

Chicago Daily Law Bulletin®

Volume 162, No. 170

Serving Chicago's legal community for 161 years

Olympic gold may have different value in a divorce

This year, our nation's Olympians brought home 46 gold medals from the Olympic Games in Rio.

As a bonus to retaining the symbolic top prize, each gold medal winner was also awarded \$25,000 per gold medal by the U.S. Olympic Committee.

Believe it or not, these super humans are "just like us" and will now face the IRS regarding their hard-earned Olympic prizes and cash. Olympians are taxed on both the value of their medals and the cash bonuses they receive.

Surprise, gold medals are not actually made of gold and are only technically worth about \$500 in material alone. Luckily for these taxpayers, they are only taxed on this minimum amount. Should a gold medal hit the market, it would certainly have a higher value than \$500 if sold to the right private collector. For example, in 2013 an Olympic gold medal won by Jesse Owens in 1936 was purchased for a record-breaking \$1.47 million.

If an Olympian treats his or her participation in their sport as a business, then they can deduct their business-related expenses, such as travel, coaches and equipment on their income tax returns.

If an Olympian treats their participation in their sport as a hobby, then they can still deduct up to a certain amount if they itemize and if they have enough income to serve as an offset.

In July, the Senate passed a bill that would give Olympians competing for our country special treatment by eliminating income taxes on medals and prize income earned at the Olympic Games.

The bill still needs to be considered by the House of Representatives, however, the idea is not wholly unique in that the Nobel Peace Prize was once exempted from income taxes.

Currently though, Nobel winners must pay taxes on their prizes unless they qualify for an exclusion which requires them to donate the award to charity.

Time will tell whether the Olympians and their gratuitous political supporters will ultimately be successful in shielding the ath-

letes from the IRS for their Olympic victory prizes.

But, even if they ultimately reign supreme over the IRS, wherever there is money, there is problems, and the quest of Olympians seeking special treatment under the law may not end in the area of taxation.

Probably because I am a divorce lawyer, I started to speculate about what problems already arise or could arise when Olympic medal-winning athletes get divorced.

I realized that if an Olympian earned their medal(s) during marriage, there is no law in place dictating that said prize is that athlete's non-marital property, and therefore, it is not shielded from a marital claim by the athlete's spouse.

In most dissolution of marriage proceedings, a major issue is property division. Illinois law directs courts to equitably distribute property of a marriage and allows the courts discretion to divide a marital estate based upon several factors according to the Illinois Marriage and Dissolution of Marriage Act, 750 ILCS 5/503.

If an Olympic athlete won his or her medal(s) prior to marriage, then that piece of property would be considered that individual's non-marital property and they would retain it as such in a divorce. The value of the medal would not be considered in valuing the marital estate.

Luckily for 18-time gold medal champion Michael Phelps (who took home five gold medals this summer), he has earned all of his medals as an unmarried man.

For Olympians unlike Phelps, who experience their victories while married, the division of this piece of property and the value assigned to it could potentially become the center of a domestic relations dispute.

In order for the courts or the parties to be able to divide an asset, including some personal property assets, a value needs to be determined by an expert or agreed upon by the parties.

In valuing the gold medal itself, the athlete would want to argue that the medal should only be valued just as the IRS values it, for the value of the material itself

TIME-OUT

AMY N. SCHILLER



Amy N. Schiller is an attorney at Schiller, DuCanto & Fleck LLP where she practices family law with a strong focus on property issues and the complex financial and custody matters facing professional athletes and entertainers. She can be reached at aschiller@sdflaw.com.

(approximately \$500).

But, the courts are not bound to a value used for tax purposes. The spouse would argue to treat the medal like any other valuable property item, like artwork, antiques and musical instruments and would then need to get it appraised by an expert. Per 750 ILCS 5/503, in determining the value of assets or property, the court shall employ a fair market value standard.

The expert sought would likely be someone with experience in appraising sports memorabilia generally, as a specific and credible Olympic medal valuation expert is unlikely to exist.

Or, the spouse could try to go down the path of making a claim for their ex's gold medal by treating it as a business asset. As mentioned herein, some athlete's treat their participation in sport as a business so that they can deduct business-related expenses.

If the Olympic athlete is considered a business by the divorce court, then the business would need to be valued. The value of the business would consider the value of business assets such as the medals.

Since the reality is that a gold medal would likely sell for more than its actual material value of approximately \$500, the valuation expert might consider its intrinsic value, or the true worth of the asset based on its own particular circumstances.

Sometimes, valuing a business asset also takes into account

intangible value such as "goodwill." Goodwill can be described as the value of a business or practice that exceeds the combined value of the physical assets. However, there is no general consensus on how goodwill should be valued.

In valuing business goodwill a valuation expert may consider factors like reputation, values, patronage and reliability. A more well-known Olympian/business, such as Caitlyn Jenner or Michael Phelps would likely be assigned a higher value for their business goodwill.

Illinois courts consider goodwill in assessing the statutory criteria for dividing marital property and in awarding maintenance. As such, goodwill considerations in valuing a business cannot overlap with factors considered in awarding a disproportionate share of the marital state and maintenance.

Illinois courts recognize a distinction between enterprise goodwill and personal goodwill. In a divorce case, enterprise goodwill would be included in valuing a marital business and personal goodwill would be excluded from that value.

In the 2005 Illinois Supreme Court case of *In Re the Marriage of Schneider*, it was determined that the goodwill of a certain spouse's business represented merely the ability to acquire future income and therefore it could not be considered in the valuation of the business or it would result in double counting of that goodwill.

Similar to *Schneider*, the business valuation of an Olympian may not result in factoring in any value for goodwill since the athlete's ability to acquire future income would already be considered in determining maintenance and property division.

Despite these considerations, Olympians need not throw in the towel just because their hard-earned medals may be marital property.

Absent a post-nuptial agreement or the creation of new law protecting the super humans in this area, the court in making its equitable property division might just use its discretion to give the athlete a break.