



Timothy W. Finchem
Commissioner

April 12, 2013

The Honorable Dave Reichert
United States House of Representatives
1127 Longworth Office Building
Washington, D.C. 20515

The Honorable John Lewis
United States House of Representatives
343 Cannon Office Building
Washington, D.C. 20515

Dear Representatives Reichert and Lewis:

The PGA TOUR is pleased to submit this statement to the working group on Charitable and Exempt Organizations, and commends Chairman Camp and the Committee for their dedication to tax reform as a way to foster economic growth and job creation.

The PGA TOUR is a unique organization whose mission is to advance the well-being of professional tournament golf and its players. The structure for PGA TOUR tournaments is also unique in professional sports in that the net proceeds from our more than 100 PGA TOUR tournaments are contributed to charity. No other exempt sporting organization operates in this manner.

All PGA TOUR tournaments are organized for charitable purposes. The PGA TOUR and its tournaments collectively raised more than \$130 million for charity in 2012 and we will be approaching the \$2 billion cumulative charity threshold by the end of this year. No sporting organization and few other exempt organizations, can match these levels of support for local charities and community organizations.

In addition to the charitable funds generated, PGA TOUR golf tournaments have a substantial economic impact on each of the communities in which our events are conducted. A typical PGA TOUR tournament will generate tens of millions of economic impact for a local community and collectively the PGA TOUR and its tournaments generate an economic impact of more than \$3 billion annually in the communities where our events are played.

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Together, anything's possible.

What makes this possible is the structure of the PGA TOUR, which distinguishes it from most other sporting organizations. The PGA TOUR itself is a 501(c)(6) business league whose members are the players who compete in the PGA TOUR tournaments. PGA TOUR tournaments are conducted as fundraisers by 501(c)(3) charity organizations whose mission is to give back to the local community by supporting local charities such as children's hospitals, education, youth initiatives and other community needs. Collectively, PGA TOUR tournaments benefit more than 3,000 charities and organizations throughout the country and literally hundreds of thousands of individuals. Almost all the work performed for the charitable organizations conducting PGA TOUR tournaments at the local community level is performed by volunteers who number more than 100,000 across all PGA TOUR events.

Another unique feature of the PGA TOUR is the fact that players are independent contractors and not employees of the business league or any team. As members of the PGA TOUR, the players participate in decisions regarding policies and principles that guide professional tournament golf and its relationship to society at large. These fundamental principles include the practice that PGA TOUR tournaments should give back to the communities where events are played and a structure whereby professional tournament golf is managed and operated for the benefit of the players and charity, rather than for the benefit of owners and promoters.

As the business league which represents the players' interests, the PGA TOUR creates more economic opportunities, better overall business conditions and greater community charitable contributions than the players could create acting as individuals. While the PGA TOUR is exempt under 501(c)(6), the organization itself does not benefit from operations as all net profits are ultimately distributed to and taxed at the member level. PGA TOUR players earn such amounts through professional competition.

Congress originally created the 501(c)(6) category in the Revenue Act of 1913 in order to help promote the well-being of persons with a common business interest. According to the legislative history of the Revenue Act of 1913, "these organizations are cooperative agencies of good citizenship in industry and commerce. In so far as [these] commercial organizations succeed in their purposes, they increase the incomes, not of themselves, but of the individuals in their communities, irrespective of membership in the organizations. The taxation of income of organizations wholly devoted to this public purpose would be a variety of double taxation, which elsewhere in H.R. 3321 is avoided."¹

As a 501(c)(6) organization, the PGA TOUR facilitates the ability of its members, the players, to succeed. This arrangement has worked well in that the PGA TOUR not only empowers its players, but as described above, they in turn, have created a unique

¹ Hearings on Tariff Schedules of the Revenue Act of 1913 Before the Subcomm. Of the Comm. On Finance, 63d Cong., 1st Sess. At 2001, 2003 (1913), cited in IRC 501(c)(6) Organizations - Technical Instruction Program for FY 2003.

organization that fosters the greatest amount of charitable giving of any sporting organization in existence today.

There are several existing tax provisions that have contributed to the PGA TOUR's ability to generate substantial amounts for charity and generate a substantial economic impact in the communities where tournaments are conducted. First, Section 274(l) as enacted in the Tax Reform Act of 1986 sets aside limitations that would otherwise apply to the deductibility of tickets and hospitality costs relating to business entertainment at charitable sporting events defined as events which are: (1) organized for the primary purpose of benefitting organizations exempt under Section 501(c)(3); (2) all of the net proceeds of which are contributed to such organizations; and (3) which use volunteers for substantially all of the work performed in carrying out these events. Section 274(l) helps to attract support for the charitable events that the PGA TOUR is dedicated to support and is fundamental to the ability to raise funds for charity at the rate that the PGA TOUR has been able to achieve.

Another provision that is fundamental to the PGA TOUR's ability to generate substantial charitable funds and drive a substantial amount of economic impact is Section 513(i) which exempts qualified sponsorship payments from the unrelated business income tax. Corporate sponsors are critical to the ability of many tax-exempt organizations to raise substantial charitable funds and the enactment of Section 513(i) settled a series of disputes which put into question the treatment of those funds. The preservation of this provision will help to ensure that the PGA TOUR and similarly situated organizations can continue to support charitable activities.

Additionally, the PGA TOUR along with many tax-exempt organizations engages in transactions with related taxable organizations as a way to facilitate its operations. Prior to an amendment to Section 512(b)(13) in 1997, tax-exempt organizations were not subject to UBIT in these transactions as long as they did not directly control more than eighty percent of the related taxable entity. The 1997 amendment reduced the threshold of control (protecting a tax-exempt from UBIT) from eighty percent to fifty percent direct or indirect ownership in a process that did not provide affected entities a forum in which to comment on the proposed change in the law. An amendment to the section which was adopted as part of the Pension Protection Act of 2006 provides an alternative test for tax-exempt entities with a higher ownership threshold in their taxable subsidiaries. Under that alternative, payments received by a tax-exempt organization from a controlled organization will be taxable only if the payment exceeds fair market value. A twenty percent penalty tax is imposed on excessive payments. This provision has been extended through 2013.

The PGA TOUR's ability to operate as a tax-exempt and to engage in limited transactions with taxable subsidiaries is at the core of its ability to make the support of charity a primary goal of its operations. However, despite the fact the core test under 512(b)(13) is permanent, the alternative test enacted in 2006 is temporary and needs to be renewed

periodically, and applies only to contracts in existence at the time it was enacted and renewals of those contracts.

We urge the Committee, as part of tax reform, to make 512(b)(13)(E) permanent and open it up to new arrangements. As a matter of tax administration it makes little sense to have a permanent test for one section of the Code and an alternative formulation that is temporary. The current arrangement adds complexity to the Code as well and requires an almost annual effort to seek an additional extension of the section. It is an established practice for tax-exempts to engage in arm's length transactions with taxable subsidiaries; Section 512(b)(13)(E) establishes sensible rules in this area and should become permanent law as part of tax reform.

The PGA TOUR is aware that Congress has been concerned from time to time with the issue of whether the privilege of tax exemption is being misused by some entities and we support greater robust enforcement of the tax laws. In our case, the ability to operate in a tax-exempt structure in conjunction with the three other provisions which are discussed above, has made it possible for the PGA TOUR to structure itself to support charities across the United States and raise more funds for charity than any other sporting organization in history.

As the Committee considers potential changes to the exempt and charitable areas, we urge that these provisions be retained and that 512(b)(13) be made permanent and extended to new contracts.

We appreciate your consideration of this submission and would be pleased to provide additional information and to meet with you to discuss our views in greater detail.

Sincerely,

A handwritten signature in black ink that reads "Timothy W. Finchem". The signature is written in a cursive, flowing style.

Tim Finchem