Gross income does not include amounts received as prizes and awards made primarily in recognition of religious, charitable, scientific, educational, artistic, literary, or civic achievement, but only if –

(1) the recipient was selected without any action on his part to enter the contest or proceeding; and

(2) the recipient is not required to render substantial future services as a condition to receiving the prize or award.

religious, charitable, scientific, educational, artistic, literary, or civic achievement"; (2) the recipient of the prize or award must be selected without any action on his part to enter a contest or proceeding; and (3) the recipient must not be required to render substantial future services as a condition to receiving the prize.[27] One of the justifications for enacting such a regulation geared towards providing tax benefits in recognition of a public service was that "requiring winners of scholarly awards to pay taxes on them would conflict with the wise and settled policy of encouraging scholarly work."[28]

Congress' aim was to provide a tax-benefit to people who had used their talents for the betterment of society, while at the same time, ensuring that game show prizes, lottery winnings, and other solely compensatory awards would be subjected to tax.[29] However, several problems arose with this statute, in that the seven areas of achievement listed as warranting a tax benefit were not actually defined.[30] This created confusion as to what type of activity or achievement fell into the specific categories.[31]

In McDermott v. Commissioner, the Petitioner was awarded the 1939 Ross Essay Prize of $3,000 by the American Bar Association.[32] The Ross Prize was given to the winner of an essay competition.[33] Each year, the American Bar Association would choose a topic "of timely public interest with a view of bringing about a scholarly consideration

---

[27] *Id.*
[28] McDermott v. Commissioner, 150 F.2d 585, 588 (D.C. Cir. 1945).
[29] Kogan, *supra* note 8, at *269; *see also* 1954 U.S. CODE CONG. & ADMIN. NEWS 4017, 4036, which provides:

> Your committee's bill includes in income subject to tax all prizes and awards except those made in recognition of past achievements of a religious, charitable, scientific, educational, artistic, literary, or civic nature, where the recipient was selected without any action on his part and is not required to render substantial future services. This exception is intended to exempt such awards as the Nobel and Pulitzer prizes.

[30] Kogan, *supra* note 8, at *269.
[31] *Id.* at *271.
[32] McDermott v. Commissioner, 150 F.2d 585, 585 (D.C. Cir. 1945).
[33] *Id.* at 586.

thereof," with the objective to promote "public welfare thereby."[34] In 1939, the year in which Petitioner was selected as the winner of Ross Prize, the subject of the essay was, "To what extent should decisions of administrative tribunals be reviewable by the Courts?"[35]

The Commissioner of Internal Revenue ruled that the prize was taxable as income, and the Tax Court agreed.[36] In reversing the Tax Court's decision, the United States Court of Appeals for the District of Columbia ruled that the prize was awarded in recognition of a scholarly achievement, and thus, was not taxable as income.[37]

In 1962, the United States Court of Appeals for the Fourth Circuit was faced with the task of determining whether a prize awarded to a person for a fishing endeavor fell within the meaning of Section 74(b) and was thus excludable from gross income.[38] The Third Annual American Beer Fishing Derby awarded Plaintiff Simmons a prize of $25,000 for catching Diamond Jim III, a rockfish wearing an identification tag for purposes of the competition.[39] The IRS asserted that the cash prize was includable in Simmons' gross income, and the District Court upheld the IRS' assertion.[40] Simmons then appealed, arguing that his achievement fell under one of the seven prescribed areas under Section 74(b) for prizes and awards.[41] Specifically, Simmons argued that the prize was made in recognition of a civic achievement, because the purpose of the American

---

[34] *Id.*
[35] *Id.*
[36] *Id.*
[37] *Id.*
[38] Simmons v. U.S., 308 F.2d 160 (1962).
[39] *Id.* at 161.
[40] *Id.*
[41] *Id.*

Brewery, Inc. in offering such a prize was to popularize the recreation and resort facilities of the state of Maryland.[42]

Unlike the result in McDermott v. Commissioner, the court ultimately concluded that the prize did not fall within Section 74(b), and thus was includable in income.[43] The court rejected Plaintiff's argument on the grounds that to classify such an achievement as one of civic recognition would be stretching the original intent of the legislature in enacting Section 74(b); it "requires a considerable flight of fancy to romanticize the Fishing Derby into a civic endeavor."[44] The court reasoned, "the statute's legislative history indicates that only awards for genuinely meritorious achievements were to be freed from taxation."[45] The court further reasoned that, "[f]ar from resembling a Nobel or Pulitzer prize-winner, Mr. Simmons fits naturally in the less-favored classification the legislators reserved for beneficiaries of 'giveaway' programs."[46] The court aligned its decision with Congressional intent to provide tax incentives to those who better society through their achievements, while ensuring that game show winners and the like are not given a tax benefit merely for their participation in an inherently compensatory contest.[47]

b. Athletic Achievements

As courts continued to interpret and apply Section 74, one question that inevitably arose was whether an athletic achievement fell within one of the seven categories, and thus warranted a tax-free award under Section 74.[48]

---

[42] *Id.* at 162.
[43] *Id.* at 164.
[44] *Id.* at 162-163.
[45] *Id.* at 163.
[46] *Id.* at 164.
[47] *Id.* at 163.
[48] Kogan, *supra* note 8, at *273; *see generally* Hornung v. Commissioner, 47 T.C. 428 (1967).

This issue was addressed in Hornung v. Commissioner, in which the plaintiff claimed that his award was nontaxable under Section 74.[49] Plaintiff Hornung, a professional football player, was named most valuable player by *Sports Magazine*, and as a result of his achievement, was awarded a Chevrolet Corvette.[50] The issue that the court faced was whether the award had been given in recognition of educational, artistic, scientific, or civic achievement, thereby making it tax-exempt.[51] Hornung made several attempts to classify his achievement as fitting within one of the seven prescribed areas in the Code.[52] Hornung first argued that the game of football is educational in that it is taught in colleges as part of physical education.[53] Hornung also argued that his award qualified as an artistic achievement because the game of football "calls for a degree of artistry."[54] Additionally, Hornung claimed that the skills of football are based on techniques that encompass scientific principles, and therefore the achievement falls within the scientific exception.[55] Hornung's last argument was that the award was made in recognition of a civic achievement due to the alleged interest of the President in petitioner's application for leave from the Army in order to play in the championship game.[56]

Based on the plaintiff's arguments, the court was faced with the challenge of interpreting the language of Section 74.[57] In holding against Hornung, the court stated that, "the words 'educational,' 'artistic,' 'scientific,' and 'civic' as used in section 74(b)

---

[49] Hornung v. Commissioner, 47 T.C. 428, 429 (1967)
[50] *Id.*
[51] *Id.* at 435.
[52] *Id.*
[53] *Id.* at 436.
[54] *Id.*
[55] *Id.*
[56] *Id.*
[57] *Id.*

should be given their ordinary, everyday meaning in the context of defining certain types of personal achievement."[58] Ultimately, the court decided that the award was includable in income, because such an athletic achievement does not fall within any of the seven prescribed areas of achievement outlined in Section 74.[59] "We feel confident that Congress had no intention of allowing professional football to constitute a type of activity for which proficiency could be recognized with an exempt award under section 74(b)."[60] The court reasoned, "[h]ad Congress intended to except prizes or awards for recognition of athletic prowess or achievement it could readily and easily have done so; as provided now however, no such exception can be read into the statutory language used."[61]

This issue regarding athletic achievement in the context of Section 74 was also addressed in Wills v. Commissioner.[62] In this case, Plaintiff Wills was a professional baseball player, who was awarded a gold and jewel-encrusted belt for his outstanding athletic achievements during the 1962 baseball season.[63] Plaintiff claimed that the fair market value of the belt should not be includable in his taxable income because the award was made "primarily in recognition of religious, charitable, scientific, educational, artistic, literary, or civic achievement."[64] The court cited *Hornung v. Commissioner*,[65] in adopting the reasoning that words should be given their ordinary meaning.[66] Additionally, Plaintiff argued that the belt should be tax-exempt because it "is a 'trophy'; that Section 74 is silent on the question of a trophy; and that the belt has no fair market

---

[58] *Id.*
[59] *Id.*
[60] *Id.* at 437.
[61] *Id.*
[62] Wills v. Commissioner, 48 T.C. 308 (1967).
[63] *Id.* at 309-310.
[64] *Id.* at 314.
[65] Hornung v. Commissioner, 47 T.C. 428, 429 (1967).
[66] Wills v. Commissioner, 48 T.C. 308, 314 (1967).

value because recipients intend to treat it as a 'trophy.'"[67] The court ultimately rejected Plaintiff's arguments and concluded that Plaintiff's achievement did not fall within one of the exceptions under Section 74(b), and thus was not excludable from gross income.[68] The court of appeals subsequently affirmed the decision of the tax court, holding that, "we cannot say that the Tax Court's finding that Wills received the car and belt for his popularity and athletic prowess and that these accomplishments did not constitute civic achievements, was clearly erroneous."[69]

c. The Current Section 74

Congress did not intend athletic achievements to fit within the list of exceptions under Section 74(b), as evidenced in the cases above.[70] However, if there was any doubt about a taxpayer's right to exclude such prizes and awards from his or her gross income before, the current tax provisions eliminate any remaining uncertainty.[71] Under the current version of Section 74, modified in 1986, Congress transformed the previously

---

[67] *Id.* at 315.
[68] *Id.* at 315-316.
[69] Wills v. Commissioner, 48 T.C. 308 (1967), *aff'd*, 411 F.2d 537 (9th Cir. 1969).
[70] See generally TRA86, *supra* note 9.
[71] *See* TRA86, *supra* note 9, §122(a) amended Code section 74(b) to read:

§74. Prizes and Awards

(b) Exception for Certain Prizes and Awards Transferred to Charities. -- Gross income does not include amounts received as prizes and awards made primarily in recognition of religious, charitable, scientific, educational, artistic, literary, or civic achievement, but only if --

(1) the recipient was selected without any action on his part to enter the contest or proceeding;

(2) the recipient is not required to render substantial future services as a condition to receiving the prize or award; and

(3) the prize or award is transferred by the payor to a governmental unit or organization described in paragraph (1) or (2) of section 170(c) pursuant to a designation made by the recipient.

three-prong test into a more stringent four-prong test.[72] Now, in addition to the three requirements under the previous section, the recipient of the prize or award must assign the award to a governmental unit or qualified charitable organization, in order for a tax-benefit to be rendered.[73] This narrows the previous intent of Congress to provide tax exemptions to those who better society through the seven defined areas.[74] Congress now seems to be reasoning that those who give their prizes or awards to a governmental unit or qualified charitable organization are the true benefactors of society, and the only award-winners who may actually receive a tax exemption under Section 74.[75] This additional requirement under the current Section 74 has greatly changed the application of the Code to winners of prizes and awards. Nobel prizes and Pulitzer prizes, for example, are no longer excludable from gross income unless given away to the government or to a charitable organization.[76]

This modification does not change the fact that athletic achievements will generally not be considered to fall within one of the seven exception areas under 74(b); an athlete's argument for a tax exemption under Section 74(b) will continue to fail at the first step of the analysis. However, it is now clear that prize-winners will not be able to exclude their prizes from their gross income, unless, in addition to fulfilling the original three requirements, they nobly give it to a governmental unit or charity.[77] It must be emphasized that in this situation, the prize-winner would not actually be keeping his or her award. To illustrate, even if an Olympian athlete somehow fulfilled Prong 1 of

---

[72] *Id.*; Kogan, *supra* note 8, at *284.
[73] I.R.C. § 74(b)(3) (2013).
[74] Kogan, *supra* note 8, at *287.
[75] Kogan, *supra* note 8, at *168.
[76] *Id.*
[77] *Id.*; I.R.C. § 74(b)(3) (2013).

Section 74's test, succeeding on the potential argument that his or her prize qualifies under one of the seven achievement areas, he or she would still not be able to claim a tax exemption unless the prize was subsequently given to the government or to a charitable organization.[78]

III. THE PROPOSED BILL

In August of 2012, Florida Senator Marco Rubio and Illinois Representative Aaron Schock introduced the Olympic Tax Elimination Act, a bill that would exempt U.S. Olympic medal winners from paying taxes on their medals.[79] The bill proposes to amend Section 74 of the Internal Revenue Code, by adding an 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."[80] The bill provides a retroactive application to apply to winners in the 2012 Summer Olympics.[81]

---

[78] I.R.C. § 74(b)(3) (2013).

[79] Marco Rubio, *Marco Rubio: Olympic Medals Shouldn't be Taxed*, USA TODAY (Aug. 13, 2012, 8:23 PM), http://www.usatoday.com/news/opinion/editorials/story/2012-08-13/Olympic-Tax-Elimination-Rubio/57040234/1; H.R. 6267, 112th Cong. (2012).

[80] H.R. 6267 provides:

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

Section 1. Elimination of Tax on Olympic Medals.

(a) In General. – Section 74 of the Internal Revenue Code of 1986 is amended by adding at the end the following subsection:

> "(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."

(b) Effective Date. – The amendment made by this section shall apply to prizes and awards received after December 31, 2011.

[81] *Id.*

As reasoning behind the proposal of this new bill, Rubio pressed that Olympians represent our nation in the Olympics and "shouldn't worry about an extra tax bill waiting for them back home."[82] Rubio sympathizes with most Olympians who go unnoticed, do not earn salaries to support their lifestyles, and "often struggle to balance their demanding training schedules with work."[83] Most importantly, Rubio emphasized that "these Olympians are a source of national unity and that their athletic excellence should not be punished."[84]

IV. THE POLITICAL DEBATE

The bill has sparked both negative and positive treatment from a range of political figures. Thirty-nine House and Senate members have signed on as co-sponsors of Senator Rubio's Olympic Tax Elimination Act.[85] Among the supporters is Senator Lamar Alexander, who announced that he is cosponsoring the Act because of his belief that "Our Olympians deserve our praise and accolades, not more tax bills, when they win at the Olympics."[86] In addition, Congresswoman Berkley has proclaimed her support for the bill.[87] Berkley has said, "Our U.S. athletes shouldn't have to worry about being hit with a big tax bill for being successful in the Olympic Games and making America proud

---

[82] Marco Rubio, *Marco Rubio: Olympic Medals Shouldn't be Taxed*, USA TODAY (Aug. 13, 2012, 8:23 PM), http://www.usatoday.com/news/opinion/editorials/story/2012-08-13/Olympic-Tax-Elimination-Rubio/57040234/1

[83] *Id.*

[84] *Id.*

[85] Len Boselovic, *Politicos Pander to Medal Winners*, Pittsburgh Post-Gazette, Aug. 12, 2012, http://www.post-gazette.com/stories/business/opinion/heard-off-the-street-politicos-pander-to-medal-winners-648691/.

[86] Press Release, Senator Lamar Alexander, Sen. Alexander Cosponsors Bill to End Taxation of Olympics Winners' Medals and Honorariums (Aug. 2, 2012) (http://www.alexander.senate.gov/public/index.cfm?p=PressReleases&ContentRecord_id=65704fa5-939d-4f33-8752-da9a45e457fd).

[87] *Berkley Cosponsors the "Olympic Tax Elimination Act"*, Congressional Documents and Publications, Aug. 2, 2012, http://berkley.house.gov/2012/08/berkley-cosponsors-the-olympic-tax-elimination-act.shtml.

of their accomplishments."[88] Berkley agreed with Senator Alexander in proclaiming that "We shouldn't be honoring the accomplishments of our Olympic athletes and then turning around and hitting them with heavy taxes on those achievements."[89] Congressman Jones also voiced his irritation at the policy that Olympians are taxed on their awards.[90] He has said, "This is just ridiculous to tax our athletes who have represented our country so well...Why are we punishing them for medals and money that they have worked hard for and received while proudly representing the United States on a world stage? It makes no sense."[91] Congresswoman Bono Mack and Congressman Butterfield even went so far as to say, "Taxing the Olympic medals of U.S. athletes is like Scrooge putting a tax on Christmas presents...It's just wrong."[92] Their joint statement also reflected their shared belief that, "Our athletes work and sacrifice for years to reach the pinnacle of their sports and to proudly represent the United States of America in the Olympic games."[93] The Internal Revenue Code was also strongly criticized by Bono Mack and Butterfield: "Only the U.S. tax code can turn the 'thrill of victory' into the agony of victory. We strongly urge our colleagues in Congress to join us in this effort to salute our U.S. Olympians. When they're standing on the podium, they should be savoring the moment – not calculating their taxes."[94] In addition, just in time for the then-upcoming election, Presidential Candidate Mitt Romney and President Barack

---

[88] *Id.*
[89] *Id.*
[90] *Jones: Do Not Tax Olympic Medals*, Congressional Press Releases, Aug. 2, 2012, http://jones.house.gov/press-release/jones-do-not-tax-olympic-medals.
[91] *Id.*
[92] *Bono Mack, Butterfield Introduce Legislation To Eliminate Income Taxes on Olympic*, Congressional Documents, http://bono.house.gov/news/documentsingle.aspx?DocumentID=305500.
[93] *Id.*
[94] *Id.*

Obama voiced their support for the bill.[95] Senior Adviser to Romney, Eric Fehrnstrom, relayed that Romney "believes that there should be no taxation of the type that you're describing on their hardware."[96] In addition, White House representatives confirmed that President Obama supports the bill.[97] Press secretary Jay Carney confirmed that Obama would do "everything we can to support our athletes."[98]

While support for the bill grew throughout the 2012 Summer Olympic Games, there was also much negative reaction to the bill, especially from those who understand the United States Tax Code and the potential implications that this bill proposes. One critic, Alex Knight, a tax partner at an Atlanta accounting firm, has gone so far as to say that winning the Olympic Games is no different than winning Wheel of Fortune or the lottery, and thus should be treated the same for tax purposes.[99] Most critics of the bill, however, have not trivialized the accomplishment of winning the Olympic Games, but instead have attacked the implications of the bill.[100] Matthew Gardner, at Citizens for Tax Justice, worries that the legislation would "add to the complexity and loopholes that everyone agrees are a problem."[101] He voiced his concerns that the bill would have a

---

[95] Arlette Saenz, *Romney Supports Eliminating Taxes On Olympic Medals*, ABC NEWS BLOG, Aug. 2, 2012, *available at* http://abcnews.go.com/blogs/politics/2012/08/romney-supports-eliminating-taxes-on-olympic-medals/; *Obama Backs Bill to Exempt Olympians from Taxes on Winnings*, CBSSPORTS.COM, Aug. 6, 2012, *available at* http://www.cbssports.com/olympics/story/19739453/obama-backs-bill-to-exempt-olympians-from-taxes-on-winnings.

[96] Arlette Saenz, *Romney Supports Eliminating Taxes On Olympic Medals*, ABC NEWS BLOG, Aug. 2, 2012, *available at* http://abcnews.go.com/blogs/politics/2012/08/romney-supports-eliminating-taxes-on-olympic-medals/.

[97] *Obama Backs Bill to Exempt Olympians from Taxes on Winnings*, CBSSPORTS.COM, Aug. 6, 2012, *available at* http://www.cbssports.com/olympics/story/19739453/obama-backs-bill-to-exempt-olympians-from-taxes-on-winnings.

[98] *Id.*

[99] Nanette Byrnes and Kevin Drawbaugh, *Will U.S. Olympic Medalists Get a Tax Break?* REUTERS, Aug. 2, 2012, *available at* http://www.reuters.com/article/2012/08/02/us-oly-usa-tax-idUSBRE8711O020120802.

[100] Richard Simon, *No Taxes on Olympic Medals, Outraged U.S. Lawmakers Demand*, LOS ANGELES TIMES, Aug. 2, 2012, *available at* http://articles.latimes.com/2012/aug/02/nation/la-na-nn-bill-exempt-taxes-on-medal-winnings-20120802.

[101] *Id.*

negative effect on the economy.[102] "Our revenues are dwindling, the rich pay less and less in taxes every year, and the tax code needs reform yesterday...With this kind of opportunistic legislation, these lawmakers are part of the problem, not the solution."[103] The Tax Foundation also attacked the bill on the grounds that "Such ad hoc exemptions to the tax code are precisely the problem...Far from addressing the fact that our tax code is a complicated and burdensome mess, Senator Rubio and Congressman Schock offer yet another unjustifiable loophole into the federal income tax code."'[104]

While most critics of the bill acknowledged that this bill would add more loopholes to the Code, some go even further as to demonstrate the complexities of adding such loopholes.[105] While the proposal is a very short passage adding to Section 74, modifying the tax code is a daunting task, which ultimately could lead to hundreds of additional pages in the Code.[106] "It turns into a Christmas tree. Everybody's hanging something on to it," said tax attorney Charles Potter.[107]

Another critic has argued that the proposed bill should not pass, because of the deep-rooted history of taxes prizes and awards, however, he does sympathize with Olympians.[108] As a solution, he suggests that "the athletic associations that put up these bonuses for medal winners should put up enough money to cover the taxes too. If it's a

---

[102] *Id.*
[103] *Id.*
[104] Catherine Pritchard, *The Fayetteville Observer, N.C., Live Wire Column*, THE FAYETTEVILLE OBSERVER BLOG, Aug. 11, 2012, http://fayobserver.com/articles/2012/08/10/1195880?sac=Local.
[105] *See generally* Len Boselovic, *Politicos Pander to Medal Winners*, PITTSBURGH POST-GAZETTE, Aug. 12, 2012, http://www.post-gazette.com/stories/business/opinion/heard-off-the-street-politicos-pander-to-medal-winners-648691/.
[106] Len Boselovic, *Politicos Pander to Medal Winners*, PITTSBURGH POST-GAZETTE, Aug. 12, 2012, *available at* http://www.post-gazette.com/stories/business/opinion/heard-off-the-street-politicos-pander-to-medal-winners-648691/.
[107] *Id.*
[108] Nanette Byrnes and Kevin Drawbaugh, *Will U.S. Olympic Medalists Get a Tax Break?* REUTERS, Aug. 2, 2012, *available at* http://www.reuters.com/article/2012/08/02/us-oly-usa-tax-idUSBRE8711O020120802.

$25,000 award, add in a third of that so that it's $25,000 after taxes."[109] Implicit in this argument, however, is still the ultimate conclusion that these prizes and awards should be taxed.[110]

V. ARGUMENT

This bill is a patriotic attempt to honor our Olympians. However, the members of Congress who proposed this bill have failed to acknowledge the potential negative effects that it may produce. There are several reasons why Congress should not pass this bill: (1) All American citizens are bound by the rigid rules of the Internal Revenue Code, and Olympians should be no exception; (2) Olympians are not coming home to an "extra" tax burden, as it has been described by supporters of the bill; and (3) the bill is contrary to the nation's goal to cure the deficit.

a) What makes Olympians more worthy of a tax benefit than other athletes, or more generally, than all American citizens?

Since 1986, when the Code underwent major amendments, all United States citizens have had to fulfill the requirements outlined in Section 74 in order to receive a tax exemption from a prize or award.[111] As previously noted, the 1986 amendment to Section 74 added a fourth prong to a previously three-pronged test, which evidenced Congressional intent to further limit tax exemptions on prizes and awards.[112] Athletes

---

[109] *Id.*
[110] *Id.*
[111] I.R.C. § 74(b)(3) (2013).
[112] *Id.*

have rarely, if ever, succeeded on the claim that a prize or award given for an athletic achievement is excludable from gross income.[113]

Horizontal equity is considered one of the most important principles of tax policy.[114] The principle provides that similarly situated individuals should face similar tax burdens.[115] The Olympic Tax Elimination Act would violate the principle of horizontal equity by favoring one group of people over another group of similarly situated people.

Other athletes who have represented the United States in global athletic competitions have not been privy to tax breaks similar to the one that this bill proposes. Illustrative of the potential violation of horizontal equity is the tax treatment of World Cup athletes. Every four years, American soccer players compete in the World Cup. Like Olympians, they represent our nation when they compete in the tournament. In proposing the bill, Senator Rubio reasoned that Olympians deserve a tax break because they represent the United States when they participate in the Olympics.[116] This reasoning should equally apply to soccer players who represent the United States when they participate in the World Cup, a worldwide athletic competition. However, Senator Rubio's proposed bill does not suggest a special exemption for these athletes.[117] Why does Senator Rubio choose only to favor Olympians? Both groups of athletes in the above example excel at the sports that they participate in, and both groups of athletes represent the United States when they compete against other nations.

---

[113] *See generally*, Kogan, *supra* note 8.
[114] David Elkins, *Horizontal Equity as a Principal of Tax Theory*, 24 Yale L. & Pol'y Rev. 43 (2006).
[115] *Id.*
[116] Marco Rubio, *Marco Rubio: Olympic Medals Shouldn't be Taxed*, USA TODAY (Aug. 13, 2012, 8:23 PM), http://www.usatoday.com/news/opinion/editorials/story/2012-08-13/Olympic-Tax-Elimination-Rubio/57040234/1.
[117] *See generally* H.R. 6267, 112th Cong. (2012)

Tax attorney Charles Potter has also illustrated the unfairness that this bill would promulgate.[118] He raised the point that the winner of the Masters golf tournament must pay taxes based on the value of the green jacket that he is awarded.[119] He also noted that the same rule applies to football players who win Super Bowl rings.[120] This raises the question, "[w]hy should Miami Heat superstar LeBron James be taxed for winning the National Basketball Association championship but not for his Olympian exploits as a member of the U.S. Dream Team?"[121]

Several Congressmen have alluded to the idea that Olympians are noble representatives of the United States when they compete against members of other countries.[122] However, to use this altruistic view of Olympians as support for a tax exemption is somewhat troubling. There are many Americans who have made significant contributions to our country, let alone the world, arguably in areas more influential than athletics, who are not exempt from Section 74's strict requirements. Robert G. Edwards developed in vitro fertilization;[123] Edward B. Lewis made discoveries concerning the genetic control of early embryonic development;[124] and Joseph E. Murray and E. Donnall Thomas made significant discoveries concerning organ and cell transplantation in the

---

[118] Len Boselovic, *Politicos Pander to Medal Winners*, PITTSBURGH POST-GAZETTE, Aug. 12, 2012, http://www.post-gazette.com/stories/business/opinion/heard-off-the-street-politicos-pander-to-medal-winners-648691/.
[119] *Id.*
[120] *Id.*
[121] *Id.*
[122] *See generally* Marco Rubio, *Marco Rubio: Olympic Medals Shouldn't be Taxed*, USA TODAY (Aug. 13, 2012, 8:23 PM), http://www.usatoday.com/news/opinion/editorials/story/2012-08-13/Olympic-Tax-Elimination-Rubio/57040234/1
[123] Robert G. Edwards – Biographical, THE OFFICIAL WEB SITE OF THE NOBEL PRIZE, http://www.nobelprize.org/nobel_prizes/medicine/laureates/2010/edwards-bio.html (last visited Sept. 20, 2013).
[124] Edward B. Lewis – Biographical, THE OFFICIAL WEB SITE OF THE NOBEL PRIZE, http://www.nobelprize.org/nobel_prizes/medicine/laureates/1995/lewis-bio.html (last visited Sept. 20, 2013).

treatment of human disease.[125] These four have all been awarded the Nobel Peace Prize for their remarkable achievements in the field of Physiology or Medicine,[126] all have subsequently had to abide by the four-prong test outlined in Section 74, and all have been subject to taxes on their Nobel Peace Prizes. To give a tax benefit to Olympic athletes, but not to Nobel Peace Prize laureates, on the basis of their significant contributions to our nation would be quite simply unfair.

Section 74 creates an even playing field for all winners of prizes and awards, no matter how substantial or significant. To favor specific groups of citizens through special exceptions would be unfair, inequitable, and a violation of horizontal equity.

b) Olympians do not come home to an "extra" tax bill.

In support of the proposed bill, several members of Congress have sympathized that Olympians should not have to pay an "extra" bill when they return home from the Olympic Games.[127] This characterization of the tax burden as an "extra" bill is misleading. Ultimately, the award-winner has realized an accession to wealth, and is therefore better off than he or she was before, even after eliminating tax dollars. As USA Today simplifies, "Anyone who gets a raise or a bonus, wins a raffle or a prize, or adds any income gets a larger tax bill, not an extra one."[128]

To understand the tax treatment of prizes and awards, it is beneficial to first provide a very brief and basic overview of how one's tax liability is computed. The first

---

[125] The Nobel Prize in Physiology or Medicine 1990, THE OFFICIAL WEB SITE OF THE NOBEL PRIZE, http://www.nobelprize.org/nobel_prizes/medicine/laureates/1990/ (last visited Sept. 20, 2013).
[126] *See generally* THE OFFICIAL WEB SITE OF THE NOBEL PRIZE, http://www.nobelprize.org (last visited Sept. 20, 2013).
[127] *Editorial: Olympians Don't Need a Tax Break*, USA TODAY, Aug. 13, 2012, *available at* http://usatoday30.usatoday.com/news/opinion/editorials/story/2012-08-13/Olympic-medal-tax-loophole/57040912/1.
[128] *Id.*

step in computing the amount of one's tax liability is the determination of gross income.[129] Under Section 61 of the Code, gross income is defined as "all income from whatever source derived."[130] For most individuals, the basic items that are included in this definition are wages, salaries, interest, dividends, and rents.[131] Section 74(a) expands the definition of gross income to include amounts received as prizes and awards.[132] Once a taxpayer's gross income is determined, the next step is to calculate the taxpayer's adjusted gross income, by deducting a set of items listed in Section 62.[133] Once the taxpayer's adjusted gross income has been determined, taxable income must be calculated.[134] This is done by deducting the amount of the personal exemptions of the taxpayer and his/her dependents, plus either (i) the standard deduction or (ii) "itemized" deductions.[135] After the taxpayer determines his or her taxable income, the rate schedule must be applied to determine the tax liability.[136] The final step is to offset the tax with any credits that may be available and to determine whether a minimum tax must be paid.[137]

As is clear from the brief guidelines above, if any of the steps are altered by substituting different amounts, the tax liability is obviously subject to change. It is therefore imperative to include "all income from whatever source derived," in the computation of gross income to ensure an accurate end result.[138]

---

[129] Joseph Bankman, Daniel N. Shaviro & Kirk J. Stark, Federal Income Taxation 31 (16th ed. 2012).
[130] *Id.*; I.R.C. § 61 (2013).
[131] Bankman, Shaviro & Stark, supra note 129, at 31.
[132] I.R.C. § 74 (amended 1986).
[133] Bankman, Shaviro & Stark, supra note 129, at 32.
[134] *Id.*
[135] *Id.*
[136] *Id.*
[137] *Id.*
[138] *Id.*

The simple fact is that when an Olympian wins an award for his efforts, he is better off than he was before being rewarded. That award counts as "income from whatever source derived" and therefore must be included in the taxpayer's gross income. Ultimately, the prize or award will increase the total tax liability that the Olympian must account for.

With a monetary prize, it is obvious that even after taxes, the Olympian is wealthier than he was before he won. If, on the other hand, the prize is not monetary, but rather a medal or a material object, the taxpayer is obligated to pay taxes on the fair market value of the prize or award. If the taxpayer cannot afford the tax, he or she has the option of selling the medal. Initially, this seems both unfair and unrealistic, since it is impractical to expect every taxpayer to sell an earned trophy because of his inability to pay taxes on it. However, the Code makes it abundantly clear that any accession to wealth must be imputed to gross income in determining one's tax liability.

It is important to note, however, that in addition to receiving a medal, an Olympic champion is also awarded a cash prize in recognition of his or her achievements.[139] A gold-medal winner is awarded $25,000; a silver-medal winner is awarded $15,000; and a bronze-medal winner is awarded $10,000.[140] The fair market value of a gold medal is approximately $675; a silver medal is valued at $385; and a bronze medal is valued at $5.[141] 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

---

[139] Kristen Hinman, *Should Olympic Winnings be Taxed?* BLOOMBERG BUSINESSWEEK, Aug. 2, 2012, *available at* http://www.businessweek.com/articles/2012-08-02/should-olympic-winnings-be-taxed.

[140] *Id.*

[141] *Win Olympic Gold, Pay the IRS*, AMERICANS FOR TAX REFORM, Jul. 31, 2012, http://www.atr.org/win-olympic-gold-pay-irs-a7091; *see also* Kim Peterson, *Not Much Real Gold in Olympic Medal*, MSN MONEY, Jul. 30, 2012, *available at http://money.msn.com/top-stocks/post.aspx?post=4ca66d5a-e067-4b78-923a-9f437ed6fa4e.*

for silver, and $25 for bronze, on the monetary value awarded.[142] 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.[143] The large cash prizes that Olympians are awarded are undoubtedly enough to cover the relatively minor tax burden that accompany the medals.

c) The proposed bill is contrary to the Nation's goal to reduce the deficit.

---

[142] I.R.C. (2012) Table 3 – Section 1(c) – Unmarried Individuals (Other Than Surviving Spouses and Heads of Households) provides:

If Taxable Income Is:	*The Tax Is:*
Not over $8,700	10% of the taxable income
Over $8,700 but not over $35,350	$870 plus 15% of the excess over $8,700
Over $35,350 but not over $85,650	$4,867.50 plus 25% of the excess over $35,350
Over $85,650 but not over $178,650	$17,442.50 plus 28% of the excess over $85,650
Over $178,650 but not over $388,350	$43,482.50 plus 33% of the excess over $178,650
Over $388,350	$112,683.50 plus 35% of the excess over $388,350

The standard deduction in 2012 was $5,950. The personal exemption in 2012 was $3,800.

Gold monetary prize tax computation:	25,000 – 5,950 – 3,800 = 15,250 $870 + 15% of the excess over $8,700 $870 + (.15)(15,250 – 8,700) = $1,852.50
Silver monetary prize tax computation:	15,000 – 5,950 – 3,800 = 5,250 10% of the taxable income (.10)(5,250) = 525
Bronze monetary prize tax computation:	10,000 – 5,950 – 3,800 = 250 10% of the taxable income (.10)(250) = 25

[143] Using I.R.C. (2012) Table 3 – Section 1(c) – Unmarried Individuals (Other Than Surviving Spouses and Heads of Households):

Gold monetary and medal prize tax computation:	25,000 + 675 – 5,950 – 3,800 = 15,925 $870 + 15% of the excess over $8,700 $870 + (.15)(15,925 – 8,700) = $1,953.75
Silver monetary and medal prize tax computation:	15,000 + 385 – 5,950 – 3,800 = 5,635 10% of the taxable income (.10)(5,635) = $563.50
Bronze monetary and medal prize tax computation:	10,000 + 5 – 5,950 – 3,800 = 255 10% of the taxable income (.10)(255) = $25.50

Members of Congress are using this proposal for political backing. Just as the Summer Games ended, the electoral campaign began to pick up pace. Both President Obama and then-Presidential Candidate Mitt Romney acknowledged their support for the bill. However, this bill would be contrary to their shared goal to cut the nation's deficit by means of the Internal Revenue Code. When addressing his plans to mitigate the nation's deficit problems, at a Press Conference in 2011, President Obama said, "It would be nice if we could keep every tax break there is, but we've got to make some tough choices here if we want to reduce our deficit."[144] He went on to explain, "Any agreement to reduce our deficit is going to require tough decisions and balanced solutions."[145] This bill starkly favors one small group of American citizens over the remaining population. Indeed, this could not have been what the President intended when he suggested balanced solutions.

This bill has the potential of setting bad precedent and creating a slippery slope for other proposals of similar nature. If Olympians become entitled to a tax benefit through passage of this bill, many other groups of people may also feel entitled to a similar tax benefit. Congress must respond to this bill in a manner that makes clear its intent to limit loopholes and preserve Section 74's even playing field for all American citizens alike.

This bill, and the potential surge of other loopholes in Section 74 and throughout the Code, would contradict the Nation's efforts to reduce the deficit. Ed Kleinbard

---

[144] *President Obama on Our Economy and the Debt Limit: "Now is the Time to Go Ahead and Make the Tough Choices*, The White House Blog, June 29, 2011, *available at* http://www.whitehouse.gov/blog/2011/06/29/president-obama-our-economy-and-debt-limit-now-time-go-ahead-and-make-tough-choices.

[145] *Id.*

explains our deficit problem with specific regards to tax expenditures.[146] "Tax expenditures are really spending programs, not tax rollbacks, because the missing tax revenues must be financed by more taxes on somebody else. Like any other form of deficit spending, a targeted tax break without a revenue offset simply means more deficits (and ultimately more taxes); a targeted tax break coupled with a specific revenue 'payfor' means that one group of Americans is required to pay (in the form of higher taxes) for a subsidy to be delivered to others through the mechanism of the tax system."[147] The very basic take-away from Kleinbard's explanation is that revenue needs to come from some source; if one group of Americans is given a tax break, then another group of Americans will have to make up for it.[148] Applied to the issue at hand, if Congress enacts the proposed bill, Olympians will no longer provide a source of the revenue. While this may not seem substantial, every source, when taken as a whole, accounts for the Nation's deficit. More concerning is that this proposed bill opens up the floodgates for other loopholes, which in effect, would diminish other revenue sources. The over-simplified result is that the loss of revenue sources will cause other groups of Americans to carry a larger tax burden.

Kleinbard has also examined the fluctuations of tax expenditures throughout the late 1900s.[149] He notes that after climbing to an all-time high in the mid-1980s, tax expenditures then "fell because of the base broadening and rate reductions of the Tax Reform Act of 1986."[150] He goes on to say that tax expenditures reached a modern low

---

[146] Edward D. Kleinbard, *The Hidden Hand of Government Spending*, Regulation (Cato Inst., pub.), Fall 2010, at 18.
[147] *Id.*
[148] *Id.*
[149] *Id.* at 21.
[150] *Id.*

in 1991.[151] Looking at this timeline, it is evident that Congress, through the Tax Reform Act of 1986, aimed to reduce tax expenditures. The bill at issue would do just the opposite – it would increase tax expenditures by providing a new benefit to a new group of people. This bill has the potential of adversely affecting our Nation's efforts to cure the deficit, and therefore should not be passed.

VI. CONCLUSION

There are many reasons why the proposed bill should not be passed. Most importantly, the consistent application of Section 74 to all prize-winners must be preserved. Olympic athletes are loved among our Nation, and rightfully so. However, there are many Americans who have made significant contributions to our society. To create an exception based on meritorious achievement just for Olympic champions would be to unfairly favor one group of Americans over the rest. Further, the tax that Olympic champions are subject to upon winning a prize or award is minor in proportion to the value of the award. An Olympic athlete would still be recognizing a huge accession to wealth, even after the tax burden is deducted from his or her overall award. Finally, the potential results of enacting the proposed bill would be detrimental to our Nation's deficit problem. Members of Congress have consistently prioritized the deficit as among the most prominent issues that our Nation is currently facing. The most basic solution is to reduce tax expenditures; this bill does exactly the opposite.

---

[151] *Id.*