
GETTING THE GOLD BUT LOSING THE MONEY: TAXING OLYMPIC CASH PRIZES**INTRODUCTION****Meghan Kearns¹**

At the 2014 Sochi Olympic games, Vic Wild became the first snowboarder in history to win two gold medals at the same Olympics. An American-born athlete, Wild is a native of Washington state. However, he wasn't competing for the United States of America at Sochi but for Russia.² Wild trained for the Olympics as a member of the U.S. Ski and Snowboard Association, but left the team due to lack of funding, which made it financially difficult for Wild to continue training. Most of the resources were directed to halfpipe or slopestyle, as opposed to downhill snowboarding, which is Wild's area of discipline.³ In 2011, Wild married Russian snowboarder, Alena Zavarzina⁴ and moved to Russia to become a citizen.⁵ Russia provide Wild with the resources he needed to train for the Olympics and financially support his family, something he could not do in America.

The United States is one of only three countries in the world to provide no government funding to support Olympic athletes. The U.S. uses a non-profit 503(c)3 organization called the United States Olympic Committee (USOC) to support and oversee U.S. teams for the Olympic, Paralympic, Youth Olympic, Pan American, and Parapan Olympic games.⁶ The USOC relies on

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² Wayne Coffey, *American-Turned-Russian Snowboarder Vic Wild Wins Second Gold Medal for Adopted Country*, N.Y. DAILY NEWS, Feb. 22, 2014, available at <http://www.nydailynews.com/sports/olympics/american-turned-russian-wins-gold-adopted-country-article-1.1696921>.

³ *Id.*

⁴ Alena Zavarzina won bronze in the women's parallel giant slalom. *Id.*

⁵ *Id.*

⁶ USOC ANN. REP. 5 (2012).

television broadcasting deals and corporate sponsors to collect money.⁷ The funds are then meagerly divided to the athletes, leaving some struggling financially to train for the Olympic games and forcing them to find alternative ways to finance their goals.⁸

Unlike the United States, the Russian government has a Ministry of Sport which “is a federal executive body responsible for drafting and implementing government policy and legal regulation in physical fitness and sport, providing state services (including anti-doping measures), and managing public property in the area of physical fitness and sport.”⁹ The Ministry helps to fund Specialized Children and Youth Olympic Reserve Schools, which select and train children with the potential to be Olympians. In 2013, the Ministry and the Foundation to Support Russian Olympians awarded grants to three hundred of the best Specialized Olympic Reserve Schools ranging from one to four million roubles. Additionally, the Ministry of Sport also subsidizes the schools.¹⁰ Private individuals, not just the government, fund Russian Olympians as well. Billionaire Mikhail Prokhorov provided the Russian biathlon team with private jets for travel.¹¹

Even though Vic Wild did not attend one of the Olympic Reserve Schools, once he became a Russian citizen he was able to receive funding from Russia that allowed him to rent an

⁷ *Olympic Funding Often Reflects Country's Values*, VOICE OF AM., Oct. 27, 2009, <http://www.voanews.com/content/a-13-2008-06-16-olympic-funding-often-reflects-countrys-values-66821302/374425.html>.

⁸ From 2009-2012 only 10.3% of total expenses for the USOC were in direct support for U.S athletes. Nathan Ikon Crumpton, *How Well Are US Athletes Supported by the USOC? And 11 Other Olympic Questions...*, U.S. ATHLETIC TRUST, (Sept. 18, 2013), <http://usathletictrust.org/athlete-advocacy/usat-publications/how-well-are-us-athletes-supported-by-the-usoc-and-11-other-important-olympic-questions/> [hereinafter *How Well Are US Athletes Supported by the USOC*].

⁹ *Description*, MINISTRY OF SPORT OF THE RUSSIAN FEDERATION, <http://government.ru/en/department/60/about/>.

¹⁰ *Ministry of Sport and Foundation to Support Russian Olympians expand support programme for Olympic reserve schools*, NEWS: THE RUSSIAN GOVERNMENT (July 12, 2013), http://government.ru/en/dep_news/2991.

¹¹ Jason Corcoran & Christopher Spillane, *American Paid by Putin is Snowboard Made Russian for Games* (Feb. 13, 2014 5:19 AM), <http://www.bloomberg.com/news/2014-02-12/american-paid-by-putin-is-snowboarder-made-russian-for-olympics.html>.

apartment and train as much as he wanted, without holding a second job.¹² In comparison, his American counterpart, Justin Reiter, spent months sleeping in his truck to support his training. Reiter went to Sochi without a coach, without a teammate, and without a wax tech. He did not make it past the first run and was disqualified for missing two gates on the course.¹³

For his two gold medals, Vic Wild received roughly \$270,000 from the Russian government.¹⁴ Wild also received a brand-new Mercedes GL SUV, provided by the Russian Olympians Foundation, which is a consortium of Russian businessmen.¹⁵ The USOC is responsible for paying cash prizes for Olympic medals to American athletes. In comparison to Vic Wild's fortune, the USOC only pays \$25,000 for gold, \$15,000 for silver and \$10,000 for bronze, all of which is considered taxable income by the Internal Revenue Service (IRS).¹⁶

For years, Congressmen have expressed interest in amending the tax code to exempt prizes won at the Olympic games. Despite having bipartisan support, such proposals garner little interest or momentum to pass in Congress. In 2012, Sen. Marco Rubio introduced a bill entitled The Olympic Tax Elimination Act to amend the Internal Revenue Code of 1986 to eliminate the tax on Olympic medals and prize money.¹⁷ Sen. Rubio argued, "Athletes representing our nation

¹²Vic Wild declined to say how much he receives from the Russian team. Rachel Bachman, *Vic Wild Wins Another Gold Medal for Russian in Parallel Slalom*, WALL ST. J., Feb. 22, 2014, available at <http://online.wsj.com/news/articles/SB10001424052702304914204579398622552209610>.

¹³ Jason Blevins, *Vic Wild's Gold Ring Leads to Two Gold medals as a Russian*, THE DENV. POST, Feb. 22, 2014, available at http://www.denverpost.com/olympics/ci_25207732/vic-wilds-gold-ring-leads-two-gold-medals.

¹⁴ Coffey, *supra* note 1.

¹⁵ Jay Busbee, *Russia Gives all its Gold Medalists \$120,000, a new Mercedes*, YAHOO SPORTS (Feb. 27, 2014 12:42 PM), <http://sports.yahoo.com/blogs/olympics-fourth-place-medal/russia-gives-all-its-gold-medalists--120-000--a-new-mercedes-174223357.html>.

¹⁶ Had Vic Wild competed for the US he would have received \$50,000. Robert W. Wood, *Win Olympic Gold, Cash, Then Endorsement Payday*, FORBES, Feb. 2, 2014, available at <http://www.forbes.com/sites/robertwood/2014/02/08/surprise-winner-of-olympic-gold-cash-endorsement-payday/>.

¹⁷ Senator Marco Rubio is a Republican from Florida. Press Release, Newsroom, U.S. Senator for Florida, Marco, available at <http://www.rubio.senate.gov/public/index.cfm/press-releases?ID=ea518eca-4667-4771-bee6-3eeda7106aac> [hereinafter *Rubio Press Release*]. The co-sponsors of the bill included Lamar Alexander (R-TN),

overseas in the Olympics shouldn't have to worry about an extra tax bill waiting for them back home."¹⁸ President Obama also expressed support. The White House press secretary said, "The President believes that we should support efforts...to ensure that we are doing everything we can to honor and support our Olympic athletes who have volunteered to represent our nation at the Olympic Games."¹⁹ With only seven co-sponsors, The Olympic Tax Elimination Act never came up for a vote in the Senate.²⁰

With the 2014 winter Olympic underway, the effort to exempt Olympic prize money from the tax code was reignited when Rep. Blake Farenthold reintroduced the Tax Exemptions for American Medalists (TEAM) Act in the House of Representatives.²¹ Rep. Farenthold expressed his reasons for the bill saying:

"This needless tax illustrates how complicated and burdensome our tax code has become. We need a fairer system for all, and eliminating this unnecessary tax burden on our athletes is a good way to start. Our Olympic athletes are the true embodiment of the American spirit. As they represent our nation on the world stage in the upcoming Winter Olympics, they should be faced with our undying support – not with excessive taxes."²²

Additionally, a similar measure, S. 2026, was introduced in the Senate by Sen. John Thune. Like its sister bills, S. 2026 would exempt Olympic and Paralympic athletes from being

John Boozman (R-AR), John "Jonny" Isakson (R-GA), Mike Lee (R-UT), David Vitter (R-LA), Scott Brown (R-MA), John Hoeven (R-ND). S. 3471, GOVTRACK.US, <https://www.govtrack.us/congress/bills/112/s3471>.

¹⁸ Rubio Press Release, *supra* note 16.

¹⁹ Kelly Phillips Erb, *President Obama Supports Tax Exception for Olympic Athletes*, FORBES, Aug. 6, 2012, available at <http://www.forbes.com/sites/kellyphillipserb/2012/08/06/president-obama-supports-tax-exemption-for-olympic-athletes/> [hereinafter *Obama Supports Tax Exemption*].

²⁰ Wood, *supra* note 15.

²¹ Representative Blake Farenthold is a Republican Congressman from Texas. Rep. Farenthold sponsored the same bill in the 112th Congress. Press Release, Newsroom, U.S. Congressman Blake Farenthold Reintroduces Tax Exemptions for American Medalist (TEAM) Act (Feb. 5, 2014), <http://farentholdforms.house.gov/news/documentsingle.aspx?DocumentID=369097> [hereinafter *Farenthold Press Release*]. The cosponsors for the 2014 bill include Walter Jones (R-NC3), Pete Sessions (R-TX32), Mario Diaz-Balart (R-FL25), Sheila Jackson Lee (D-TX18), Doug LaMalfa (R-CA1), Luke Messer (R-IN6), Ted Poe (R-TX2), Kevin Yoder (R-KS3), Bill Cassidy (R-LA6), Tome Cole (R-OK4), George Holding (R-NC13), David Loebsack (D-IA2), Filemon Vela (D-TX34) and Carol Shea-Porter (D-NH1). H.R. 3987, GOVTRACK.US, <https://www.govtrack.us/congress/bills/113/hr3987> [hereinafter *H.R. 3987, Govtrack*].

²² Farenthold press release, *supra* note 20.

taxed by the IRS on cash prizes won at the Olympic games. Sen. Thune argued, “In the United States, athletes are welcomed home from winning on a world stage with a tax bill. Winning an Olympic medal should be a source of great pride for our athletes and the federal government should celebrate their achievement rather than tax their success.”²³

Not everyone agrees that Olympic prize money should be exempted. Olympic cash prizes are taxed like Nobel or Pulitzer Prizes and opponents argue it is unfair to exempt Olympians and not other prizes awarded based on merit.²⁴ A second argument is that adding another tax exemption threatens the uniformity of the tax code.²⁵ A third reason to continue to tax Olympic prize money is that the tax does not create an economic hardship. If the athlete treats his training like a business he or she could be eligible for a deduction.²⁶ Since athletes can find relief in the tax code, there is no reason to add another. Proponents of the status quo argue the Olympics should be about the games and caution not to “muck it up with politics.”²⁷

Since the inception of the modern Olympics, the games have been influenced by politics. American athletes represent our country on the international stage and their victories are a source of national pride. From the triumphs of Jesse Owens at the 1936 Berlin Olympics to the defeat of the Soviet hockey team in Miracle on Ice, Americans rallied behind these Olympic victories.

²³ Senator John Thune is a Republican from South Dakota. S. 2026 is co-sponsored by Sen. Marco Rubio (R-Fla.), Charles “Chuck” Schumer (D-N.Y.), Mark Kirk (R-Ill.), Kristen Gillibrand (D-N.Y.), Roger Wicker (R-Miss.), John Hoeven (R-N.D.), Roger Wicker (R-MS), Orrin Hatch (R-UT), Michael Crapo (R-ID), and John “Johnny” Isakson (R-Ga.). Press Release, Press, Thune Introduces Legislation to Protect Olympic and Paralympic Medalists from Federal Tax (Feb. 12, 2014), <http://www.thune.senate.gov/public/index.cfm/2014/2/thune-introduces-legislation-to-protect-olympic-and-paralympic-medalists-from-federal-tax> [hereinafter *Thune Press Release*]. See also S. 2026, GOVTRACK.US, <https://www.govtrack.us/congress/bills/113/s2026> [hereinafter *S. 2026, Govtrack*].

²⁴ Dena Guttman, Note, *Dear Olympic Medalists, Thank You for Representing our Country in the Olympics, But it's Time to Pay up!*, 22 CARDOZO J. INT'L & COMP. L. 85, 90-91 (2013).

²⁵ *Id.* at 90.

²⁶ Kelly Phillips Erb, *Yes, Olympic Wins Are Taxable (And Should Stay That Way)*, FORBES, Feb. 11, 2014, available at <http://www.forbes.com/sites/kellyphillipserb/2014/02/11/yes-olympic-wins-are-taxable-and-should-stay-that-way/> [hereinafter *Olympic Wins Are Taxable*].

²⁷ Obama Supports Tax Exemption, *supra* note 18.

The United States government does very little to support Olympic athletes as they train for the games. Not every Olympian is fortunate enough to have as many sponsors as Olympic swimmer, Michael Phelps, and as a result struggle financially to fund their training. The small amount of money the USOC awards for Olympic medals could be invested in the training for the Olympic athletes rather than taxed by the IRS. Should Congress pass an exception for Olympic prize money, the appropriate language in the bill must be clear and specific, which is why S. 2026 should be passed and not The Olympic Tax Elimination Act or TEAM Act.

Part I of this paper will briefly discuss the history of the modern Olympics and highlight some Olympic moments that provided a source of national pride for Americans. Part II will discuss the USOC and how it is organized. It will detail how the USOC funds are allocated and describe the financial landscape that many Olympic hopefuls face as they train. It will also compare the U.S. structure to the Canadian structure for funding Olympic athletes. Part III will discuss the relevant IRC statutes that apply to Olympic cash prizes. Part IV will argue that the S. 2026 and not The Olympic Tax Elimination Act or TEAM Act should be passed because the language is unambiguous under the plain meaning doctrine.

PART I: NATIONALISM AND THE MODERN OLYMPICS

Nationalism has played a significant role in the modern Olympics. The Olympics are a way for countries to assert physical dominance on the world stage, which inherently influences political policy. The modern Olympics was born out of the politics of the nineteenth century.

In 1896, Pierre de Coubertin of France revived the Olympics as a way to prove French superiority through physical competition. As a boy, Coubertin witnessed the defeat of France by the Germans in the Franco-Prussian War in 1871. He believed the French loss was due to the inferiority of the French youth. Unlike the French, who ignored physical education, the Germans

emphasized gymnastics training in school and Coubertin believed this created a stronger German soldier. Coubertin revived the Olympics as a way to physically improve the French youth and assert French superiority.²⁸ Thus the modern Olympics were born out of a desire to assert political superiority through physical fitness.

Since 1896, politics have been a key player in the Olympic games from the planning stages to the closing ceremony.²⁹ The athletes that represent their respective nations galvanize a sense of national pride when they are victorious. The United States has relished in the triumphs of Olympians throughout history. Two case studies provide an excellent example of this: Jesse Owens at the 1936 Berlin Olympics and the U.S. men's hockey team at the 1980 Lake Placid Olympics.³⁰

In 1931, Berlin won the bid for the Olympic games. Shortly after, Adolf Hitler and the Nazi party assumed power in 1933.³¹ Even though there were reports of discrimination against Jewish-Germans prior to the Olympic games, Germany assured the world that it was open to all athletes of different races and the games continued as planned.³² At the 1936 Olympics, Germany won the most medals, but African-American track star Jesse Owens won four gold

²⁸ Shane R. Saum, *The Olympic Cold War 7-8* (2010) (unpublished M.A. thesis), available at http://sdsu-dspace.calstate.edu/bitstream/handle/10211.10/585/Saum_Shane.pdf?sequence=1.

²⁹ Coubertin wanted to host the first Olympics in Paris, but Athens, Greece was chosen as a more suitable location. The 1916 Games were cancelled due to World War I being fought. In the 1968 Olympics, American runners, Tommy Smith and John Carlos, used the medal ceremony to salute Black Power and refused to acknowledge the American flag. The 1972 Munich Olympics, also known as the "Munich Massacre," involved a hostage situation with eleven members of the Israeli wrestling team and eight Palestinian terrorists. The situation ended in bloodshed with eleven Israeli athletes and one German police officer shot dead. After the incident the 1972 Olympics continued as planned. The 1980 Olympics in Moscow were boycotted by the United States during the Cold War. The Soviet Union also boycotted the 1984 Olympic games in Los Angeles. *Id.* at 5-22.

³⁰ The victory of the Team USA. over the Soviet Union in 1980 is also known as the "Miracle on Ice." *Id.* at 4.

³¹ *Id.* at 12.

³² Countries threatened to boycott the Berlin games when reports of discrimination against the Jewish community came to light. After criticism from the American Olympic Committee President, Avery Brundage, the secretary of the German Athletic Federation announced that Germany would allow all athletes to compete irrespective of nationality or race. The announcement from Germany satisfied international concerns and no boycott was established. *Id.* at 12.

medals for the United States.³³ His accomplishment, as an African-American, was a huge upset to Hitler and the Nazi Party who believed in the superiority of the Aryan race.³⁴

The 1980 winter Olympics in Lake Placid was exposed to even more international tensions between the United States and the Soviet Union as the two countries engaged in the Cold War. Prior to the start of the Lake Placid Olympics, Americans were uncertain of what the future would bring.³⁵ Domestically, America suffered from rising gasoline prices and inflation during the Presidency of Jimmy Carter; international news was no better with the Soviet invasion of Afghanistan in 1979 and the Iranian Hostage Crisis at the American Embassy in Tehran, Iran.³⁶ The hockey game between the Soviet Union and the United States received a great deal of press. Team USA was staffed by amateur hockey players. The team entered the Olympics ranked seventh out of the twelve teams competing.³⁷ On February 22, 1980 Team USA played the Soviets and won, despite the odds against them. The game was viewed not only as an Olympic victory but an American victory against an international adversary.³⁸

The day after the game, the *New York Times* wrote that the American outpouring was “not merely in the team’s victory over a seemingly invincible foe, but in a kind of national vindication after years of tensions with the Soviet Union and adversity in Afghanistan, Iran, the Middle East

³³ *Id.* at 12.

³⁴ Nazi Germany successfully used propaganda to fool the world that they were a peaceful country during the 1936 games. Many people left Germany with no knowledge of the atrocities against the Jews taking place. With more international trust, Adolf Hitler was able to build up the military to prepare for the invasion of Poland four years later and the start of World War II. *Id.* at 12.

³⁵ In a 1980 *Gallup Poll* 56% of Americans believed 1980 would be a worse year than 1979. After the American hockey victory over the USSR at the winter Olympics, 26% of Americans believed 1981 would be worse than 1980. *Id.* at 23-24.

³⁶ *Id.* at 23.

³⁷ *Id.* at 25.

³⁸ *Id.* at 25.

and the other world arenas.”³⁹ President Carter called the Team USA coach, Herb Brooks, to congratulate him. The President told the coach that it “made the American people very proud, and reflected the ideals of the country.”⁴⁰ A letter to the editor of the *New York Times* wrote, “the gold medal won by the American hockey team is probably doing more to bolster the morale of the American vis-à-vis our international problems than any words or action of our President and other leaders.”⁴¹

The victories of Jesse Owens and the US men’s hockey team brought national pride to the United States. Americans rallied behind their victories as not only Olympic wins but triumphs over international enemies that reignited a sense of national pride. That strong sense of nationalism would not have been possible without the Olympians representing the United States on the world stage.

PART II: NOT EVERY OLYMPIAN IS MICHAEL PHELPS

A. THE USOC AND THE FINANCIAL REALITY OF AMERICAN OLYMPIC ATHLETES

Unlike other countries, the United States does not have a sports ministry. The United States Olympic Committee (USOC) is the organization responsible for supporting and overseeing U.S. teams for the Olympics and Paralympics.⁴²

The USOC was originally founded in 1894 but in 1978 was reorganized under the Olympic Amateur Sports Act. The legislation made the USOC a federally chartered non-profit

³⁹ *Id.* at 26.

⁴⁰ *Id.* at 26.

⁴¹ *Id.* at 27.

⁴² USOC ANN. REP., *supra* note 5 at 5.

corporation. As a result, it does not receive any financial support from the United States government.⁴³ Additionally, each sport has a National Governing Body (NGB) that provides services to the USOC. For example, some of the NGB's include USA Swimming, U.S. Ski & Snowboard Association and the USA Track & Field. Each NGB is an independent non-profit organization and can raise money from its own sponsors in addition to receiving direct funding from the USOC. Not every NGB receives the same amount of money from the USOC. The amount of funding depends on the individual NGB and ranges from \$100,000 to \$3,000,000.⁴⁴

According to the quadrennial Olympic cycle from 2009-2012, the USOC had an expense budget of \$795,917,076. Direct athlete support expense totaled \$81,622,014, which is only 10.3% of expenses.⁴⁵ The USOC also offers health insurance and stipends.⁴⁶ The stipends range from \$400 to \$2,000 per month, which translates to \$4,800 to \$24,000 per year. Stipends are not awarded to every athlete and the top ranked competitors receive priority.⁴⁷ The amount of money the USOC provides athletes is not much in comparison to the expenditures on travel, training or equipment.

Unfortunately there is a misconception that Olympic athletes are flush with sponsorships like Michael Phelps. The reality is that Olympians like Michael Phelps are the exception rather than the rule.⁴⁸ Most Olympic hopefuls struggle financially to fund their training on their own

⁴³ *Id.* at 5.

⁴⁴ How Well Are US Athletes Supported by the USOC, *supra* note 7.

⁴⁵ *Id.*

⁴⁶ Charles Riley, *Olympians Face Financial Hardship*, CNNMONEY (July 10, 2012, 5:37 PM), <http://money.cnn.com/2012/07/10/news/economy/olympic-athletes-financial/>.

⁴⁷ How Well Are US Athletes Supported by the USOC, *supra* note 7.

⁴⁸ Nathan Ikon Crumpton, *The Intrinsic Value of Elite Athletes*, U.S. ATHLETIC TRUST, (July 11, 2013), <http://usathletictrust.org/athlete-advocacy/usat-publications/the-intrinsic-value-of-elite-athletes/> [hereinafter *Intrinsic Value of Elite Athletes*].

since the USOC provides such little financial support.

Other than the stipends, Olympians receive income through corporate sponsorships if they win. The result is a source of income that is not steady like a traditional job.⁴⁹ Most Olympians are not Michael Phelps, who is estimated to be worth \$55 million.⁵⁰ Phelps accumulated his wealth as a result of being the most decorated Olympian in history. At the end of the 2012 London Olympics, his medal count was eighteen gold, two silver, and two bronze.⁵¹

Most Olympians do not have the massive fortune that Phelps has. Without government support, athletes must rely on income from prize money, apparel contracts, grants and part-time work.⁵² The income generated from these sources is not consistent and many athletes must live sparingly to finance their training.

Hannah Kearney, a three time Olympian in freestyle skiing and the most decorated World Cup skier in history,⁵³ must live “as frugally as possible.”⁵⁴ Even though Chobani Greek Yogurt sponsors Kearney, she relies on it to help defray the \$50,000 it costs annually to compete.⁵⁵

⁴⁹ Guttman, *supra* note 23, at 89.

⁵⁰ Michael Phelps Net Worth, CELEBRITY NET WORTH, <http://www.celebritynetworth.com/richest-athletes/olympians/michael-phelps-net-worth/>.

⁵¹ Guttman, *supra* note 23, at 85. See also Chris Chase, *22 Facts About Michael Phelps' Record 22 Olympic Medals*, YAHOO! SPORTS, <http://sports.yahoo.com/blogs/olympics-fourth-place-medal/22-facts-michael-phelps-record-22-olympic-medals-000650620--oly.html> (for more information on the Olympic medals won by Michael Phelps).

⁵² Riley, *supra* note 45.

⁵³ Hannah Kearney won gold at the 2010 Vancouver Olympics in freestyle skiing and bronze in the 2014 Sochi games. She competed in the 2006 Olympics in Turin but did not medal. Kearney also has sixteen consecutive victories in moguls or dual moguls. *Sochi 2014 Olympics*, ESPN WINTER OLYMPICS, http://espn.go.com/olympics/winter/2014/athletes/_/athlete/11235/hannah-kearney.

⁵⁴ Shira Springer, *Olympic Dream can be Costly for Athletes*, THE BOSTON GLOBE (Feb. 2, 2014), available at <http://www.bostonglobe.com/sports/2014/02/02/winter-olympians-face-financial-challenges/6nlsSzLX9NmAK34fn1YoiI/story.html>.

⁵⁵ *Id.*

Jazmine Fenlator,⁵⁶ a bobsled driver who competed at the 2014 Sochi Olympics, estimated it personally costs her \$80,000 a year to compete. Even though the USA Bobsled team provides a two-man bobsled, worth \$150,000, Fenlator is responsible for health insurance, bobsled spikes (worth \$300 per pair) and sled runners (worth \$5,000-\$12,000 per set). This does not include the cost of travelling for training and competitions. For example, Fenlator took a \$5,000 trip to Calgary to train.⁵⁷

In 2012, USA Track & Field Foundation surveyed American track and field athletes and found that approximately 50% of athletes ranked in the top ten in the U.S. in their event made less than \$15,000 annually from the sport through “sponsorships, grants, prize money, etc.”⁵⁸ Even the Track and Field athletes with apparel contracts contained provisions to lower income should the athlete get injured or fail to perform as expected.⁵⁹

For many athletes, the Olympics are a six-figure investment with a small rate of return.⁶⁰ Even after four years of preparation there is no guarantee of a winning a medal. In order to receive a lucrative endorsement deal, the athlete “must win gold medals, be friendly, physically attractive, and have a clean reputation.”⁶¹ Having an extra source of income from cash prizes

⁵⁶ Jazmine Fenlator finished 11th at the 2014 Sochi games in the women’s two man bobsled. Tara Sullivan, *Olympics: Wayne’s Jazmine Fenlator Finishes 11th in Women’s Bobsled*, NORTHJERSEY.COM (Feb, 19, 2014, 2:21 PM), http://www.northjersey.com/news/Olympics__Canada_rallies_past_US_for_womens_bobsled_gold_Waynes_Fenlator_finishes_in_11th.html.

⁵⁷ Springer, *supra* note 53.

⁵⁸ Jack Wickens, *How Much Money Do Track and Field Athletes Make?*, TRACK & FIELD ATHLETES ASSOCIATION (May 8, 2012), <http://trackandfieldathletesassociation.org/site/how-much-money-do-track-and-field-athletes-make/>.

⁵⁹ Riley, *supra* note 45.

⁶⁰ Charles Passy, *The Cost of Being an Olympic Athlete*, HUFF POST MONEY, (Aug. 8, 2012, 12:58 PM), http://www.huffingtonpost.com/2012/08/09/cost-of-being-an-olympic-athlete_n_1760687.html.

⁶¹ Kathryn Kisska-Schulze & Adam Epstein, *Taxing Missing: Operation Gold and the 2012 Proposed Olympic Tax Elimination Act*, 14 TEX. REV. ENT. & SPORTS L. 95, 110 (2013). *See also* TJ Walker, 10 Rules for Olympic Athletes on Turning Medals into Real Gold, Forbes, (Aug. 5, 2012),

awarded at the Olympics could be better served towards helping the athletes continue training for future Olympics or pay off debt incurring while preparing for the games.

B. CANADA AND OWN THE PODIUM

The United States is one of only three countries in the world to provide no government support to Olympic athletes.⁶² Canada, however, does provide government support to Olympians. The Canadian non-for-profit counterpart to the USOC is called Own the Podium and is funded extensively by the Canadian government.⁶³ The goal of Own the Podium is to increase the Canadian medal count at the Olympic games and make Canada an athletic world power.⁶⁴

Own the Podium was an initiative started in 2005 “to lead the development of Canadian sports to achieve sustainable podium performances at the Olympic and Paralympic Games.”⁶⁵ The Canadian Government is Own the Podium’s largest endorser.⁶⁶ The government has contributed \$25 million leading up to the Sochi Olympics.⁶⁷ One of the Canadian bobsled members commented that “Canada’s bobsleigh program could not have achieved what we did without the tremendous financial support from the Government of Canada’s investment in Own

<http://www.forbes.com/sites/tjwalker/2012/08/05/10-rules-for-olympic-athletes-on-turning-gold-medals-into-real-gold/>.

⁶² USOC ANN. REP., *supra* note 5.

⁶³ *Canadian Athletes Celebrate Federal Government’s Continued Commitment to Driving Podium Performances*, OWN THE PODIUM, <http://ownthepodium.org/SpecialPages/News/Canadian-Athletes-Celebrate-Federal-Government’s-C.aspx> [hereinafter *Canadians Celebrate Federal Commitment*].

⁶⁴ *Id.* Cf. Brett Wilson, *Why “Own the Podium” Sets Canada Up for Failure*, HUFFINGTON POST (Feb. 8, 2014), http://www.huffingtonpost.ca/brett-wilson/own-the-podium-canada_b_4748336.html (for arguments against Own the Podium).

⁶⁵ *Canadians Celebrate Federal Commitment*, *supra* note 62; *Vision, Mission, and Goals*, OWN THE PODIUM, <http://ownthepodium.org/About-OTP/Vision,-Mission,-and-Goals.aspx>.

⁶⁶ *Government*, OWN THE PODIUM, <http://ownthepodium.org/Partners/Government.aspx>.

⁶⁷ *Canadians Celebrate Federal Commitment*, *supra* note 62.

the Podium.”⁶⁸

Like the United States, Canada also awards cash prizes for Olympic medals and also taxes them. The Canadian Olympic Committee Athlete Excellence Fund (COC Athlete Excellence Fund) awards cash prizes for Olympic medals as well as cash prizes for top finishes in the World Championships for non-Olympic years. The COC Athletic Fund awards \$20,000 for gold, \$15,000 for silver, and \$10,000 for bronze medals won at an Olympic game.⁶⁹ In non-Olympic years, the COC Athlete Excellence Fund awards between \$4,000 and \$5,000 for top finishes at the World Championships as “financial support for living, training and competition expenses.”⁷⁰ The cash awards received from the COC are also taxable by the Canada Revenue Agency (CRA).⁷¹ In 2009, the CRA opined that the cash prizes from the COC Athlete Excellence Fund to Olympic medalists were taxable because the winnings “were not awarded in recognition of service to the public.”⁷² The Minister of Revenue in Canada, however, acknowledged that Olympic medals could indirectly “promote” a sense of nationalism.⁷³

The Income Tax Act in Canada does exempt “prescribed prizes” from taxation, though it is unclear how many prizes are covered under the exclusion.⁷⁴ Prizes awarded for meritorious achievements in the arts or sciences are exempted. But for Olympic cash prizes to be excluded,

⁶⁸ *Id.* The comment was made by Kaillie Humphries a member of the Canadian bobsleigh team.

⁶⁹ *Canadian Olympic Committee Athlete Excellence Fund*, CANADIAN OLYMPIC COMMITTEE, <http://olympic.ca/programs/athlete-excellence-fund/>.

⁷⁰ *Id.*

⁷¹ Julius Melnitzer, *Canada May Tax Cash Prizes Awarded to Canadian Olympic Medalists*, FINANCIAL POST (Feb. 18, 2014), <http://business.financialpost.com/2014/02/18/canada-may-tax-cash-prizes-awarded-to-canadian-olympic-medalists/>. See also Guttman, *supra* note 23 at 108-111 (for a more detailed analysis of the Canadian tax structure as it applies to Canadian Olympians).

⁷² Melnitzer, *supra* note 70.

⁷³ *Id.*

⁷⁴ *Id.*

Canadian Olympians would have to demonstrate that their achievement is “in service to the public.”⁷⁵ The Canadian government argues that athletes do not provide a public service. The position by the federal government is inconsistent especially since it is one of the largest donors to Own the Podium, which has the goal of increasing the success of Canadian athletes at the Olympics. Canadian Olympians may provide a public service in other ways such as through youth programs that are open to all Canadians that “promote values enshrined in Canadian culture and the Charter of Rights.”⁷⁶ The Canadian medalists from the 2014 Sochi Olympics were taxed for the prize money received from the COC Athlete Excellence Fund, though the issue of whether to exempt the prize money is an ongoing debate.

PART III: TAXING OLYMPIC PRIZE MONEY AWARDED BY THE USOC

A. THE OLYMPIC CASH PRIZES

The USOC awards cash prizes in the amounts of \$25,000 for gold, \$15,000 for silver and \$10,000 for bronze.⁷⁷ The IRS considers the cash prizes taxable income.⁷⁸ The income tax

⁷⁵ *Id.*

⁷⁶ *Id.* Another country that waged a battle over whether to tax Olympic athletes was Australia. In 2007, the Australian Tax Office ruled that athletes “carrying on a business of sport” will continue to be taxed while athletes with “little or no sponsorship, little or no prize money, no manager, and are not generally paid to participate in events will not be found to be carrying on a business and will therefore be entitled to receive their funding tax-free.” A spokesperson from the Australian Olympic Committee stated, “It’s so beneficial to athletes, particularly because a vast majority of athletes don’t earn a lot of money and this type of funding is vital to their preparation for the Olympic Games.” *Olympians Win Tax Battle with ATO*, THE SYDNEY MORNING HERALD (May 11, 2007), <http://www.smh.com.au/news/sport/olympians-win-tax-battle-with-ato/2007/05/11/1178390535649.html>. See also Guttman, *supra* note 23 at 99-107 (for more information on the Australian tax structure and how it applies to Olympic athletes).

⁷⁷ The United States is not the only participating country that awards cash prizes to Olympians. Cash prize amounts vary by country. For the 2014 Sochi Olympics, Azerbaijan awarded \$510,000 for a gold medal. Belarus and Ukraine awarded \$150,000 for gold medals. Russia awarded \$113,000 for gold, \$71,000 for silver and \$42,000 for bronze. Finland awarded \$41,000 and Armenia awarded \$30,000 for gold medals. The United Kingdom does not award any prize money for medals won at the Olympics. Antoine Blua, *Money for Medals: How Sochi Athletes Stand to Cash In*, Radio Free Europe Radio Liberty, (Feb. 17, 2014), <http://www.rferl.org/content/olympics-medals-table-money/25252349.html>.

⁷⁸ Wood, *supra* note 15.

amount on the cash prizes depends on the specific income tax bracket that the athlete falls into. The athletes in the top bracket, like snowboarder Shaun White,⁷⁹ could pay as much as 39.6 percent of their winnings, which translates into \$9,900 in taxes to the U.S. government.⁸⁰

B. THE HISTORICAL DEVELOPMENT OF PRIZES AND AWARDS IN THE UNITED STATES TAX CODE

The federal government power to tax is enumerated in Article 1, Section 8, Clause 1 which states, “The Congress shall have Power To lay and collect Taxes, Duties, Imposts and Excises, to pay the Debts and provide for the common Defence and general Welfare of the United States; but all Duties, Imposts and Excises shall be uniform throughout the United States.”⁸¹ The Sixteenth Amendment further expanded Congress’s taxing power to include income stating that “the Congress shall have power to lay and collect taxes on incomes, from whatever source derived.”⁸²

The first federal income tax laws began in 1913. The 1913 definition of “net income” was broadly defined and the law had few exceptions or exclusions.⁸³ The definition of “net income” included:

gains, profits, and income derived from salaries, wages, or compensation for personal service of whatever kind and in whatever form paid, or from professions, vocations, businesses, trade, commerce, or sales, or dealings in property, whether real or personal,

⁷⁹ Shaun White is reportedly worth \$40 million dollars. He has won two Olympic gold medals in snowboarding. His endorsement deals include Burton, Oakley, Target, Hewlett-Packard, and Ubisoft. *Shaun White Net Worth*, CELEBRITY NET WORTH, <http://www.celebritynetworth.com/richest-athletes/olympians/shaun-white-net-worth/>.

⁸⁰ Justin Sykes, *Achieve Olympic Glory-Now Pay the IRS*, AMERICANS FOR TAX REFORM (Feb. 7, 2014, 8:30 AM), <http://www.atr.org/achieve-olympic-glory-pay-irs-a8135>. Americans for Tax Reform created a chart calculating the taxable amount based on the income tax bracket for a gold medalist, a silver medalist and a bronze medalist. The chart does not account for state taxes, which could also consider the Olympic cash prize as taxable income.

⁸¹ U.S. Const. art. 1 § 8, cl. 1.

⁸² U.S. Const. amend. XVI.

⁸³ Bruce I. Kogan, *The Taxation of Prizes and Awards-Tax Policy Winners and Losers*, 63 Wash. L. Rev. 257, 259-260 (1988).

growing out of the ownership or use of or interest in real or personal property, also from interest, rent, dividends, securities, or the transaction of any lawful business carried on for gain or profit, or gains or profits and *income derived from any source whatever*...⁸⁴

Since the definition of net income was so broad it included awards and prizes. The court, however, excluded some prizes as gifts and therefore not gross income. The result was an inconsistent case-by-case basis of what prizes were included and what prizes were excluded from the tax code.⁸⁵

In 1954, Section 74 was enacted to clarify the issue of taxation of prizes and awards. The law set out a three-prong test that excluded income if the following were true:

- (1) the award was made primarily in recognition of religious, charitable, scientific, educational, artistic, literary or civic achievement;
- (2) the recipient must have been selected without taking any action to enter the contest or proceeding; and
- (3) the recipient is not required to render substantial future services as a condition to receiving the award.⁸⁶

The statute limited the exclusion to those prizes and awards given for “past achievement” and areas Congress recognized as “central to American values.”⁸⁷ The goal of the tax policy was to exclude endeavors that benefited society as a whole. Congress purposefully wanted to tax income won through game shows, sweepstakes, or lotteries because those were awarded through

⁸⁴ Tariff Act of 1913, Pub. L. No. 16 § 2, 38 Stat. 114 (1913), *quoted in Id.* at 259-260 (emphasis added).

⁸⁵ Kogan, *supra* note 82 at 262. *See Washburn v. Comm’r*, 5 T.C. 1333 (1945) (holding that a radio giveaway prize was “an outright gift, not subject to any of the earmarks of income.” The prize was a gift because it came to petitioner without expectation, required no subsequent action, was not the result of a wager and did not require petitioner to endorse a product); *McDermontt v. Comm’r*, 3 T.C. 929 (1944) *rev’d*, 150 F.2d 585 (D.C. Cir. 1945) (holding that a prize awarded to the winner of an essay contest was taxable income); *Robertson v. United States*, 343 U.S. 711 (1952) (holding that the cash prize for the best symphony contest was taxable income because in the “legal sense payment of a prize to a winner of a contest is the discharge of a contractual obligation.”).

⁸⁶ I.R.C. § 74(b) (1954).

⁸⁷ Kogan, *supra* note 82 at 271-272.

luck rather than merit.⁸⁸ By excluding activities that benefitted society, Congress wanted to incentivize people to pursue “altruistic goals.”⁸⁹ It clearly listed specific fields of achievement that would be exempted from taxation, namely: religion, charity, science, education, art, literature or civic achievement to achieve that end.⁹⁰ The result was that awards such as Nobel Prizes and Pulitzer Prizes were excluded from taxation.⁹¹

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 income⁹² 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.⁹³ Section 74(b) currently states:

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 governmental unit or organization described in paragraph (1) or (2) of section 170(c) pursuant to a designation made by the recipient.⁹⁴

⁸⁸ *Id.* at 275.

⁸⁹ *Id.* at 270.

⁹⁰ *Id.* at 269. *See also* I.R.C. § 74(b) (1954).

⁹¹ Kogan, *supra* note 82 at 271.

⁹² I.R.C. § 63(a) defines “taxable income” as gross income minus the deductions allowed in I.R.C. § 1.

⁹³ Kogan, *supra* note 82 at 286-287.

⁹⁴ I.R.C. § 74(b). *See also* 26 C.F.R. 1.74-1.

The 1986 changes to the tax code not only altered what was taxable but also changed the underlying policy of the law. Rather than encouraging altruistic achievements that benefit society, the new changes promoted economic efficiency – a drastic change in ideology from previous tax codes.⁹⁵

There are a few ways to reduce or avoid the taxation of a prize or award under Section 74. The first way to avoid paying tax on the prize or award is to decline the reward. George C. Scott avoided the tax when he declined an Academy Award for Patton.⁹⁶ A second action is to give the prize or award to charity. Giving the prize to charity will not avoid the tax entirely because the taxpayer cannot deduct a charitable contribution that exceeds fifty percent of the adjusted gross income. The taxpayer will still be responsible for paying tax on the prize given away.⁹⁷ The last way to avoid the tax completely is by assigning the prize or award before receiving it. By doing this, the taxpayer can redirect the tax before it impacts him or her.⁹⁸ In order to properly designate the prize, the recipient must be a qualified charity and the taxpayer must assign the award to the charity before it is presented to him or her.⁹⁹ President Obama successfully avoided the taxation of his Nobel Prize by doing this in 2009.¹⁰⁰

C. TAXING ATHLETIC ACHIEVEMENT AND THE RELEVANT CASE LAW

While there are options under the current law for Olympic medalists to avoid the tax bill for their cash prizes won at the games, there is no way for the prize to be exempted. There are seven different categories under Section 74 that exempt prizes but athleticism is not one of them.

⁹⁵ Kogan, *supra* note 82 at 258.

⁹⁶ Robert W. Wood, *Nobel Prize Brings Tax Bill (Oh, And Accolades)*, FORBES (Oct. 11, 2011 6:08 AM), <http://www.forbes.com/sites/robertwood/2011/10/11/nobel-prize-brings-tax-bill-oh-and-accolades/> [hereinafter *Nobel Prize Brings Tax*].

⁹⁷ *Id.*

⁹⁸ *Id.*

⁹⁹ Rev. Proc. 87-54, 1987-2 C.B. 669.

¹⁰⁰ Nobel Prize Brings Tax, *supra* note 95.

Courts have held that the categories listed in the tax code are to be given their plain meaning and therefore athletic prizes cannot be considered religious, charitable, scientific, educational, artistic, literary, or civic achievement.¹⁰¹

The first case to address whether a “skill” could be considered civic achievement was *Simmons v. United States*. In *Simmons*, an experienced fisherman, William Simmons, won a \$25,000 prize in a fishing contest, organized by American Brewery, Inc. The company tagged a rock fish named Diamond Jim III and threw it in the Chesapeake Bay. The fisherman who caught Diamond Jim III and presented him to the company with the identification tag and an affidavit would win a cash prize of \$25,000. Simmons knew about the contest and, despite the unfavorable odds against him, caught the fish and received his cash prize.¹⁰²

Simmons argued that he should not have to pay the tax on the cash prize. He argued it was a payment in recognition of a civic achievement since it rewarded his skill as a fisherman and should be exempted under Section 74(b).¹⁰³ The court rejected the argument and held that the reward did not constitute civic achievement.¹⁰⁴ The court explained that civic achievement “implies positive action, exemplary, unselfish and broadly advantageous to the community.”¹⁰⁵ The court further explained that the legislative history indicated that Congress wanted to exempt awards for meritorious achievement and tax prizes awarded at a giveaway show or contest, like the fishing contest Simmons won.¹⁰⁶

¹⁰¹ I.R.C. § 74(b).

¹⁰² *Simmons v. United States*, 308 F.2d 160, 161-162 (4th Cir. 1962).

¹⁰³ *Id.* at 162.

¹⁰⁴ *Id.* at 163.

¹⁰⁵ *Id.* at 163.

¹⁰⁶ *Id.* at 163.

Two cases that directly address athletic achievements are *Hornung v. Commissioner* and *Wills v. Commissioner*. Since Olympic prize money is awarded in recognition of athletic accomplishment, the issue is most similar to these two cases. In *Hornung v. Commissioner*, a professional football player, Paul Hornung, from the Green Bay Packers was selected by the editors of Sports Magazine as the most valuable player in the National Football League Championships between the Green Bay Packers and the New York Giants. The magazine rewarded the player with a Corvette worth \$3,331.04.¹⁰⁷ The taxpayer argued that the Corvette should be exempted under Section 74 because the game of football could be considered educational, artistic, scientific, and civic achievement. The football player relied on the opinion of the editor and chief of Sports Magazine to support his argument. The editor and chief testified that the game of football is “educational because it is taught in accredited colleges as part of certain physical educational courses,” artistic because a star football player status “call[s] for a degree of artistry,” and scientific because the skills necessary to play the game requires “scientific” principles to execute them.¹⁰⁸ The taxpayer also argued that his prize was a civic achievement because of his application for leave from the Army to play in the championship game. The court held that the prize awarded to the football player was not exempted under Section 74(b). The court wrote that the terms “educational,” “artistic,” “scientific,” and “civic” in Section 74(b) should be given their “ordinary, everyday meaning.”¹⁰⁹ The award did not fit the everyday meaning of those words and the court would not exclude it. The court further discussed that if Congress wanted to exempt athletic achievement it could do so. But absent a specific exclusion written in the tax code, the court refused to read one into the statutory

¹⁰⁷ *Hornung v. Comm’r* 47 T.C. 428, 429-431 (1967).

¹⁰⁸ *Id.* at 436.

¹⁰⁹ *Id.* at 436.

language.¹¹⁰

In *Wills v. Commissioner*, the court once again refused to accept the argument that an athletic achievement could be considered artistic or civic achievement. The court also included a discussion about failed attempts in Congress to add “athletic” to the list of exempted prizes listed in Section 74(b). The case was about Maurice Wills, a professional baseball player for the Los Angeles Dodgers. In 1962, he broke the major league record for most stolen bases in one season, he was voted “player of the game” in the 1962 All Star game, voted “most valuable player” of the National League, “Athlete of the Year from the Associated Press, “Man of the Year” from Sports Magazine and “Athlete of the Year” from Baseball Writers. At the end of the 1962 season, Wills received an MG automobile as a reward for being elected “most popular Dodger.” The car was worth \$1,731.¹¹¹ Wills argued his awards should be exempted under Section 74 as civic and artistic achievement. The court once again ruled against the taxpayer and held that the athletic achievement was neither civic nor artistic. The court reasoned that the words should be given their ordinary meaning. The court explained artistic connotes activities such as “painting, drawing, architecture, sculpture, poetry, music, dancing and dramatics.”¹¹² An athletic achievement does not fit within the artistic meaning. Relying on *Simmons* the court held that “civic achievement” implies something positively advantageous to the community and an athletic accomplishment falls short of that definition.¹¹³

The court also discussed proposed bills in Congress to add athletics to Section 74(b). The court found it persuasive that the legislature had heard several proposals about the issue but

¹¹⁰ *Id.* at 437.

¹¹¹ *Wills v. Comm’r*, 411 F.2d 537, 538-539 (9th Cir. 1969).

¹¹² *Id.* at 542.

¹¹³ *Id.* at 542.

failed to make any law. Because of the lack of action, athletic achievements were not included in the exemption. The court concluded only Congress could remedy the problem.¹¹⁴

The issue involving taxation of Olympic cash prizes is distinguishable from *Hornung* and *Wills* because those cases involved professional athletes on a national stage not amateur and professional athletes on an international stage.¹¹⁵ Due to the nature of the games, Olympians have a unique opportunity to influence national pride.¹¹⁶ For example, when Paul Hornung of the Green Bay Packers defeated the New York Giants to win the National Football League Championships, Green Bay, Wisconsin won. But when the 1980 U.S. Men's Hockey team defeated the Soviet Union and went on to win gold, America won.¹¹⁷ While the National Football League is played on a national stage, the Olympics are played on an international stage, which makes the event distinguishable. The 1980 hockey game was not just about winning a gold medal, it was about defeating a foreign adversary.¹¹⁸ What Olympians accomplish at the games may not be a "civic achievement" as the court has defined the phrase¹¹⁹ but they can certainly have a greater impact on the nation because they are competing on an international stage.

As the law is currently written, athletic accomplishments are not considered "civic

¹¹⁴ *Id.* at 542-543.

¹¹⁵ For decades only amateur athletes were allowed to compete in the Olympics and professionals were not. With the broadcasting of the Olympics on television, a strong movement emerged to have professionals play in the games so the public could see athletes they were familiar with. The movement began after Avery Brundage, president of the International Olympic Committee, left in 1972. By 1992, the movement was complete when the American Dream Team for basketball, which was staffed by only National Basketball Association players, won gold. Bob Greene, *What Changed the Olympics Forever*, CNN (Jul. 23, 2012 11:43 AM), <http://www.cnn.com/2012/07/22/opinion/greene-olympics-amateurs/>.

¹¹⁶ See discussion *supra* Part I.

¹¹⁷ See *supra* notes 34-40.

¹¹⁸ See *supra* note 37.

¹¹⁹ See *supra* note 103.

achievement” under the law.¹²⁰ Since the Olympic cash prizes are awarded in recognition of athletic achievement, the awards are also taxed under Section 74. The courts refused to grant relief for awards in recognition of athletic accomplishments, and absent an act by Congress, Olympians have no recourse.¹²¹

PART IV: A COMPARISON OF CONGRESSIONAL PROPOSALS TO ADD OLYMPIC CASH PRIZES AS AN EXEMPTION UNDER SECTION 74

A. OPPOSING ARGUMENTS TO AN EXEMPTION FOR OLYMPIC CASH PRIZES

As the two most recent Olympics approached, several Congressmen drafted legislation to exempt Olympic prize money under Section 74. In 2012, Sen. Marco Rubio proposed The Olympic Tax Elimination Act.¹²² With only seven co-sponsors, The Olympic Tax Elimination Act never came up for a vote.¹²³ There are two bills currently pending in Congress. Sen. John Thune proposed S. 2026 and Rep. Blake Farenthold proposed the TEAM Act.¹²⁴ Even though each bill received bi-partisan support,¹²⁵ there has been no shortage of opposition. While there are many arguments in favor of exempting Olympic cash prizes, there are also arguments against it.¹²⁶

One argument against exempting Olympic cash prizes is that it goes against the goals of the 1986 reforms. Two aspirations of the 1986 changes were to make the tax code simpler and to incentivize economic benefits to society rather than altruistic achievements. Neither of these objectives, however, have been achieved by the reforms. When Congress amended the tax code

¹²⁰ See *supra* notes 103 and 109.

¹²¹ See *supra* note 113.

¹²² Rubio Press Release, *supra* note 16.

¹²³ Wood, *supra* note 15.

¹²⁴ See *supra* notes 20-22.

¹²⁵ Obama Supports Tax Exemption, *supra* note 18.

¹²⁶ See *supra* note 23-26.

in 1986, it wanted to make the legislation “broad-based, simple and revenue neutral.”¹²⁷ But in reality, the reforms made the tax code more even complicated than its predecessor¹²⁸ by continuing many of the existing tax preferences as well as adding new ones.¹²⁹ One more exemption to the tax code will not make it more complex than it already is.

Another goal of the 1986 reforms was to create a tax code to incentive economic benefits to society. Prizes not of economic benefit are taxed, such as Nobel Prizes and Pulitzer Prizes.¹³⁰ The current law, however, does not exclusively operate under such a rigid economic policy. There are still exemptions in the law that promote social objectives rather than economic benefit. For example, charitable deductions remain in the tax code even though they do no promote economic benefit. Section 170 allows for a deduction for charitable contributions.¹³¹ The charitable deduction was added in 1917 “to encourage private philanthropic support for organizations which were dedicated to addressing broad public needs such as religion, charity, science, education, literature, and the arts.”¹³² The deduction has remained because it successfully incentivizes people to make charitable contributions, which is an altruistic act rather than an economic benefit.¹³³ Winning an Olympic medal is not an economic achievement. It is an altruistic benefit to society, much like a Nobel Prize or Pulitzer Prize.¹³⁴ The inconsistency

¹²⁷ James J. Freeland et al., *Fundamentals of Federal Income Taxation* 6 (15th ed. 2009), *quoted in* Guttman, *supra* note 23 at 92.

¹²⁸ Kogan, *supra* note 82 at 296.

¹²⁹ Kogan, *supra* 82 at 299. See also Guttman, *supra* note 23 at 92.

¹³⁰ See *supra* note 92.

¹³¹ I.R.C. § 170(a)(1).

¹³² Kogan, *supra* note 82 at 305.

¹³³ Kogan, *supra* note 82 at 306.

¹³⁴ See *supra* notes 88-90. Olympic prizes and Nobel and Pulitzer awards are extremely similar in their value to society by bringing pride to the United States through recognition of achievements in an international arena. For years Congress exempted the Nobel and Pulitzer prizes from taxation prior to 1986. There is no reason why those prizes should not be excluded again.

within the tax code is a failure to achieve the objectives of the tax code. Congress does not adhere to its own goals regarding the tax code and Olympic medalists should not have to be penalized with a tax because of Congress's own failure.

Opponents also argue that Olympic athletes might qualify for deductions from the IRS if they treat their training like a business.¹³⁵ Section 162 of the tax code specifically covers travel but athletes could argue that the cash prizes should be exempted as well. By treating the sport as a business, the cash bonuses may be deductible already. Since there is a provision currently in the tax code that could cover the cash prizes, then there is no need to pass another exemption.¹³⁶

Section 162 of the IRC deals with deductions for business related activity. It states, "There shall be allowed as a deduction all the ordinary and necessary expenses paid or incurred during the taxable year in carrying on any trade or business."¹³⁷ Traveling expenses are deductible when made "in pursuit of a trade or business."¹³⁸ The term "business" is defined as "that which occupies the time, attention, and labor of men for the purpose of livelihood or profit..."¹³⁹ A business cannot be for "pleasure, exhibition, or social diversion."¹⁴⁰ Section 262 does not allow deductions for personal, living, or family expenses.¹⁴¹

The fine line for an Olympic athlete to receive deductions for training is to demonstrate that it is not for pleasure. One similar scenario to an Olympic athlete is a 1990 Technical Advice Memorandum issued by the IRS that denied travel expense deductions to an Army officer who

¹³⁵ Olympic Wins Are Taxable, *supra* note 25.

¹³⁶ *Id.*

¹³⁷ I.R.C. § 162(a).

¹³⁸ I.R.C. § 162(a)(2).

¹³⁹ *Dogett v. Burnet*, 65 F.2d 191, 193 (D.C. Cir. 1933).

¹⁴⁰ *Id.* at 194.

¹⁴¹ I.R.C. § 262.

traveled for athletic training and competitions. The Army officer was a member of the Army's World Class Athlete Program, which was established to give soldier-athletes an opportunity to train and compete in national and international sporting events, including the Olympics. The Army encouraged, but did not require the soldier-athletes to participate in competitions. The officer was assigned to a training center and was considered a "pentathlete."¹⁴² From 1985 to 1986, the officer incurred travel expenses to competitions and wanted to receive a deduction under Section 162. The IRS denied the request saying the expenses were personal expenditures under Section 262.¹⁴³ The IRS argued, "The athletes derive a benefit in that they are allowed an opportunity to participate in sporting events which can provide both personal satisfaction and recognition as a world class athlete."¹⁴⁴

When evaluating expenses for Olympic training, the IRS could apply similar logic as it did to the Army officer. The IRS could argue Section 262 applies as opposed to Section 162 because Olympic training is a personal expense rather than a business expense. Even if an Olympic athlete argued the training was for business purposes, the IRS could still counter that Olympic training is for "pleasure" and therefore Section 162 does not apply.

Assuming Section 162 did apply and the Olympic athlete could receive deductions for training expenses, the monetary benefit of the deduction is minimal in comparison to the entire financial endeavor of training. Training an Olympian can be as much as a six figure investment when factoring in the cost of equipment, coaching and travel.¹⁴⁵ While a Section 162 deduction could help defray some of the financial burden, it does not stop Olympic athletes and their

¹⁴² I.R.S. Tech. Adv. Mem. 9050003 (Dec. 14, 1990).

¹⁴³ *Id.*

¹⁴⁴ *Id.*

¹⁴⁵ Passy, *supra* note 59.

families from feeling the financial strain. For example, the mother of Gabby Douglas, the 2012 gymnast who won gold in the all-around and team event, filed for a Chapter 13 bankruptcy to help pay for Gabby's training and sold her jewelry and let her daughter move to Iowa to train full time to pursue the Olympics.¹⁴⁶

A tax deduction could help defray some costs, but in comparison to the total cost of Olympic training (with years and years of coaching, equipment expenses and traveling) a deduction is minimal. The athletes need money and a cash prize awarded by the USOC could help. This begs the question then of whether the cash prizes, which are only worth \$25,000, \$15,000 and \$10,000 has any financial benefit to the awarded Olympian. The answer obviously depends on the individual athlete and their needs. For example, Michael Phelps may not need the cash prize because he is not facing a financial hardship.¹⁴⁷ But for one of the USA track athletes making less than \$15,000 per year,¹⁴⁸ the cash prize would be extremely beneficial.

B. STATUTORY INTERPRETATION

In 2012, Sen. Marco Rubio brought the Olympic cash prize taxation into the national spotlight when he proposed The Olympic Tax Elimination Act. The proposed legislation had bipartisan support as well as support from President Obama. The bill did not pass because it did not have enough co-sponsors.¹⁴⁹ Efforts to exempt Olympic cash prizes was renewed when Rep. Blake Farenthold and Sen. John Thune proposed legislation in the House of Representatives and

¹⁴⁶ Sarah Jaffe, *What We Should Learn from Gabby Douglas's Mom's Bankruptcy: Treat Our Olympians (And Everyone Else) Better*, ALTERNET (Aug. 6, 2012, 12:45 PM), <http://www.alternet.org/hot-news-views/what-we-should-learn-gabby-douglas-moms-bankruptcy-treat-our-olympians-and-everyone>.

¹⁴⁷ Michael Phelps has a net worth estimated to be \$55 million. Michael Phelps net worth, *supra* note 49.

¹⁴⁸ Wickens, *supra* note 57.

¹⁴⁹ See *supra* notes 16-19.

Senate in 2014.¹⁵⁰ Neither of these pieces of legislation has passed.

Each proposed bill differs in language slightly but the small differences can have a major impact if it was to become law. The best way to analyze how each bill could be interpreted by the courts is by examining them under statutory interpretation techniques, such as the plain meaning doctrine.

The plain meaning doctrine, narrowly looks at the text of a specific bill. The approach allows the court to look at the statute in its entirety and consider dictionaries, other analogous statutory provisions, cannons of construction and common sense. If the statute is deemed “ambiguous” then the court will look to extrinsic evidence, such as legislative history, to determine the intent of the drafters.¹⁵¹

C. S. 3471: THE OLYMPIC TAX ELIMINATION ACT

On August 1, 2012 in the 112th Congress, Senator Marco Rubio introduced S. 3471, also known as The Olympic Tax Elimination Act.¹⁵² The bill sought to amend Section 74 to eliminate the tax on Olympic medals. It states:

Section 1. Elimination of tax on Olympic medals

¹⁵⁰ See *supra* notes 20-22.

¹⁵¹ Natasha Dasani, Note, *Class Actions and the Interpretation of Monetary Damages Under Federal Rule of Civil Procedure 23(b)(2)*, 75 Fordham L. Rev. 165, 177-178 (2006). A second statutory interpretation is the intentional approach, which looks beyond the text of the statute and examines extrinsic evidence such as legislative history and purpose of the statute. The goal of the intentional approach is to understand the drafter’s intent. A third approach is legislative silence, which examines what is meant when a statute is silent to a specific issue. Legislative silence is viewed in one of two ways. First, the court can interpret silence to be ambiguity in the statute or second, that Congress deliberately omitted the issue. *Id.* at 180-183. Neither the intentional approach nor the legislative silence approach apply to any of the proposed bills to be examined below. None of the bills left the committee stage and therefore have no legislative history to examine the drafter’s intent. See *infra* notes 154, 165, 172. As for legislative silence, the courts have already spoken on the issue by ruling that since Congress is silent on whether to exempt Olympic cash prizes, the awards should be taxed. See *supra* note 113.

¹⁵² Rubio Press Release, *supra* note 16.

(a) In general

Section 74 of the Internal Revenue Code of 1986 is amended by adding at the end the following new 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.¹⁵³

According to a press release, the bill “would amend the Internal Revenue Code of 1986 to eliminate the tax on Olympic medals and prize money won by United States athletes.”¹⁵⁴ The bill was referred to the Committee on Finance but never received a vote because it only had seven co-sponsors.¹⁵⁵

The language of The Olympic Tax Elimination Act is very broad. Under the plain meaning doctrine, there are other prizes that could be included other than medals and cash prizes won at the Olympics. The use of the word “any” makes the bill ambiguous. Because the statute is ambiguous the best way to discern its meaning is to consult extrinsic evidence such as a dictionary.¹⁵⁶ “Any” is defined as “any amount.”¹⁵⁷ Because of the broad definition of “any” taxpayers could argue other prizes are included in the law. For example, some endorsement contracts for Olympians provide large bonuses if the athlete wins a medal. The athletes could argue that the bonuses in the endorsement deal are covered as “any” prize or award won at the Olympic Games.¹⁵⁸ Since Sen. Rubio hoped his bill would exempt Olympic medals and cash prizes, it is doubtful he would want to include cash bonuses from endorsement deals under the

¹⁵³ S. 3471, 112th Cong. (2012).

¹⁵⁴ Rubio Press Release, *supra* note 16.

¹⁵⁵ *See supra* note 16 for the list of co-sponsors.

¹⁵⁶ *See supra* note 150. Under the plain meaning doctrine the court is allowed consult dictionaries.

¹⁵⁷ Merriam-Webster’s Dictionary, (2006).

¹⁵⁸ Kisska-Schulze & Epstein, *supra* note 61 at 108-109.

exemption as well.¹⁵⁹

The plain meaning doctrine encourages that the legislation be analyzed in its entirety.¹⁶⁰ The title of Section I only refers to exempting Olympic medals. It does not mention cash prizes. Only the text of the statute does. The inconsistent phrasing between the text of the statute and the section title of the statute could create confusion as to whether cash prizes should be exempted.¹⁶¹

Because of how vague and broad the language of The Olympic Tax Elimination Act is, it should not be passed.

D. H.R. 3987: TAX EXEMPTIONS FOR AMERICAN MEDALISTS (TEAM) ACT

On February 5, 2014 Rep. Blake Farenthold reintroduced H.R. 3987, also known as the TEAM Act.¹⁶² Rep. Laura Richardson first introduced the TEAM Act in the 112th Congress on August 2, 2012.¹⁶³ The 2012 bill did not make it past the House Ways and Means Committee.¹⁶⁴ Rep. Farenthold also introduced a bill in the 112th Congress on August 1, 2012. The 2012 version from Rep. Farenthold was not called the TEAM act at the time. Rep. Farenthold renamed the bill as the TEAM Act of 2014.¹⁶⁵ The 2014 TEAM Act has been referred to the House Ways and Means Committee.¹⁶⁶ The 2014 version states:

Section 2. Olympic medals and USOC prize money excluded from gross income

(a) In general

¹⁵⁹ Rubio Press Release, *supra* note 17.

¹⁶⁰ Dasani, *supra* note 151.

¹⁶¹ S. 3471 *supra*, note 153.

¹⁶² Farenthold Press Release, *supra* note 21.

¹⁶³ H.R. 6287: *Tax Exemption for American Medalists Act*, GOVTRACK.US, <https://www.govtrack.us/congress/bills/112/hr6287>.

¹⁶⁴ *Id.*

¹⁶⁵ H.R. 6250, 112th Cong. (2012).

¹⁶⁶ H.R. 3987, Govtrack, *supra* note 21.

Section 74 of the Internal Revenue Code of 1986 is amended by adding at the end the following new subsection:

(d) Exception for Olympic medals and prizes

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.¹⁶⁷

The TEAM Act has better language because it is more specific than The Olympic Tax Elimination Act. While the bill still uses the word “any,” it denotes what cash prizes it refers to, unlike The Olympic Tax Elimination Act. By including the “United States Olympic Committee,” the bill is limited to prizes awarded by the USOC.¹⁶⁸ The specific language of the bill eliminates the possibility that cash bonuses awarded through an endorsement deal would be covered.¹⁶⁹

When examined in its entirety, the TEAM Act is drafted better than The Olympic Tax Elimination Act. The Section 2 title mentions both taxes on Olympic medals and cash prizes awarded by the USOC.¹⁷⁰ The body of the statute also refers to both medals and cash prizes awarded by the USOC.¹⁷¹ The consistency between the title and body of the legislation makes it clear that the exemption applies only to medals and cash prizes awarded by the USOC.

Under the plain meaning doctrine, the TEAM Act is clearer and could be passed, though it is not the strongest bill that has been proposed.

¹⁶⁷ H.R. 3987, 113th Cong. (2014).

¹⁶⁸ *Id.*

¹⁶⁹ See *supra*, note 158.

¹⁷⁰ H.R. 3987, 113th Cong. (2014).

¹⁷¹ *Id.*

E. S. 2026

On February 12, 2014 Sen. John Thune introduced S. 2026 in the Senate to exempt Olympic and Paralympic medals and cash prizes from the tax code.¹⁷² The bill was referred to the Senate Finance Committee where it awaits to move past the committee stage.¹⁷³ According to a press release, Sen. Thune argued that the bill would not affect tax revenue or taxes on endorsement or sponsorship income for Olympians.¹⁷⁴ Given how specific the language of S. 2026 is, it is likely that is how the legislation would be interpreted under the plain meaning doctrine. The draft of the bill states:

Section 1. Olympic and Paralympic medals and USOC prize money excluded from gross income

(a) In general

Section 74 of the Internal Revenue Code of 1986 is amended by adding at the end the following new subsection:

(d) Exception for Olympic and Paralympic medals and prizes

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*.¹⁷⁵

The language of S. 2026 mirrors H.R. 3987 with the exception that it includes prizes awarded at the Paralympic Games as well as the Olympic Games.

The Paralympics is an international competitive event for disabled athletes, which started in 1948 with World War II veterans. The first Olympic-style games were organized in 1960 in

¹⁷² See *supra*, note 23 for a list of Senators who sponsored the bill.

¹⁷³ S. 2026, Govtrack, *supra* note 23.

¹⁷⁴ Thune Press Release, *supra* note 23.

¹⁷⁵ S. 2026, 113th Cong. (2014) (emphasis added).

Rome, Italy.¹⁷⁶ The Paralympic Games have been held in the same venue as the Olympic games since 1988. There is also one organizing committee for both the Olympic and Paralympic games.¹⁷⁷ Over the years the Paralympic movement has increased in popularity. The United States had a roster of eighty athletes for the 2014 Paralympics in Sochi, which was an increase of thirty athletes from the 2010 Vancouver Paralympics.¹⁷⁸

The financial situation for Paralympians is even more difficult than their Olympic counterparts. The USOC does not fund Olympic and Paralympic sports equally. Paralympic athletes receive less funding from the USOC. For example, the track and field Olympic athletes were awarded stipends ranging from \$10,000 to \$15,000 in 2007. By comparison, the Paralympic track and field athletes received stipends ranging from \$1,000 to \$2,000. Additionally, the cash prizes awarded to Paralympic medalists are also not equal. A gold medalist Paralympian only receives a \$5,000 cash prize from the USOC rather than the \$25,000 prize awarded to an Olympic gold medalist.¹⁷⁹ Like the Olympic cash prizes, the Paralympic cash prizes are also subject to taxation under Section 74(b).¹⁸⁰

The language of S. 2026 is the strongest and clearest of the three proposed bills. Like the TEAM Act, S. 2026 designates that the exemption only applies to cash prizes received from the USOC which eliminated loopholes in the law where athletes could argue that sponsorship or

¹⁷⁶ History, *Paralympic Games*, OLYMPIC.ORG, <http://www.olympic.org/content/olympic-games/paralympic-games/>.

¹⁷⁷ Paralympic Games, *Paralympic Games*, OLYMPIC.ORG, <http://www.olympic.org/content/olympic-games/paralympic-games/?tab=paralympic-games>.

¹⁷⁸ 2014 U.S. Paralympic Team Named, TEAMUSA.ORG (Feb. 21, 2014), <http://www.teamusa.org/Road-to-Sochi-2014/Features/2014/February/21/2014-US-Paralympic-Team-Named>.

¹⁷⁹ Alan Schwarz, *Paralympic Athletes Add Equality to Their Goals*, N.Y. TIMES, Sept. 6, 2006, available at http://www.nytimes.com/2008/09/06/sports/othersports/06paralympics.html?pagewanted=print&_r=0.

¹⁸⁰ See *supra* Part III.

endorsements are covered.¹⁸¹ The exemption is limited to exempting medals and cash prizes awarded by the USOC.

S. 2026 differs from both The Olympic Tax Elimination Act and the TEAM Act because it is the only bill to include cash prizes awarded to Paralympians as well as Olympians. Under the plain meaning doctrine, courts could interpret that The Olympic Elimination Act and the TEAM Act do not include Paralympians since they are not specifically mentioned in the law.¹⁸² Omitting Paralympians creates a discrimination issue in both bills. Paralympians are sensitive to discrimination because of how the USOC treats them. Paralympic sports do not receive the same amount of funding as Olympic sports and Paralympians argue that it is unfair.¹⁸³ If Congress were to pass a tax exemption omitting them, Paralympians could also argue that they are being treated unfairly under the law. S. 2026 eliminates this problem by including both Olympians and Paralympians.

Of the three bills examined, S. 2026 is the strongest and clearest. The law is limited in scope by including only medals and cash prizes from the USOC. By listing Paralympians as well as Olympians, the bill eliminates the question of whether Paralympians are included in the law. S. 2026 should therefore be passed.

CONCLUSION

Training for the Olympics is an expensive endeavor and many athletes struggle financially to fund it. The United States government does not fund Olympians and the USOC gives small

¹⁸¹ See *supra* notes 157 and 168.

¹⁸² Under the doctrine of legislative silence, the courts could also argue that Congress deliberately omitted Paralympics from the statute and therefore Paralympians are not included. See *supra*, note 150 for a description of the doctrine of legislative silence.

¹⁸³ Schwarz *supra*, note 178.

stipends to athletes. If the athlete makes it to the Olympics, he or she has an opportunity to represent the United States on the world stage. By competing against other nations, Olympians have the unique ability to influence national pride should they win.

The USOC pays cash prizes for medaling at the Olympic games, which is subject to taxation under Section 74(b). The exemptions under the tax code do not include athletic achievement and the courts have ruled that the language should be given its ordinary meaning. Therefore cash prizes awarded as a result of participation in the Olympics are not viewed as religious, charitable, scientific, educational, artistic, literary or civic achievement as define by Section 74(b). Only Congress can change the law and remedy the situation.

Over the years Congressmen have proposed legislation to exempt cash prizes awarded by the USOC.¹⁸⁴ Of the three most recent proposals to exempt Olympic cash prizes, S. 2026 is the best draft. The language of the legislation is clear and specific under the plain meaning doctrine. S. 2026 should be passed by Congress and if not that proposal then a similar one.

¹⁸⁴ This paper mentions only three bills. There have been numerous proposals introduced in Congress since 2012. *See also* H.R. 6287, 112th Cong. (2012); H.R. 6252, 112th Cong. (2012); H.R. 6267, 112th Cong. (2012); H.R. 6359, 112th Cong. (2012).