

## NOTE

### DEAR OLYMPIC MEDALISTS, THANK YOU FOR REPRESENTING OUR COUNTRY IN THE OLYMPICS, BUT IT'S TIME TO PAY UP!

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#### I. INTRODUCTION

With a total of twenty-two medals, Michael Phelps<sup>1</sup> is officially

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the most decorated Olympian of all time.<sup>2</sup> Besides winning eighteen gold, two silver, and two bronze medals,<sup>3</sup> Phelps has also received a number of endorsement deals.<sup>4</sup> In addition to his Olympic medals and million dollar endorsement deals, Phelps has also received cash prizes from the United States Olympic Committee. The United States Olympic Organizing Committee awards each United States Olympian \$25,000 for winning a gold medal, \$15,000 for silver, and \$10,000 for bronze.<sup>5</sup> Based on Phelps's gold medals alone, he has been awarded at least \$450,000.<sup>6</sup>

The United States is not alone in awarding these cash prizes.

Since 1992, athletes have been allowed to accept cash awards from their governments, national Olympic committees, or private foundations that are their partners. The cash bonuses vary widely from country to country, with some countries offering little more than the uniforms on their athletes' backs and others providing windfalls that can surpass average salaries many times over.<sup>7</sup>

For example, the highest payout for a medal is given by Georgia, which awards \$1,300,000 to a gold medalist.<sup>8</sup> Azerbaijan awards the greatest monetary award for both silver and bronze medalists, at \$255,000 for a silver, and \$128,000 for a bronze.<sup>9</sup> Other countries are not too far behind Georgia in awarding astronomical amounts for a gold medal:

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Professor Laura Cunningham for her advice and guidance throughout the writing process. I would also like to thank my family and friends for all their love, support, and encouragement.

<sup>1</sup> Michael Phelps, a United States Olympic swimmer, competed in his first Olympics at the age of fifteen as part of the United States' men's swim team. *Michael Phelps Biography*, BIOGRAPHY.COM, <http://www.biography.com/people/michael-phelps-345192> (last visited Dec. 17, 2012). He has since competed in the summer games in Athens, Beijing, and London. *Id.*

<sup>2</sup> *How Many Medals Does Michael Phelps Have?*, NEWSONE (Aug. 13, 2012), <http://newsone.com/2030817/how-many-medals-does-michael-phelps-have/>.

<sup>3</sup> *Id.*

<sup>4</sup> *Michael Phelps Net Worth, Salary, Endorsements*, CELEBRITY NETWORTH (July 28, 2012), <http://celebnetworth.org/michael-phelps-net-worth-salary>. Michael Phelps has partnered with Speedo USA, Visa Inc., Omega, Hilton Hotels Corp., PowerBar, AT&T Inc., Kellogg Co., Rosetta Stone Ltd., PureSport, SwimRoom.com, Nike, Head & Shoulders, Subway, Under Armour, and Louis Vuitton. *Id.*

<sup>5</sup> Kristen Hinman, *Should Olympic Winnings Be Taxed?*, BUSINESSWEEK (Aug. 2, 2012), <http://www.businessweek.com/articles/2012-08-02/should-olympic-winnings-be-taxed>.

<sup>6</sup> Phelps has won 18 gold medals, and at \$25,000 per medal, that comes to \$450,000. *See Michael Phelps Net Worth, Salary, Endorsements*, *supra* note 4; Hinman, *supra* note 5.

<sup>7</sup> Megan Gambino, *Want to Get Rich? Win an Olympic Medal for Azerbaijan*, SMITHSONIAN.COM BLOG (Aug. 14, 2012, 1:20 PM), <http://blogs.smithsonianmag.com/smartnews/2012/08/want-to-get-rich-win-an-olympic-medal-for-azerbaijan/>.

<sup>8</sup> *Id.*

<sup>9</sup> *Id.*

Singapore awards \$708,800, Azerbaijan \$510,000, Philippines \$340,900, Malaysia \$307,000, Thailand \$300,000, United Arab Emirates \$272,000, and Kazakhstan \$250,000.<sup>10</sup>

However, for the Western world, the prizes are not nearly as lucrative. The United States awards \$25,000 for a gold, while Canada only awards \$20,000.<sup>11</sup> Although the cash prizes awarded by the United States Olympic Organizing Committee do not compare to other countries' exorbitant prizes, when an Olympian like Michael Phelps wins multiple medals, these cash prizes accumulate.

Currently, “[l]ike Nobel Prize money and lottery winnings, medalists’ cash prizes and the fair market value of the medals themselves are subject to ordinary income taxes.”<sup>12</sup> Nevertheless, some believe that Olympic medalists should not have to pay taxes on their cash prizes.<sup>13</sup> On August 1, 2012, Florida Senator Marco Rubio<sup>14</sup> introduced the Olympic Tax Elimination Act.<sup>15</sup> According to Rubio, “athletes representing our nation overseas in the Olympics shouldn’t have to worry about an extra tax bill waiting for them back at home.”<sup>16</sup> “Our tax code is a complicated and burdensome mess that too often punishes success, and the tax imposed on Olympic medal winners is a classic example of this madness,” Rubio said in a statement.<sup>17</sup> This act would exempt United States Olympic medal winners from paying taxes on their cash prizes.<sup>18</sup> Specifically, the bill would amend the Internal

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<sup>10</sup> *Id.*

<sup>11</sup> *Id.*

<sup>12</sup> See Hinman, *supra* note 5.

<sup>13</sup> *Id.*

<sup>14</sup> Senator Marco Rubio is a United States Senator from Florida and has been serving since January 2011. *Biography*, MARCO RUBIO, <http://www.rubio.senate.gov/public/index.cfm/biography> (last visited Nov. 2, 2012). As a member of the Republican Party, he has previously served in the Florida House of Representatives from 2000 to 2008. *Id.*

<sup>15</sup> Erika Bolstad, *Rubio Proposes Olympic Tax Loophole*, THE MIAMI HERALD BLOG (Aug. 1, 2012, 3:07 PM), <http://miamiherald.typepad.com/nakedpolitics/2012/08/rubio-proposes-olympic-tax-loophole.html>; see also Press Release, Marco Rubio, Senator Rubio Introduces Bill to Eliminate Tax on Olympic Medal Winners (Aug. 1, 2012), available at <http://www.rubio.senate.gov/public/index.cfm/2012/8/senator-rubio-introduces-bill-to-eliminate-tax-on-olympic-medal-winners>.

<sup>16</sup> Matthew Yglesias, *Tax the Olympians*, SLATE.COM (Aug. 7, 2012, 4:03 PM), [http://www.slate.com/articles/business/moneybox/2012/08/tax\\_breaks\\_for\\_olympic\\_medals\\_a\\_terrible\\_idea\\_whose\\_popularity\\_shows\\_why\\_tax\\_reform\\_is\\_unlikely\\_.html](http://www.slate.com/articles/business/moneybox/2012/08/tax_breaks_for_olympic_medals_a_terrible_idea_whose_popularity_shows_why_tax_reform_is_unlikely_.html).

<sup>17</sup> Conor Friedersdorf, *Why Marco Rubio Is Wrong on Olympic Winnings*, THE ATLANTIC (Aug. 2, 2012, 9:00 AM), <http://www.theatlantic.com/politics/archive/2012/08/why-marco-rubio-is-wrong-on-olympic-winnings/260626/>.

<sup>18</sup> Bolstad, *supra* note 15.

Revenue Code of 1986<sup>19</sup> to eliminate the tax on Olympic cash prizes awarded to United States athletes.<sup>20</sup> The proposed bill would add a new subsection at the end of Section 74 of the Internal Revenue Code<sup>21</sup> that would state: “(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.”<sup>22</sup>

Others share the same sentiment as Senator Rubio. For example, Assemblyman Curt Hagman<sup>23</sup> feels that “athletes represent a true dedication to success which must be properly recognized and rewarded rather than monetarily punished.”<sup>24</sup> Representatives Mary Bono Mack<sup>25</sup> and G.K. Butterfield<sup>26</sup> have said in a joint statement,<sup>27</sup> “[t]axing the Olympic medals of U.S. athletes is like Scrooge putting a tax on Christmas presents.” A further argument against taxing Olympic cash prizes is that not all athletes receive high salaries from contracts or endorsement deals and therefore need the money that they receive from the cash prizes. Many less affluent Olympians must therefore resort to playing overseas to make ends meet:

Shutting off the proverbial tap for many [less wealthy athletes] because of a tiny handful [of wealthy athletes] is problematic. Most of the Olympic athletes do not play in a professional league that pays well . . . .

Some American Olympians resort to living overseas to continue their professional career because the pay Stateside is so lacking. For example, most members of the American men’s volleyball team play in European professional leagues because there is not an equivalent that pays well here at home.<sup>28</sup>

Athletes rely on these cash prizes, as well as salary earned overseas, in their day-to-day lives, so paying taxes on such cash prizes ultimately

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<sup>19</sup> I.R.C. (1986).

<sup>20</sup> I.R.C. § 74(d) (Proposed Official Amendment 2012), *available at* [http://www.rubio.senate.gov/public/index.cfm/files/serve/?File\\_id=c8c159ab-0d94-4cbe-8591-e7991531dc35](http://www.rubio.senate.gov/public/index.cfm/files/serve/?File_id=c8c159ab-0d94-4cbe-8591-e7991531dc35).

<sup>21</sup> I.R.C. § 74 (2012).

<sup>22</sup> I.R.C. § 74(d).

<sup>23</sup> Assemblyman Curt Hagman is a Republican member of the California Assembly. Andrew Clark, *Olympic Medalists Should Not Pay Taxes on Reward Income*, DAILY SUNDIAL (Aug. 27, 2012), <http://sundial.csun.edu/2012/08/olympic-medalists-should-not-pay-taxes-on-reward-income/>.

<sup>24</sup> *Id.*

<sup>25</sup> Former Representative Mary Bono was a House Republican from California. *Id.*

<sup>26</sup> Representative G.K. Butterfield is a House Democrat from North Carolina. *Id.*

<sup>27</sup> *Id.*

<sup>28</sup> *Id.*

reduces their income.

Furthermore, President Obama has also endorsed Rubio's bill.<sup>29</sup> "With the president now on board, there's a good chance Rubio's idea will become law. In fiscal terms, the change will be minuscule [sic]."<sup>30</sup>

White House press secretary Jay Carney said that Obama would sign that bill if it reached his desk.

"The president believes that we should support efforts, like I think the bill you're referencing, 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," Carney said.<sup>31</sup>

On the one hand, when someone competes for his or her country, he or she should be recognized and rewarded for his or her achievements—not penalized by being taxed on the cash prizes.<sup>32</sup> Awards received from the United States Olympic Committee should not be considered income because competing in an Olympic game is not a traditional job. Athletes are not compensated for competing in the Olympic Games; "[t]he only direct income a few Olympians receive for their competition is from corporate sponsorships."<sup>33</sup> Instead of earning a salary based on hours of output, as in a traditional job, Olympians are only compensated for their time, efforts, and skills if they win.<sup>34</sup>

On the other hand, many taxpayers now are wondering how these awards are any different from the Nobel Prize, which is usually taxed:<sup>35</sup>

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<sup>29</sup> Yglesias, *supra* note 16.

<sup>30</sup> *Id.*

<sup>31</sup> Byron Tau, *Obama Supports Exempting Olympic Medals from Taxes*, POLITICO (Aug. 6, 2012, 12:48 PM), <http://www.politico.com/politico44/2012/08/obama-supports-exempting-olympic-medals-from-taxes-131199.html>.

<sup>32</sup> See Clark, *supra* note 24.

<sup>33</sup> David E. Weliver, *How Much Do Olympic Athletes Earn?*, MONEY UNDER 30 (June 14, 2012), <http://www.moneyunder30.com/how-much-do-olympic-athletes-earn-unless-youre-michael-phelps-not-enough>.

<sup>34</sup> *Id.* "While these bonuses are a nice way to reward athletes financially for a big, big accomplishment, many will never enjoy the steady income that comes with a corporate sponsorship, making what they endure to compete all the more impressive." *Id.*

<sup>35</sup> INTERNAL REVENUE SERVICE, IRS PUBLICATION 525: TAXABLE AND NONTAXABLE INCOME 32 (2012), available at <http://www.irs.gov/pub/irs-pdf/p525.pdf>. According to IRS Publication 525:

*Pulitzer, Nobel, and similar prizes.* If you were awarded a prize in recognition of accomplishments in religious, charitable, scientific, artistic, educational, literary, or civic fields, you generally must include the value of the prize in your income. However, you do not include this prize in your income if you meet [certain] requirements.

*Id.* For those requirements, see *infra* Part III, Section C. For the general principle that gross income includes income from whatever source derived, see also *Comm'r v. Glenshaw Glass Co.*,

In terms of fairness, it seems like a strange slight to winners of other kinds of prizes. Are Olympic medalists worthier than winners of the Nobel or Pulitzer prizes? And of course exempting *all* prize income from income tax could merely encourage all kinds of people to restructure their income as prizes. The J.P. Morgan Memorial Prize for Achievement in Investment Banking, anyone?<sup>36</sup>

Additionally, adding exemptions and loopholes to our current tax system reduces uniformity. Many would argue that, if Olympic cash prizes—which are based on achievements—are excluded, other achievement-based prizes, like cash bonuses, should be excluded as well. Our current tax system is one that strives for “uniformity throughout the United States,”<sup>37</sup> and excluding Olympic cash prizes from being taxed would not be deemed uniform. Therefore, the arguments to exclude Olympic cash prizes from taxation should be disregarded and Senator Rubio’s bill, or any similar future proposals, should not be passed. These awards are “simply extra income, and the income would be taxed.”<sup>38</sup>

This Note will compare the United States Internal Revenue Code’s current view on Olympic prizes with other countries’ practices on taxing Olympic prizes. Part II, *infra*, will analyze the history behind income tax in the United States. Part III, *infra*, will discuss the current tax implications for Olympic prizes and awards in the United States. Part IV, *infra*, will compare the United States Internal Revenue Code with other countries’ income tax systems, specifically focusing on how different countries deal with prizes and awards and whether they include them in gross income. It will discuss income tax in Australia and Canada, to compare the two countries’ policies to each other and to the policy of the United States.<sup>39</sup> Part V, *infra*, will argue that Rubio’s bill should not be passed and that the United States should apply the same decisions as those in Australia and Canada with regard to taxing Olympic prizes.

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348 U.S. 426 (1955).

<sup>36</sup> Yglesias, *supra* note 16.

<sup>37</sup> U.S. Const. art. 1, § 8, cl. 1.

<sup>38</sup> Yglesias, *supra* note 16.

<sup>39</sup> Australia and Canada were chosen for comparison purposes because both have a progressive personal income tax similar to the United States. They each also award similar cash prizes to Olympic athletes who win gold medals. *See infra* Part IV.

## II. THE HISTORY AND BACKGROUND BEHIND THE UNITED STATES' FEDERAL INCOME TAX

### A. *Income Tax and the United States Constitution*

The federal government's power to tax stems from Article 1, Section 8, Clause 1 of the United States Constitution:<sup>40</sup> "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."<sup>41</sup> The Sixteenth Amendment further provides that "[t]he Congress shall have power to lay and collect taxes on incomes, *from whatever source derived*."<sup>42</sup>

### B. *The History of Income Tax*

The United States currently follows a system of progressive income taxation,<sup>43</sup> however, that was not always the case.

[Initially] America's founders rejected the income tax entirely, but when they spoke of taxes they recognized the need for uniformity and equal protection to all citizens. . . .

[T]he principle behind the progressive income tax—the more you earn, the larger the percentage of tax you must pay—would have been appalling to the founders.<sup>44</sup>

Nevertheless, internal revenue laws have been through extensive development, and have since been codified in Title 26 of the United States Code,<sup>45</sup> which was enacted *prima facie* law in 1924.<sup>46</sup> "Scrutiny of the Code was invited in its preface for the purpose of correcting errors, eliminating obsolete matter, and restatement."<sup>47</sup>

In 1930, the Joint Committee on Internal Revenue Taxation completely reorganized and rearranged Title 26 of the United States Code.<sup>48</sup> This complete substitution was not a mere duplication of the

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<sup>40</sup> U.S. CONST. art. I, § 8, cl. 1.

<sup>41</sup> *Id.*

<sup>42</sup> U.S. CONST. amend. XVI (emphasis added).

<sup>43</sup> Burton Folsom, *The Progressive Income Tax in U.S. History: The Root of Much Evil*, FEE.ORG (May 1, 2003), <http://www.thefreemanonline.org/columns/the-progressive-income-tax-in-us-history/>.

<sup>44</sup> *Id.*

<sup>45</sup> 26 U.S.C. *et seq.* (2012).

<sup>46</sup> JAMES J. FREELAND ET AL., *FUNDAMENTALS OF FEDERAL INCOME TAXATION* 6 (15th ed. 2009).

<sup>47</sup> *Id.*

<sup>48</sup> *Id.*

old Title; rather, in addition to correcting errors and eliminating obsolete matter, the Joint Committee added new provisions.<sup>49</sup>

After three revisions of the code, in 1954, it was evident that many of the revenue statutes were “antiquated and ill-adapted to present-day conditions.”<sup>50</sup> The internal revenue laws had not undergone a complete revision since 1875.<sup>51</sup> Although Congress had codified existing internal revenue law in 1938, “[t]hat code did not change existing law, so many of the complications and inequities of existing law were continued.”<sup>52</sup> The 1954 Code was also amended multiple times.<sup>53</sup> Several amendments were undertaken in an effort to stimulate the economy,<sup>54</sup> and to raise revenues, reduce federal budget deficits, and reform the tax system.<sup>55</sup> The 1954 Code was then replaced by the Internal Revenue Code of 1986.<sup>56</sup> “The 1986 legislation, it was said, was to be *broad-based, simple, fair, and revenue neutral* (not productive of greater or less amounts of revenue). Toward that end the 1986 Act reallocated the tax burden, subjected more items to taxation and, at the same time, reduced tax rates.”<sup>57</sup> However, the goals of the 1986 legislation have not been achieved.<sup>58</sup> Instead, the Code is more complex, not simpler, than its predecessor.<sup>59</sup>

### III. TAXATION OF AWARDS IN THE UNITED STATES

#### A. *The United States' Taxes Versus Other Industrialized Nations'*

The United States' federal taxes are high compared to other developed countries',<sup>60</sup> which rely less on income taxes and

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<sup>49</sup> *Id.*

<sup>50</sup> *Id.* at 9 (quoting 100 CONG. REC. 8536 (1954) (statement of Sen. Millikin)).

<sup>51</sup> FREELAND ET AL., *supra* note 46, at 9 (quoting 100 CONG. REC. 8536 (1954) (statement of Sen. Millikin)).

<sup>52</sup> *Id.*

<sup>53</sup> *Id.*

<sup>54</sup> *See, e.g.*, Revenue Act of 1971, Pub. L. No. 92-178, 85 Stat. 497 (repealed 1984) (reinstating the investment tax credit, and increasing the minimum standard deduction from \$1,000 to \$1,300).

<sup>55</sup> *See, e.g.*, Tax Equity and Fiscal Responsibility Act of 1982 [TEFRA], Pub. L. No. 97-248, 96 Stat. 324 (codified as amended in scattered sections of 42 U.S.C.) (created in order to reduce the budget gap by generating revenue, through closure of tax loopholes and introduction of tougher enforcement of tax rules, as opposed to changing marginal tax rates).

<sup>56</sup> FREELAND ET AL., *supra* note 46, at 10; *see, e.g.*, Tax Reform Act of 1986, Pub. L. 99-514, 100 Stat. 2085 (codified as amended at 26 U.S.C.).

<sup>57</sup> FREELAND ET AL., *supra* note 46, at 10.

<sup>58</sup> *Id.*

<sup>59</sup> *Id.*

<sup>60</sup> In a study that took into consideration the relative corporate income tax, capital tax, sales

significantly more on consumption taxes.<sup>61</sup> For example, out of the \$5.4 trillion in total government revenue (including federal, state, and local governments) the U.S. government is expected to collect in the year 2013, income taxes will represent 35%.<sup>62</sup> Federal revenue alone is budgeted at \$2.7 trillion, with almost all federal revenue coming from income taxes.<sup>63</sup> Individual and corporate income taxes will represent 56% of total federal revenue, with social insurance taxes providing 35% of total federal revenue.<sup>64</sup> “Most other developed countries rely significantly less on income taxes and significantly more on consumption taxes. . . . To a large extent, this difference is explained by the widespread adoption of value-added taxes over the last thirty years throughout the industrialized world, with the notable exception of the U.S.”<sup>65</sup> The United States relies relatively more on income tax, yet takes consumption into account when determining income.<sup>66</sup>

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tax, property tax and miscellaneous local business tax burdens of various countries, along with statutory labor costs, India, Canada, China, Mexico, Russia, United Kingdom, and the Netherlands, all ranked lower than the United States in tax burdens. Kelly Phillips Erb, *The Most Tax Friendly Country in the World Is . . . (Spoiler Alert: It's Not the U.S.)*, FORBES.COM (Sept. 25, 2012, 6:38 PM), <http://www.forbes.com/sites/kellyphillipserb/2012/09/25/the-most-tax-friendly-country-in-the-world-is-spoiler-alert-its-not-the-u-s/>. “For purposes of the study, KMPG used a score of 100 as the benchmark; the United States was assigned that score. India’s score came in at 49.7, which means that total tax costs are about half of that in the United States.” *Id.*

<sup>61</sup> Alvin C. Warren, *Three Versions of Tax Reform*, 39 WM. & MARY L. REV. 157, 158 (1997). A “consumption tax” is

[a] tax only on income that one spends on goods and services. A common example of a consumption tax is a sales tax. . . . Proponents of a consumption tax argue that it encourages saving and makes the economy more efficient, while opponents maintain that it adversely affects the poor, who must, by necessity, spend more of their income.

*Consumption Tax Definition*, THEFREECTIONARY.COM, <http://financial-dictionary.thefreedictionary.com/Consumption+Tax> (last visited Jan. 13, 2013).

<sup>62</sup> Christopher Chantrill, *Estimated Government Revenue for FY2013*, USGOVERNMENTREVENUE.COM, [http://www.usgovernmentrevenue.com/current\\_revenue](http://www.usgovernmentrevenue.com/current_revenue) (last visited Sept. 21, 2013).

<sup>63</sup> *Id.*

<sup>64</sup> *Id.*

<sup>65</sup> Warren, *supra* note 61, at 158. A “value-added-tax,” also known as a “VAT,” is [a] type of consumption tax that is placed on a product whenever value is added at a stage of production and at final sale. Value-added tax (VAT) is most often used in the European Union. The amount of value-added tax that the user pays is the cost of the product, less any of the costs of materials used in the product that have already been taxed.

*Definition of Value-Added-Tax—VAT*, INVESTOPEDIA.COM, <http://www.investopedia.com/terms/v/valueaddedtax.asp#axzz2HzO0Z3p9> (last visited Jan. 14, 2013).

<sup>66</sup> Al Ehrbar, *Consumption Tax*, THE CONCISE ENCYCLOPEDIA OF ECONOMICS, <http://www.econlib.org/library/Enc/ConsumptionTax.html> (last visited Oct. 13, 2013).

For nearly a century now, the principal federal tax on individuals has been the

### *B. Gross Income*

The first step in determining the amount of taxes an individual must pay is to calculate the individuals' taxable income. "An individual's taxable income can be defined as "gross income minus . . . deductions."<sup>67</sup> Therefore, before calculating taxable income, a person must first determine his or her gross income. Gross income<sup>68</sup> is an accretion concept, which measures how much richer an individual is over a period of time.<sup>69</sup> Ultimately, all accession to wealth must be included in gross income, unless specifically excluded.<sup>70</sup> Any exclusion to gross income must be specifically stated in the Code.<sup>71</sup> Therefore, unless there is a specific exclusion for Olympic cash prizes, the prize money that Olympic medalists receive would be considered taxable income.

### *C. Prizes and Awards*

Section 74 of the Internal Revenue Code explicitly states, "[g]ross

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personal income tax, which falls on both labor income (wages and salaries) and capital income (interest, dividends, and capital gains). Meanwhile, states and localities raise a large share of their revenue through sales taxes, which are taxes on consumption. The federal government also has a smattering of consumption taxes, such as the excise tax on gasoline.

*Id.*

<sup>67</sup> I.R.C. § 63 (2012). Deductions differ from exclusions in that "[e]xclusions from income—items like health insurance premiums your employer pays for you and gifts you receive from parents and grandparents—are generally left off your federal tax return." Mercadien, P.C., *Exclusions and Deductions: Both Play a Role in Tax Planning*, WEEKLY TAX TIPS (Oct. 10, 2011), [http://www.mercadien.com/\(S\(matqoviv113vacyh2ecpehuz\)\)/PDF/Exclusions%20and%20Deductions.pdf](http://www.mercadien.com/(S(matqoviv113vacyh2ecpehuz))/PDF/Exclusions%20and%20Deductions.pdf). On the other hand, "[d]eductions from income are reported on your return, and can fit into one or more categories." *Id.* They are either deducted from gross income (which is called an above-the-line deduction) or from your adjusted gross income (which is called a below-the-line deduction). *The Difference between Above-the-Line and Below-the-Line Deductions*, FISCAL TAX BLOG (Mar. 19, 2009), <http://www.fiscaltax.com/tax-blog/the-difference-between-abovetheline-and-belowtheline-deductions>.

<sup>68</sup> The U.S. Code defines gross income as "all income from whatever source derived," including (but not limited to) the following items relevant here: compensation for services, including fees, commissions, fringe benefits, and similar items; and gross income derived from business. I.R.C. § 61 (2012).

<sup>69</sup> See generally G. Edward Philips, *The Accretion Concept of Income*, 38 ACCT. REV. 14 (1963). Phillips defines "accretion income" as "an increase in economic power which can be measured with reasonable objectivity." *Id.* at 14.

<sup>70</sup> I.R.C. § 63 (2012); see generally *Comm'r v. Glenshaw Glass Co.*, 348 U.S. 426, 477 (1955) (holding that there is no exception to gross income for punitive damages; the Court could not ignore the plain language of § 61 of the code, which states that gross income includes income from any source derived).

<sup>71</sup> *Id.*

income includes amounts received as prizes and awards.”<sup>72</sup> This provision extends to the Nobel Peace Prize, the Pulitzer Prize, as well as many other prizes and awards.<sup>73</sup> In 1954, due to the fact that the 1939 Code did not state whether prizes and awards were excluded from gross income, Congress enacted section 74,<sup>74</sup> which expressly included prizes and awards in gross income.<sup>75</sup> However, section 74(b) carved out an exception for a prize or award made primarily in recognition of an achievement in one of several specified fields: religious, charitable, scientific, educational, artistic, literary, or civic—but only if “the recipient was selected without any action on his part to enter the contest or proceeding” and the recipient was “not required to render substantial future services as a condition to receiving the prize or award.”<sup>76</sup>

As part of its 1986 base-broadening action, Congress substantially curtailed the exclusion by adding a third requirement: that the exception will only apply if the prizes and awards are transferred to charity.<sup>77</sup> With the addition of the third requirement, the statute currently reads:

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 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.<sup>78</sup>

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<sup>72</sup> I.R.C. § 74(a) (2012).

<sup>73</sup> FREELAND ET AL., *supra* note 46, at 105.

<sup>74</sup> I.R.C. § 74 (2012).

<sup>75</sup> *Id.*

<sup>76</sup> I.R.C. § 74(b) (2012).

<sup>77</sup> FREELAND ET AL., *supra* note 46 at 106. If a Nobel Peace Prize is gifted to a charity, this is the one way in which the Nobel Prize can be tax-free. I.R.C. § 74(b) (2012); *see also* 26 C.F.R. § 1.74-1 (2012).

<sup>78</sup> I.R.C. § 74(b). Section 170 of the Internal Revenue Code defines the term “charitable contribution” as:

a contribution or gift to or for the use of—

- (1) A State, a possession of the United States, or any political subdivision of any of the foregoing, or the United States or the District of Columbia, but only if the contribution or gift is made for exclusively public purposes.
- (2) A corporation, trust, or community chest, fund, or foundation—
  - (A) created or organized in the United States or in any possession

Consequently, according to the third condition, the only way for a winner to exclude a prize and award from their gross income is never to use the award or prize at all.<sup>79</sup> There is also another exception to the general rule to include amounts received as prizes and awards in gross income. Section 74(c) carves out the second exception; this narrow exclusion provides an exception for certain employee achievement awards.<sup>80</sup> Therefore, only under these two limited narrow exceptions can a taxpayer exclude prizes and awards from their gross income. Regulation section 1.74-1 further interprets Section 74 of the Internal Revenue Code explaining, “Prizes and awards which are includible in gross income include (but are not limited to) amounts received from radio and television giveaway shows, door prizes, and *awards in contests of all types.*”<sup>81</sup>

The issue of Olympic prizes is very similar to the issue in the 1967 case of *Hornung v. Commissioner*.<sup>82</sup> There, after Hornung, a football player, scored a record nineteen points in the National Football League championship game between the Green Bay Packers and the New York Giants, *Sport Magazine* informed Hornung that he had been declared their most valuable player (MVP).<sup>83</sup> As MVP, Hornung was awarded a

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thereof, or under the law of the United States, any State, the District of Columbia, or any possession of the United States;

- (B) organized and operated exclusively for religious, charitable, scientific, literary, or educational purposes, or to foster national or international amateur sports competition (but only if no part of its activities involve the provision of athletic facilities or equipment), or for the prevention of cruelty to children or animals;
- (C) no part of the net earnings of which inures to the benefit of any private shareholder or individual; and
- (D) which is not disqualified for tax exemption under section 501(c)(3) by reason of attempting to influence legislation, and which does not participate in, or intervene in (including the publishing or distributing of statements), any political campaign on behalf of (or in opposition to) any candidate for public office.

A contribution or gift by a corporation to a trust, chest, fund, or foundation shall be deductible by reason of this paragraph only if it is to be used within the United States or any of its possessions exclusively for purposes specified in subparagraph (B). Rules similar to the rules of section 501(j) shall apply for purposes of this paragraph.

I.R.C. § 170(c) (2012).

<sup>79</sup> Bruce I. Kogan, *The Taxation of Prizes and Awards—Tax Policy Winners and Losers*, 63 WASH. L. REV. 257, 313 (1988).

<sup>80</sup> See I.R.C. § 74(c) (2012) for specific requirements of the exception for certain employee achievement awards.

<sup>81</sup> 26 C.F.R. § 1.74-1 (2012) (emphasis added).

<sup>82</sup> *Hornung v. Comm’r*, 47 T.C. 428 (1967).

<sup>83</sup> *Id.* at 430.

1962 Corvette with a fair market value of \$3,331.04.<sup>84</sup> Hornung failed to include the fair market value of the car on his tax return for 1962 or any other year.<sup>85</sup> Hornung argued “(1) that the car was received as a gift and therefore properly excluded from gross income under section 102(a) [of the Internal Revenue Code] and (2) that the car was received as a nontaxable prize or award under section 74.”<sup>86</sup> However, the Tax Court found that “[t]he dominant motive and purpose of McFadden-Bartell<sup>87</sup> in awarding the Corvette to [Hornung] was to promote and benefit their business of publishing Sport Magazine.”<sup>88</sup> There was no “detached and disinterested generosity,” such that the Corvette would constitute an excludable gift.<sup>89</sup>

With regard to Hornung’s second argument, section 74(b), as it read at the time, specifically included amounts received as prizes and awards in gross income, unless they qualified for an exception.<sup>90</sup> However, the Tax Court held “that the words ‘educational,’ ‘artistic,’ ‘scientific,’ and ‘civic’ as used in section 74(b) should be given their ordinary, everyday meaning in the context of defining certain types of personal achievement.”<sup>91</sup> There is legislative history to support this interpretation;<sup>92</sup> the statute and legislative history define the crucial test as the nature of the activity being rewarded<sup>93</sup> and state that only awards from “genuinely [sic] meritorious achievements were to be freed from taxation.”<sup>94</sup> This interpretation of the achievements singled out in section 74(b) is consistent with the view that Hornung’s playing of professional football is not considered a “genuinely [sic] meritorious achievement.”<sup>95</sup> The court held that the Corvette Hornung received

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<sup>84</sup> *Id.* at 431.

<sup>85</sup> *Id.*

<sup>86</sup> *Id.* at 435. Subsection 102(a) carves out an exception from gross income for the value of property acquired by gift, bequest, devise, or inheritance. I.R.C. § 102 (2012)

<sup>87</sup> Sport Magazine is a publication of the McFadden-Bartell Corp. Hornung, 47 T.C. at 429.

<sup>88</sup> *Id.* at 433.

<sup>89</sup> *Id.* at 435; *see* Comm’r v. Duberstein, 363 U.S. 278, 285 (1960) (providing the bright line rule that a gift, in the statutory sense, proceeds from “detached and disinterested generosity” (internal citations omitted)).

<sup>90</sup> I.R.C. § 74(b) (1954).

<sup>91</sup> Hornung, 47 T.C. at 436.

<sup>92</sup> H.R. REP. NO. 83-1337 (1954), *reprinted in* 3 U.S.C.C.A.N 4017, 4036, 4163; S.REP. NO. 83-1622 (1954), *reprinted in* 3 U.S.C.C.A.N 4621, 4642, 4813.

<sup>93</sup> *Simmons v. United States*, 308 F.2d 160, 163 (1962) (referring to H.R. REP. NO. 83-1337, pt. VI.D (1954)).

<sup>94</sup> *Id.* “Thus, Nobel and Pulitzer prizes were there cited as examples of awards to be within the exclusionary provisions of section 74(b), while prizes given in ‘radio and television giveaway shows, or as door prizes, or in any similar type contest’ were to be taxed as income.” *Id.*

<sup>95</sup> *Id.*

could not have been excluded as a prize or award under section 74(b), and therefore should have been included in gross income and taxed.<sup>96</sup>

Because it did not fall under section 74(b)(3)—under which Hornung’s case would have been moot, as he did not donate his prize to a governmental unit or organization—Hornung’s receipt of the Corvette constituted gross income. Similarly, if Olympic cash prizes do not fall under section 74(b)(3), they should be taxable. Activities conducted during the Olympics are not ordinarily understood as “religious, charitable, educational, artistic, literary, or civic achievement.”<sup>97</sup> Instead, competing in the Olympic games is similar to playing professional football. After the 1988 Olympic games, the International Olympic Committee voted to allow all professional athletes to be eligible to compete in the Olympic games.<sup>98</sup> Therefore, because many professional athletes compete in both the professional arena as well as the Olympic games, the prizes received for competing in the Olympic games should be taxed just as Hornung’s Corvette was.

Nevertheless, Section 74(b)(3) makes both Hornung’s case, as well as Olympic cash prizes, moot. Like Hornung, Olympic winners tend to keep their prizes rather than donate them to charities; therefore, the prizes they receive would be taxed as income.

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<sup>96</sup> *Id.*

<sup>97</sup> I.R.C. § 74(b) (2012). “Had 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.” Hornung, 47 T.C. at 437.

<sup>98</sup> *Amateurism*, USA TODAY (July 12, 1999), <http://usatoday30.usatoday.com/olympics/owg98/osytr01.htm>. However, despite the fact that so-called “professional” athletes could not compete in the Olympic games prior to 1988, when the games initially began in ancient Greece, the athletes who competed in the Olympics were not truly “amateurs”:

[t]hey were supported during their training, and even though a winner received only an olive wreath at the Games themselves, back home he was well rewarded and could become rich. In fact, the stakes may have even been higher than [sic] they were today, with victory being of paramount importance and defeat disgracing the entire city-state which the athlete represented. And champions could even be lured away from one city-state to another.

*Id.*

IV. TAXATION OF OLYMPIC CASH PRIZES IN AUSTRALIA AND  
CANADA

A. *Australia*

1. *The Income Tax Assessment Act*

Income tax in Australia is collected from three income sources: capital gains,<sup>99</sup> salaries and wages, and income from business.<sup>100</sup> Individuals' incomes are taxed at progressive rates,<sup>101</sup> while incomes from businesses are taxed at a flat rate of 30%.<sup>102</sup> In Australia, personal income tax is the single biggest source of taxation revenue, comprising 37% of the total tax revenue.<sup>103</sup>

Australia's income tax legislation consists of two statutes, the Income Tax Assessment Act 1936 and the Income Tax Assessment Act 1997 (hereinafter referred to as "ITAA").<sup>104</sup> These acts, under which income tax is collected, are acts of the Parliament of Australia.<sup>105</sup> The 1997 Act is a rewrite of the 1936 Act, simply using modern language and modern taxation law concepts.<sup>106</sup> "The Australian tax system taxes income when it is 'derived', irrespective [sic] of whether it has been physically received by the recipient or paid by direction on the recipient's behalf to a third party."<sup>107</sup> In Australia, individuals pay

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<sup>99</sup> A capital gain or loss is the difference between what it cost to acquire an asset and what was received when it was disposed of. *Capital Gains Tax*, AUSTRALIAN TAXATION OFFICE, <http://www.ato.gov.au/General/Capital-gains-tax/> (last visited Sept. 21, 2013). Capital losses cannot be net against income, but they can be used to reduce a capital gain in the same income year. *Id.*

<sup>100</sup> *Income Tax in Australia*, ECONOMYWATCH (Oct. 14, 2010), <http://www.economywatch.com/tax/australia/income.html>.

<sup>101</sup> AUSTRALIAN COUNCIL OF TRADE UNIONS, ACTU WORKING AUSTRALIA TAX PAPER NO. 4, PAYING OUR WAY: RESTORING FAIRNESS TO PERSONAL INCOME TAX 7 (Oct. 2011), *available at* [http://www.actu.org.au/Images/Dynamic/attachments/7488/ACTU\\_Tax\\_Paper\\_4\\_Paying\\_Our\\_Way.pdf](http://www.actu.org.au/Images/Dynamic/attachments/7488/ACTU_Tax_Paper_4_Paying_Our_Way.pdf). "In a progressive tax system, higher income earners pay a larger proportion of their incomes in tax than low- and middle-income earners." *Id.* It should be noted that "when other taxes are included, the overall tax system is much closer to being 'flat', or proportional, than progressive." *Id.*

<sup>102</sup> *Income Tax in Australia*, *supra* note 100.

<sup>103</sup> *Chapter A: Personal Taxation*, in AUSTRALIA'S FUTURE TAX SYSTEM (2009), *available at* [http://taxreview.treasury.gov.au/content/finalreport.aspx?doc=html/publications/papers/final\\_report\\_part\\_2/chapter\\_a1.htm](http://taxreview.treasury.gov.au/content/finalreport.aspx?doc=html/publications/papers/final_report_part_2/chapter_a1.htm).

<sup>104</sup> *Jurisdictional Reports: Australia*, SOCIETY OF TRUST AND ESTATE PRACTITIONERS [STEP], <http://www.step.org/jr-australia> (click: Taxation) (last visited Sept. 21, 2013).

<sup>105</sup> *Id.*

<sup>106</sup> *Id.*

<sup>107</sup> *Id.*

income taxes based on their assessable income.<sup>108</sup>

Section 6.5 of the ITAA 1997 states, “Your *assessable income* includes income according to ordinary concepts, which is called *ordinary income*. . . . [Y]our assessable income includes the ordinary income you derived directly or indirectly from all sources.”<sup>109</sup> Section 6.10 of the ITAA 1997 further states:

Other assessable income (statutory income)

1. Your *assessable income* also includes some amounts that are *not* ordinary income.
2. Amounts that are *not* ordinary income, but are included in your assessable income by provisions about assessable income, are called *statutory income*.
3. If an amount would be statutory income apart from the fact that you have not received it, it becomes statutory income as soon as it is applied or dealt with in any way on your behalf or as you direct.<sup>110</sup>

Section 6.15 of the ITAA 1997 broadens our understanding of assessable income by stating what is *not* considered assessable income:

1. If an amount is not ordinary income, and is not statutory income, it is not assessable income (so you do not have to pay income tax on it).
2. If an amount is exempt income, it is not assessable income.
3. If an amount is non-assessable non-exempt income, it is not assessable income.<sup>111</sup>

Section 15.2 of the ITAA 1997 further clarifies what constitutes assessable income and whether gifts provided in respect of employment or services should be included as assessable income.<sup>112</sup>

Your assessable income includes the value to you of all allowances, gratuities, compensation, benefits, bonuses and premiums provided to you in respect of, or for or in relation directly or indirectly to, any employment of or services rendered by you (including any service as a member of the Defence Force).<sup>113</sup>

<sup>108</sup> See *Income Tax Assessment Act 1997 [ITAA 1997]* (Cth) s 6.5 (Austl.), available at [http://www.austlii.edu.au/au/legis/cth/consol\\_act/itaa1997240/s6.5.html](http://www.austlii.edu.au/au/legis/cth/consol_act/itaa1997240/s6.5.html).

<sup>109</sup> *Id.*

<sup>110</sup> *ITAA 1997* s 6.10 (Austl.), available at [http://www.austlii.edu.au/au/legis/cth/consol\\_act/itaa1997240/s6.10.html](http://www.austlii.edu.au/au/legis/cth/consol_act/itaa1997240/s6.10.html).

<sup>111</sup> *ITAA 1997* s 6.15 (Austl.), available at [http://www.austlii.edu.au/au/legis/cth/consol\\_act/itaa1997240/s6.15.html](http://www.austlii.edu.au/au/legis/cth/consol_act/itaa1997240/s6.15.html).

<sup>112</sup> *ITAA 1997* s 15.2 (Austl.), available at [http://www.austlii.edu.au/au/legis/cth/consol\\_act/itaa1997240/s15.2.html](http://www.austlii.edu.au/au/legis/cth/consol_act/itaa1997240/s15.2.html).

<sup>113</sup> *Id.*

Therefore, according to ITAA 1997, benefits or bonuses provided in relation to employment or services rendered will be considered assessable income, and will therefore be taxable.

## 2. Prizes and Assessable Income

“Paragraph 26(e) of the ITAA 1936 provides that the value to the taxpayer of all gratuities and benefits given or granted to them in respect of, or for or in relation directly or indirectly to, any employment will be included in their assessable income.”<sup>114</sup> Therefore, Australia requires all individuals to declare income from “prizes or awards associated with employment or investments, depending on the circumstances.”<sup>115</sup>

“In determining whether a prize or gift is ordinary income, the courts have established that consideration of the whole of the circumstances is necessary.”<sup>116</sup> Therefore, the following questions must be considered: (1) How and why did the recipient receive the prize or gift?<sup>117</sup> (2) Is this prize or gift the kind of gift “which is a common incident of the recipient’s calling or occupation”?<sup>118</sup> (3) Was the prize or gift made voluntarily?<sup>119</sup> (4) Was the prize or gift solicited?<sup>120</sup> (5) Can the prize or gift be “traced to gratitude engendered by some service rendered by the recipient to the prize or gift donor”?<sup>121</sup> (6) What was the motive of the prize or gift donor?<sup>122</sup> (7) Does the recipient rely on the prize or gift for regular maintenance of themselves and any dependents?<sup>123</sup>

To further clarify this issue, the Australian Taxation Office issued a Class Ruling that sets out the Commissioner’s opinion regarding the way in which tax laws are applied to prizes.<sup>124</sup> The Australian Council

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<sup>114</sup> Class Ruling CR 2003/71: Income Tax: Science Prize: The Australian Council of Deans of Science University Science Teaching Prize ¶ 29 (Nov. 26, 2006) (original ruling plus note), *available at* <http://law.ato.gov.au/atolaw/DownloadNoticePDF.htm?DocId=CLR%2FCR200371%2FNAT%2FATO%2F00001&filename=pdf/pbr/cr2003-071r1.pdf&PiT=99991231235958>.

<sup>115</sup> *Income You Must Declare*, AUSTRALIAN TAXATION OFFICE (June 27, 2013), <http://www.ato.gov.au/Individuals/Income-and-deductions/Income-you-must-declare/>.

<sup>116</sup> Class Ruling CR 2003/71, *supra* note 114, ¶ 24.

<sup>117</sup> *Id.*

<sup>118</sup> *Id.*

<sup>119</sup> *Id.*

<sup>120</sup> *Id.*

<sup>121</sup> *Id.*

<sup>122</sup> *Id.*

<sup>123</sup> *Id.*

<sup>124</sup> *Id.*

of Deans of Science (ACDS) is a national body that represents those who hold senior positions of responsibility in scientific fields in Australian universities,<sup>125</sup> and offers a \$30,000 prize to recognize a scientist who has made an outstanding contribution to science education in Australia.<sup>126</sup> The ACDS University Science Teaching Prize (the Prize) is awarded annually to a scientist who has made an outstanding contribution in science education and demonstrated excellence in University science teaching.<sup>127</sup> The Australian Tax Court has held that “[t]he ACDS University Science Teaching Prize is not assessable income under either section 6-5 or section 6-10 of the ITAA 1997.”<sup>128</sup> The Prize was not received by virtue of employment or as compensation for services rendered.<sup>129</sup> According to ITAA 1997, a prize is only assessable income if it is ordinary or statutory income.<sup>130</sup> Because the Prize does not constitute ordinary or statutory income, it is not assessable income under section 6-5 or 6-10 of ITAA 1997.<sup>131</sup>

However, in a more recent ruling, the Australian Commissioner of Taxation discussed the benefits received by individuals when involved in sports:<sup>132</sup> “The Ruling sets out the Commissioner’s view as to whether these benefits are assessable income under the *Income Tax Assessment Act 1936* (ITAA 1936) or the *Income Tax Assessment Act 1997* (ITAA 1997).”<sup>133</sup> In this ruling, benefits include payments received, such as cash prizes:

The following are assessable income:

- payments received from, in respect of, or in connection with employment;
- payments or other benefits received for, in respect of, or in connection with services provided; and
- amounts of a revenue nature or other benefits received, including prizes and awards, *from carrying on a business of*

<sup>125</sup> For example, the council represents Deans of Faculty, Heads or Deans of School, and Heads of Departments. Class Ruling CR 2003/71, *supra* note 114, ¶ 10.

<sup>126</sup> *Id.* ¶ 11.

<sup>127</sup> *Id.* ¶¶ 11-12, 25.

<sup>128</sup> *Id.* ¶¶ 21, 32.

<sup>129</sup> *Id.* ¶ 26.

<sup>130</sup> *ITAA 1997 s 6.10 (Austl.)*, available at [http://www.austlii.edu.au/au/legis/cth/consol\\_act/itaa1997240/s6.10.html](http://www.austlii.edu.au/au/legis/cth/consol_act/itaa1997240/s6.10.html).

<sup>131</sup> Class Ruling CR 2003/71, *supra* note 114, ¶ 32.

<sup>132</sup> Taxation Ruling TR 1999/17: Income Tax: Sportspeople—Receipts and Other Benefits Obtained from Involvement in Sport (Jun. 20, 2012) (consolidated ruling), available at <http://law.ato.gov.au/atolaw/DownloadNoticePDF.htm?DocId=TXR%2FTR199917%2FNAT%2FATO%2F00001&filename=pdf/pbr/tr1999-017c1.pdf&PiT=99991231235958>.

<sup>133</sup> *Id.* ¶ 1.

*participating in sport.* This includes the *exploitation of personal skills in a commercial way* for the purpose of gaining reward.<sup>134</sup>

In order to determine whether an amount is ordinary income, factors to evaluate include: whether the payment is the product of employment, services rendered, or any business; the quality or character of the payment in the hands of the recipient; the form of the receipt (meaning whether it is received as a lump sum or periodically); and the motive of the person making the payment.<sup>135</sup> Motive, however, is rarely a decisive factor, as many cases involve a mixture of motives.<sup>136</sup>

Based on this ruling, in order for a prize or award to be considered assessable income of an athlete, the prize or award must have been received through “carrying on a business of participating in sport.”<sup>137</sup> The Commissioner defines “a business of participating in sport” as “the commercial exploitation of skills developed as a pastime or hobby; and the commercial exploitation of skills developed and used in pursuit of sporting excellence.”<sup>138</sup> Furthermore,

A sportsperson’s business could also involve the commercial exploitation of his or her ‘public fame’ or ‘image’. Typically, commercial exploitation will involve an individual utilising his or her skills in a systematic, regular and/or organised manner with a view to obtaining assessable income. This is despite the fact that many of the usual indicators of a business are absent, eg. [sic], a business structure, business premises, employees or trading stock. A sportsperson will not be carrying on a business in respect of his or her sporting activities merely because he or she is utilising his or her skills in a systematic, regular and organised manner unless he or she is doing so for the purpose of commercially exploiting those skills.<sup>139</sup>

Many Olympic athletes often commercially exploit their names and skills while obtaining endorsement deals.<sup>140</sup> For example, the United States Olympic gymnastics team, which won gold in the 2012 London games, is planning to trademark the term “Fierce Five” to honor their team and make a few dollars along the way.<sup>141</sup> Each player is also

<sup>134</sup> *Id.* ¶ 9 (emphasis added).

<sup>135</sup> *Id.* ¶ 17.

<sup>136</sup> *Id.*

<sup>137</sup> *Id.* ¶ 9.

<sup>138</sup> *Id.* ¶ 29.

<sup>139</sup> *Id.*

<sup>140</sup> See, e.g., *Michael Phelps Net Worth, Salary, Endorsements*, *supra* note 4.

<sup>141</sup> Mark J. Miller, *London 2012 Olympic Athletes Now Hunting for Endorsement Gold*, BRAND CHANNEL (Aug. 14, 2012, 3:05 PM),

making over \$100,000 for taking part in Kellogg's Tour of Gymnastic Champions.<sup>142</sup> Similarly, Sally Pearson, the Australian Olympic champion who won gold in track and field, had commercial deals in place by the time she returned home from the 2012 London games.<sup>143</sup> While there is no doubt that endorsement deals are considered income,<sup>144</sup> these Olympic winners are essentially exploiting the skills they used in the Olympic Games, as well as their public fame and image. Despite the fact that the usual indicators of a business are absent, Olympic medalists are essentially conducting a business by using their fame and image to profit.

Even if one were to argue that Olympic athletes are not commercially exploiting their skills, their cash prizes can still be considered assessable income:

An 'occasional' voluntary payment received 'solely' because a sportsperson pursues sport in a systematic, regular and organised manner will not be assessable income. By 'solely' we mean the sportsperson is not an employee, engaged in the provision of services or carrying on a business in respect of his or her sporting activity. In this paragraph it is assumed that the sportsperson is not utilising their skills for the purpose of commercial exploitation thereof. Accordingly, the 'occasional' voluntary payment cannot be related to any income-producing activity . . .

. . . A medal, trophy or other award will not be assessable income as they are given and received on personal grounds. For example, where an athlete, who otherwise exploits his or her skills for the purposes of commercial gain, is awarded a medal to recognise a personal achievement at an international competition.

. . . An award on the other hand will be assessable income where it has intrinsic value, or represents an intrinsic form of remuneration to the person, rather than merely recognising a particular achievement of that person. An example of this would be an award of cash or a car to an athlete who exploits his or her skills for the

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<http://www.brandchannel.com/home/post/2012/08/14/Olympic-Athletes-Now-Hunting-for-Endorsement-Gold.aspx>. The team initially intended to trademark the name "Fab Five," a name they were repeatedly called throughout the London Olympic games; however, that term had already been trademarked in 1991 by Jalen Rose, a basketball player on the Michigan team that used that same nickname. *Id.*

<sup>142</sup> *Id.*

<sup>143</sup> Damien Stannard, *Sally Hurdles Money Barrier*, HERALD SUN (Aug, 19, 2012, 8:41 AM), <http://www.heraldsun.com.au/news/sally-hurdles-money-barrier-as-he-cashed-in-on-olympic-triumph/story-fnbk754t-1226453415939>.

<sup>144</sup> Taxation Ruling TR 1999/17, *supra* note 132, ¶ 29.

purposes of commercial gain.<sup>145</sup>

On the surface, it seems that, according to the Commissioner, cash prizes received in recognition of winning medals at an Olympic game would not qualify as assessable income.<sup>146</sup> However, if that award has “intrinsic value, or represents an intrinsic form of remuneration to the person,” it is considered assessable income.<sup>147</sup> Most athletes competing in the Olympic games do not have a full-time job.<sup>148</sup> Instead, their hopes and dreams are to win an Olympic medal and, ultimately, to receive endorsement deals, as well as sponsorships.<sup>149</sup> Olympic cash prizes, therefore, represent an intrinsic form of remuneration to Olympians, as the athletes consider them a form of payment and support.

The idea of cash prizes as a form of remuneration, treated as assessable income, was further illustrated in the Australian case of *Kelly v. Federal Commissioner of Taxation*.<sup>150</sup> There, a professional football player received a cash prize of \$20,000 from the Channel 7 television station for receiving the Sandover Medal and being voted the league’s best and fairest player in the 1978 season.<sup>151</sup> There, the Commissioner treated the \$20,000 received as assessable income.<sup>152</sup> The football player objected, claiming that the award had not been granted to him in relation to his employment or services rendered.<sup>153</sup> However, the court held there was a sufficient nexus between the award and the player’s employment, as the payment was clearly incidental to his career as a professional footballer, and the payment was made to him by virtue of his status as a professional and his playing football to the best of his

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<sup>145</sup> Taxation Ruling TR 1999/17, *supra* note 132, ¶¶ 63, 65, 66 (internal citations omitted).

<sup>146</sup> *Id.* ¶ 65.

<sup>147</sup> *Id.* ¶ 66.

<sup>148</sup> “An aspiring Olympic athlete spends an average of eight hours a day, seven days a week training their body and mind—more time than a full-time job.” Elizabeth Olson, *Olympic Athletes: The Sponsorship behind the Athletes*, INFOPLEASE.COM, <http://www.infoplease.com/spot/olympic-athletes.html#ixzz2FWe773QO> (last visited Dec. 19, 2012).

<sup>149</sup> *Id.* An endorsement deal is an official relationship between an athlete and a manufacturer. The athlete gains publicity through the relationship, while the manufacturer hopes to increase sales by using the athletes’ name and likeness through advertisement, association, and promotion etc. With a sponsorship however, an athlete is required to advertise a brand, and receives payment in return. *How to Get a Sponsorship/Endorsement Deal*, CAPTIVATE MUSIC BLOG (Dec. 11, 2011), <http://captivatemusic.blogspot.com/2011/12/how-to-get-sponsorship-endorsement-deal.html>.

<sup>150</sup> *Kelly v. Fed. Comm’r of Taxation* (1985) 80 FLR 155 (Austl.).

<sup>151</sup> *Id.*

<sup>152</sup> *Id.*

<sup>153</sup> *Id.*

skill and ability.<sup>154</sup>

The High Court has also found that prize money received for athletic achievement may be considered assessable income in the case of *Federal Commissioner of Taxation v. Stone*.<sup>155</sup> In *Stone*, the taxpayer—a policewoman who also competed in women's javelin throwing events—argued that the prize money and grants she received in recognition of her javelin throwing achievements should not have been considered assessable income.<sup>156</sup> The Federal Court initially found that the taxpayer was carrying on a business as a professional athlete, hoping to make money.<sup>157</sup> The taxpayer then appealed to a Full Court of the Federal Court.<sup>158</sup> Then the Full Court reversed the Federal Court's decision, deciding the taxpayer was not conducting a business, as she only entered into specific competitions where she would acquire competitive experience;<sup>159</sup> her choices of competitions were not based on prize winnings.<sup>160</sup> The Full Federal Court felt the taxpayer lacked profit-making intentions, as her primary career was being a policewoman.<sup>161</sup> The Commissioner then appealed to the High Court.<sup>162</sup> The High Court unanimously ruled that the taxpayer was a top athlete who was in the business of throwing javelins for financial reward.<sup>163</sup> Although javelin throwing was not the taxpayer's primary profession, she was well aware that, by accepting sponsorships, she was essentially exploiting her skill.<sup>164</sup>

However, in 2008,

[t]he Australian Olympic Committee waged a \$1.1 million, 11-year court battle to make Olympic medal prize money tax-free for its athletes struggling to make ends meet. The only ones who pay taxes Down Under are those earning enough prize and sponsorship to be 'carrying on a business of sport, ' [sic] such as former swim star Ian Thorpe.<sup>165</sup>

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<sup>154</sup> *Id.*

<sup>155</sup> *Fed. Comm'r of Taxation v Stone* (2005) 222 CLR 289 (Austl.).

<sup>156</sup> *Id.*

<sup>157</sup> *Id.* ¶ 5.

<sup>158</sup> *Id.*

<sup>159</sup> *Id.*

<sup>160</sup> *Id.*

<sup>161</sup> *Id.*

<sup>162</sup> *Id.* ¶ 6.

<sup>163</sup> *Id.* ¶ 47.

<sup>164</sup> *Id.* See generally Beth McDermott, Case Comment, *Commissioner of Taxation v Stone* (2005) 215 ALR 61: *Its Implications for the Role of Intention in Assessing Business Receipts, and the Treatment of Gains Made by Athletes*, 28 SYDNEY L. REV. 373 (Austl.), available at [http://sydney.edu.au/law/slr/slr28\\_2/McDermott.pdf](http://sydney.edu.au/law/slr/slr28_2/McDermott.pdf).

<sup>165</sup> Paul L. Caron, *The Tax Treatment of Olympic Athletes*, TAXPROF BLOG (Feb. 15, 2010),

In a letter from John D. Coates, President of the Australian Olympic Committee, he reported that the Australian Taxation Office issued a Class Ruling confirming that, athletes who are not carrying on the business of sport, will not be taxed on their cash prizes.

While it is easy to characterise some athletes, such as Tiger Woods, as being in the business of sport, it is less easy to provide certainty as to where to draw the line at the other end of the spectrum.

A few guidelines are set out below:

1. If you have no sponsorships, no manager and you are not generally paid to participate in events, you will almost certainly be found not to be carrying on a business (and therefore not taxable on your MIF [medal incentive funding]<sup>166</sup> payment).
2. If you have one or two minor sponsorships . . . you should be found not to be carrying on business.
3. If, in addition to the facts in 1 and 2 above, you win a few small prizes (less than \$1,000 each) along the way you should also be fine.
4. Once you go beyond categories 1, 2 and 3 and have one or more substantial sponsors and (as is likely) you periodically win significant prize money, you should seek specific advice in relation to your personal circumstances and perhaps even seek a private ruling.<sup>167</sup>

Ultimately, because most Olympic prize medalists accept many sponsorships and endorsement deals, they will therefore be characterized as being in the business of sport.

In Australia, the taxation of prizes and awards ultimately comes down to whether the taxpayer is carrying on a business of sport.<sup>168</sup> Those who do not carry on a business of sport are not required to

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[http://taxprof.typepad.com/taxprof\\_blog/2010/02/the-tax-.html](http://taxprof.typepad.com/taxprof_blog/2010/02/the-tax-.html). Ian Thorpe, an Australian Olympic swimmer, is best known for winning “the most gold medals of any Australian athlete, and was the youngest to win a world championship.” *Ian Thorpe Biography*, BIOGRAPHY.COM, <http://www.biography.com/people/ian-thorpe-20930179> (last visited Jan. 14, 2013).

<sup>166</sup> The Australian Olympic Committee provides \$15,000 to Olympic gold medalists, \$10,000 for silver, \$7,500 for bronze and \$5,000 for fourth place at the Olympics, world championships or an event of equal status. *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>.

<sup>167</sup> Letter from John D. Coates, President, Australian Olympic Committee (May 11, 2007), *available at* [http://corporate.olympics.com.au/files/dmFile/ATO\\_Class\\_Ruling\\_10May07\\_LHEAD.pdf](http://corporate.olympics.com.au/files/dmFile/ATO_Class_Ruling_10May07_LHEAD.pdf).

<sup>168</sup> Taxation Ruling TR 1999/17, *supra* note 132.

include their cash prizes in their assessable income.<sup>169</sup> However, those who do carry on a business of sport are obligated to pay taxes on their cash prizes.<sup>170</sup> For the most part, Olympians want to make money and receive endorsement deals, but the second they accept a large endorsement deal, they have entered into the “business realm” and must pay taxes on their awards.<sup>171</sup> Therefore, if two Olympic athletes both receive a cash prize for winning a medal at the Olympic games—but one accepts a large endorsement deal, while the other does not—the latter’s cash prize will be taxed, but the former’s will not.<sup>172</sup>

## B. *Canada*

### 1. *History of Taxation in Canada*

Prior to World War I, the Canadian federal government relied on indirect taxes such as customs duties and excise taxes in order to raise revenue.<sup>173</sup> Unlike the United Kingdom and the United States, Canada avoided charging an income tax prior to World War I.<sup>174</sup> From 1867 to 1917, “[t]he federal government placed taxes on liquor, beer, malt, cigarettes, cigars, and snuff.”<sup>175</sup> When Britain declared war on Germany, on August 4, 1914, Canada, a former British colony, found itself in the Great War at Britain’s side.<sup>176</sup> The pressures of financing World War I subsequently brought major changes to the Canadian tax system, and in July 1917, the federal government imposed a general tax on corporate and personal income.<sup>177</sup> On February 27, 1996, the federal government announced the formation of a national revenue agency that was later named the Canada Customs and Revenue Agency, later

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<sup>169</sup> *Id.*

<sup>170</sup> *Id.*

<sup>171</sup> Coates, *supra* note 167.

<sup>172</sup> *Id.*

<sup>173</sup> *Appendix 1.2—History of Taxes in Canada*, DUNDEEWEALTH.COM, [http://www.dundeewealth.com/adv/historyof\\_taxes.pdf](http://www.dundeewealth.com/adv/historyof_taxes.pdf).

<sup>174</sup> *Canada and the First World War*, LIBRARY AND ARCHIVES CANADA, <http://www.collectionscanada.gc.ca/firstworldwar/025005-3300-e.html> (last visited June 24, 2013). Personal income tax in the United Kingdom dates back to 1799. A.B. Atkinson, *Income Tax and Top Incomes over the Twentieth Century*, 168 *HACIENDA PÚBLICA ESPAÑOLA* 123 (2004). In 1861, United States Congress passed the Revenue Act, which restored earlier excise taxes, and imposed a tax on personal income. *History of the US Tax System*, ALMANAC OF POLICY ISSUES (Aug. 2003), [http://www.policyalmanac.org/economic/archive/tax\\_history.shtml](http://www.policyalmanac.org/economic/archive/tax_history.shtml).

<sup>175</sup> *Appendix 1.2, supra* note 173, at 6.

<sup>176</sup> *Id.*

<sup>177</sup> *Id.*

renamed the Canada Revenue Agency, also known as the CRA.<sup>178</sup> “The CRA continues to administer tax laws for the Government of Canada and for most provinces and territories. It also continues to look after social and economic benefit and incentive programs delivered through the tax system.”<sup>179</sup>

## 2. *Canadian Income Tax*

### a. The Income Tax Act

In Canada, the Canada Revenue Agency (CRA) administers federal income taxes.<sup>180</sup> Both corporate and personal federal income taxes are levied under the provisions of the Income Tax Act.<sup>181</sup> According to the Income Tax Act,

- (1) An income tax shall be paid, as required by this Act, on the taxable income for each taxation year of every person resident in Canada at any time in the year.
- (2) The taxable income of a taxpayer for a taxation year is the taxpayer’s income for the year plus the additions and minus the deductions permitted by Division C [of this Act].<sup>182</sup>

The Canadian Income Tax Act further states that one must include, in computing income of a taxpayer,

the amount, if any, by which (i) the total of all amounts (other than amounts described in paragraph 56(1)(q), amounts received in the course of business, and amounts received in respect of, in the course of or by virtue of an office or employment) received by the taxpayer in the year, each of which is an amount received by the taxpayer as or on account of a scholarship, fellowship or bursary, or a *prize for achievement in a field of endeavour* ordinarily carried on by the taxpayer, other than a prescribed prize, exceeds (ii) the taxpayer’s scholarship exemption for the year . . .<sup>183</sup>

<sup>178</sup> *Id.* at 7.

<sup>179</sup> *Id.*

<sup>180</sup> *Tax Matters, MIGRATION NEWS CANADA*, [http://www.migrationnews.com/canada/tax\\_matters](http://www.migrationnews.com/canada/tax_matters) (last visited Oct. 14, 2013).

<sup>181</sup> *Id.*

<sup>182</sup> Income Tax Act, R.S.C. 1985 [Canadian Income Tax Act], c. A-2 (Can.).

<sup>183</sup> Canadian Income Tax Act, c. D-56(1)(n) (emphasis added). Prizes that constitute income are further defined in the Income Tax Folio, which states:

Subparagraph 56(1)(n)(i) includes the amount of a prize for achievement in a field of endeavour ordinarily carried on by the taxpayer (other than a prescribed prize). A prize can be considered to be an award to a particular person selected from a group of potential recipients and given for something that is accomplished, attained or carried out successfully. However, the type of prize contemplated in subparagraph

Therefore, under Canadian law, “prize[s] for achievement in a field of endeavour,”<sup>184</sup> or an amount “paid in recognition of a genuine accomplishment in a challenging area,”<sup>185</sup> will be included in a taxpayer’s income.

#### b. Olympic Prizes and Income

“Canada’s Olympic medallists and their coaches have won more than a quarter-million dollars in prize money so far at the London 2012 Games, all of it taxable income.”<sup>186</sup> In fact, the Canadian Olympic Committee’s (COC) Athlete Excellence Fund (AEF) awards \$20,000 for each gold medal won, \$15,000 for a silver medal, and \$10,000 for a

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56(1)(n)(i) is restricted. The criteria for awarding the prize must be such that a recipient is rewarded for success in an area in which the recipient regularly applies effort. Therefore, an amount generally qualifies as a prize for purposes of subparagraph 56(1)(n)(i) if it is paid in recognition of a genuine accomplishment in a challenging area, whether it be of an academic, vocational or technical nature. A prize that is not included in subparagraph 56(1)(n)(i) is considered to be a “windfall” and is not required to be included in income unless it is also a business receipt . . . or income from employment . . . . The following points indicate how subparagraph 56(1)(n)(i) applies to certain situations.

- An award of damages to an injured party. This is not considered to be a prize.
- Lottery winnings. Although this is a prize, the recipient is not being recognized for an accomplishment nor are the winnings likely to relate to a field of endeavour ordinarily carried on by the recipient. As a result, subparagraph 56(1)(n)(i) does not apply.
- An award by a professional institution to the candidate obtaining highest marks in examinations set by the institution. This is a prize subject to the provisions of subparagraph 56(1)(n)(i).

Canada Revenue Agency, *S1-F2-C3: Scholarships, Research Grants and Other Education Assistance*, INCOME TAX FOLIO ¶ 3.53 (Mar. 28, 2013), available at <http://www.cra-arc.gc.ca/tx/tchncl/ncmtx/fls/s1/f3/s1-f3-c2-eng.html>. A “prescribed prize” is further defined as:

A prize meeting all of the criteria of a prescribed prize is not included in computing the income of the recipient, even if the prize relates to accomplishments in the recipient’s ordinary field of endeavour. Section 7700 of the Regulations defines a prescribed prize as any prize that is recognized by the general public for meritorious achievement in the arts, the sciences or service to the public. . . .

. . . For example, a Nobel Prize given to a scientist or the Governor General’s Literary Award given to a professional writer would qualify, as would many community service awards. Scholarships and bursaries awarded to students would not qualify as prescribed prizes. Furthermore, any amount that can reasonably be regarded as having been received as compensation for services rendered, or to be rendered, is not a prescribed prize.

*Id.* ¶¶ 3.56-3.57.

<sup>184</sup> Canadian Income Tax Act, c. D-56(1)(n).

<sup>185</sup> Canada Revenue Agency, *supra* note 183.

<sup>186</sup> *Should Canadian Medallists Pay Taxes on Prize Money?*, METRONews (Aug. 11, 2012), <http://metronews.ca/olympics/329253/should-canadian-medallists-pay-taxes-on-prize-money/>.

bronze.<sup>187</sup> According to the Income Tax Act, all prize money “for achievement in a field of endeavour ordinarily carried on by the taxpayer,” other than prescribed prizes, is taxable.<sup>188</sup> If Olympic cash prizes are considered “an achievement in a field of endeavour,” then they will be taxable.<sup>189</sup> However, if the cash prizes are considered a prescribed prize, then they are not taxable.<sup>190</sup>

In anticipation of the 2010 Vancouver Winter Olympics, “the CRA was asked specifically whether the prize money awarded by the COC would be taxable.”<sup>191</sup> The Canadian Income Tax Act treats prize money as taxable.<sup>192</sup> In a letter dated June 26, 2009, Jean-Pierre Blackburn, the Minister of National Revenue, wrote, “[P]aragraph 56(1)(n)<sup>193</sup> is sufficiently broad as to apply to a prize awarded to an athlete for winning an Olympic medal.”<sup>194</sup> “Although winning an Olympic medal may be an internationally recognized achievement and could indirectly promote a sense of nationalism, such a prize is not awarded in recognition of service to the public and therefore would not be a prescribed prize and would not fall within the exception.”<sup>195</sup>

Consequently, because Olympic cash prizes do not fall under the exclusion of prescribed prizes, they will be included in Canadian Olympians’ taxable income.<sup>196</sup>

#### V. RUBIO’S BILL SHOULD NOT PASS, AND OLYMPIANS SHOULD BE TAXED

Regardless of the fact that many Americans consider taxes complex, unfair, and even inefficient, the majority of Americans tolerate it.<sup>197</sup> “[M]ost people’s complaint is not that they pay too much

<sup>187</sup> *Id.*

<sup>188</sup> Canadian Income Tax Act, c. D-56(1)(n).

<sup>189</sup> *Id.*

<sup>190</sup> *Id.*

<sup>191</sup> Jamie Golombek, *Is There Tax on That Olympic Medal?*, NAT’L POST (Feb. 18, 2010), available at <http://www.nationalpost.com/related/topics/there+that+Olympic+medal/2582310/story.html>.

<sup>192</sup> *Should Canadian Medallists Pay Taxes on Prize Money?*, *supra* note 186.

<sup>193</sup> Paragraph 56(1)(n) of the Canadian Income Tax Act states that prizes for an achievement in a field of endeavour should be included in the computation of income for the taxation year. *See supra* note 183.

<sup>194</sup> Letter from Jean-Pierre Blackburn, P.C., M.P. (June 26, 2009), [http://www.canadiantaxlitigation.com/wp-content/uploads/2012/08/CRA\\_Taxation\\_of\\_Olympic\\_Prizes\\_June\\_26\\_2009.pdf](http://www.canadiantaxlitigation.com/wp-content/uploads/2012/08/CRA_Taxation_of_Olympic_Prizes_June_26_2009.pdf) (internal footnote added).

<sup>195</sup> *Id.*

<sup>196</sup> *Id.*

<sup>197</sup> Len Burman, *Happy Birthday, Income Tax*, FORBES (Feb. 4, 2013, 5:48 PM),

federal income tax, but that the rich do not pay their fair share.”<sup>198</sup> These rich people who are not paying their fair share, can be deemed to include some Olympic athletes, as Olympic medalists have a chance to become remarkably wealthy.<sup>199</sup> By excluding Olympic medal winners from including cash prizes in their income, the IRS is essentially allowing some rich individuals to be excluded from paying their fair share. An Olympic cash prize should not be excluded from income tax, when taxes are collected with the intention to raise revenue for the necessary governmental functions, “such as the provision of public goods.”<sup>200</sup> Considering the entire country benefits from these necessary governmental functions, the entire country should be required to pay income tax, regardless of how they earned such income.

“Taxation can have a redistributive function, aimed at reducing the unequal distribution of income and wealth that results from the normal operation of a market-based economy.”<sup>201</sup> It is a well-known fact that many Olympians receive cash prizes for their achievements.<sup>202</sup> If Olympians are not required to include cash prizes in their income, then individuals who receive cash bonuses from other employment should not be required to include them in their income. Both Olympic cash prizes and cash bonuses are based on achievements. These unfair exemptions will eventually undermine one of the intentions of taxation, which is to “reduc[e] the unequal distribution of income and wealth.”<sup>203</sup> In fact, by excluding Olympic cash prizes from gross income the IRS is essentially advancing the unequal distribution of wealth. If an individual’s cash bonus would be taxed as gross income, then it would be unfair and illogical to exclude an Olympic cash prize.

As stated previously, Senator Marco Rubio has critiqued the tax code as “a complicated and burdensome mess”<sup>204</sup> and therefore has “made tax simplification one of his talking points.”<sup>205</sup> It is ironic that Senator Rubio encouraged tax simplification, yet at the same time argued for another tax loophole. By passing Rubio’s proposed bill, the

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<http://www.forbes.com/sites/leonardburman/2013/02/04/happy-birthday-income-tax/>.

<sup>198</sup> *Id.*

<sup>199</sup> Gina Roberts-Grey, *6 Olympic Stars Who Got Filthy Rich after the Games*, THEPOSTGAME (Aug. 8, 2012, 8:44 PM), <http://www.thepostgame.com/blog/list/201208/6-olympic-stars-who-got-filthy-rich-after-games#1>. Headed into the London Olympic games, Michael Phelps’ estimated net worth was somewhere between \$40 million dollars and \$50 million dollars. *Id.*

<sup>200</sup> Reuven S. Avi-Yonah, *The Three Goals of Taxation*, 60 TAX L. REV. 1, 3 (2006).

<sup>201</sup> *Id.*

<sup>202</sup> Gambino, *supra* note 7.

<sup>203</sup> Avi-Yonah, *supra* note 200.

<sup>204</sup> Hinman, *supra* note 5; *see supra* Introduction.

<sup>205</sup> Friedersdorf, *supra*, note 17.

IRS essentially would be adding a complicated exception.<sup>206</sup> “[T]his is a perfect example of why the tax code is a complicated and burdensome mess.”<sup>207</sup> Treating Olympic winnings as distinct from other income—specifically other prize income—cannot be justified, least of all by Senator Rubio, who advocates tax code simplicity.<sup>208</sup> Instead of writing more exemptions, Rubio should focus on addressing a simplification of the tax code.

“Rubio’s argument seems to be purely emotional, which makes sense because that’s all there is to support his idea.”<sup>209</sup> His only argument is that taxing Olympians on their cash prizes seems unfair or un-American,<sup>210</sup> but what Rubio fails to realize is that not taxing Olympians is essentially unfair to regular citizens, who are required to pay taxes on prizes they receive.<sup>211</sup> “There is no sound policy reason to treat Olympic winnings any differently than the money someone wins from the lottery or at the poker table. Under the law, they are both taxable income.”<sup>212</sup> Income tax allows the government to fund programs like Medicare, Medicaid, Social Security, and our roadways;<sup>213</sup> “[i]t’s not about taxing success.”<sup>214</sup> If Rubio is worried about taxing those who represent our country, then there is no way for him to explain why military service people, police, and firefighters are taxed. “Winning a medal is special but there are thousands of other heroes that don’t get media attention” and would be taxed on their prizes, and awards.<sup>215</sup> Rubio’s purely emotional argument is a slippery slope that will result in many debates.<sup>216</sup> Unless Rubio is pushing for an exemption of *all* awards and prizes from taxation, there is no reason to treat Olympians differently. Olympians are not more deserving of a tax

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<sup>206</sup> *Id.*

<sup>207</sup> *Id.*

<sup>208</sup> *Id.*

<sup>209</sup> Doug Mataconis, *Marco Rubio’s Olympian Tax Policy Pander*, OUTSIDE THE BELTWAY (Aug. 2, 2012), <http://www.outsidethebeltway.com/marco-rubios-olympian-tax-policy-pander/>.

<sup>210</sup> *Id.*

<sup>211</sup> *Id.*

<sup>212</sup> *Id.*

<sup>213</sup> Morgan Korn, *Olympic Winners: Do They Deserve Tax Breaks?*, YAHOO! FIN. (Aug. 9, 2012, 2:03 PM), <http://finance.yahoo.com/blogs/daily-ticker/olympic-winners-deserve-tax-breaks-180313245.html>.

<sup>214</sup> *Id.*

<sup>215</sup> *Senator Rubio to IRS: Lay Off Olympic Medalists*, TAX FACTOR BLOG (Aug. 8, 2012), <http://thetaxfactor.com/senator-rubio-to-irs-lay-off-olympic-medalists/>.

<sup>216</sup> Mataconis, *supra* note 209. Sample debates will include “[w]hy should Olympic athletes be exempted from paying taxes on their prize money, but not professional golfers, or poker players, or winners of literary prizes, or folks who win the lottery?” *Id.*

break than other prizewinners.<sup>217</sup> However, by proposing such a bill, Rubio is essentially contradicting himself.

Medalists usually receive a wide array of sponsorship and endorsement opportunities after medaling in the Olympics.<sup>218</sup> They make a lot of money from these endorsements,<sup>219</sup> and should not be worrying about the taxes they have to pay on the minute awards they received, in comparison to the taxes they will have to pay on their million-dollar endorsement deals. Surprisingly, even some Olympic athletes feel that the Olympic Elimination Tax Act should not be passed; “Todd Rogers, a 2008 gold medal winner in beach volleyball and a member of the 2012 team, had a message for Rubio: Thanks, but no thanks.”<sup>220</sup> According to Rogers, he makes enough money and feels that he should be taxed.<sup>221</sup> Rogers is not saying he would not take the exemption but does not feel that he needs it.<sup>222</sup>

The United States’ taxes generally incentivize and dissuade certain activities and products.<sup>223</sup> For example, cigarettes are taxed at high rates, and subsidies are given for hybrid cars.<sup>224</sup> However, lawmakers do not appear to understand that Olympians do not work grueling, endless hours for the cash prize, but for the glory, the fulfillment, and the love of the sport—all reasons the IRS cannot tax.<sup>225</sup> Therefore, taxing cash prizes will not incentivize or dissuade Olympians; money is not the only, or even the primary, incentive for Olympians.

Additionally, a goal of the Tax Reform Act of 1986 was to broaden the tax base, accomplished in part by reducing the number of items that were excludable from gross income.<sup>226</sup> The legislation broadened the tax base by including prizes, awards, scholarships, and fellowships in gross income.<sup>227</sup> By proposing an exclusion of Olympic medals from gross income, lawmakers are once again suggesting an erosion of the

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<sup>217</sup> Alex Seitz-Wald, *Michael Phelps Doesn't Need a Tax Break*, SALON (Aug. 7, 2012, 11:49 AM), [http://www.salon.com/2012/08/07/michael\\_phelps\\_doesnt\\_need\\_a\\_tax\\_break/](http://www.salon.com/2012/08/07/michael_phelps_doesnt_need_a_tax_break/).

<sup>218</sup> Weliver, *supra* note 33.

<sup>219</sup> *Id.*

<sup>220</sup> Kevin Johnson & Jeff Zillgitt, *Olympic Medal Tax Cut Not for Every Athlete*, USA TODAY (Aug. 3, 2012, 7:27 PM), <http://usatoday30.usatoday.com/sports/story/2012-08-03/olympics-medal-tax-congress/56758460/1>.

<sup>221</sup> *Id.*

<sup>222</sup> *Id.*

<sup>223</sup> Ann Hollingshead, *An Olympic Tax*, FIN. TRANSPARENCY COALITION (Aug. 8, 2012), <http://www.financialtaskforce.org/2012/08/08/21267/>.

<sup>224</sup> *Id.*

<sup>225</sup> *Id.*

<sup>226</sup> FREELAND ET AL., *supra* note 46, at 105.

<sup>227</sup> *Id.*

tax base. This addition would strictly counter the intention of the legislature in passing the Tax Reform Act of 1986.<sup>228</sup>

Another reason Olympic cash prizes should not be excluded from gross income is because of the incentive to cheat. While the cash prizes awarded to Olympian medalists are not the only, or even primary, incentive for Olympic medalists, one cannot ignore the fact that for few, the cash prizes can be somewhat of an incentive. When there is an incentive to win, there can also be an incentive to cheat.<sup>229</sup> The more money offered, especially in poorer countries, the greater chance an athlete will be tempted to cheat, for example, by doping.<sup>230</sup> Not having to pay taxes on these cash awards may provide an incentive to cheat, something lawmakers should want to avoid.

Moreover, countries spend millions of dollars on the Olympics.<sup>231</sup> In 2008 alone, the United States Olympic Committee spent more than \$232 million to “help American athletes win 110 medals in Beijing—the site of the previous Summer Olympic Games. That’s \$2.1 million per medal, but doesn’t include the cash kicked in by each sport’s governing body from sponsors, donors and special events.”<sup>232</sup> If Rubio’s bill is passed, that means that the government will collect less income tax, and will have fewer funds available to fund critical and essential programs, like Medicare, Medicaid, Social Security, and our roadways.<sup>233</sup> The government will therefore end up spending more money to finance such programs, due to the lack of income tax collected. The United States spends so much money on the Olympics

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<sup>228</sup> *Id.*

<sup>229</sup> Cheating at the Olympics is not an impossible feat. South African swimmer Cameron van der Burgh, an Olympic gold medalist in the 2012 summer games, admitted to cheating during the men’s 100-meter breaststroke:

In breaststroke, competitors are allowed to take one dolphin kick at the start and one after each turn before starting their breaststroke kick. But with no underwater video judging, swimmers are oftentimes able to sneak in an extra kick. Van der Burgh appears to take three of them based on video replays. If judges had caught him, the illegal moves could have earned him a disqualification.

In an interview with the Sydney Morning Herald, he said that he took extra kicks, but pointed out it’s typical of other swimmers as well.

Scott Gleeson, *Gold Medal Swimmer Admits to Cheating at Games*, USA TODAY (Aug. 8, 2012, 7:23 AM), <http://usatoday30.usatoday.com/sports/olympics/london/story/2012-08-07/Gold-medal-swimmer-admits-to-cheating-at-Games/56854568/1>.

<sup>230</sup> Cordelia Hebblethwaite, *Who, What, Why: Why Are U.S. Athletes Taxed on Olympic Medal Wins?*, BBC NEWS MAGAZINE (Aug. 3, 2012, 4:55 AM), <http://www.bbc.co.uk/news/magazine-19101429>.

<sup>231</sup> Jason Notte, *You Won’t Believe What America Spends to Win Olympic Gold in These Sports*, WEALTH WIRE (Aug. 2, 2012), <http://www.wealthwire.com/news/global/3606>.

<sup>232</sup> *Id.*

<sup>233</sup> Korn, *supra* note 213.

already, and there is no reason to spend any more money by allowing Olympians to exclude their cash prizes from their gross income.

Senator Rubio has even used the word “punished” when talking about how Olympians feel when they have to pay taxes on their cash prizes.<sup>234</sup> But receiving a cash prize for a medal is by no means a punishment.<sup>235</sup> “Receiving a cash prize is, as the name implies, a *prize*. You are taxed on your prize.”<sup>236</sup> Illinois Congressman Aaron Schock even compared paying taxes on a gold medal to a sacrifice.<sup>237</sup> A tax is by no means a sacrifice, nor is it anything like the sacrifices that athletes make to earn a gold medal: “[m]ost athletes must choose between their sport and a career, a degree, a relationship, a family, or a combination thereof . . . . To liken a real sacrifice like these choices to a tax is ridiculous.”<sup>238</sup>

Lastly, proponents of this bill mistakenly see the legislation as a way to support and honor Olympians.<sup>239</sup> Instead, it is a “grandiose gesture that in the scheme of things does virtually nothing to actually support the athletes who represent our nation at the Games.”<sup>240</sup> Due to the United States’ progressive tax system, athletes who need the money will pay very little tax on their prizes, while superstars like Michael Phelps will pay the full tax rate.<sup>241</sup> Every year, thousands of athletes train, compete, and devote their lives to competing in the Olympic games.<sup>242</sup> “They will do so without a medal, without recognition from Senator Rubio, and without a dime of direct government funding. . . . To say that a tax break on medals is supporting our athletes—even symbolically—is a joke.”<sup>243</sup> Therefore, excluding Olympic cash prizes from taxable income, is not really supporting and honoring Olympians, as Olympic medalists do not compete in the Olympic games with the expectations of receiving “support and honor,”<sup>244</sup> through a medal, or recognition by Senator Rubio. Up until now, Olympians have received support and honor from their nation, despite the inclusion of Olympic cash prizes in taxable income.

Australia, Canada, and the United States all have a progressive

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<sup>234</sup> Hollingshead, *supra* note 223.

<sup>235</sup> *Id.*

<sup>236</sup> *Id.*

<sup>237</sup> *Id.*

<sup>238</sup> *Id.*

<sup>239</sup> *Id.*

<sup>240</sup> *Id.*

<sup>241</sup> *Id.*

<sup>242</sup> *Id.*

<sup>243</sup> *Id.*

<sup>244</sup> *Id.*

personal income tax, and each awards similar cash prizes to Olympic athletes who win gold medals.<sup>245</sup> Like the United States Olympic Organizing Committee, the Canadian Olympic Committee—the organization that awards the cash prizes in Canada—is a national, private, not-for-profit organization.<sup>246</sup> The Australian Olympic Committee is also a non-profit organization, independent of the government and government funding, other than contributions by state governments to the Olympic Team Appeal; the funds required to finance the Australian Olympic Committee's (AOC) activities are generated through marketing and fundraising programs.<sup>247</sup> Because the three countries are similar in their method of taxation, their Olympic cash prize awards, as well as their committee funding, they should be similar in their methods of taxation on Olympic medals. Olympic cash prizes are distributed by private organizations, and the cash prizes are considered taxable income, similar to a salary received by a private organization, which is considered taxable income. If the funding of the cash prizes is private, similar to a salary, there is no reason why taxes should not be paid. Additionally, taxpayers will not want to “pay higher taxes to help beleaguered Olympic medalists who have to manage endorsement offers.”<sup>248</sup> Because the United States has not yet ruled on taxing Olympic cash prizes, the United States should look to similar countries, like Canada and Australia, and adopt their resolutions.

Instead of specifically adding a new exclusion to section 74 of the Internal Revenue Code, perhaps a fairer and easier alternative would be

<sup>245</sup> Gambino, *supra* note 7. Australia and Canada both award \$20,000 for a gold medal, while the United States awards \$25,000 for a gold medal. *Id.*

<sup>246</sup> *Supporting Team USA*, TEAMUSA.ORG, [http://support.teamusa.org/site/PageNavigator/How\\_Giving\\_Helps\\_Fund\\_Team\\_USA.html](http://support.teamusa.org/site/PageNavigator/How_Giving_Helps_Fund_Team_USA.html) (last visited Sept. 21, 2013); *Key Stakeholders*, OLYMPICFOUNDATION.CA, <http://www.olympicfoundation.ca/about-the-foundation/our-partners/> (last visited Sept. 21, 2013).

<sup>247</sup> *Australian Olympic Committee*, AUSTRALIAN CANOEING, [http://www.canoe.org.au/?Page=1502&MenuID=Links%2F100%2F0%2C+Links%2F100%2F0%2C+About+Us%2F93%2F0%2COrganisations\\_AC\\_is\\_affiliated\\_to%2F101%2F0%2F0](http://www.canoe.org.au/?Page=1502&MenuID=Links%2F100%2F0%2C+Links%2F100%2F0%2C+About+Us%2F93%2F0%2COrganisations_AC_is_affiliated_to%2F101%2F0%2F0) (last visited Feb. 6, 2013).

[T]he AOC neither seeks nor derives any funding from the Australian Government or its Australian Sports Commission (ASC) and Australian Institute of Sport (AIS) it acknowledges the critical assistance these bodies provide to the AOC's Olympic Winter Institute of Australia (OWIA) and member National Federations (NFs) of sports on the Olympic Winter program and to athletes directly for their preparation for the Olympic Winter Games.

AUSTRALIAN OLYMPIC COMMITTEE INC., PROGRAMS AND FUNDING GUIDELINES FOR SPORTS ON THE PROGRAM OF THE 2014 OLYMPIC WINTER GAMES IN SOCHI, *available at* [http://corporate.olympics.com.au/files/dmfile/ProgramsFundingGuidelinesSochi-16November2012\\_Final2.pdf](http://corporate.olympics.com.au/files/dmfile/ProgramsFundingGuidelinesSochi-16November2012_Final2.pdf) (last visited Sept. 21, 2013).

<sup>248</sup> Korn, *supra* note 213.

for the IRS to draft a new regulation to clarify that Olympic cash prizes are considered gross income, and are therefore taxable. This addition would prevent further confusion and questioning regarding the taxability of Olympic cash prizes. Canada anticipated this tax question before the 2010 Vancouver Olympic games, and the CRA subsequently resolved the issue.<sup>249</sup> The United States should do the same, by having the IRS issue a regulation to clarify that Olympic cash prizes are considered taxable income—before the 2014 Winter Olympic Games in Sochi, Russia.

Lastly, if the United States passes Senator Rubio's bill, no longer will there be an incentive for Olympic winners to donate their cash prizes to charity.<sup>250</sup> However, if the taxation policies of Canada and Australia are adopted in the United States, and Senator Rubio's bill is not passed, the incentive to donate prizes and awards to charities will continue. "Deeds of giving are the very foundation of the world,"<sup>251</sup> and "[a] man's true wealth is the good he does in this world."<sup>252</sup> Therefore, not only will an Olympic medalist feel good about himself for making a donation to charity, but he will also receive a tax deduction, which will reduce his taxable income.

## VI. CONCLUSION

In conclusion, Olympic medal winners should not be exempt from paying taxes on their cash prizes, and the United States should not pass Senator Rubio's proposed bill. Exempting Olympic medalists from paying tax on their cash prizes may be tempting; however, our country bases its income taxes on being fair, and this exemption would not be equitable. Instead, the United States should keep its current standards of including prizes in gross income, as Canada and Australia do. If the United States' primary concern is the Olympians who cannot afford the taxes on their cash prizes, the country should adopt the provisions that Australia has,<sup>253</sup> and only include Olympic cash prizes in gross income when the Olympian is carrying on the business of sport. However, the United States must be realistic and realize that, as much as Olympic

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<sup>249</sup> Golombek, *supra* note 191.

<sup>250</sup> See I.R.C. § 74(b)(3) (2012).

<sup>251</sup> Jewish saying derived from the Mishna, *Pirkei Avot* 1:2; see *Charity Quotation*, GIVINGWHATWECAN.ORG, <http://www.givingwhatwecan.org/why-give/charity-quotations> (last visited Sept. 21, 2013).

<sup>252</sup> Saying variously attributed to the prophet Mohammed, poet Kahlil Gibran, and French playwright Molière. See, e.g., *Thoughts on the Business of Life*, FORBES.COM, <http://thoughts.forbes.com/thoughts/wealth-mohammed-a-mans-true> (last visited Sept. 21, 2013).

<sup>253</sup> Coates, *supra* note 167.

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athletes love the sports in which they participate, many of them turn their medal-winning images into moneymaking professions.<sup>254</sup> While there is nothing legally wrong with this practice, Olympic medals ultimately turn the athletes' love for a sport into a profession, earning income, and individuals should pay taxes on all income, from whatever source it is derived.<sup>255</sup>

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<sup>254</sup> See generally Weliver, *supra* note 33.

<sup>255</sup> See *Comm'r v. Glenshaw Glass Co.*, 348 U.S. 426 (1955).