

E. AMATEUR ATHLETIC ORGANIZATIONS

1. Introduction

This article is concerned with the exemption from tax of amateur athletic organizations under IRC 501(c)(3) and IRC 501(j). This subject has been discussed previously in the 1980 ATRI at page 62 and in the 1982 CPE at page 83.

2. Background

An amateur athletic organization may qualify for IRC 501(c)(3) exemption under three different rationales. First, an amateur athletic organization may be classified as "educational" under IRC 501(c)(3) on the grounds that it teaches sports to youth or is affiliated with an exempt educational organization. Rev. Rul. 80-215, 1980-2 C.B. 174; Rev. Rul. 77-365, 1977-2 C.B. 192; Rev. Rul. 67-291, 1967-2 C.B. 184; Rev. Rul. 64-275, 1964-2 C.B. 142; Rev. Rul. 55-587, 1955-2 C.B. 261. Second, an amateur athletic organization may be classified as "charitable" under IRC 501(c)(3) on the grounds that it combats juvenile delinquency or lessens the burdens of government. Rev. Rul. 80-215, 1980-2 C.B. 174; Rev. Rul. 59-310, 1959-2 C.B. 146. Third, an organization may be exempt on the grounds that it is designed "to foster national or international amateur sports competition (but only if no part of its activities involve the provision of athletic facilities or equipment)" as provided in IRC 501(c)(3). Organizations that meet the requirements of fostering athletic competition under IRC 501(c)(3) may also seek classification as "qualified amateur sports organizations" under IRC 501(j). Qualified amateur sports organizations are not prohibited from providing facilities and equipment.

A number of organizations were granted exemption under the "charitable" or "educational" rationales long before the "amateur athletic" provision was added to the Code in 1976. Since the enactment of the "amateur athletic" provision, attention has been focused on that section and on IRC 501(j). The "amateur athletic" provision of IRC 501(c)(3), however, is not exclusive. The "charitable" and "educational" rationales are still very much alive and exemption may be granted under those rationales as well as under the "amateur athletic" provision. (See Committee Report, 1976 Tax Reform Act--P.L. 94-455, 10-4-76.)

Since previous articles have examined the exemption of athletic organizations under IRC 501(c)(3) in considerable detail, this article is primarily

devoted to examining the history, meaning, and limitations of IRC 501(j) and its interaction with IRC 501(c)(3). Recent developments in the classification of amateur athletic organizations as charitable or educational will also be considered.

3. Provision of Facilities or Equipment

As stated above, IRC 501(c)(3) provides for the exemption under IRC 501(a) of organizations which are organized and operated exclusively "to foster national or international amateur sports competition (but only if no part of its activities involve the provision of athletic facilities or equipment)."

In 1982, IRC 501(j) was added to the Code. That section provides:

(j) Special Rules for Certain Amateur Sports Organizations--

(1) In general.-- In the case of a qualified amateur sports organization--

(A) the requirement of subsection (c)(3) that no part of its activities involve the provision of athletic facilities or equipment shall not apply, and

(B) such organization shall not fail to meet the requirements of subsection (c)(3) merely because its membership is local or regional in nature.

(2) Qualified amateur sports organization defined.-- For purposes of this subsection, the term "qualified amateur sports organization" means any organization organized and operated exclusively to foster national or international amateur sports competition if such organization is also organized and operated primarily to conduct national or international competition in sports or to support and develop amateur athletes for national or international competition in such sports.

The intention of this section was to relieve certain organizations from the prohibition against the provision of facilities and equipment. That prohibition had been very strictly construed by the Service. For example, an organization which, as part of its coaching program, made videotapes of athletes for the purpose of analyzing their performance could not be granted exemption as an amateur athletic

organization under IRC 501(c)(3), since the use of videotape equipment was considered the provision of equipment. According to Senator Stevens, who introduced IRC 501(j) in the Senate, the section was needed because

"for 5 years, and especially since the 1978 Amateur Sports Act spun off new national governing bodies for competitive sports, this statute [i.e., 501(c)(3)] has caused tremendous financial problems for the amateur sports world and that is why our immediate action is necessary. Many of the development drives that assist and prepare our Olympic athletes and other national and regional amateur sports organizations are at a standstill simply because it is necessary for many of these organizations to provide training facilities and equipment and they cannot receive tax exempt status under the current interpretation." 128 Cong. Rec. S8919 (July 22, 1982) (statement of Senator Stevens).

An organization which seeks exemption as a "qualified amateur sports organization" under IRC 501(j) must meet the requirements imposed on amateur athletic organizations under IRC 501(c)(3) as well as the requirements specified in IRC 501(j)(2). The former section states that an organization must "foster national or international sports competition." The latter section requires an organization to "conduct national or international competition in sports or to support and develop amateur athletes for national or international competition in such sports." We must assume that Congress intended the requirements of these two Code sections to have different meanings, for if the two requirements are identical Congress could have achieved its desired result by simply striking out of IRC 501(c)(3) the prohibition against the provision of facilities and equipment. As a practical matter, however, it is difficult to distinguish between the requirements of the two sections. Almost all organizations which "foster national or international sports competition" will do so by conducting national or international competition or by supporting or developing amateur athletes for such competition. Typically, the activities of amateur athletic organizations are the promulgation of official rules and standards of play, the chartering and supervision of teams, the provision of coaching, equipment, and facilities, the organization of inter-team competition, and the promotion and advertisement of a sport. All of these activities constitute the conduct of competition or development of athletes as well as the fostering of competition. It is theoretically possible for an organization to satisfy the "amateur athletic" standards of IRC 501(c)(3) and not be a "qualified amateur sports organization" under IRC 501(j)(2). The tax law specialist must be alert to this possibility. It will be a rare organization, however, which will satisfy the standards

of IRC 501(c)(3) and not qualify under IRC 501(j). As a practical matter, therefore, the prohibition against the provision of facilities and equipment will rarely apply to an exempt amateur athletic organization.

This situation is well illustrated by G.C.M. 39459. In that case an organization had as its stated objectives the prescribing of rules and standards for competition in women's bowling, encouraging amateur participation in that sport, educating the public on the sport, sponsoring and conducting national and international competitions, and adopting uniform qualifications for membership. The organization was recognized by the United States Olympic Committee as the national governing body in that sport and the organization sponsored a team in the Pan American Games, including providing team members with uniforms and equipment. The Service found that the organization's activities satisfied the requirements of IRC 501(j) and, but for the provision of equipment, also satisfied the amateur athletic requirements of IRC 501(c)(3).

It must be remembered that some athletic organizations qualify for exemption on the grounds that they are charitable or educational. The prohibition against the provision of facilities and equipment does not and never has applied to these organizations. An organization which qualifies as charitable or educational may, therefore, seek exemption on those grounds and thus avoid the complexities of the "amateur athletic" provisions of IRC 501(c)(3) and IRC 501(j). Exempt organizations specialists must examine applications under all three possibilities.

4. National or International Competition

IRC 501(c)(3) provides that amateur athletic organizations are exempt only if they "foster national or international sports competition." IRC 501(j)(2) retains this requirement. The precise meaning of "national or international sports competition" has been the subject of considerable debate ever since that term was first used in the Code. The legislative history of IRC 501(c)(3) indicates that the section was not intended to grant exemption to "social clubs or organizations of casual athletes" or to organizations "whose primary purposes are the recreation of their members." (Senator Culver, 122 Cong. Rec. 25,961 (1976)). It is therefore necessary for the Service to distinguish between social/recreational organizations and organizations that promote serious competition.

Cases processed by the Service indicate that the following factors are relevant in determining whether the organization fosters national or international competition:

- A. Is the sport that the organization supports an event in the Olympic or Pan-American Games?
- B. Are the athletes that the organization supports in the age group from which Olympic-quality athletes are usually chosen?
- C. Are the athletes of a caliber that makes them serious contenders for the Olympic or Pan-American Games?
- D. Do the athletes have to demonstrate a certain level of talent and achievement in order to receive support from the organization?
- E. Does the organization provide intensive, daily training, as opposed to sponsoring weekend events that are open to and attract a broad range of competitors?
- F. Is the organization devoted to improving the performance of a small group of outstanding athletes or does it emphasize the improvement in health of the general public?
- G. Is the organization a member of the United States Olympic Committee?

These factors are not of equal weight and are not to be considered as the sole relevant issues in determining whether or not an organization promotes national or international competition. All the facts and circumstances of each organization must be taken into account in determining exempt status. An affirmative response to these questions, however, strongly indicates that the organization qualifies under IRC 501(j). For example, exemption has been granted to an organization that sponsored swimmers of Olympic age who had demonstrated a high degree of achievement in the type of events that are featured at the Olympics. The organization engaged in intensive, seven-day-a-week training, which was the organization's primary activity. The Service ruled that these activities satisfied the requirements of IRC 501(j). On the contrary, exemption has been denied to an organization that promoted long-distance running by sponsoring numerous racing events ranging in length from three to ten miles. The events were open to a broad range of athletes in all age groups. Most of the races sponsored were of a length not featured in the Olympic Games. The organization was affiliated with a national sanctioning body that certified the Club's measured courses so that the record times

could be recognized by the running community. The Service found the club to be essentially recreational.

The fact that an organization is not composed exclusively of serious athletes, however, does not necessarily disqualify it from exemption under IRC 501(j). For example, exemption has been granted to an athletic organization which had millions of members, the vast majority of whom took only a casual interest in the sport. The organization sponsored an active program of conducting or sanctioning local and national tournaments, measuring and certifying equipment and scores to ensure that scores were dependent solely on the skill of the athlete, and developing standard rules for the sport. The sport was an exhibition sport at the Pan American Games and the United States team at those games was selected and financed by the organization. The organization was a Group C (nonmedal sport) member of the United States Olympic Committee and is currently negotiating to have the sport included in Olympic competition. Although IRC 501(j) is intended to apply only to organizations which support serious competition and not to organizations of casual or recreational athletes, exemption was granted to this organization since it was involved in national competition and sponsored a Pan American team.

In a similar case, exemption was granted under IRC 501(j) to an organization which had 15,000 members, most of whom were recreational participants in a particular sport. The sport is on the program of the Olympic Games but the organization in question was not recognized by the United States Olympic Committee as the governing body of the sport. The organization encouraged participation in the sport through lectures, clinics, and films, preserved historical artifacts and data of the sport, disseminated information about the availability of national competitions, classes, and facilities, retained professional instructors to select and coach persons with Olympic potential, planned and administered nationwide league competition, and maintained rule and record books. The Service ruled that the organization was of the type that Congress intended to be covered by IRC 501(j). The fact that the organization was not recognized by the U.S. Olympic Committee was not determinative, since the Code intended to grant exemption to a broader group of organizations than just the entities recognized by the U.S.O.C. The focus in determining whether an organization qualifies under IRC 501(j) should be on the primary purpose of the organization, rather than on its membership.

The distinction between national or international competition and competition which is strictly local in nature is crucial but not always easy to perceive. Even the humblest local organization may include a world-class athlete

among its membership and the fostering of national competition logically includes a substantial but indefinite number of preliminary competitions which are themselves of less than national scope. The Code adds to the difficulty of making this distinction by requiring in IRC 501(c)(3) and IRC 501(j)(2) that a qualified amateur sports organization be "organized and operated exclusively to foster national or international amateur sports competition" while stating in IRC 501(j)(1)(B) that an organization "shall not fail to meet the requirements of subsection (c)(3) merely because its membership is local or regional in nature." To date, the Service and the courts have provided no hard-and-fast rules for distinguishing local from national competition. The fact that a competition, although local in nature, is part of a well-organized chain of tournaments or play-offs leading to a competition of national scope clearly favors the exemption of the sponsoring organization. On the other hand, competitions that do not automatically qualify the victors for higher competitions are less likely to be considered national in scope. All of the facts and circumstances, however, must be weighed in making this distinction.

5. Athletics as a Charitable Activity

Traditionally, the Service has considered amateur athletics a charitable activity only if conducted in a manner that relieves the burdens of government or combats juvenile delinquency. The Tax Court in Hutchinson Baseball Enterprises, Inc. v. Commissioner, 73 T.C. 144 (1979), on the contrary, found amateur athletics to be inherently charitable. In that case the petitioner was a corporation that owned and operated a baseball team. None of the players were paid by the corporation for playing baseball. The corporation leased and maintained a playing field for use by its team, operated a baseball camp, and provided coaching and instruction for the camp and for local Little League teams. The corporation also allowed the local college and American Legion teams to use the field at nominal fees. Contributions were the primary source of the corporation's income. The Tax Court found that the legislative history of IRC 501(c)(3) "indicates that Congress has long considered amateur athletics to fall within the penumbra of IRC 501(c)(3). Therefore, petitioner's stated purpose, the furtherance of recreational and amateur sports, falls within the broad outline of 'charity' and should be so classified." The court added that it is possible for amateur athletics to be engaged in for either exempt or non-exempt purposes, with the predominant motive of the organization being determinative. The court found that the purpose of the petitioner's activities was to advance amateur athletics and the petitioner was therefore exempt as a charitable institution under IRC 501(c)(3).

In Hutchinson Baseball Enterprises, Inc. v. Commissioner, 696 F.2d 757 (10th Cir., 1982), the Court of Appeals affirmed the Tax Court decision. The Service argued that under IRC 501(c)(3) the "promotion of amateur sports had not been viewed as a charitable purpose except where the organization engaged in sufficient instructional activities so as to qualify as an educational organization, or where the sports program was part of an overall recognized charitable activity such as the reduction of juvenile delinquency." The court stated that on the "proper interpretation of the term 'charitable,' we agree with the Tax Court's ruling" and found that the petitioner was a charity since it "furthered the development and sportsmanship of children and young men."

The long-term impact of Hutchinson is not yet clear. The principle that the promotion of amateur athletics is per se charitable could greatly expand the number of exempt amateur athletic organizations. Under that principle, it is arguable that recreational organizations of casual athletes could qualify for exemption without regard for whether they promote national competition or aid serious contenders. The Service appealed the Tax Court decision in part due to these concerns. The Service, although stating that the appellate court's interpretation of "charitable" was overly broad, did not appeal this case to the Supreme Court because there was no constitutional issue or conflict among the circuits, and little likelihood the Court would grant certiorari.

The Tax Court very recently confronted some of the issues raised by Hutchinson in The Media Sports League, Inc. v. Commissioner, T.C. Memo. 1986-568. In that case the petitioner arranged football, softball, volleyball, and other games among its members. Membership was open to all persons over age twenty-one, without regard for their skill in the sport. Informal instruction in the fundamentals of each sport was offered to members but members were not required to receive such instruction, nor were they required to participate in any athletic activities. The Court cited Hutchinson for the principle that "the promotion, sponsorship, and advancement of amateur and recreational sports is a charitable purpose within the meaning of section 501(c)(3)," and found that "the furtherance of amateur athletics is one of petitioner's goals." The court distinguished Hutchinson, however, on the grounds that Media Sports had the social and recreational interests of its members as a substantial purpose. The court found such a purpose to be non-exempt and, consequently, upheld the Service's denial of exemption to the petitioner.

The implication of Media Sports is that the promotion of amateur athletics is an exempt activity distinguishable from non-exempt recreational activities. This

distinction may be substantially equivalent to the distinction described earlier in this article between social/recreational organizations of casual athletes and organizations which foster serious sports competition. If so, the implications of Hutchinson will be greatly circumscribed. Only further scrutiny by the courts, however, can definitively describe the limits of Hutchinson.