H. AMATEUR ATHLETIC ORGANIZATIONS

1. Introduction

This article updates and expands the 1980 EOATRI discussion of amateur athletic organizations. It includes the current status of the suspense order on these cases, a brief comparison of the sections under which an organization involved in the promotion of amateur athletics may qualify for exemption, and a discussion of the difference between educational competition and non-exempt competitive activities.

2. Background

Since 1977 the Service, at Treasury's direction, has been suspending the issuance of adverse ruling letters on the exempt status of amateur athletic organizations under IRC 501(c)(3). This suspension order came about as a result of the Tax Reform Act of 1976 which amended IRC 501(c)(3) to provide that organizations, organized and operated exclusively to foster national and international amateur sports competition, if no part of their activities involves the provision of athletic facilities or equipment, can be recognized as exempt from federal income tax under that section.

Originally, applications for recognition of exemption under IRC 501(c)(3) by organizations engaged in the promotion of such amateur competition that provided any form of facilities or equipment were forwarded to the National Office and were suspended there pending some resolution of the facilities and equipment problem. As no solution has been reached and it does not appear likely that it will be reached anytime soon, Manual Transmittal 7600-28 (11-13-80) was issued which added section 7668.(10) to the Manual. That section directs the field offices to suspend this type of case in their own offices rather than forward them to the National Office.

3. Comparison of Sections Under Which Exemption May Be Granted

Prior to the passage of the Tax Reform Act of 1976, exemption under IRC 501(c)(3) was available to an amateur athletic organization only if its activities advanced one of the purposes specified in that section. At that time, the specified purposes were religious, charitable, scientific, testing for public safety, literary or educational purposes, or the prevention of cruelty to children or animals. The

Service had never recognized the promotion of amateur sports competition as an exempt purpose per se. Amateur athletic organizations could qualify as organizations described in IRC 501(c)(3) on the basis that their activities were educational (by association with an educational institution or because they provided training or instruction in athletics), or charitable (they combatted juvenile delinquency or reduced the burdens of government). See Rev. Rul. 67-291, 1967-2 C.B. 184; Rev. Rul. 65-2, 1965-1 C.B. 227, Rev. Rul. 64-275, 1964-2 C.B. 142, Rev. Rul. 59-310, 1959-2 C.B. 146; and Rev. Rul. 55-587, 1955-2 C.B. 261.

Organizations that promoted amateur sports competition only could obtain exemption under IRC 501(c)(4), as the promotion of amateur sports is considered to foster the common good and general welfare of the people of the community by providing wholesome activity and entertainment. See Rev. Rul. 70-4, 1970-1 C.B. 126; Rev. Rul. 69-384, 1969-2 C.B. 122; and Rev. Rul. 68-118, 1968-1 C.B. 216.

Social clubs exempt under IRC 501(c)(7) are often involved in sports activities in that many provide recreational facilities such as tennis courts, swimming pools and golf courses for the use of their members. In addition, a coach or training director may be employed by the club to assist members in learning or improving their skill in the sport. This kind of organization was clearly not intended to be considered within the purview of the 1976 amendment to IRC 501(c)(3). In the discussion of the amendment in the Senate Congressional Record dated August 5, 1979, at page S13612, it emphasizes that:

> It [the amendment] is not intended to make social clubs, or organizations of casual athletes, into tax-exempt charities. Only an organization whose primary purpose is the support and development of amateur athletes for participation in international competition in Olympic or Pan American sports will qualify under this amendment. Organizations whose primary purposes are the recreation of their members or whose facilities are used primarily by casual athletes will not qualify.

4. Competition as an Exempt Activity

In the revenue rulings referred to above, those that recognized IRC 501(c)(3) exemption did so because the organization served an exempt purpose without reference to the merits of sports as an exempt activity. Exemption was based primarily on the educational nature of the training provided. Most organizations, however, also sponsor competitions in connection with their other activities. The

extent to which the promotion of competition in connection with otherwise exempt sports activities is permissible has not yet been resolved. The opinion of the Office of Chief Counsel upon which Rev. Rul. 64-275 is based states that:

> In regard to the sponsoring of the above described regattas where actual racing takes place, while such races may not be exclusively educational in nature under the statute, it is believed that the participation of the facility in them is minor and incidental and that its primary educational purpose of training and developing the sailing and racing capability of individuals remains the central purpose...(emphasis supplied). [Rev. Rul. 64-275 discusses an organization which provides advanced training in techniques of racing small boats in national and international competition and thereby expects to improve the calibre of candidates representing the United States in the Olympic and Pan American games.]

The position was established, therefore, that the teaching of a sport could be educational or charitable but the promotion of competition was not, and that exemption would not be affected by the presence of competitive activities as long as they were not predominant.

The Tax Reform Act of 1976 amended IRC 501(c)(3) to provide that organizations organized and operated exclusively to foster national or international amateur sports competition, if no part of their activities involve the provision of athletic facilities or equipment, could be recognized as exempt from federal income tax under that section.

Senate Report No. 94-1236, 94th Cong., 2d Sess. 542-543 (1976), states that the amendment "is not intended to adversely affect the qualification for charitable tax exempt status or tax deductible contributions of any organization which would qualify under the standards of prior law."

The amateur athletic amendment resulted from the Congressional perception that:

> Under prior law, organizations which teach youth or which are affiliated with charitable organizations have been able to qualify for exemption under section 501(c)(3) and have been eligible to receive tax-deductible contributions. Other organizations which foster national or international amateur sports competition may be exempt

> from taxation under other provisions...but often do not qualify to receive tax-deductible contributions. Joint Committee Explanation of the Tax Reform Act of 1976, 1976-3 C.B. (Vol. 2) 423.

There are three basic categories of teaching and/or competition oriented groups that may qualify as educational organizations or amateur athletic organizations subject to the 1976 amendment to IRC 501(c)(3). These are: (1) organizations that teach sports and promote athletic competition; (2) organizations that promote sports competition in conjunction with educational organizations; and, (3) organizations that promote sports competition without providing sports training or acting in conjunction with an organization that does.

Organizations that teach sports and promote athletic competitions have been held to be educational and thus described in IRC 501(c)(3). In Rev. Rul. 65-2, an organization that conducted sports clinics for student players, provided free instruction, encouraged youth participation in tournaments, and arranged for attendance of players and instructors at state tournaments was held to be educational within the meaning of IRC 501(c)(3). Likewise, organizations that promote sports competition in conjunction with educational organizations are recognized as being described in IRC 501(c)(3). Rev. Rul. 67-291 states that the athletic program of a university is an integral part of its overall educational activities and that an organization that provides necessary services to student athletes and coaches is described in IRC 501(c)(3). Whether organizations that promote sports competition without providing sports training or acting in conjunction with an organization that does are exempt, is not clear. Some courts have held the promotion of sports competition to be educational. In U.S. Lawn Tennis Assn., No. 106977 (B.T.A.M. 1942), the Board of Tax Appeals held that an organization whose responsibilities and duties included:

> the development of lawn tennis throughout the country, the upholding of amateurism, sportsmanship and the regulations of the game, direction of International Davis Cup play in the North American Zone, the staging of approximately 40 national championship events in senior, junior, intercollegiate, interscholastic and public park classifications; the sanctioning and general supervision of more than 600 senior and junior tournaments annually, the national ranking of players in most of the foregoing championship categories...meets all the stipulated conditions for exemption.

The Service, however, has taken the position that organizations that merely promote competitive sports are not educational organizations within the meaning of IRC 501(c)(3). In Rev. Rul. 70-4, an organization which publicized a sport and conducted tournaments but had no regular program of teaching the sport was denied recognition as an IRC 501(c)(3) educational organization and was characterized as a social welfare organization described in IRC 501(c)(4). Although the promotion of sports is not per se educational, an organization that promotes competition in sports among children is a charitable organization described in IRC 501(c)(3) even though it does not teach the sport or support an institution that does.

The Service is at present considering cases in these three categories to determine the extent to which competition is a legitimate part of exempt educational or amateur athletic organization activities.

Since the 1976 amendment, two revenue rulings concerning the qualifications for exemption of athletic organizations under IRC 501(c)(3) have been published; i.e., Rev. Rul. 77-365, 1977-2 C.B. 192, which holds that an organization providing instruction to persons of any age in a particular sport and which does not sponsor competition in that sport is exempt under IRC 501(c)(3) as an educational organization, and Rev. Rul. 80-215, 1980-2 C.B. 174, which holds that developing, promoting and regulating a sport for children under 18 years of age, in certain circumstances, combats juvenile delinquency by providing a recreational outlet for young people. This organization does organize local and state-wide competitions but participation is limited to juveniles; therefore, the Service's published position has remained that competition unless insubstantial or conducted among minors, is not an educational activity.

An additional revenue ruling, 80-295, 1980-2 C.B. 194, holding that the sale of exclusive broadcasting rights to athletic events is not an unrelated trade or business, described an organization that was created as a national governing body for amateur athletics. The organization sponsors, supervises and regulates programs in a number of different sports and arranges for and coordinates open competition for amateur athletes at the local, state, regional and national levels. While this revenue ruling does not directly discuss the qualification of organizations that sponsor athletic competition, it indirectly suggests that such organizations can qualify under IRC 501(c)(3). The revenue ruling does not indicate whether the organization discussed qualifies by virtue of the 1976 amendment to IRC 501(c)(3).