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Taxing Prizes and Awards: Proposed Amendments to Section 74 to Treat Meritorious Achievements Equitably

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TAXING PRIZES AND AWARDS: PROPOSED AMENDMENTS TO SECTION 74 TO TREAT MERITORIOUS ACHIEVEMENTS EQUITABLY

*Taylor L. Green**

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I. INTRODUCTION

WINNING a Nobel Prize, a Pulitzer Prize, a World Cup, an Olympic medal, or a Paralympic medal is a meritorious achievement.¹ Elinor Ostrom, a professor who received a Nobel Prize in Economic Sciences, disproved the long-held idea that collectively-used natural resources “would be over-exploited and destroyed in the long-term.”² John Hackworth and Brian Gleason, editors of the Sun Newspapers who received a Pulitzer Prize in Editorial Writing, wrote “fierce, indignant editorials that demanded truth and change after the deadly assault of an inmate by corrections officers.”³ Twenty-three soccer players who won the FIFA Women’s World Cup provoked former President Obama to remark, “Playing like a girl means being the best. . . . It means wearing our nation’s crest on your jersey, taking yourself and your country to the top of the world.”⁴ Laura Graves, who carried her dressage team to win an Olympic medal,⁵ hailed from a small Vermont farm⁶ and left her cosmetologist career “for a shot at turning the unruliest horse on the circuit into a dressage superstar.”⁷ Matt Stutzman, who won a Paralympic medal in archery, was born without arms but steadfastly trained to perfect his shooting method.⁸ Curiously, while each feat is a meritorious achievement, winning all but an Olympic or a Paralympic medal, generally, is a taxable achievement.

Taxable income is comprised of gross income reduced by any exemp-

1. *See Meritorious*, MERRIAM-WEBSTER’S DICTIONARY OF LAW (2011) (Defining “meritorious” as “deserving of honor or esteem”).

2. *Elinor Ostrom - Facts*, NOBELPRIZE.ORG, http://www.nobelprize.org/nobel_prizes/economic-sciences/laureates/2009/ostrom-facts.html [<https://perma.cc/P3VS-NAVM>] (last visited Mar. 26, 2017). She “showed that when natural resources are jointly used by their users, in time, rules are established for how these are to be cared for and used in a way that is both economically and ecologically sustainable.” *Id.*

3. *The 2016 Pulitzer Prize Winner in Editorial Writing*, PULITZER PRIZES, <http://www.pulitzer.org/winners/john-hackworth-and-brian-gleason-sun-newspapers> [<https://perma.cc/ZZC3-KGKX>] (last visited Mar. 26, 2017).

4. *USA Women Honoured at White House*, FIFA.COM (Oct. 27, 2015), <http://www.fifa.com/womensworldcup/news/y=2015/m=10/news=usa-women-honoured-at-white-house-2722383.html> [<https://perma.cc/2R3W-XQPL>].

5. Kat Lotrecchiano, *Laura Graves and Diddy Carry the U.S. to Team Bronze*, NBC OLYMPICS (Aug. 12, 2016, 5:05 PM), <http://www.nbcolympics.com/news/laura-graves-and-diddy-carry-us-team-bronze> [<https://perma.cc/M64W-CLJ4>].

6. *Slow and Steady Wins the Race: Laura Graves and Diddy*, NBC OLYMPICS (Sept. 14, 2016), <http://www.nbcolympics.com/video/slow-and-steady-wins-race-laura-graves-and-diddy> [<https://perma.cc/GYF3-T44G>].

7. Ollie Williams, *Laura Graves and ‘Diddy’: An Equestrian Fairytale*, CNN (Oct. 1, 2015), <http://edition.cnn.com/2015/07/10/sport/laura-graves-dressage-fairytale-equestrian/> [<https://perma.cc/NE3F-4DQW>].

8. Rachel Axon, *Paralympic Archer Matt Stutzman Puts Family First as He Chases His Dreams*, USA TODAY (July 22, 2016, 9:20 AM), <http://www.usatoday.com/story/sports/olympics/rio-2016/2016/07/22/paralympic-archer-matt-stutzman/87415336/> [<https://perma.cc/Q2XS-H2E3>].

tions or deductions.⁹ Gross income is “all income from whatever source derived,”¹⁰ including most prizes and awards, which are addressed in Internal Revenue Code Section 74.¹¹ Over the years, Congress has exempted certain prizes and awards from gross income.¹²

For “religious, charitable, scientific, educational, artistic, literary, or civic achievement,” to exclude prizes and awards from gross income, Section 74(b) requires the recipient (1) to be “selected without any action on his part to enter the contest or proceeding;” (2) not to be “required to render substantial future services as a condition to receiving the prize or award;” and (3) to transfer the prize or award “to a governmental unit or charitable organization.”¹³

For Olympic and Paralympic achievement, as of October 7, 2016,¹⁴ Section 74(d) exempts from gross income “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.”¹⁵ This exception applies only if the recipient’s adjusted gross income¹⁶ does not exceed \$1,000,000 (or \$500,000 for a married individual filing a separate return).¹⁷

Though commentators have criticized Section 74(d) proposals for preferentially treating Olympians and Paralympians, compared to other prize and award recipients,¹⁸ no commentator has suggested overhauling Section 74 to provide equitable treatment for meritorious achievements, while reconciling the existing exceptions.

9. I.R.C. § 63(a) (2012); *What Is Taxable and Nontaxable Income?*, INTERNAL REVENUE SERV., <https://www.irs.gov/businesses/small-businesses-self-employed/what-is-taxable-and-nontaxable-income> [<https://perma.cc/X3HF-HAC6>] (last updated Dec. 12, 2016).

10. I.R.C. § 61(a) (“Except as otherwise provided in this subtitle, gross income means all income from whatever source derived, including (but not limited to)” several items.).

11. I.R.C. § 74(a) (“Except as otherwise provided in this section or in section 117 (relating to qualified scholarships), gross income includes amounts received as prizes and awards.”). Section 117 provides, “Gross income does not include any amount received as a qualified scholarship by an individual who is a candidate for a degree at an educational organization.” I.R.C. § 117(a).

12. I.R.C. § 74(b)–(c); I.R.C. § 74(d) (West 2017).

13. I.R.C. § 74(b).

14. United States Appreciation for Olympians and Paralympians Act of 2016, Pub. L. No. 114-239, 130 Stat. 973 (to be codified at 26 U.S.C. § 74); Office of the Press Secretary, *Statement by the Press Secretary on H.R. 1475, H.R. 2494, H.R. 2733, H.R. 3004, H.R. 3937, H.R. 5147, H.R. 5578, H.R. 5883, H.R. 5944, H.R. 5946, S. 1004, S. 1698, S. 2683, S. 3283*, WHITE HOUSE (Oct. 7, 2016), <https://obamawhitehouse.archives.gov/the-press-office/2016/10/07/statement-press-secretary-hr-1475-hr-2494-hr-2733-hr-3004-hr-3937-hr> [<https://perma.cc/2JD5-TQK3>].

15. I.R.C. § 74(d)(1).

16. Adjusted gross income refers to gross income minus several deductions. *See* I.R.C. § 62.

17. I.R.C. § 74(d)(2)(A). For simplicity, the author will refer to this as the “\$1,000,000 adjusted gross income limitation” or the “adjusted gross income limitation.”

18. *See, e.g.,* Samantha Goewey, Note, *Taxing the Gold: The Tax Treatment of Olympians*, 24 SETON HALL J. SPORTS & ENT. L. 179, 179–201 (2014); Kelly Phillips Erb, *Yes, Olympic Wins Are Taxable (and Should Stay That Way)*, FORBES (Feb. 11, 2014, 11:27 PM), <http://www.forbes.com/sites/kellyphillipserb/2014/02/11/yes-olympic-wins-are-taxable-and-should-stay-that-way/#4d1ebcbe7f91> [<https://perma.cc/W6H8-NYTR>].

This article argues that Congress erred by enacting Section 74(d) and, consequently, by preferentially treating certain athletic achievement compared to religious, charitable, scientific, educational, artistic, literary, and civic achievement. To provide equitable treatment for meritorious achievements, but also to reconcile Section 74's existing exceptions, this article proposes amending Section 74. More specifically, Section 74 should be amended in the following ways: (1) omit Section 74(d); (2) add "athletic" to Section 74(b)'s enumerated achievements but require the recipient to represent the United States in an international competition; and (3) reconcile the adjusted gross income limitation and charitable transfer requirement.¹⁹

This article will begin by exploring the historical background leading to the current treatment of prizes and awards, focusing primarily on legislative history.²⁰ Then, reconsidering Section 74(b)'s absence of "athletic" and exposing Section 74(d)'s discreteness will illustrate how Section 74 has failed to provide equitable treatment for meritorious achievements.²¹ Next, analyzing prize and award recipients' ability to deduct business expenses will rebut a frequent argument against allowing preferential treatment for Olympians and Paralympians.²² Lastly, contrasting the Tax Reform Act of 1986²³ with both the American Taxpayer Relief Act of 2012²⁴ and the United States Appreciation for Olympians and Paralympians Act of 2016²⁵ will reveal why the theory behind Section 74(b)(3)'s charitable transfer requirement has been eroded.²⁶ The Article will then propose amendments to Section 74 to treat meritorious achievements equitably and to reconcile the existing exceptions.²⁷

II. HISTORICAL BACKGROUND LEADING TO THE CURRENT TREATMENT OF PRIZES AND AWARDS

A. EXPLORING THE LAW BEFORE SECTION 74

While Article I, Section 8, Clause 1 of the Constitution gives Congress the "[p]ower [t]o lay and collect [t]axes,"²⁸ the Sixteenth Amendment,²⁹ ratified in 1913, led Congress to enact the Revenue Act of 1913,³⁰ known

19. See *infra* Part IV.

20. See *infra* Part II.

21. See *infra* Section III.A.

22. See *infra* Section III.B.

23. Pub. L. No. 99-514, 100 Stat. 2085 (codified at 26 U.S.C. § 1).

24. Pub. L. No. 112-240, 126 Stat. 2313 (codified in scattered sections of 26 U.S.C.).

25. Pub. L. No. 114-239, 130 Stat. 973 (to be codified at 26 U.S.C. § 74).

26. See *infra* Section III.C.

27. See *infra* Part IV.

28. U.S. CONST. art. I, § 8, cl. 1.

29. U.S. CONST. amend. XVI ("The Congress shall have power to lay and collect taxes on incomes, from whatever source derived, without apportionment among the several states, and without regard to any census or enumeration."); *Brushaber v. Union Pac. R.R. Co.*, 240 U.S. 1, 18 (1916) ("[T]he whole purpose of the Amendment was to relieve all income taxes when imposed from apportionment from a consideration of the source whence the income was derived.").

30. Pub. L. No. 63-16, 38 Stat. 114 (codified at 43 U.S.C. § 152).

today as “the forerunner of the modern income tax.”³¹ Despite the federal income tax system’s rich history of reform over the twentieth and twenty-first centuries,³² the concept of “gross income,” or “net income,” has changed minimally.³³ But Congress waited to address whether to include prizes and awards in gross income until 1954.³⁴

Not surprisingly, before 1954, courts diverged on whether to tax prizes and awards.³⁵ In *Washburn*, known as the Pot O’ Gold case,³⁶ the Tax Court held that a \$900 prize was a gift and thus was not gross income.³⁷ As Mrs. Washburn was relaxing at home, her telephone rang, and a voice exclaimed, “Congratulations, Mrs. Washburn.”³⁸ When she questioned the caller, the voice responded, “Haven’t you been listening to your radio?”³⁹ Mrs. Washburn replied that she had not, but the voice continued, “Well, you have won the Pot O’ Gold.”⁴⁰ Within thirty minutes, she received a telegram stating, “Herewith draft for nine hundred dollars outright cash gift.”⁴¹ When asked later if Mrs. Washburn would appear on a program, she declined.⁴² The court concluded “without difficulty” that the \$900 cash prize, resulting from a spinning wheel paired with telephone directories, was a gift because Mrs. Washburn did not receive it as a result of capital or labor, did not expect to receive it, and did not perform a subsequent obligation.⁴³

By contrast, in *McDermott*, known as the Ross Essay Contest case,⁴⁴ the Tax Court held that a \$3,000 prize was gross income.⁴⁵ The American Bar Association awarded a law professor⁴⁶ \$3,000 for submitting the best essay discussing “To What Extent Should Decisions of Administrative

31. Sheldon D. Pollack, *Origins of the Modern Income Tax, 1894–1913*, 66 *TAX LAW* 295, 297 (2013).

32. *Id.*; *Historical Highlights of the IRS*, INTERNAL REVENUE SERV., <https://www.irs.gov/uac/historical-highlights-of-the-irs> [<https://perma.cc/2PP5-AKSY>] (last updated July 6, 2016).

33. *Compare* § 2, 38 Stat. at 167 (“[S]ubject only to such exemptions and deductions as are hereinafter allowed, the net income of a taxable person shall include gains, profits, and income derived from salaries, wages, or compensation for personal service of whatever kind and in whatever form paid, . . . or gains or profits and income derived from any source whatever . . .”) with I.R.C. § 61 (2012) (“Except as otherwise provided in this subtitle, gross income means income from whatever source derived . . .”).

34. Internal Revenue Code of 1954, Pub. L. No. 83-591, § 74, 68A Stat. 4, 24 (codified in scattered sections of 26 U.S.C.).

35. *Robertson v. United States*, 343 U.S. 711, 713 (1952), *aff’g sub nom.* *United States v. Robertson*, 190 F.2d 680 (10th Cir. 1951); *McDermott v. Comm’r*, 150 F.2d 585, 586–87 (D.C. Cir. 1945), *rev’g* 3 T.C. 929 (1944); *Washburn v. Comm’r*, 5 T.C. 1333, 1334–35 (1945).

36. S. REP. NO. 83-1622, at 13 (1954); H.R. REP. NO. 83-1337, at 11 (1954).

37. *Washburn*, 5 T.C. at 1334–35.

38. *Id.* at 1334.

39. *Id.*

40. *Id.*

41. *Id.*

42. *Id.*

43. *Id.* at 1335.

44. S. REP. NO. 83-1622, at 13 (1954); H.R. REP. NO. 83-1337, at 11 (1954).

45. *McDermott v. Comm’r*, 3 T.C. 929, 932 (1944), *rev’d*, 150 F.2d 585 (D.C. Cir. 1945).

46. *McDermott v. Comm’r*, 150 F.2d 585, 586 (D.C. Cir. 1945), *rev’g* 3 T.C. 929 (1944).

Tribunals be Reviewable by the Courts?”⁴⁷ The Ross Essay Contest prize originated from the will of Mr. Ross, who created a trust for the American Bar Association to administer the essay contest.⁴⁸ In determining that the \$3,000 prize was gross income, the Tax Court reasoned that the prize was trust income.⁴⁹

But the District of Columbia Circuit Court reversed and characterized the \$3,000 prize as a gift, finding it “immaterial whether the award was made out of income or other funds.”⁵⁰ Rather, the prize winner’s tax liability depended on whether the prize was income from services or was simply a gift.⁵¹ A gift “cannot be counted upon in advance and may never recur.”⁵² Applying this framework, the court reasoned that the purpose of the Ross Essay Contest prize was “to give and to incite, not to employ or buy.”⁵³ In addition, “the dominant motive of a normal contestant for [the] prize [was] not a hope of immediate financial gain.”⁵⁴ While “the contest provide[d] an added motive[,] . . . this added motive [was] more a matter of prestige than of money.”⁵⁵ The court concluded that “requiring winners of scholarly awards to pay taxes on them would conflict with the wise and settled policy of encouraging scholarly work.”⁵⁶

Disagreeing with the District of Columbia Circuit, the Tenth Circuit in *Robertson* held that the value of an award is taxable to a contestant who enters, wins, and accepts the award.⁵⁷ A musician spent three years composing a symphony called “Trilogy,” placed it in his files without publishing it, and later entered it into a contest “for the best symphonic compositions written by native-born composers of North, Central and South America.”⁵⁸ Upon winning a \$25,000 prize, the musician argued that the prize was not taxable because it was a gift.⁵⁹ The Tenth Circuit disagreed, stating the “practical test” to apply “in cases where income has been claimed to have been a gift is to determine if the income was received gratuitously and in exchange for nothing.”⁶⁰ This test is not satisfied “when a person . . . submits the result of his skill and training in a contest and receives a prize.”⁶¹ The court criticized the District of Columbia Circuit for stating that “one entering this sort of a contest does it purely for the advancement of art or scholarly pursuits” because, “if so,

47. *McDermott*, 3 T.C. at 929.

48. *Id.* at 930.

49. *Id.* at 930–31.

50. *McDermott*, 150 F.2d at 586–87.

51. *Id.* at 587.

52. *Id.* at 588.

53. *Id.* (internal quotation marks omitted).

54. *Id.*

55. *Id.*

56. *Id.*

57. *United States v. Robertson*, 190 F.2d 680, 683 (10th Cir. 1951), *aff’d sub nom. Robertson v. United States*, 343 U.S. 711 (1952).

58. *Id.* at 681.

59. *Id.* at 681–82.

60. *Id.* at 682.

61. *Id.* at 683.

the contestant could well refuse to accept the prize.”⁶²

The Supreme Court granted certiorari in *Robertson* to settle the conflicting decisions in the District of Columbia and Tenth Circuits.⁶³ The Court affirmed the Tenth Circuit’s decision in *Robertson*, but applied contract law.⁶⁴ The Court explained that a contestant’s acceptance of a contest sponsor’s offer creates an enforceable contract, paying a prize to a contest winner is legally equivalent to discharging a contractual obligation, and discharging a legal obligation—such as paying for services rendered or paying consideration pursuant to a contract—is not a gift.⁶⁵ The case would differ “if an award were made in recognition of past achievements or present abilities, or if payment was given not for services, . . . but out of affection, respect, admiration, charity or like impulses.”⁶⁶ But when “payment is in return for services rendered, it is irrelevant that the donor derives no economic benefit from it.”⁶⁷ Nonetheless, Congress clarified the proper tax treatment for prizes and awards by enacting Section 74 of the Internal Revenue Code of 1954.⁶⁸

B. ENACTING SECTION 74: GROSS INCOME DESIGNATION AND EXCEPTION FOR CERTAIN ACHIEVEMENT

Intending to overrule and eliminate the confusion resulting from the Pot O’ Gold and Ross Essay Contest cases,⁶⁹ Congress enacted Section 74.⁷⁰ Under the original Section, prizes and awards are included in gross income, except those received “in recognition of religious, charitable, scientific, educational, artistic, literary, or civic achievement,” where “the recipient was selected without any action on his part to enter the contest or proceeding” and “is not required to render substantial future services as a condition to receiving the prize or award.”⁷¹ Congress intended “to exempt such awards as the Nobel and Pulitzer prizes.”⁷²

To provide further guidance, the U.S. Department of Treasury promulgated regulations in 1955.⁷³ Treasury provided a non-exhaustive list of prizes and awards to include in gross income: “amounts received from

62. *Id.*

63. *Robertson v. United States*, 343 U.S. 711, 713 (1952), *aff’g sub nom. United States v. Robertson*, 190 F.2d 680 (10th Cir. 1951).

64. *Id.* at 713–14.

65. *Id.* at 713.

66. *Id.* at 713–14 (citation omitted).

67. *Id.* at 714.

68. Pub. L. No. 83-591, § 74, 68A Stat. 4, 24 (codified in scattered sections of 26 U.S.C.).

69. S. REP. NO. 83-1622, at 13 (1954) (“The provision eliminates the confusion resulting from certain court decisions. The Pot O’Gold case and the Ross Essay Contest case are overruled insofar as these cases held the receipts not to be income under the code.”); H.R. REP. NO. 83-1337, at 11 (1954) (same).

70. § 74, 68A Stat. at 24.

71. *Id.*

72. H.R. REP. NO. 83-1337, at 11; *see also* Treas. Reg. § 1.74-1(b)(3) (1955) (“Thus, such awards as the Nobel prize and the Pulitzer prize would qualify for the exclusion.”).

73. Treas. Reg. § 1.74-1.

radio and television give-away shows, door prizes, and awards in contests of all types, as well as any prizes and awards from an employer to an employee . . . in connection with his employment.”⁷⁴ In addition, if a “prize or award is not made in money but is made in goods or services, the fair market value of the goods or services is the amount to be included in income.”⁷⁵

Courts have since interpreted Section 74(b)'s listed achievements, relying heavily on legislative history and ordinary meaning.⁷⁶ In *Simmons*, the Fourth Circuit predictably held that a taxpayer “was not rewarded for a civic achievement” when he won a \$25,000 prize for catching the tagged fish in the Third Annual American Beer Fishing Derby.⁷⁷ Noting that “it require[d] a considerable flight of fancy to romanticize the Fishing Derby into a civic endeavor,” the court continued that “it is not the motivations of the donor that are legally relevant.”⁷⁸ Rather, “the crucial test is the nature of the activity being rewarded.”⁷⁹

After studying the dictionary definition of “civic,”⁸⁰ the court reasoned that the enumerated achievements “represent activities enhancing in one way or another the public good.”⁸¹ “Moreover, the statute’s legislative history indicates that only awards for genuinely meritorious achievements were to be freed from taxation.”⁸² The outcome might have differed, however, if the taxpayer had riskily “captured and destroyed a killer whale terrorizing the Maryland seashore.”⁸³

Turning to the absence of “athletic” in Section 74(b)'s listed achievements, the Tax Court decided two cases involving professional athletes who attempted to exclude their prizes and awards from gross income.⁸⁴ First, in *Hornung*, the Tax Court held that professional football player Paul Hornung should have included a Corvette automobile award in gross income.⁸⁵ Hornung received the Corvette from Sports Magazine after being selected the most valuable player in the National Football League championship game.⁸⁶ Hornung argued that “his accomplishments in the championship football game constitute[d] educational, artis-

74. *Id.* § 1.74-1(a)(1).

75. *Id.* § 1.74-1(a)(2).

76. *Simmons v. United States*, 308 F.2d 160, 163 (4th Cir. 1962); *Wills v. Comm’r*, 48 T.C. 308, 314 (1967), *aff’d*, 411 F.2d 537 (9th Cir. 1969); *Hornung v. Comm’r*, 47 T.C. 428, 436–37 (1967), *acq.*, 1967-2 C.B. 1.

77. *Simmons*, 308 F.2d at 161–63.

78. *Id.* at 162–63.

79. *Id.* at 163.

80. *Id.* (“[C]ivic’ is defined as ‘relating, pertaining, or appropriate, to a citizen.’ One may be . . . a civic person if he merely lives in a state and quietly obeys its laws, but a ‘civic achievement’ involves more. It implies positive action, exemplary, unselfish, and broadly advantageous to the community.”).

81. *Id.*

82. *Id.*

83. *Id.* at 164.

84. *Wills v. Comm’r*, 48 T.C. 308, 316 (1967), *aff’d*, 411 F.2d 537 (9th Cir. 1969); *Hornung v. Comm’r*, 47 T.C. 428, 437 (1967), *acq.*, 1967-2 C.B. 1.

85. *Hornung*, 47 T.C. at 437.

86. *Id.* at 430–31.

tic, scientific, and civic achievements within the meaning of [S]ection 74(b).”⁸⁷ But the court quipped that Hornung “should be caught behind the line of scrimmage on this particular offense maneuver.”⁸⁸ Relying on ordinary meaning,⁸⁹ legislative history,⁹⁰ and the *Simmons* reasoning, the court remained “confident that Congress had no intention of allowing professional football to constitute a type of activity for which proficiency could be recognized with an exempt award under [S]ection 74(b).”⁹¹

Similarly, in *Wills*, the Tax Court held that professional baseball player Maury Wills should have included his S. Rae Hickok belt⁹² and MG automobile in gross income.⁹³ Wills won the Hickok belt for being selected the prior year’s outstanding professional athlete and the automobile for being selected the most popular Los Angeles Dodger.⁹⁴ Because Wills received the Hickok belt “primarily in recognition of athletic skills” and because “excellence in sport” was the “predominant criterion for selection,” the “award was not made for achievement in one of the enumerated areas.”⁹⁵ Likewise, with the MG automobile, the court refused to hold that a popularity award fell within the listed achievements.⁹⁶

The Ninth Circuit affirmed, finding additional support “in the fact that Congress ha[d] recently heard several proposals to add the word ‘athletic’ to the list of exempted prizes . . . but ha[d], thus far, refused to do so.”⁹⁷ The court concluded by lamenting the state of the law:

The law as it presently exists requires the foregoing conclusion. We dislike it, for we are convinced it is an inequitable result. The next step would be for the Internal Revenue Service to tax the gold and silver in the medals awarded to Olympic Games’ winners. Unfortunately for the taxpayer in this case, the court has no authority to legislate equities into the Internal Revenue Code or the Treasury Regulations. Both the problem and the remedy lie with the Congress, not with the courts.⁹⁸

87. *Id.* at 436.

88. *Id.*

89. *Id.* (“We believe that the words ‘educational,’ ‘artistic,’ ‘scientific,’ and ‘civic’ as used in [S]ection 74(b) should be given their ordinary, everyday meaning in the context of defining certain types of personal achievement.”).

90. *Id.* at 436–37 (“Legislative history supports our belief. For example, the Senate report states that the provisions of [S]ection 74(b) are intended to exempt from taxation such awards as the Nobel prize.”).

91. *Id.* at 437.

92. *Wills v. Comm’r*, 48 T.C. 308, 310 n.1 (1967), *aff’d*, 411 F.2d 537 (9th Cir. 1969) (“The S. Rae Hickok belt was jewel-studded, contained 27 one and one-half carat diamonds, simulated stones, and had a 3 1/2-pound gold belt buckle.”).

93. *Id.* at 310, 316.

94. *Id.* at 310.

95. *Id.* at 315–16.

96. *Id.* at 316.

97. *Wills v. Comm’r*, 411 F.2d 537, 542–43 (9th Cir. 1969), *aff’g* 48 T.C. 308 (1967).

98. *Id.* at 543.

C. ENACTING SECTION 74(B)(3): CHARITABLE
TRANSFER REQUIREMENT

Known as “one of the most comprehensive revisions of the federal income tax system,”⁹⁹ the Tax Reform Act of 1986¹⁰⁰ made “sweeping changes”¹⁰¹ to the Internal Revenue Code, including changes to Section 74.¹⁰² The Act aimed to broaden the tax base and lower tax rates¹⁰³ and to achieve fairness, efficiency, and simplicity.¹⁰⁴ Congress would promote fairness by ensuring “that individuals with similar incomes pay similar amounts of tax.”¹⁰⁵ Congress would foster efficiency by dramatically reducing tax rates to “stimulate work effort and saving by leaving more of each additional dollar of wage” in a taxpayer’s hands.¹⁰⁶ Congress would reduce complexity by providing two individual tax rates of 15% and 28%.¹⁰⁷

Broadening the tax base, Congress amended Section 74(b) by adding a charitable transfer requirement, Section 74(b)(3), to the exception.¹⁰⁸ In addition to receiving the prize or award for religious, charitable, scientific, educational, artistic, literary, or civic achievement, the recipient may exclude the prize or award from gross income only if “(1) the recipient was selected without any action on his part to enter the contest or proceeding; (2) the recipient is not required to render substantial future services as a condition to receiving the prize or award; and” (3) the recipient transfers the prize or award to a governmental unit or charitable organization.¹⁰⁹

Congress added Section 74(b)(3) to ensure fairness and economic neutrality, to reduce complexity, and to recognize recipients’ desire to transfer a prize or award to charity.¹¹⁰ Addressing fairness, the Joint Committee on Taxation explained that “[a] prize or award generally increases an individual’s net wealth in the same manner as any other receipt of an equivalent amount that adds to the individual’s economic well-being.”¹¹¹ For instance, “an award of \$10,000 for scientific achievement” and “the receipt of \$10,000 in wages, dividends, or as a taxable award”

99. STAFF OF THE JOINT COMM. ON TAXATION, 100TH CONG., GENERAL EXPLANATION OF THE TAX REFORM ACT OF 1986 6 (Comm. Print 1987).

100. Pub. L. No. 99-514, 100 Stat. 2085 (codified at 26 U.S.C. § 1).

101. See STAFF OF THE JOINT COMM. ON TAXATION, 100TH CONG., *supra* note 99, at 6.

102. *Id.* at 30–38.

103. See *id.* at 11 (“By providing sharply lower tax rates to individuals . . . the need for special tax preferences is greatly diminished.”).

104. *Id.* at 6.

105. *Id.* at 7.

106. *Id.* at 9.

107. *Id.* at 18.

108. Tax Reform Act of 1986, Pub. L. No. 99-514, § 122, 100 Stat. 2085, 2109 (codified in scattered sections of 26 U.S.C.).

109. *Id.* Section 74(b)(3) specifically refers to a “governmental unit or organization described in paragraph (1) or (2) of section 170(c).” *Id.*

110. STAFF OF THE JOINT COMM. ON TAXATION, 100TH CONG., *supra* note 99, at 32.

111. *Id.* at 31.

equally “increase the recipient’s net wealth and ability to pay taxes.”¹¹² Explaining economic neutrality, the Committee noted that the previous Section 74(b) exclusion “depended on the recipient’s marginal tax rate, and thus generally was greater in the case of higher-income taxpayers.”¹¹³ Discussing complexity, the Committee described difficult questions that had arisen, such as “what constituted a qualifying form of achievement, whether an individual had initiated action to enter a contest or proceeding, and whether the conditions of receiving a prize or award involved rendering ‘substantial’ services.”¹¹⁴ In addition, Congress worried about Section 74(b) “serv[ing] as a possible vehicle for the payment of disguised compensation.”¹¹⁵ Lastly, the Committee recognized that some Section 74(b) prize or award recipients “may wish to assign the award to charity, rather than claiming it for personal consumption or use.”¹¹⁶

D. ENACTING SECTION 74(D): EXCEPTION FOR CERTAIN OLYMPIC AND PARALYMPIC ACHIEVEMENT

While millions recently watched the Rio Summer Olympics,¹¹⁷ a fraction likely considered Olympic and Paralympic medal winners’ tax consequences. Before Congress enacted the United States Appreciation for Olympians and Paralympians Act of 2016,¹¹⁸ and thus added Section 74(d),¹¹⁹ Olympians and Paralympians had to include the prize money awarded and “the fair market value of gold, silver, and bronze medals” in their gross income.¹²⁰

The United States Olympic Committee (USOC), “a corporation created by statute to serve as a coordinating body for United States participation in international competitive amateur sports,”¹²¹ “serves as both the National Olympic Committee and National Paralympic Committee for the United States.”¹²² The USOC awards U.S. Olympic and Paralympic athletes prize money for medals awarded.¹²³ Olympians receive \$25,000, \$15,000, and \$10,000 for each gold, silver, and bronze medal, respectively,¹²⁴ while Paralympians receive \$5,000, \$3,500, and \$2,500.¹²⁵ In addition, the medals awarded have values of approximately

112. *Id.*

113. *Id.* at 31–32.

114. *Id.* at 32.

115. *Id.*

116. STAFF OF THE JOINT COMM. ON TAXATION, 100TH CONG., *supra* note 99, at 32.

117. Eric Deggans, *NBC Declares Rio a ‘Media’ Success, Though TV Ratings Were Down*, NPR (Aug. 23, 2016, 5:06 AM), <http://www.npr.org/sections/thetorch/2016/08/23/491024790/nbc-declares-rio-a-media-success-though-tv-ratings-were-down> [https://perma.cc/H28N-7S5Z].

118. Pub. L. No. 114-239, 130 Stat. 973 (to be codified at 26 U.S.C. § 74).

119. I.R.C. § 74(d)(1) (West 2017).

120. H.R. REP. NO. 114-762, at 4 (2016).

121. *Id.* at 3; *see* 36 U.S.C. §§ 220501–12 (2012).

122. *About the USOC*, TEAM USA, <http://www.teamusa.org/About-the-USOC> [https://perma.cc/V83S-VTPN] (last visited Mar. 26, 2017).

123. H.R. REP. NO. 114-762, at 3–4.

124. *Id.* at 3.

125. *Id.* at 3–4.

\$565 for gold, \$305 for silver, and \$5 for bronze.¹²⁶

On October 7, 2016,¹²⁷ former President Obama signed into law the United States Appreciation for Olympians and Paralympians Act of 2016.¹²⁸ The Act amended Section 74 by adding an exception for Olympic and Paralympic medals and prizes.¹²⁹ Accordingly, Olympians and Paralympians' gross income "shall not include the value of any medal awarded in, or any prize money received from the [USOC] on account of, competition in the Olympic Games or Paralympic Games."¹³⁰ But the exception does not apply to an Olympian or a Paralympian with adjusted gross income over \$1,000,000 (or \$500,000 for a married individual filing a separate return).¹³¹ The effective date for the amendment is December 31, 2015.¹³²

One month earlier, former Congressman Bob Dold introduced the bill for himself and for Congressman Blake Farenthold.¹³³ Urging his colleagues to support the bill, former Congressman Dold explained that "[t]he vast majority of these athletes do not have endorsement deals and sponsorships" but instead "work full-time jobs while training or are full-time students."¹³⁴ He added that many athletes "have struggled just to get by while training to represent our Nation," naming an athlete who "lived in near poverty on just \$400 a month" while training for the 2012 London Olympics and then won a bronze medal in the 2016 Rio Olympics.¹³⁵ Within days, the bill garnered near unanimous support and passed both the House of Representatives¹³⁶ and the Senate.¹³⁷

The House Committee on Ways and Means explained the legislation's rationale to "eliminate an unfair tax burden."¹³⁸ The Committee applauded "the athletes who represent the United States on the global stage" for performing a "valuable patriotic service."¹³⁹ These athletes "do so only after years of personal sacrifice to attain the level of excellence required to compete."¹⁴⁰ In fact, while training and preparing, "many athletes representing the United States in the games earn little or no money from participation in their chosen sports and often defer pursuit of ca-

126. *Id.* at 4 n.7.

127. See Office of the Press Secretary, *supra* note 14.

128. Pub. L. No. 114-239, 130 Stat. 973 (to be codified at 26 U.S.C. § 74).

129. I.R.C. § 74(d) (West 2017).

130. I.R.C. § 74(d)(1).

131. I.R.C. § 74(d)(2)(A).

132. § 2, 130 Stat. at 973.

133. 162 CONG. REC. H5161-05 (daily ed. Sept. 7, 2016) (statement of Rep. Dold). It was then referred to the House Committee on Ways and Means. H.R. REP. NO. 114-762, at 2 (2016).

134. 162 CONG. REC. H5683-01 (daily ed. Sept. 20, 2016) (statement of Rep. Dold).

135. *Id.*

136. 162 CONG. REC. H5836-01 (daily ed. Sept. 22, 2016) (passing with 415 yeas, one nay, and fifteen not voting).

137. 162 CONG. REC. S6285-01 (daily ed. Sept. 29, 2016) (passing unanimously).

138. H.R. REP. NO. 114-762, at 2.

139. *Id.* at 4.

140. *Id.*

reers outside sports.”¹⁴¹ The prizes, therefore, “are intended to reward such sacrifices and to provide incentives to other athletes who seek to represent the United States on a global stage.”¹⁴²

The Congressional Budget Office and the Joint Committee on Taxation estimate that the Act will reduce revenues “by about \$3 million over the 2017–2026 period.”¹⁴³ More specifically, the Act “would have no effect on revenues in 2016 and would reduce them by \$1 million in 2017, 2021, and 2025, and by less than \$500,000 in the other years of the 2017–2026 period.”¹⁴⁴ To put these estimates in perspective, in 2015, the Internal Revenue Service collected approximately \$3.3 trillion in revenues.¹⁴⁵ At most, therefore, the Act will result in lost revenues for one year of approximately 0.00003% of total revenues.¹⁴⁶

Despite Congress’s bipartisan effort and the Act’s estimated slight reduction in revenues, the Act has generated myriad criticism among commentators in the academy¹⁴⁷ and the news.¹⁴⁸ Most commentators argue that the Act fails from a tax policy standpoint because it preferentially treats Olympians and Paralympians.¹⁴⁹ In addition, many critics¹⁵⁰ find the Act unnecessary because an athlete who treats participation in a sport as a business may deduct related business expenses.¹⁵¹

III. CRITICIZING SECTION 74

Section 74 preferentially treats certain athletic achievement, as opposed to religious, charitable, scientific, educational, artistic, literary, and

141. *Id.*

142. *Id.*

143. *Id.* at 6.

144. H.R. REP. NO. 114-762, at 6.

145. DEP’T OF THE TREASURY, INTERNAL REVENUE SERVICE DATA BOOK, 2015 3 (2016).

146. $(1,000,000/3,000,000,000,000) \times (100) = 0.0000333$.

147. Kathryn Kisska-Schulze & Adam Epstein, *Taxing Missy: Operation Gold and the 2012 Proposed Olympic Tax Elimination Act*, 14 TEX. REV. ENT. & SPORTS L. 95, 95–118 (2013); Goewey, *supra* note 18, at 179–201; Dena Guttmann, Note, *Dear Olympic Medalists, Thank You for Representing Our Country in the Olympics, but It’s Time to Pay Up!*, 22 CARDOZO J. INT’L & COMP. L. 85, 85–119 (2013).

148. Adam Chodorow, *Olympians Don’t Need a Tax Break*, SLATE (Aug. 26, 2016, 5:34 PM), http://www.slate.com/articles/business/moneybox/2016/08/giving_olympians_a_tax_break_is_bad_for_america.html; Erb, *supra* note 18; Howard Gleckman, *Giving Olympians a Special Tax Break Wins the Gold Medal of Bad Ideas*, FORBES (Aug. 16, 2016, 2:06 PM), <http://www.forbes.com/sites/beltway/2016/08/16/giving-olympians-a-special-tax-break-wins-the-gold-medal-of-bad-ideas/#4e5d0af51f53> [https://perma.cc/U2ZR-3KMG].

149. *See, e.g.*, Goewey, *supra* note 18, at 193–95.

150. *See, e.g.*, Erb, *supra* note 18.

151. *See* I.R.C. § 162(a) (2012) (“There shall be allowed as a deduction all the ordinary and necessary expenses paid or incurred during the taxable year in carrying on any trade or business . . .”). Examples include “a reasonable allowance for salaries or other compensation for personal services actually rendered,” “traveling expenses (including amounts expended for meals and lodging other than amounts which are lavish or extravagant under the circumstances) while away from home in the pursuit of a trade or business,” and “rentals or other payments required to be made as a condition to the continued use or possession, for purposes of the trade or business, of property to which the taxpayer has not taken or is not taking title or in which he has no equity.” I.R.C. § 162(a)(1)–(3).

civic achievement.¹⁵² Reconsidering Section 74(b)'s absence of "athletic" and exposing Section 74(d)'s discreteness will clarify how Section 74 has failed to provide equitable treatment for meritorious achievements.¹⁵³ Then, analyzing prize and award recipients' ability to deduct business expenses will refute a frequent argument against allowing preferential treatment for Olympians and Paralympians.¹⁵⁴ Lastly, contrasting the Tax Reform Act of 1986¹⁵⁵ with both the American Taxpayer Relief Act of 2012¹⁵⁶ and the United States Appreciation for Olympians and Paralympians Act of 2016¹⁵⁷ will reveal why Section 74(b)(3)'s charitable transfer requirement is no longer sound.¹⁵⁸

A. RECONSIDERING SECTION 74(B)'S ABSENCE OF "ATHLETIC" AND EXPOSING SECTION 74(D)'S DISCRETENESS

The 1960s cases revealed that Section 74(b)'s listed achievements explicitly and implicitly exclude athletic achievements¹⁵⁹ and "represent activities enhancing in one way or another the public good."¹⁶⁰ The Ninth Circuit regretted, however, that the necessary interpretation would result in taxing Olympic winnings.¹⁶¹ But the *Hornung* and *Wills* courts¹⁶² correctly refused to incorporate athletic achievements into Section 74(b)'s list because implicitly including "athletic" would render Congress's list meaningless and would give the judiciary legislative authority.

About fifty years later, however, Congress shared the Ninth Circuit's sympathy for Olympic and Paralympic athletes.¹⁶³ Though the Ninth Circuit noted failed attempts in the 1960s to add "athletic" to Section 74(b)'s listed achievements,¹⁶⁴ Congress has changed its mind, at least for Olympic and Paralympic achievement.¹⁶⁵ Unfortunately, however, because Congress created a separate exception for certain Olympic and Paralympic achievement, instead of incorporating its idea into Section 74(b), Section 74 now treats meritorious achievements inequitably.

More specifically, Congress blundered because, by adding Section 74(d), meritorious achievements within Section 74 are treated differently, and other meritorious achievements are excluded. First, Congress dif-

152. Compare I.R.C. § 74(b) with I.R.C. § 74(d) (West 2017).

153. See *infra* Section III.A.

154. See *infra* Section III.B.

155. See Pub. L. No. 99-514, 100 Stat. 2085 (codified at 26 U.S.C. § 1).

156. See Pub. L. No. 112-240, 126 Stat. 2313 (codified in scattered sections of 26 U.S.C.).

157. See Pub. L. No. 114-239, 130 Stat. 973 (to be codified at 26 U.S.C. § 74).

158. See *infra* Section III.C.

159. *Wills v. Comm'r*, 48 T.C. 308, 316 (1967), *aff'd*, 411 F.2d 537 (9th Cir. 1969); *Hornung v. Comm'r*, 47 T.C. 428, 437 (1967), *acq.*, 1967-2 C.B. 1.

160. *Simmons v. United States*, 308 F.2d 160, 163 (4th Cir. 1962).

161. *Wills v. Comm'r*, 411 F.2d 537, 543 (9th Cir. 1969), *aff'g* 48 T.C. 308 (1967).

162. See *Wills*, 48 T.C. at 316; *Hornung*, 47 T.C. at 437.

163. See United States Appreciation for Olympians and Paralympians Act of 2016, Pub. L. No. 114-239, 130 Stat. 973 (to be codified at 26 U.S.C. § 74).

164. See *Wills*, 411 F.2d at 543.

165. See § 2, 130 Stat. at 973.

ferred in treating certain athletic achievement in Section 74(d) and religious, charitable, scientific, educational, artistic, literary, or civic achievement in Section 74(b), as commentators often criticize.¹⁶⁶ That Congress included a charitable transfer requirement and excluded an adjusted gross income limitation for Section 74(b) achievement, but excluded a charitable transfer requirement and included an adjusted gross income limitation for Section 74(d) achievement, is both unclear and unfounded.¹⁶⁷

With the exception of a few Nobel Prize recipients—such as Bob Dylan,¹⁶⁸ former President Barack Obama,¹⁶⁹ and former Vice President Al Gore¹⁷⁰—most Section 74(b) recipients are scientists, economists, artists, journalists, and photographers. These individuals are hardly society's wealthiest. Rather, they are “[t]alented individuals who ignore available paths to immediate commercial or economic reward and instead seek to contribute to mankind’s store of knowledge or to lift up the human condition through art, literature, education, charitable work, or the like.”¹⁷¹ These individuals—engaging in “activities enhancing in one way or another the public good”¹⁷²—are equally deserving of a tax break as are Olympians and Paralympians.

In addition to disparately treating meritorious achievements within Section 74, Congress excluded meritorious achievements from Section 74(d), such as other athletes and scholars competing internationally for the United States. Consider, for example, the athletes competing for the United States in the FIFA World Cup,¹⁷³ Golf World Cup,¹⁷⁴ and Hockey

166. See, e.g., Goewey, *supra* note 18, at 179–201; Erb, *supra* note 18.

167. Compare I.R.C. § 74(b) (2012) with I.R.C. § 74(d) (West 2017).

168. *Bob Dylan - Facts*, NOBELPRIZE.ORG, https://www.nobelprize.org/nobel_prizes/literature/laureates/2016/dylan-facts.html [<https://perma.cc/YKY9-ZC8S>] (last visited Mar. 26, 2017). Dylan won the 2016 Nobel Prize in Literature “for having created new poetic expressions within the great American song tradition.” *Id.*

169. *Barack H. Obama - Facts*, NOBELPRIZE.ORG, http://www.nobelprize.org/nobel_prizes/peace/laureates/2009/obama-facts.html [<https://perma.cc/VUR8-6C2B>] (last visited Mar. 26, 2017). Former President Obama won the 2009 Nobel Peace Prize “for his extraordinary efforts to strengthen international diplomacy and cooperation between peoples.” *Id.*

170. *Al Gore - Facts*, NOBELPRIZE.ORG, http://www.nobelprize.org/nobel_prizes/peace/laureates/2007/gore-facts.html [<https://perma.cc/D8KF-4GTN>] (last visited Mar. 26, 2017). Former Vice President Gore shared the 2007 Nobel Peace Prize “for [his] efforts to build up and disseminate greater knowledge about man-made climate change, and to lay the foundations for the measures that are needed to counteract such change.” *Id.*

171. See Bruce I. Kogan, *The Taxation of Prizes and Awards—Tax Policy Winners and Losers*, 63 WASH. L. REV. 257, 304 (1988).

172. *Simmons v. United States*, 308 F.2d 160, 163 (4th Cir. 1962).

173. See *2018 FIFA World Cup Russia*, FIFA.COM, <http://www.fifa.com/worldcup/> [<https://perma.cc/S8LH-NVPR>] (last visited Mar. 26, 2017).

174. See *How It All Began*, ISPS HANDA WORLD CUP OF GOLF, <http://www.pgatour.com/tournaments/isps-handa-world-cup-of-golf/news/2016/10/05/everything-you-need-to-know-about-the-world-cup-of-golf.html> [<https://perma.cc/H4Q4-XHU9>] (last visited Mar. 26, 2017) (“The event has grown into the greatest global team event in golf, with two-man teams from 28 countries competing for the title on some of the world’s finest courses.”).

World Cup.¹⁷⁵ Lest we forget the 2015 FIFA Women's World Cup Champions, whom former President Obama thanked for "wearing our nation's crest on your jersey, taking yourself and your country to the top of the world."¹⁷⁶ Consider also students and scholars representing the United States as they compete in international academic competitions. Thus, Section 74 is ripe for amendment.

B. ANALYZING THE ABILITY TO DEDUCT BUSINESS EXPENSES

Upon acknowledging that Section 74 treats meritorious achievements inequitably, the next step to solve the inequity is to determine whether to eliminate all preferential treatment, to eliminate Section 74(b)'s or Section 74(d)'s preferential treatment, or to reconcile Section 74(b) with Section 74(d). Commentators who favor solely eliminating Section 74(d) often contend that preferential treatment for Olympians and Paralympians is unnecessary because an athlete who treats participation in a sport as a business may deduct related business expenses.¹⁷⁷

But this argument is unpersuasive. First, while deductions cover some coaching, traveling, and equipment expenses, deductions do not eliminate the "financial strain" felt by athletes and their families.¹⁷⁸ Second, the argument intending to reject preferential treatment for Olympians and Paralympians stretches to all meritorious prize and award recipients because religious, charitable, scientific, educational, artistic, literary, or civic achievement prize and award recipients also may deduct related business expenses. The argument, therefore, suggests eliminating all preferential treatment. But Congress has preferentially treated some prize and award recipients for over sixty years,¹⁷⁹ apparently remaining unaffected by recipients' ability to deduct business expenses. Third, the argument is inconsistent with the tax system because Congress has excluded numerous items from gross income—such as gifts and inheritances,¹⁸⁰ certain fringe

175. See *2016 World Cup: Frequently Asked Questions*, WORLD CUP OF HOCKEY 2016 TORONTO ("The 2016 World Cup of Hockey will feature eight teams competing for a best-on-best international hockey championship: The eight teams participating in the 2016 World Cup of Hockey are Team Canada, Team Czech Republic, Team Finland, Team Russia, Team Sweden, Team USA, Team Europe and Team North America."), <https://www.wch2016.com/info/world-cup-of-hockey-faq> [<https://perma.cc/T8VK-ARWJ>] (last visited Mar. 26, 2017).

176. See *USA Women Honoured at White House*, *supra* note 4.

177. See Erb, *supra* note 18; see also I.R.C. § 162(a) (2012).

178. See Meghan Kearns, *Getting the Gold but Losing the Money: Taxing Olympic Cash Prizes*, 12 WILLIAMETTE SPORTS L.J. 68, 94–95 (2014).

179. See Internal Revenue Code of 1954, Pub. L. No. 83-591, § 74, 68A Stat. 4, 24 (codified in scattered sections of 26 U.S.C.).

180. See I.R.C. § 102(a) ("Gross income does not include the value of property acquired by gift, bequest, devise, or inheritance.").

benefits,¹⁸¹ certain scholarships,¹⁸² life insurance proceeds,¹⁸³ and compensation for injuries or sickness¹⁸⁴—while also allowing numerous deductions—such as deductions for business expenses,¹⁸⁵ investment expenses,¹⁸⁶ losses,¹⁸⁷ qualified residence interest,¹⁸⁸ tuition and related expenses,¹⁸⁹ and bad debt.¹⁹⁰ An Olympian’s or a Paralympian’s ability to deduct business expenses, therefore, is a weak argument for solely eliminating Section 74(d) to solve Section 74’s inequity.

C. CONTRASTING PAST POLICY GOALS WITH CURRENT CONGRESSIONAL PREFERENCES

Despite the nostalgia surrounding the Tax Reform Act of 1986, relying on the Act’s goal to broaden the tax base is inappropriate because the tax structure has changed drastically over the last thirty years.¹⁹¹ As discussed, the Tax Reform Act of 1986 aimed to lower tax rates and broaden the tax base, creating two tax rates of 15% and 28%.¹⁹² To broaden the tax base, Congress added Section 74(b)(3)’s charitable transfer requirement so that fewer prizes and awards would be exempt from gross income.¹⁹³ By contrast, the American Taxpayer Relief Act of 2012 provides

181. See I.R.C. § 132(a) (“Gross income shall not include any fringe benefit . . .”).

182. See I.R.C. § 117(a) (“Gross income does not include any amount received as a qualified scholarship . . .”); see also Rev. Rul. 77-263, 1977-2 C.B. 47 (“The value of athletic scholarships . . . is excludable from the recipient’s gross income . . .”).

183. See I.R.C. § 101(a)(1) (“Except as otherwise provided . . . gross income does not include amounts received . . . under a life insurance contract . . .”).

184. See I.R.C. § 104(a) (“[G]ross income does not include . . . amounts received under workmen’s compensation acts as compensation for personal injuries or sickness [or] the amount of any damages (other than punitive damages) received . . . on account of personal physical injuries or physical sickness . . .”).

185. See I.R.C. § 162(a) (“There shall be allowed as a deduction all the ordinary and necessary expenses paid or incurred during the taxable year in carrying on any trade or business . . .”).

186. See I.R.C. § 212 (“[T]here shall be allowed as a deduction all the ordinary and necessary expenses paid or incurred during the taxable year” “for the production or collection of income;” “for the management, conservation, or maintenance of property held for the production of income; or” “in connection with the determination, collection, or refund of any tax.”).

187. See I.R.C. § 165(a) (“There shall be allowed as a deduction any loss sustained during the taxable year . . .”).

188. See I.R.C. § 163(h)(1), (h)(2)(D) (“[N]o deduction shall be allowed . . . for personal interest paid or accrued during the taxable year. . . . [T]he term ‘personal interest’ means any interest . . . other than . . . any qualified residence interest . . .”).

189. See I.R.C. § 222(a) (“[T]here shall be allowed as a deduction an amount equal to the qualified tuition and related expenses paid by the taxpayer . . .”).

190. See I.R.C. § 166(a)(1) (“There shall be allowed as a deduction any debt which becomes worthless within the taxable year.”).

191. Compare Tax Reform Act of 1986, Pub. L. No. 99-514, 100 Stat. 2085 (codified at 26 U.S.C. § 1) with American Taxpayer Relief Act of 2012, Pub. L. No. 112-240, 126 Stat. 2313 (codified in scattered sections of 26 U.S.C.).

192. § 101, 100 Stat. at 2096; STAFF OF THE JOINT COMM. ON TAXATION, 100TH CONG., *supra* note 99, at 18.

193. STAFF OF THE JOINT COMM. ON TAXATION, 100TH CONG., *supra* note 99, at 32.

seven tax rates with a top rate of 39.6%,¹⁹⁴ but Congress has not repealed the charitable transfer requirement.

Notwithstanding whether Congress should return to the ideas pro-
pounded by the Tax Reform Act of 1986, because increased rates have
eroded the base-broadening and rate-lowering theory, relying on Section
74(b)(3)'s base-broadening rationale is misguided. Perhaps Congress ac-
knowledged this problematic reliance when it enacted Section 74(d) and
derogated from Section 74(b)'s charitable transfer requirement.

If, however, under the Trump administration, Congress engages in
comprehensive tax reform and significantly lowers individual tax rates,
then 1986 base-broadening might be more appropriate.¹⁹⁵ Until then, re-
quiring religious, charitable, scientific, educational, artistic, literary, or
civic achievement prize and award recipients to transfer their entire win-
nings to a governmental or charitable organization, but not requiring
Olympians and Paralympians to do the same, is inequitable. Section 74
should be amended accordingly.

IV. AMENDING SECTION 74

Without question, Section 74 treats certain athletic achievement differ-
ently from religious, charitable, scientific, educational, artistic, literary,
and civic achievement. To achieve equity, the question remains whether
to eliminate preferential treatment for prizes and awards altogether, to
eliminate Section 74(b)'s or Section 74(d)'s preferential treatment, or to
reconcile Sections 74(b) and 74(d). Because Congress has provided prefer-
ential treatment for some prizes and awards for over sixty years,¹⁹⁶
eliminating all preferential treatment, or even Section 74(b)'s or Section
74(d)'s preferential treatment, would disregard congressional intent to in-
centivize meritorious pursuits. Disregarding congressional intent conflicts
with Congress's "[p]ower [t]o lay and collect [t]axes."¹⁹⁷ The following
proposed amendments to Section 74, therefore, defer to congressional in-
tent but recommend extending the exceptions to achieve equity. Specifi-
cally, Section 74 should be amended by omitting Section 74(d), adding
"athletic" to Section 74(b)'s listed achievements but requiring the recipi-
ent to represent the United States in an international competition, and

194. § 101, 126 Stat. at 2316; *Major Enacted Tax Legislation Since 2010*, TAX POLICY CENTER, <http://www.taxpolicycenter.org/laws-and-proposals/major-enacted-tax-legislation-2010> [https://perma.cc/4V5Q-N4BH] (last visited Mar. 26, 2017).

195. Even with a Republican White House and Congress, comprehensive tax reform seems unlikely. See Howard Gleckman, *The Prospects for Tax Reform Are Dimming*, FORBES (Feb. 2, 2017, 1:50 PM), <http://www.forbes.com/sites/beltway/2017/02/02/the-prospects-for-tax-reform-are-dimming/#e4104b7420a3> [https://perma.cc/YP3N-2985]; Jacob Pramuk, *Paul Ryan: We Can't Start on Tax Reform and Infrastructure Until Spring*, CNBC (Feb. 2, 2017, 9:19 AM), <http://www.cnbc.com/2017/02/02/paul-ryan-we-cant-start-on-tax-reform-and-infrastructure-until-spring.html> [https://perma.cc/6GPH-EKVP].

196. See Internal Revenue Code of 1954, Pub. L. No. 83-591, § 74, 68A Stat. 4, 24 (codified in scattered sections of 26 U.S.C.).

197. See U.S. CONST. art. I, § 8, cl. 1.

editing the adjusted gross income limitation and charitable transfer requirement.

Implementing these suggestions, Section 74 would read as follows:¹⁹⁸

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

(b) Exceptions for Certain Prizes and Awards

(1) Recipient's Adjusted Gross Income Does Not Exceed \$1,000,000: Gross income does not include amounts received as prizes and awards made primarily in recognition of religious, charitable, scientific, educational, artistic, literary, civic, or *athletic* achievement, but only if—

(A) the recipient was selected without any action on his part to enter the contest or proceeding, *or the recipient represented the United States in an international competition*;

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

(C) *the amount of the prize or award in excess of \$1,000,000 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; and*

(D) the recipient's adjusted gross income (determined without regard to this section) for such taxable year does not exceed \$1,000,000 (half of such amount in the case of a married individual filing a separate return).

(2) Recipient's Adjusted Gross Income Exceeds \$1,000,000 or, Regardless of Adjusted Gross Income, Recipient Opts to Transfer the Prize or Award: Gross income does not include amounts received as prizes and awards made primarily in recognition of religious, charitable, scientific, educational, artistic, literary, civic, or athletic achievement, but only if—

(A) the recipient was selected without any action on his part to enter the contest or proceeding, *or the recipient represented the United States in an international competition*;

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

(C) 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; *and*

(D) *the recipient's adjusted gross income (determined without regard to this section) for such taxable year exceeds \$1,000,000 (half of such amount in the case of a married individual filing a separate return), or the recipient opts to transfer the prize or*

198. For clarity, any changes are italicized. Cf. I.R.C. § 74 (West 2017). Also for clarity but not to omit, proposed Section 74 excludes Section 74(c)'s exception for certain employee achievement awards and language coordinating the adjusted gross income limitation with Sections 86, 135, 137, 199, 221, 222, and 469. See I.R.C. § 74(d)(2)(B) (coordinating the adjusted gross income limitation with other limitations).

award to a governmental unit or organization described in paragraph (1) or (2) of section 170(c).

A. OMITTING SECTION 74(D)

Section 74(d) should be omitted because its addition results in inequitable treatment within Section 74, first, by preferentially treating certain athletic achievement over religious, charitable, scientific, educational, artistic, literary, and civic achievement.¹⁹⁹ Second, Section 74(d) excludes related athletic and scholarly achievements, such as athletes and scholars representing the United States in international competitions.

Reconciling the existing exceptions, proposed Section 74 incorporates Congress's Section 74(d) goals of excluding Olympic and Paralympic prizes and awards from gross income and providing an adjusted gross income limitation for the exclusion to prevent a windfall for certain athletes.²⁰⁰ Proposed Section 74 integrates both goals but extends the preferential treatment to related meritorious achievements. Thus, any scholar or athlete competing internationally for the United States, with adjusted gross income not exceeding \$1,000,000, would receive preferential treatment, assuming the scholar or athlete meets proposed Section 74's other requirements.

B. ADDING "ATHLETIC" TO SECTION 74(B)'S ENUMERATED ACHIEVEMENTS AND REQUIRING THE RECIPIENT TO REPRESENT THE UNITED STATES IN AN INTERNATIONAL COMPETITION

Gross income does not include amounts received as prizes and awards made primarily in recognition of religious, charitable, scientific, educational, artistic, literary, civic, or *athletic* achievement, but only if—(A) the recipient was selected without any action on his part to enter the contest or proceeding, *or the recipient represented the United States in an international competition.*

To eliminate Section 74(d)'s narrowness and to reconcile Section 74(b) with Section 74(d), Section 74 should be amended by adding "athletic" to Section 74(b)'s enumerated achievements and by requiring the recipient to represent the United States in an international competition. These proposed changes would "reward . . . sacrifices and . . . provide incentives to other athletes who seek to represent the United States on a global stage."²⁰¹

Adding "athletic" to Section 74(b)'s listed achievements would place Olympic, Paralympic, and World Cup prize and award recipients under Section 74(b)'s ambit, allowing these athletes to exclude their prizes and awards if the athletes meet Section 74's other requirements. But merely

199. Compare I.R.C. § 74(b) (2012) with I.R.C. § 74(d).

200. See H.R. REP. NO. 114-762, at 4 (2016).

201. See *id.*

adding “athletic” to the enumerated achievements would not incorporate Section 74(d)’s goal of providing tax-free awards to certain athletes because Section 74(b)(1) requires the recipient to be “selected without any action on his part to enter the contest or proceeding.”²⁰² Olympic, Paralympic, and World Cup competitors, for example, decide to enter the respective competitions. Adding the language “or the recipient represented the United States in an international competition” allows Olympic, Paralympic, and World Cup prize and award recipients to use Section 74(b).

Requiring the recipient to represent the United States in an international competition also would prevent professional athletes like Maury Wills and Paul Hornung from taking advantage of Section 74.²⁰³ Congress did not intend for professional athletes to take advantage of Section 74(d) because it enacted the section to aid impoverished athletes representing the United States in international competitions.²⁰⁴ Professional athletes’ salaries easily exclude the individuals from the realm of Congress’s tax break: as of 2012, average salaries for National Basketball Association (NBA), National Football League (NFL), National Hockey League (NHL), and Major League Baseball (MLB) players were \$5.15 million, \$1.9 million, \$2.4 million, and \$3.2 million, respectively.²⁰⁵

NBA, NFL, NHL, and MLB players do not represent the United States in international competitions, as such. But if, for example, a player joined the respective Olympic or World Cup team and won a prize or award, he likely would not receive a tax break because of the adjusted gross income limitation discussed below. Thus, both additions convert Section 74 into a more equitable provision without eliminating Olympians’ and Paralympians’ tax break.

C. RECONCILING THE ADJUSTED GROSS INCOME LIMITATION AND CHARITABLE TRANSFER REQUIREMENT

(1) RECIPIENT’S ADJUSTED GROSS INCOME DOES NOT EXCEED \$1,000,000: Gross income does not include amounts received as prizes and awards . . . , but only if— . . . (C) *the amount of the prize or award in excess of \$1,000,000 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; and (D) the recipient’s adjusted gross income (determined without regard to this section) for such taxable year does not exceed \$1,000,000 (half of such amount in the case of a married individual filing a separate return).*

202. See I.R.C. § 74(b)(1).

203. See *Wills v. Comm’r*, 48 T.C. 308, 316 (1967), *aff’d*, 411 F.2d 537 (9th Cir. 1969); *Hornung v. Comm’r*, 47 T.C. 428, 437 (1967), *acq.*, 1967-2 C.B. 1.

204. See H.R. REP. NO. 114-762, at 4.

205. See Monte Burke, *Average Player Salaries in the Four Major American Sports Leagues*, FORBES (Dec. 7, 2012, 3:29 PM), <http://www.forbes.com/sites/monteburke/2012/12/07/average-player-salaries-in-the-four-major-american-sports-leagues/#6a6910903497> [<https://perma.cc/EDA4-GM4A>].

(2) Recipient's Adjusted Gross Income Exceeds \$1,000,000 or, Regardless of Adjusted Gross Income, Recipient Opts to Transfer the Prize or Award: Gross income does not include amounts received as prizes and awards . . . , but only if— . . . (C) 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; and (D) *the recipient's adjusted gross income (determined without regard to this section) for such taxable income exceeds \$1,000,000 (half of such amount in the case of a married individual filing a separate return), or the recipient opts to transfer the prize or award to a governmental unit or organization described in paragraph (1) or (2) of section 170(c).*

While Section 74(b) requires a religious, charitable, scientific, educational, artistic, literary, or civic achievement prize or award recipient to transfer the entire amount to exclude it from gross income,²⁰⁶ Section 74(d) contains no such requirement for an Olympian or a Paralympian but limits the exclusion to a recipient with adjusted gross income not exceeding \$1,000,000.²⁰⁷ Proposed Section 74 strikes a compromise between Section 74(b)'s charitable transfer requirement and Section 74(d)'s adjusted gross income limitation.

Section 74(b)'s charitable transfer requirement reflects Congress's desire to allow a recipient to donate a prize or award to a governmental or charitable organization.²⁰⁸ Section 74(d)'s adjusted gross income limitation is intended to prevent a windfall for certain Olympic and Paralympic athletes, such as those with lucrative endorsement deals and sponsorships, while still helping impoverished athletes.²⁰⁹ The problem with Section 74(d)'s adjusted gross income limitation is its narrow application to Olympians and Paralympians.

To treat religious, charitable, scientific, educational, artistic, literary, civic, and athletic achievement equitably, but also to prevent a windfall for certain prize and award recipients—such as Bob Dylan,²¹⁰ former President Barack Obama,²¹¹ and former Vice President Al Gore²¹²—proposed Section 74 incorporates Section 74(d)'s adjusted gross income limitation and Section 74(b)'s charitable transfer requirement. In addition, because the theory supporting Section 74(b)'s charitable transfer requirement has been eroded,²¹³ proposed Section 74 allows a recipient who meets the \$1,000,000 adjusted gross income limitation to keep \$1,000,000 of the prize or award before transferring the remainder to a governmen-

206. See I.R.C. § 74(b)(3).

207. See I.R.C. § 74(d)(2)(A) (West 2017).

208. See STAFF OF THE JOINT COMM. ON TAXATION, 100TH CONG., *supra* note 99, at 32.

209. See 162 CONG. REC. H5683-01 (daily ed. Sept. 20, 2016) (statement of Rep. Dold) (“The vast majority of these athletes do not have endorsement deals and sponsorships” but instead “work full-time jobs while training or are full-time students.”).

210. See *Bob Dylan - Facts*, *supra* note 168.

211. See *Barack H. Obama - Facts*, *supra* note 169.

212. See *Al Gore - Facts*, *supra* note 170.

213. See *supra* Section III.C.

tal or charitable organization.²¹⁴ Implementing the adjusted gross income limitation and charitable transfer requirement, proposed Section 74 separates recipients into two categories: recipients with adjusted gross income not exceeding \$1,000,000 and recipients with adjusted gross income exceeding \$1,000,000.

For a prize or award recipient with an adjusted gross income not exceeding \$1,000,000, a recipient has two options to exclude the entire amount of the prize or award from gross income. First, the recipient may keep up to \$1,000,000 of the prize or award and then donate any remainder of the prize or award exceeding \$1,000,000 to a governmental or charitable organization. Second, the recipient may donate the entire prize or award. For a prize or award recipient with an adjusted gross income exceeding \$1,000,000, a recipient has one option to exclude the entire amount of the prize or award from gross income: the recipient must donate the entire prize or award to a governmental or charitable organization.

V. CONCLUSION

Despite its honorable intentions, Congress erred by enacting Section 74(d) and, consequently, by treating certain athletic achievement differently from religious, charitable, scientific, educational, artistic, literary, and civic achievement.

Exploring the historical background leading to the current treatment of prizes and awards, this article first explained the inconsistent case law before Congress enacted Section 74. It then revealed Congress's intent in 1954 to clarify the law with Section 74 and to incentivize scholarly pursuits with Section 74(b), which led to judicial interpretations of the enumerated achievements' meanings in *Simmons*, *Hornung*, and *Wills*. Next, this article exposed the changes in 1986 to broaden the tax base and lower tax rates, resulting in Section 74(b)(3)'s charitable transfer requirement, and it concluded by discussing Congress's desire to treat Olympians and Paralympians preferentially with Section 74(d).²¹⁵

Criticizing Section 74, this article first reconsidered Section 74(b)'s absence of "athletic" and exposed Section 74(d)'s discreteness to illustrate how Section 74 has failed to provide equitable treatment for meritorious achievements.²¹⁶ Then, this article analyzed prize and award recipients' ability to deduct business expenses to refute an argument against allowing preferential treatment for Olympians and Paralympians.²¹⁷ Lastly, this article revealed why Section 74(b)(3)'s charitable transfer requirement is no longer well-grounded, contrasting the Tax Reform Act of 1986

214. Congress could choose an alternative amount for certain recipients to keep before donating the remainder to charity. The amount of \$1,000,000 is slightly arbitrary, though the rationale is not.

215. See *supra* Part II.

216. See *supra* Section III.A.

217. See *supra* Section III.B.

with the American Taxpayer Relief Act of 2012 and the United States Appreciation for Olympians and Paralympians Act of 2016.²¹⁸

The article then proposed amending Section 74 to treat meritorious achievements equitably while reconciling the existing exceptions.²¹⁹ First, the proposed Section 74 omits Section 74(d) because its addition both causes Section 74 to treat meritorious achievements within the Section differently and excludes other meritorious achievements.²²⁰ Second, to broaden Section 74(d)'s scope, but to prevent professional athletes from exploiting the exception, the proposed Section 74 adds "athletic" to Section 74(b)'s listed achievements but requires the recipient to represent the United States in an international competition.²²¹ Third, the proposed Section 74 reconciles Section 74(b)'s charitable transfer requirement and Section 74(d)'s adjusted gross income limitation.²²²

Upon implementing proposed Section 74, winning a Nobel Prize, a Pulitzer Prize, a World Cup, an Olympic medal, or a Paralympic medal would remain a meritorious achievement but generally would not be a taxable achievement. Therefore, the characters who began this article and their prizes or awards—Elinor Ostrom (Nobel Prize),²²³ John Hackworth and Brian Gleason (Pulitzer Prize),²²⁴ twenty-three soccer players (FIFA World Cup),²²⁵ Laura Graves (Olympic medal),²²⁶ and Matt Stutzman (Paralympic medal)²²⁷—would be treated equitably.

218. *See supra* Section III.C.

219. *See supra* Part IV.

220. *See supra* Section IV.A.

221. *See supra* Section IV.B.

222. *See supra* Section IV.C.

223. *See Elinor Ostrom - Facts, supra* note 2.

224. *See The 2016 Pulitzer Prize Winner in Editorial Writing, supra* note 3.

225. *See USA Women Honoured at White House, supra* note 4.

226. *See Lotrecchiano, supra* note 5.

227. *See Axon, supra* note 8.