



IRS BLOCKED FROM TAXING PRIZES & AWARDS FOR SOME OLYMPIC ATHLETES IN THE U.S.

By Mark Feigenbaum, CPA, CA

President Obama signed H.R. 5946 into law on October 7, 2016. The “United States Appreciation for Olympians and Paralympians” was passed by the House and Senate with little opposition.

This gives some opportunity to discuss the U.S. taxation of prizes and awards. This new law provides a bit of a twist on the rules for the inclusion of prizes into income.

Internal Revenue Code – Sections 61 & 74

Section 61 of the *Internal Revenue Code* states that: “Except as otherwise provided in this subtitle, gross income means all income from whatever source derived”. This means that unless the Code gives an exemption or exception, everything is income. There are very few sections in a massive Code that deviate from the inclusion of income from whatever source derived. Section 74 is one of these “except as otherwise provided” sections that give some specific direction on a particular type of income.

Section 74 is the section that deals specifically with prizes and awards. First, §74(a) states “Except as provided in subsection (b) and in section 117 (relating to scholarships and fellowship grants), gross income includes amounts received as prizes and awards.” This follows what we already know in §61, but there is an exception in subsection (b).

In the *Internal Revenue Code* of 1954, subsection 74(b) stated:

(b) Exception.

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

- (1) the recipient was selected without any action on his part to enter the contest or proceeding; and
- (2) the recipient is not required to render substantial future services as a condition to receiving

the prize or award.

Exempted from income is any prize or award if it was in recognition of any of the listed areas and if they didn't enter into that contest and weren't required to perform any services as a condition of the prize or award.

Paul V. Hornung v. Comm.

This gives rise to one of my favorite tax cases (of course, it is difficult to rank good tax cases). In *Paul V. Hornung v. Comm.*, 47 TC 428 (1967), Paul Hornung played in the 1961 NFL Championship on December 31, 1961 for the Green Bay Packers. He was awarded Sport Magazine's outstanding player in the championship after scoring 19 points in the game. The award for this designation was a 1962 Corvette automobile (with a fair value of \$3,331.04!). The magazine told Paul of the win right after the game and gave him a car on January 3, 1962 in New York. There was an issue before the Court as to if it were income in 1961 or 1962, which can be analyzed at a different time (the Court held 1961).

I think the best part of the case was the court describing the position of Mr. Hornung on how that exemption in subsection 74(b) should apply to him:

"In the opinion of this witness, the game of football is educational because it is taught in accredited colleges as part of certain physical education courses. Moreover, being a star football player is said to be an artistic achievement since such status "calls for a degree of artistry." Finally, since the skills of a football player are based upon techniques which encompass certain "scientific" principles, it is contended that petitioner's ability to excel in the execution of these techniques is a scientific achievement worthy of recognition by means of the award presented by Sport. Petitioner also argues that the award was made in recognition of civic achievement due to the alleged interest of the President of the United States in petitioner's application for leave from the Army to allow participation in the championship game."

The Court tried its hand at wit and included this paragraph in the opinion:

"petitioner is precluded from effectively arguing that the award constituted a gift, and he can only hope to score on his argument that the award qualifies as an exception under section 74(b). In making this argument, petitioner shifts into a shotgun formation, contending that his accomplishments in the championship football game constitute educational, artistic, scientific, and civic achievements within the meaning of section 74(b). We believe that petitioner should be caught behind the line of scrimmage on this particular offensive maneuver."

In Hornung's case, the court ruled that the car was income to him and the car was for publicity purposes, not "disinterested generosity", or one of those §74(b) exceptions for a prize. When applying these rules to the Olympic medals, the U.S.A. pays to the athlete \$25,000 for gold, \$15,000 for silver \$10,000 for bronze plus the actual value of the metals which at today's price would be \$600 for gold, \$325 for silver and \$6 for bronze (though the fair market value of the medal may increase beyond these amounts in a hypothetical sale, given the medal's historical significance and collectability).

An income exclusion for the Olympic medals could be argued on the basis of artistic or civic achievement. The original §74(b) exception was intended to exclude the Nobel Prize, as an example.

Conclusion

Unfortunately, all of the above arguments are moot because Section 74(b) was amended in 1986 (Public Law 99-514) to add an additional condition: (3) that the prize also had to be turned over to a government agency or qualifying charitable organization. This would have eliminated all of Mr. Hornung's arguments and the exclusion of Olympic or Nobel prizes, unless the recipient turned over the prize to the government or a qualifying charity.

Adding another part to §74 from H.R. 5946 signed this week:

Exception for Olympic and Paralympic Medals and Prizes.

- (1) In general.-- Gross income shall not include the value of any medal awarded in, or any prize money received from the United States Olympic Committee on account of, competition in the Olympic Games or Paralympic Games.
- (2) Limitation based on adjusted gross income.-
 - (A) In general.--Paragraph (1) shall not apply to any taxpayer for any taxable year if the adjusted gross income (determined without regard to this subsection) of such taxpayer for such taxable year exceeds \$1,000,000 (half of such amount in the case of a married individual filing a separate return).

Accordingly, the value of the medals from only the Olympic (and Paralympic) games would be exempt from some of the athletes, depending on their income. The Nobel Prize is still included in income.

To be complete, there is one other exception in §74 from the inclusion of prizes and awards, if it relates to an employee achievement award. To be excluded, the award must be of tangible property (such as a watch, not cash or gift cards), and the value can't exceed \$400 (or \$1,600 if part of a qualified plan award); the award must be in recognition of length of service or safety achievement and must be given as part of a meaningful presentation.

Canada awards its medalists from the Olympics with \$20,000 for a gold, \$15,000 for a silver and \$10,000 for a bronze, and the taxation is entirely different to residents of Canada, which makes cross border situations exciting and complex.

For more information, please contact:

Dr. Mark Feigenbaum is a US Attorney, CPA, and CA, practicing in Thornhill, Ontario specializing in cross-border taxation for individuals primarily in the sports, entertainment and music industries, and individuals moving to and from the U.S., businesses expanding to the U.S., estate planning, U.S. immigration, and tax litigation.

He can be contacted at mark@feigenbaumlaw.com or 905-695-1269.