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WILL YOU TIP THE PIZZA DELIVERY DRONE? COMMERCIAL DRONE USAGE NOW AND IN THE FUTURE

Unmanned aerial systems, also known as drones, have maintained a lasting presence in the headlines over the past few years, whether it was their applications in the United States' wars or concerns about domestic use of drones for surveillance and law enforcement. Interestingly, drones are not limited purely to military and government use. The field is quickly expanding to include civilian and commercial applications. While hobbyists can now simply pick up a drone at stores such as Barnes and Noble[1], commercial usage of drones has yet to make a significant impact on our society as of yet. Funding is abundant, however, so within the next few years, our society will change rapidly with the introduction of commercial drone use. One must ask him or herself: Will drones be buzzing around us within a few years, delivering items and performing services?

Drones can be used for any number of things. They can be used to monitor crops, mining, and other important activities. [2] They can also be used for more mundane things, such as pizza delivery via drone[3] and personal shopping. Drone investment has skyrocketed compared to last year- \$40.9 million dollars was invested in drone startups so far this year, more than double of last years' investment.[4] Projected sales of civilian drones are predicted to reach \$8.2 billion within the next decade.[5]

Furthermore, the government is mandating that drones play a larger role in certain aspects of our lives. The Federal Aviation Administration, the FAA, has yet to comply with a Congressional mandate that required the administration to integrate certain types of drones for civilian and commercial use into national airspace by Q3 2015.[6] The FAA is unlikely to comply with the mandate on time and that is not without reason – this type of technology has never been used for

civilian or commercial purposes as of yet and there exists no data to determine drone usage and applications as of yet. [7]

Consequently, one must wonder if drones can be used for commercial purposes at the moment? The answer is yes and no. In 2007, the FAA released a statement that banned usage of drones for business purposes due to concerns about unacceptable safety risks without proper integration.[8] However, the FAA's regulatory stance on drones is on shaky ground – the FAA did not go through the proper rule making process. Without following this process, the FAA's regulations are not legally binding. Hence, commercial drone usage remains uncharted territory despite the fact that production and investment has skyrocketed, meaning the actual usage of drones commercially remains in question.

One reason why actual usage remains in question is privacy issues. Drones are usable for many commercial uses that do not invade privacy such as mining, environmental monitoring and emergency response.[9] Unfortunately, privacy concerns are very real because the only statutes, so far, concerning drone collected data are related only to law enforcement usage of drones.[10] Accordingly, the ACLU has exposed many concerns with private and business drone usage – mainly because drones can be used to track, classify and identify people on the go and create profiles of the people they see. While there is proposed state legislation that states that law enforcement must delete data after a certain number of days, such legislation does not exist for commercial users of drones.[11]

We've all been exposed to the effects of corporations and businesses keeping track of our buying decisions – ads on websites such as Facebook and features such as Amazon's recommended items show us that companies are actively using data gleaned from our activities. Companies also frequently buy collections of data from third parties, such as phone number lists. Commercial

drones, however, unleash a whole new suite of problems – businesses could theoretically track individuals through data collection, and through collaboration with other businesses, construct complete profiles. Are drones pushing the idea of business data collection too far? Will drone use, in the foreseeable future, help create the type of dystopian worlds we see in games like *Deus Ex* where our lives and actions are subject not only to online data collection, but also surveillance by machines to distinguish our individual likes, dislikes, lifestyles and even our secrets?

It is unarguable that drones take that first step towards destroying privacy. The very fact that there will be drones performing a multitude of tasks all over the United States in the future leads to the very real possibility that their data collection skills will be abused. At the very least, companies using their capabilities to film and profile individuals would lead to our decisions and lifestyles being known by a wide variety of entities. Having drones around will be like having cameras constantly whirring about us in daily life, recording our activities, whether it is intentional or not.

Despite these potential privacy issues, however, the future of drone usage seems to be certain. While the FAA may be slow in accomplishing Congress' mandate, the massive boom in drone investing and drone related legislation makes a favorable response to commercial drone use all but certain. Already, the UAS industry is shaping up with Washington and California competing to be the major hubs of the drone industry. [12] At this rate, we should get used to the fact that within the next decade, drones will become part of everyday life, even though we will be sacrificing some of our privacy. I would not, however, count on pizza delivery with drones in the near future.

- [1] <http://www.barnesandnoble.com/p/toys-games-parrot-ardrone-20-quadricopter-blue/24151641?ean=3520410007286>
- [2] <http://www.ibtimes.com/drone-delivers-pizza-investors-say-commercial-drones-show-much-potential-1452902>
- [3] <http://money.cnn.com/2013/06/04/technology/innovation/dominos-pizza-drone/>
- [4] <http://www.bloomberg.com/news/2013-10-30/drones-delivering-pizza-venture-capitalists-wager-on-it.html>
- [5] Id.
- [6] <http://tech.fortune.cnn.com/2013/05/13/drone/>
- [7] Id.
- [8] <http://www.scientificamerican.com/article.cfm?id=drone-pilot-challenges-faa-commercial-flying-ban>
- [9] <http://www.sensorsandsystems.com/dialog/perspectives/30861-what-are-the-top-ten-civilian-uses-of-drones-that-don%E2%80%99t-impinge-privacy.html>
- [10] Id.
- [11] <https://www.aclu.org/blog/national-security-technology-and-liberty/aerospace-group-issues-recommendations-state-drone>
- [12] <http://money.cnn.com/gallery/magazines/fortune/2013/05/13/drone-economy.fortune/>

SHOULD TAX CREDITS AS AN INCENTIVE FOR HIGHER EDUCATION BE ELIMINATED?

One of the biggest contributors to rising disparity in America today is the widening earnings gap between workers with college degrees and those without.[1] Higher education remains a good investment, even though some new grads are currently struggling to get jobs. Over the past two decades, lawmakers have progressively asked the tax code to direct all manner of social and economic objectives (e.g. home buying, adoption, attending college, trading in a clunker for a newer car, etc.). In regards to federal assistance for higher education expenses, tax credits and deductions are relatively new.[2]

Lawmakers have increasingly used tax credits to aid students in covering the cost of college. From 1997 [3], the first year these credits came into existence, to 2010, the use and cost of these credits has increased significantly. [4] Currently, there are three tax benefits for higher education expenses. Each of these has different benefit sizes, income limits, income definitions, and qualifying expenses.[5] This means that a taxpayer must calculate a plethora of tax related components to determine which one would provide a greater benefit.

Nevertheless, it isn't in fact clear whether tax credits for higher education expenses actually promote college attendance. One of the first papers analyzing the behavioral effects of such credits found that the credits did not increase the likelihood of college attendance. Instead, the primary beneficiaries of the credits were those who were already likely to go to college. [6] Another paper found that "there is some evidence to support that public two-year colleges responded to incentives created by the tax credits by raising tuition price beyond what can be

explained by fluctuations in state support, and the responses were stronger for schools with a greater proportion of credit-eligible students.”[7] Other research found that “recent increases in financial aid have not improved affordability” and argue that this is due to the fact that colleges are able to “capture the aid” by increasing their tuition. In other words, schools know that students receive this tax subsidy, raise their prices, and capture most of the subsidy. [8] Another study has found that despite sharp price increases at private colleges, the amount that students actually pay has barely changed over the last decade due to discounts, grants and tax benefits. [9] However, one fact is clearly indisputable, student debt in America has surpassed credit card debt. [10]

So, is the tax code the right means for increasing access to higher education and making college more affordable? Generally speaking, the answer is no.

What do the health care, housing, and now higher education sectors all have in common? They receive the most government intervention through the tax code and other mechanisms. Perhaps it is of no surprise that “[e]ducation and health services were by far the largest private industry, as measured by employment, to add jobs during the recession.” [11] The cost of health care is soaring due to many factors, related and unrelated to government regulation, and housing suffers a similar problem in part due to overabundance of tax subsidies intended to promote home ownership.[12]

Are we subsidizing student debt too generously? Subsidized student loans and education credits are fueling higher college costs by disconnecting student-consumers from the true cost of higher education. [13] The cost of attending college has increased 439% since 1982 (more than four times the rate of inflation), even with federal involvement in student loans. [14]

While there is an undisputed value and financial benefit in getting a college degree, using the tax code to make college more affordable produces serious unintended consequences. These tax “incentives” are likely contributing to the rising costs of higher education. Economist Richard Vedder argues that “some of these financial aid programs have contributed mightily to the explosion in tuition and fees in modern times.”^[15] With ever more government money pouring in and no profit motive or accountability to shareholders, public colleges have no pressure to use resources efficiently, not to mention that compensation for college presidents now rivals corporate CEO salaries.^[16]

As with any tax provision, the economic cost of these tax incentive programs will exceed its budgetary cost. First, the cost of compliance for taxpayers and the IRS increases, and so does the heightened risk for fraud and abuse. As the complexity of provisions increases, so does the cost to society. Second, and perhaps a more serious consequence, continuing to increase federal subsidies for college raises questions of equity. Increasing federal subsidies for higher education, whether in the form of government grants or student loans, shifts the responsibility of paying for college from the student, who directly benefits from college, to the taxpayer.^[17] Transferring the burden of student loan financing from university graduates who earn, on average, twice that of someone with a high school diploma, to the three-quarters of taxpayers who did not attend college is unjust.^[18] Recently, Senator Rubio and Representative Schock^[19] proposed to eliminate the current tax preferences for higher education expenses, replacing these provisions with a single new tax credit for higher education expenses. Doing so would reduce the complexity in the tax system, save taxpayers money by limiting these credits, and attempt to make them less susceptible to fraud.

Nevertheless, the fact remains that tax credits for higher education may not be the best way to encourage college attendance. In fact, according to a recent case study, eliminating the various education credits and trading the static revenue gains for individual rate cuts would: allow for an across-the-board rate cut of 0.9%; boost GDP by \$19 billion per year; boost federal revenues by \$4.5 billion on a dynamic basis; increase employment by the equivalent of approximately 121,000 full-time workers; and produce little change in hourly wages.^[20] Helping low-income individuals attend college should be a top priority. However, Congress needs to find the most cost-effective way to do so. The current practice of issuing grants and tax subsidies may fail the efficiency test.^[21]

[1] The median income for a worker with a 4-year college degree was \$75,568 in 2010. By contrast, the median income for a worker with only a high school diploma was \$38,976. <http://taxfoundation.org/article/are-tax-credits-proper-tool-making-higher-education-more-affordable>

[2] See Elaine M. Maag and Katie Fitzpatrick, “Federal Financial Aid for Higher Education: Programs and Prospects,” Urban Institute, January, 2004.

[3] IRS Notice 97–60. <http://www.irs.gov/pub/irs-tege/notice97-60.pdf>

[4] Scott Hodge, Are Tax Credits the Proper Tool for Making Higher Education More Affordable? Testimony before the U.S. Senate Committee on Finance, July 25, 2012, <http://taxfoundation.org/article/are-tax-credits-proper-tool-making-higher-education-more-affordable>.

[5] The American Opportunity Credit is a refundable tax credit of up to \$2,500; The Lifetime Learning Credit gives taxpayers a non-refundable credit up to \$2,000 on qualifying expenses and has an income limit of \$124,000 for married taxpayers. However, unlike the American Opportunity Credit, it has no lifetime limit; The

Deduction for Education Expenses is an above-the-line deduction, which means that instead of reducing an individual taxpayer's tax bill, it reduces their taxable income. Although there are three, taxpayers can only claim one of the three available tax benefits.

[6] Bridget Terry Long, *The Impact of Federal Tax Credits for Higher Education Expenses*(National Bureau of Economic Research, Working Paper No. 9553, Dec. 2006),<http://www.nber.org/papers/w9553>.

[7] *Id.*

[8] Robert E. Martin & Andrew Gillen, *How College Pricing Undermines Financial Aid*, Center for College Affordability and Productivity Policy Paper (Mar. 2011), at

13.http://centerforcollegeaffordability.org/uploads/How_College_Pricing_Undermines.pdf.

[9] <http://trends.collegeboard.org/college-pricing>

[10]http://libertystreeteconomics.newyorkfed.org/2012/03/grading-student-loans.html?utm_source=feedburner&utm_medium=feed&utm_campaign=Feed%3A+LibertyStreetEconomics+%28Liberty+Street+Economics%29

[11] <http://www.bls.gov/opub/mlr/2011/04/art1full.pdf>. p. 8.

[12]Canada does not have a mortgage interest deduction, yet its rate of homeownership is equal to that in the U.S.

[13]The Obama administration has significantly increased federal involvement in the student loan industry, effectively nationalizing student lending through language buried in Obamacare, by continuing to increase federal subsidies. See <http://www.cbsnews.com/news/who-will-benefit-from-obamas-student-loan-plan/>

[14] <http://www.heritage.org/research/reports/2010/11/pell-grant-increase-would-not-solve-the-college-cost-problem>

[15] Richard Vedder, “The Real Costs of Federal Aid to Higher Education,” Heritage Foundation *Lecture* No. 984, January 12, 2007, at <http://www.heritage.org/research/lecture/the-real-costs-of-federal-aid-to-higher-education>.

[16] <http://chronicle.com/article/Income-Gap-Widens/129980/>

[17] For example, “Under Georgetown’s Loan Repayment Assistance Program , students take out Grad PLUS loans to cover the full cost of attending law school (around \$75,000 per year, which includes living expenses). After they graduate, they enroll in Income-Based Repayment. If they work in government or non-profit jobs, Georgetown pays 100 percent of their loan payments for 10 years, after which IBR’s loan forgiveness wipes away the remaining balance. The students pay nothing for their education.” http://www.washingtonmonthly.com/college_guide/blog/go_to_law_school_for_free_let.php.

[18] Dan Lips, “Ways to Make Higher Education More Affordable,” Heritage Foundation *WebMemo* No. 2785, January 29, 2010, at <http://www.heritage.org/research/reports/2010/01/ways-to-make-higher-education-more-affordable>.

[19] <http://schock.house.gov/news/documentsingle.aspx?DocumentID=336645>

[20] <http://taxfoundation.org/article/case-study-8-education-credits>

[21] <http://taxvox.taxpolicycenter.org/2012/07/27/do-higher-education-tax-credits-make-sense/#sthash.msJznVfd.dpuf>

SPACE FOR PRIVATE INVESTMENT: ENTREPRENEURS OF THE FINAL FRONTIER

On May 25, 2012 Space Exploration Technologies Corp. (commonly referred to as “SpaceX”) made history, with its Dragon capsule becoming the first private spacecraft to dock with and supply the International Space Station (ISS).[i] Though the capsule was unmanned, the event marked an important milestone in human spaceflight. Since then, SpaceX has made two more flights to the ISS as part of its Commercial Resupply Services (CRS) contract with NASA.[ii] On September 29, 2013, Orbital Sciences Corporation (“Orbital”) docked its Cygnus spacecraft with the ISS, becoming the second private company to do so.[iii] Like SpaceX, Orbital will make additional supply flights to the space station in connection with the CRS program.[iv] Despite accomplishing a similar task as a part of the same program, the two companies represent vastly different approaches. While Orbital represents a more traditional approach in the space industry, SpaceX provides a vision for future entrepreneurship.

Government Contracts

From the earliest days of the space race, government contracts played a central role. The first rocket to carry an American into space in 1961 was built on contract by the Chrysler Corporation.[v] More than 50 years later, the U.S. Government continues to contract with private companies to accomplish its goals in space, though in the past decade, its approach has evolved to allow more private innovation.[vi] In spite of this evolution, companies are still bound by the heavily regulated government contracts process.

The Federal Acquisition Regulation (FAR), 48 C.F.R. Chapter 1, governs almost all government contracts, including contracts with NASA.[vii] The process begins when the agency identifies a need or requirement that it must satisfy.[viii] For example, in the 1960s, NASA began to see a need for a reusable launch vehicle that could carry payloads and service future space stations and satellites. [ix] This idea would later become the Space Shuttle, but it would only take shape after NASA solicited designs from aerospace companies like Lockheed, McDonnell Douglas, General Dynamics, and North American Rockwell. [x] For the Space Shuttle design, NASA issued a Request For Proposals (RFP)[xi], which is a type of solicitation used in the Competitive Negotiation method of contracting[xii]. In contrast to the other competitive contracting method, Sealed Bidding, Competitive Negotiation has less specific requirements and allows communication between the agency and the potential contractors. [xiii]Under the FAR, an RFP is required to state the following: (1) the agency's need, (2) the contract's anticipated terms and conditions, (3) information the contractor must include in its proposal, and (4) factors the agency will consider in awarding the contract.[xiv]

On April 14, 2008, NASA released an RFP for the Commercial Resupply Services contract, which would award the winners with the task of sending needed cargo to the International Space Station after the retirement of the Space Shuttle.[xv] Orbital and SpaceX were awarded contracts in the amount of \$1.9 billion and \$1.6 billion, respectively, to each send 20 metric tons of cargo to the ISS.[xvi] The contract was a major boon to SpaceX, which had previously been almost entirely privately funded. For Orbital, it was an important success, but in many ways, it was business as usual.

Different Approaches

Though they've competed for some of the same contracts, SpaceX and Orbital are very different companies.

Orbital in many respects resembles the old paradigm for the space industry. The company was incorporated in Delaware as "Space Systems Corporation" in 1982 after its founders, David Thompson, Bruce Ferguson, and Scott Webster, worked together on a NASA-funded study of commercial space applications while attending Harvard Business School. [xvii] Its first source of revenue was a NASA contract in 1983.[xviii] Thereafter, the company began to expand in size and revenues through its contracts with NASA and the Department of Defense.[xix] In the ten years after its creation, Orbital diversified its business. In 1988, it was awarded a contract with the Defense Advanced Research Project Agency (DARPA) to build Pegasus, an orbital rocket launched from a converted commercial jet.[xx] In 1989, the company was awarded another multi-million dollar contract by DARPA, this time for a ground-based rocket called Taurus. In 1990, the company went public (NYSE: ORB), and since then has expanded its product portfolio to include three more launch vehicles, numerous satellites, and ballistic missile defense systems.[xxi] In building its various systems, Orbital uses a number of subcontractors for the different components. For example, two different companies supplied the engines for the Antares rocket[xxii] which carries the Cygnus spacecraft to orbit, and six different subcontractors were used to build the Cygnus.[xxiii] Since its inception, Orbital has been, first and foremost, a government contractor and it has profited from this arrangement. In 2012, Orbital earned \$1.4 billion in total revenue with \$61 million in net profits.[xxiv]

SpaceX represents a force for innovation in the private space industry. Founded in 2002 by Elon Musk, co-founder of PayPal and CEO of Tesla Motors,

the company began building rockets before it ever saw any money from the U.S. Government. [xxv] In the company's early years, it was funded entirely through private capital, including a \$100 million injection of Musk's own money.[xxvi] In contrast with Orbital, SpaceX has designed and built the vast majority of the components used in its launch vehicles and spacecraft, including the Merlin engines and the Dragon capsule.[xxvii] SpaceX is also currently a privately held corporation. [xxviii] As a result of its in-house component production and privately-held status, the company is able to take more risks in pursuit of its goals. Building components in-house also reduces overhead costs and time delays related to subcontracting, such as contract negotiations. [xxix] These cost savings can be passed on to SpaceX's customers, whether that be the government or private entities. [xxx] As a result, SpaceX can offer competitive launch prices which are 40-60% lower than its competitors. [xxxi] As of November 2013, SpaceX has more than 40 contracts for future launches with its Falcon 9 and Falcon Heavy launch vehicles, representing both government and private customers. [xxxii] With the revenue generated from these launches, Musk has an ambitious goal: making travel to Mars routine and economically viable. [xxxiii] The company continues to push forward with technology development that will make this possible. [xxxiv]

Public Policy

The rise of SpaceX points to a future where private companies take on more of a role in space travel and space exploration. In an era where government spending is in decline and budget cuts affect all areas of government, SpaceX stands as a testament to what is possible with private investment in this previously government-dominated field. To be sure, government contracts still represent a major revenue source, even for startups like SpaceX, but as the company has

shown, it does not necessarily have to be the main source of revenue like it is for companies like Orbital. The major test for SpaceX and other private space companies will be to send manned spacecraft into orbit. In 2007, the FAA laid the groundwork for future manned private spaceflight by enacting new regulations concerning, among other things, public safety, launch safety, and informed consent by passengers.^[xxxv] Spaceflight is still an inherently risky activity. Rockets carry large quantities of highly energetic fuel, and accidents can happen, like the July 1, 2013 crash of a Russian Proton launch vehicle.^[xxxvi] Congress and the Executive Branch should work together to lower barriers to private investment in human spaceflight, while balancing important safety concerns. By lowering these barriers and working with companies, government can usher in a new, more open, more innovative space age.

[i] <http://online.wsj.com/news/articles/SB10001424052702304840904577426042171703270>

[ii] <http://www.nasaspaceflight.com/2013/03/spacexs-crs-2-dragon-iss-departure-splashdown/>

[iii] <http://www.theguardian.com/science/2013/sep/29/orbital-sciences-cygnus-international-space-station>

[iv] <http://www.nasaspaceflight.com/2008/12/spacex-and-orbital-win-huge-crs-contract-from-nasa/>

[v] <http://history.nasa.gov/SP-4201/ch1-5.htm>

[vi] <http://www.nytimes.com/2012/05/15/science/space/contracts-help-private-sector-edge-deeper-into-space.html>

[vii] <http://www.acquisition.gov/far/current/pdf/FAR.pdf>

[viii] Carl L. Vacketta, A Primer on Federal Government Contracts 41, 2007

[ix] <http://history.nasa.gov/SP-4221/ch5.htm> at 225

- [x] Id. at 222
- [xi] Id. at 226
- [xii] Vacketta, at 53
- [xiii] Id.
- [xiv] Id.
- [xv] http://www.nasa.gov/offices/c3po/home/cots_phase2_iss_resupply_rfp_prt.htm
- [xvi] http://www.nasa.gov/home/hqnews/2008/dec/HQ_C08-069_ISS_Resupply.html
- [xvii] <http://www.fundinguniverse.com/company-histories/orbital-sciences-corporation-history/>
- [xviii] Id.
- [xix] Id.
- [xx] Id.
- [xxi] <http://www.orbital.com/>
- [xxii] http://www.orbital.com/NewsInfo/Publications/Antares_Fact.pdf
- [xxiii] http://www.orbital.com/NewsInfo/Publications/Cygnus_fact.pdf
- [xxiv] http://www.orbital.com/Investor/FinancialDocuments/documents/AR_12.pdf
- [xxv] <http://www.nytimes.com/2006/02/05/business/yourmoney/05rocket.html>
- [xxvi] Id.
- [xxvii] <https://space-academy.grc.nasa.gov/y2011/tour-summaries/spacex/>
- [xxviii] <http://money.cnn.com/2013/06/05/investing/elon-musk-space-x-ipo/>
- [xxix] <http://blogs.hbr.org/2013/04/what-spacex-can-teach-us-about/>
- [xxx] Id.
- [xxxii] <http://www.spacex.com/about>
- [xxxiii] <http://blogs.hbr.org/2013/04/what-spacex-can-teach-us-about/>

[xxxiv] Id.

[xxxv] http://www.faa.gov/about/office_org/headquarters_offices/ast/human_space_flight_reqs/

[xxxvi] <http://www.space.com/21811-russian-rocket-crash-details-revealed.html>

THE NON-DEDUCTIBILITY OF JURIS DOCTORATE DEGREE EXPENSES UNDER TREASURY REGULATION 1.162-5

The effects of the recent economic recession and the relatively high unemployment rates that ensued are still felt across the country. According to “The American Workforce,” a survey conducted for *The Springboard Project*, approximately eight in ten workers, regardless of income or education level, show keen interest in pursuing further training and education.[i][ii] Fortunately, given the relative generosity of the U.S. Tax Code, there are several ways to deduct qualified educational expenses. For example, adults may be able to claim the Lifetime Learning Credit, 20% of the first \$10,000 of qualified education expenses, for a maximum amount of \$2,000.[iii] However, the income cutoff for Lifetime Learning begins to phase out for singles with modified adjusted gross income above \$48,000 and couples above \$96,000.[iv] (See IRS Publication 970). Luckily, there’s another option, and the focus of this article, which is deducting educational expenses as a job or career expense. Self-employed individuals (sole proprietors) can write such expenses off as a business expense on Schedule C, and employees can claim a miscellaneous itemized deduction as an “unreimbursed employee business expense.” This option is especially attractive to individuals who are in the higher tax brackets, for whom the government will pick up 39.6% [v] of the cost of courses (i.e. 39.6% is deducted as a business expense).

Consider a typical scenario: an individual works during the day, goes to school at night, and wants to know whether school tuition can be deducted from gross income. Naturally, individuals will want to deduct such expenses since they are taking coursework in order to promote themselves professionally. Due to the attractiveness of deducting educational expenses as a job or career expense, there

are many cases on point. Unfortunately, there is no code section addressing work related educational expenses. Section 162(a) of the Internal Revenue Code (26 U.S.C. § 162(a)), which deals with trade or business expenses, refers to ordinary and necessary expenses yet it makes no mention of education. The regulations however, do.[vi]

If an individual is taking courses due to a job requirement, such courses are wholly deductible. The ultimate question comes down to whether a person is already carrying a trade or business. A critical distinction is presented in Treas. Reg. § 1.162-5, that is, in order to be deductible, the course must maintain or improve skills required in an existing profession, not qualify the individual for a new profession. In other words, the course work should expand rather than commence something new. The courts employ a number of different analyses and standards when determining whether educational expenses are deductible, leaving taxpayers hoping to get a deduction for educational expenses largely at the mercy of the judge.[vii]

In Revenue Ruling 74-78, the IRS addressed whether expenditures incurred by a dentist pursuing postgraduate studies in orthodontics could be deducted for Federal income tax purposes. The IRS ruled that, because the expenditures improved his skills as a dentist, they were deductible as ordinary and necessary expenditures under section 162 of the Code. However, in Robinson, 78 T.C. 550, the IRS disallowed, and the Tax Court affirmed and held, that a petitioner, a licensed practical nurse (“LPN”), may not deduct the costs of acquiring a 4-year degree from a school of nursing when such degree leads to her qualification as a registered nurse (“RN”).[viii] To some this would seem counter-intuitive, especially in light of Revenue Ruling 74-78, since the job functions of an RN are similar to that of an LPN. In fact, Sec. 1.162-5(b)(3), Income Tax Regs., provides

that “[I]n the case of an employee, a change of duties does not constitute a new trade or business if the new duties involve the same general type of work as is involved in the individual’s present employment.” The Tax Court, however, saw a clear-cut distinction between an LPN and an RN, and stated that “[w]hile it is thus abundantly clear that a ‘teacher is a teacher is a teacher is a teacher’. . . [t]he heightened level of professional judgment, the increase in skills one can perform, and the supervisory powers exercised by an RN serve to distinguish the RN from the LPN in job function and responsibility.”[ix]

Furthermore, the arguably counter-intuitive result reached in Robinson was repeated in Johnson, 77 T.C. 876, where the Tax Court held that real estate agents may not deduct expenses incurred in taking educational courses in real estate that were required under California law to obtain real estate broker licenses. The court reasoned that real estate brokers are in a different trade or business than real estate agents under California law and the real estate courses taken by petitioners led to qualifying them for a new trade or business under Sec. 1.162-5(b)(3), Income Tax Regs.[x] See also, Davis v. Comm’r, 65 T.C. 1014, 1019 (1976) (denying a teacher’s aid with an undergraduate degree in social work to deduct the expense of a doctorate degree in social work, since the Ph.D. degree obtained was the minimum amount of education normally required for the employment secured as a full-time permanent faculty member).

Up to this point several general scenarios related to educational expenses as a job or career expense were presented and analyzed. However, what about a person who attends law school and wishes to deduct the cost of the JD degree. Some courts employ what has been coined the “Commonsense approach,” which requires a comparison between the types of activities “the taxpayer was qualified to perform before acquiring a particular title or degree with those that he or she was qualified

to perform afterwards.”[xi] There are dozens of cases involving paralegals, CPAs, law students working part time, and even IRS agents who try to deduct the cost of a law degree. In all such cases, however, taxpayers have lost. Simply put, an educational expense associated with a JD degree, in contrast to an LLM, is non-deductible.

Although there are many cases on point, two stand out because, despite facts favorable to the petitioners, they still lost. In Vetrick v. C.I.R., petitioner was a member of the Montana state bar (passed the bar by self-study without attending law school), who was drafted by army and sent to Cleveland. Following discharge, Vetrick decided to remain in Ohio. Although Vetrick was already a licensed attorney, he was not a member of the Ohio state bar. He established a federal law practice in Cleveland, Ohio, as such practice required membership in any State Bar. After deciding to attend law school, he enrolled in courses specifically to sharpen the skills he used in federal court. Nevertheless, the United States Tax Court disallowed the deductions, ruled for the Commissioner, and Vetrick appealed. The Court of Appeals held that cost of law school courses and related travel expenses could not be deducted for income tax purposes as an educational expense by an attorney who was qualified to practice only in federal courts where completion of law school and acquisition of law degree enabled him to perform substantially different legal tasks and therefore qualified him for a new trade or business. Vetrick v. C. I. R., 628 F.2d 885 (5th Cir. 1980). The Vetrick court relied on Sharon v. Comm’r of Internal Revenue, 66 T.C. 515 (1976) aff’d sub nom. Sharon v. C. I. R., 591 F.2d 1273 (9th Cir. 1978), where a New York attorney accepted a job with the IRS in California and was unable to deduct his California bar review costs because they were incurred in pursuit of “a new trade or business,” namely, private practice.

Another case, albeit with less favorable facts, is Wassenaar v. Comm’r of Internal Revenue. Wassenaar graduated from law school with a masters degree in taxation in May 1973. He never practiced law before his enrollment in the program and was not admitted to the bar until May 1973. Wassenaar contended that for more than 10 years prior to 1973, he was in a trade or business of “rendering his services to employers for compensation,” and that he was engaged in the trade or business of “analyzing and solving legal problems for compensation” while he worked on the law review at Wayne State and clerked for two law firms. He also claimed that that the graduate courses in taxation helped maintain and improve his skills in that work. Nevertheless, the United States Tax Court held that such educational expenses are not deductible under Sec. 162(a) because his education must have been more than “tenuously related to the skills required in the taxpayer’s occupation; it must [have been] proximately related to such skills. We cannot accept the petitioner’s argument that courses in the more advanced fields of tax law have any proximate relation to his past employment.” Wassenaar v. Comm’r of Internal Revenue, 72 T.C. 1195, 1201 (1979).

As these and numerous other cases show, any attempt to deduct educational expenses under Sec. 162(a) as far as they relate to a JD degree is futile. See also Weizmann v. Comm’r, 483 F.2d 817, 819-20 (1973) (denying a patent agent a deduction for law school because his primary purpose in attending law school was to become a patent attorney and whose law degree qualified him for a new trade or business); Gore v. Comm’r, 62 T.C.M. (CCH) 426, 427 (1991) (denying an auditor a deduction for law school since such education qualified him for a new trade or business).

In summary, in cases where concrete educational and examination requirements to become legally eligible to practice in a field must be met, the courts

apply an objective approach to determine the deductibility of such expenses. The facts and circumstances of each case are not considered, rather, courts simply disallow a deduction exclusively because the education objectively qualifies the taxpayer in a new trade or business. Thus, the expense of obtaining a JD degree is *never deductible* under the present-day regulation since an individual may only practice in the legal profession by obtaining the compulsory education and passing the requisite bar examination.

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- [i] Springboard Project is an independent commission convened by Business Roundtable that is creating innovative approaches to helping American workers develop the skills they need to remain competitive in the global marketplace.
- [ii] <http://businessroundtable.org/news-center/new-survey-reveals-obstacles-to-training-and-education-are-threatening/>
- [iii] <http://www.irs.gov/publications/p970/ch03.html>
- [iv] Id.
- [v] <http://www.irs.gov/uac/Newsroom/Annual-Inflation-Adjustments-for-2013>.
- [vi] Treas. Reg. § 1.162-5(a)(1) provides that an educational expense will qualify if the education: 1) Maintains or improves skills required by the individual in his employment or other trade or business, or 2) Meets the express requirements of the individual's employer, or the requirements of applicable law or regulations, imposed as a condition to the retention by the individual of an established employment relationship, status, or rate of compensation.
- [vii] Jill Kutzbach Sanchez, Note, The Deductibility of MBA Degree Expenses Under Treasury Regulation 1.162-5: Are You One of the Lucky Few Who Qualify?, 32 J. CORP. L. 659, 675 (2007).

- [viii] Robinson v. Comm’r of Internal Revenue, 78 T.C. 550, 551 (1982).
- [ix] Id., 78 T.C. 550, 558.
- [x] Johnson v. Comm’r of Internal Revenue, 77 T.C. 876 (1981).
- [xi] Allemeier v. Comm’r, 90 T.C.M. (CCH) 197, 199 (2005).

FACEBOOK IPO PROVES MORE TRANSPARENCY NEEDED FOR INVESTORS, BUT WILL TWITTER LISTEN?

In light of its growing popularity as a social media tool with more than 200 million active users, [i]Twitter announced in September of 2013 that it was ready to launch an Initial Public Offering (IPO). Twitter, which has never turned a profit in its seven years in existence, had originally set a price range of \$17 to \$20 per share for the IPO.[ii] Despite these earlier projections, Twitter announced in a tweet on November 6, 2013 that it priced its stock at \$26 per share due to high initial demand for its IPO. [iii]

Twitter's stock market debut is also "likely to be scrutinized [from the beginning] since Facebook went public in May 2012 and promptly flopped." [iv] Given this enhanced level of investor interest, Twitter decided it would avail itself of the fast track IPO process which is part of the Jumpstart Our Business Startups Act (JOBS Act). Intended to address a decade of declining IPO activity, the JOBS Act is designed to facilitate IPO activity among "emerging" businesses by easing various securities regulations.[v] The JOBS Act permits emerging companies to fast track their IPOs by confidentially testing the market with institutional investors, initiating the registration process and receiving SEC comments before filing a public preliminary registration statement on Form S-1.[vi] Therefore, the main benefit a company derives from the JOBS Act is the ability to do a quiet filing of the filed registration statement with the SEC, which is viewable by the public for only 21 days prior to the launching of the IPO.[vii] Although capitalizing on the JOBS Act privacy protections may seem like the best approach for Twitter, given the backlash Facebook received for its inaccurate reporting to the SEC prior to launching its IPO, Facebook's experience should serve as a cautionary tale for Twitter.

BACKGROUND: THE FACEBOOK PROBLEM

Investor confidence in the IPO process has been substantially eroded as a result of allegations by investors regarding certain non-disclosures made by Facebook in the course of implementing its IPO in 2012. In the consolidated class action complaint *In Re Facebook, Inc., IPO Securities, and Derivative Litigation*, Facebook investors allege: (1) Facebook incorrectly reported its revenue prospects from increased mobile usage to the SEC, inflating these figures, and (2) Facebook initially disclosed this negative information privately to a “select group of potential investors.”^[viii] “Many [high powered] investors that received this non-public information about Facebook’s dimming revenue prospects cancelled their orders or slashed the number of shares they intended to buy, dropped the price they were willing to pay, or sold their shares immediately after the IPO.”^[ix] When the media reported on this asymmetrical information sharing investors were furious, causing Facebook’s stock price to plummet.^[x]

ANALYSIS

The JOBS Act was passed last year with bipartisan support.^[xi] The purpose of this Act was to loosen a number of federal securities regulations in order to encourage start-up companies to enter the stock market. The problem being that through this fast-track IPO process confidential information is made available to the affiliates, insiders and underwriters but is not made part of a formal pre-registration statement to the SEC until three weeks prior to an IPO’s launch. This undercuts the pre-registration process designed to level the playing field among investors.^[xii]

Furthermore, although the JOBS Act was intended to facilitate investment in small start-up companies, established companies have also benefited from the Act’s privacy standards. Emerging middle-sized to large social media companies in particular qualify under the Act because despite their high market evaluations, their advertising revenue falls below the \$1 Billion threshold specified in the

Act.^[xiii] The intended purpose of the Act was to make the initial steps necessary to launch an IPO easier for small businesses, thereby propelling business creation and job growth.^[xiv] Instead, the Act has benefited established businesses and simultaneously curtailed the SEC's primary goal to "get corporations to provide full and complete information about what they are doing."^[xv]

RECOMMENDATION

The JOBS Act, as applied to social media companies with high valuations, such as Twitter, will only serve to compound the transparency problems raised by investors in their complaints against Facebook. There are multiple reasons why Twitter opted for the "secret" IPO, such as avoiding the close investor scrutiny that foreshadowed Facebook's disastrous IPO, hiding financial details from its rivals such as Facebook and LinkedIn for a longer period, and avoiding an outside audit and submitting less financial statements than the customary amount.^[xvi] However, in light of Facebook's mistakes, Twitter's best reporting strategy to generate a successful IPO would be to make sure it reports accurate future earnings potential, its share price correctly reflects this projected earnings potential, and this information is disclosed to the public in a transparent manner. Opting out of the JOBS Act protections would be consistent with this upfront, honest approach. On its first day of trading, Twitter closed at \$44.90 a share, 73 percent above its IPO price.^[xvii] Only time will tell whether Twitter's "secret" IPO will suffer the same, disastrous fate as Facebook's IPO.

[i] Peter Eavis, *With Facebook's Tumultuous I.P.O. in Mind, Twitter Tries to Value Its Shares*, The New York Times, Sep. 13,

2013,http://dealbook.nytimes.com/2013/09/13/with-facebooks-tumultuous-i-p-o-in-mind-twitter-tries-to-value-its-shares/?_r=0

[ii]Richard Drew, *Twitter Prices Shares at \$26 for IPO*, NBC News Business, Nov. 7, 2013, <http://www.nbcnews.com/business/twitter-ipo-could-be-priced-higher-sources-8C11544386>

[iii]Id.

^{iv} *Four Lessons Twitter Learns from Facebook's IPO Mistakes*, The Times of India, Sep. 14, 2013, http://articles.timesofindia.indiatimes.com/2013-09-14/social-media/42061860_1_ipo-documents-sam-hamadeh-privco

^v Zachary M. Seward, *Will Twitter File a Secret IPO?*, Quartz, Feb. 19, 2013, <http://qz.com/55044/will-twitter-file-a-secret-ipo/>

[vi]The JOBS Act of 2012, H.R. 3606, 112th Cong. § 106(e)(2012).

[vii]Id.

[viii]Complaint at 114, *In Re Facebook, Inc., IPO Securities, and Derivative Litigation*, 922 F.Supp.2d 445 (S.D.N.Y. 2013) (No. 12-2389).

[ix]Id. at 16.

[x]Id.

[xi]Sarah N. Lynch, *Twitters 'Secret' IPO Puts Investors In the Dark, For Now*, Reuters, Sept. 15, 2013, <http://www.reuters.com/article/2013/09/13/us-twitter-ipo-jobsact-idUSBRE98C11020130913>

[xii]Id.

[xiii]*Supra*, note vi.

[xiv]Sarah N. Lynch, *supra* note xi.

[xv]Id.

[xvi]Zachary M. Seward, *supra* note v.

[xvii]*Twitter Stock to Begin Trading Thursday; Price Set at \$26 per Share*, The Times Picayune, Nov. 7, 2013, http://www.nola.com/business/index.ssf/2013/11/twitter_stock_to_begin_trading.html

THE MACY’S, JC PENNEY, AND MARTHA STEWART LOVE TRIANGLE: IS FREEDOM OF CONTRACT THREATENED?

Background

In 2011, Martha Stewart called Macy’s CEO Terry Lundgren and announced she wanted to have her cake and eat it too – she was breaking her contract with the company. [1]

The contract granted Macy’s exclusive rights to sell Stewart’s bed, bath and kitchen merchandise. [2] In exchange for these rights, Macy’s spent millions to bring Stewart (then fresh out of prison) back to the forefront as America’s homemaker extraordinaire. [3]

But after some questionable missteps from competitor JC Penney, Stewart decided exclusivity was not in her best interest.

The Macy’s contract forbid Stewart from designing products in those categories of housewares for anyone else. The contract made a very narrow exception for Martha Stewart-owned stores. [4]

Ron Johnson, JC Penney CEO at the time, knew about the Macy’s contract when he offered Stewart a competing contract. [5] As part of his plan to keep his struggling department store afloat, he prepared a revamp of its home department, with Stewart’s face front and center. [6] He and his advisors interpreted the Macy’s contract’s narrow exception for Martha Stewart-owned stores as allowing a “store within a store.” [7] This, in their minds, meant JC Penney stores were free to house Martha Stewart “shops.” [8]

And yet simultaneously, Johnson knew that this move would still constitute a conflict. [9] Johnson, in a set of rather incriminating emails, told another executive that he was urging Stewart to “talk to Macy’s about a break in a tight, exclusive agreement.” [10]

After Johnson promised Stewart \$500 million, he predicted in another email that Macy's would "simply pick up their toys and go home." [11]

Unfortunately for Johnson, Macy's refused to do so. Macy's sued both JC Penney and Stewart's company for breach of contract. [12]

The Legal Battle

That suit was filed in January 2013. [13] When the case made it to trial in March, the judge said he would make a ruling by August. Then, he went on vacation until September. [14] Then, he declined to issue a ruling. [15] Why? Because he didn't want to hamper JC Penney from doing business. [16]

A month later, the judge gave JC Penney and Stewart a deadline – if they couldn't work out this problem on their own by October 25, he claimed he would actually issue a ruling. [17]

Penney and Stewart announced a revised agreement, days before the deadline, which excluded the line of products disputed by Macy's. [18]

The case for JC Penney is not very strong, and their concession proves they realized Johnson's blunder. Given that the parties' intentions are paramount in interpreting contracts, it would violate reason to think Macy's intended "Martha Stewart-owned stores" to allow her to set up shop inside one of its main competitors. The main point of the contract was exclusivity, and Stewart taking her sales to any other company would constitute a material breach. Despite what could have been more explicit wording on Macy's part, contractual intentions are not difficult to determine here.

What makes this case worth examining, however, was the judge's reluctance to rule on what seems to be a clear issue.

From his statements as to why he made the choices he did, it seems he did not want to hinder an already failing business. JC Penney is an iconic name in American retail, but pity for a company that made poor choices (no matter who

they are) does not belong in the legal system. Trying to prop up a failing business may be a worthy cause, because it keeps people employed – but that policy decision should be left to other branches of government. Congress has the power of the purse, and hence the power to make those financial allocations. Justice, on the other hand, is supposed to be blind.

This judge's pro-big business stance brings to mind the recent government bailout of the automobile industry. Like the Big Three, JC Penney is going through very troublesome times. Under Johnson's leadership, JC Penney has seen rough sales over the past few years. Shares have fallen almost 70% this year. [19] Rumors of bankruptcy, while vehemently denied, continue to circulate. [20]

In contrast to the automobile industry, however, JC Penney knowingly (one might even say maliciously) pursued a contractual breach in bad faith. The automobile industry may have made its own set of mistakes, but many agree that a contributing factor was increasing oil prices. [21] Automobile makers throughout the world felt these effects, no matter how well they were managed. [22] Here, JC Penney has only itself to blame for its legal troubles.

This, moreover, is no reason for a court to play favorites. JC Penney made a bad move when it asked Stewart to break her contract with a competitor. Assuming the contract was binding, the court had a duty to step in and enforce it.

Despite limiting their contract to terms more agreeable to Macy's, JC Penney and Stewart still must deal with an ongoing suit for damages. [23] Given the judge's apparent desire to pass the buck in this case, it is unlikely the action will be successful. That is not the main concern, however – as a New York Times reporter wrote, even Macy's doesn't necessarily want to push JC Penney into bankruptcy over this case. [24] The real take-away from this case is that judicial reluctance threatened freedom of contract by silently deferring to the breaching parties. Unfortunately, this deference may make business partners wary of

entering into such exclusive agreements, lest the other party goes behind their back, and a court takes no clear stance to remedy the breach.

[1] <http://www.reuters.com/article/2013/02/25/us-macys-jcpenney-marthastewart-idUSBRE91O14V20130225>

[2] http://www.cleveland.com/business/index.ssf/2013/10/macys_is_the_only_retailer_all.html

[3] Id.

[4] http://www.nytimes.com/2013/10/19/business/without-a-verdict-fight-over-martha-stewart-languishes.html?_r=0

[5] http://www.huffingtonpost.com/2013/03/02/jc-penney-ceo-martha-stewart-macys_n_2793713.html

[6] http://www.cleveland.com/business/index.ssf/2013/10/macys_is_the_only_retailer_all.html

[7] <http://www.nytimes.com/2013/08/02/business/for-penney-stewart-trials-outcome-is-just-one-pressing-concern.html>

[8] Id.

[9] http://www.huffingtonpost.com/2013/03/02/jc-penney-ceo-martha-stewart-macys_n_2793713.html

[10] http://www.cleveland.com/business/index.ssf/2013/10/macys_is_the_only_retailer_all.html

[11] Id.

[12] Id.

[13] http://www.nytimes.com/2013/10/19/business/without-a-verdict-fight-over-martha-stewart-languishes.html?_r=0

[14] Id.

[15] Id.

[16]<http://online.wsj.com/news/articles/SB10000872396390443618604577621770240371292>

[17] http://www.nytimes.com/2013/10/19/business/without-a-verdict-fight-over-martha-stewart-languishes.html?_r=0

[18]http://www.cleveland.com/business/index.ssf/2013/10/macys_is_the_only_retailer_all.html

[19] <http://money.cnn.com/2013/10/21/investing/jc-penney-stock-1/index.html?iid=EL>

[20] Id.

[21] <http://www.nbcnews.com/id/24896359/#.Un09r40zMy8>

[22] <http://www.dw.de/germanys-steinmeier-calls-for-eu-to-rescue-ailing-car-industry/a-3801809-1>

[23]http://www.cleveland.com/business/index.ssf/2013/10/macys_is_the_only_retailer_all.html

[24] http://www.nytimes.com/2013/10/19/business/without-a-verdict-fight-over-martha-stewart-languishes.html?_r=0

CRIMES AGAINST HUMANITY, I’M LOVIN’ IT: ISSUES IN SPONSORSHIP OF THE 2014 SOCHI WINTER OLYMPICS

By: Inessa Goodman

While business leaders and CEOs have never shied away from promoting their political agendas and views, the line is sometimes blurred between what is appropriate, and what is not. The recent controversies involving Chik-fila, Barilla, and their public statements against the LGBT community highlight this issue. Recently, a similar issue has surfaced, not involving public statements, but mere funding of an entity that supports questionable social policies.

What effect does this have on businesses? Should businesses be held more accountable for their social responsibility? Specifically, this article explores this issue in the context of the upcoming Winter Olympics in Sochi, Russia.

Current Anti-Gay Legislation in Russia

Homophobia is now engrained in the state policies in Russia. In June 2013, Vladimir Putin, president of Russia signed an “anti-gay propaganda law”. These laws ban the “public display and dissemination of homosexual propaganda”. Punishments for violating these laws range from fines of \$150 to \$1,500, and a possible fifteen day jail sentence.[i] The law is unclear what constitutes propaganda; meaning it could range from speech to signs, to public displays of affection between homosexual individuals.[ii] A law was also recently passed that would make it illegal for gay couples to adopt children from Russia, both at home and abroad. There are also talks of removing children from same sex couples.[iii]

Apart from these discriminatory laws, there is evidence of human rights violations, violence against gays, taking place in public with no condemnation

from the Russian government. Groups like “Occupy Pedophilia” target young homosexuals, shaming and torturing these individuals, while simultaneously filming this activity. This violence is then displayed on social media websites, even the local news, in full view of all the public, and the Russian government.[iv]

In November 2012, the European Court for Human Rights determined that the propaganda law was discriminatory under the International Covenant on Civil and Political Rights after an activist, Irina Fedotova was convicted under the law for holding a sign that read HOMOSEXUALITY IS NORMAL AND I AM PROUD OF MY HOMOSEXUALITY.[v] The U.N. Office of the High Commissioner for Human Rights has also condemned this law, urging its appeal.[vi] On November 5, 2013, the Dutch foreign minister proclaimed the situation serious enough to consider granting asylum to those subject to inhumane treatment or violations of their human rights.[vii]

Sponsorship of the 2014 Sochi Winter Olympics

This activity has culminated in a huge backlash against the upcoming Winter Olympics in Sochi, Russia. Many are calling for the boycott of these Olympics. Consequently, many are calling for major sponsors to pull their sponsorship, or to use their platform to advocate for LGBT rights.[viii] The major sponsors of the Sochi Winter Olympics include General Electric, McDonalds, Panasonic, Samsung, Proctor & Gamble, Coca-Cola, and the Dow Chemical Company. Many LGBT activist groups have held protests against McDonalds, P&G, and Coca-Cola, in the latter case pouring the product into the sewers outside of their corporate headquarters[ix]. Many maintain withholding money would have a direct and positive effect on the Russian government; similar to the results seen in the 1992 Barcelona Olympics, which generated 20,000 permanent

jobs, completely restricted the city landscape, and turned the city into the 12th most popular city destination in the world for tourists.[x]

Ultimately, people question the social responsibility of these companies in seemingly overlooking these atrocities in favor of promoting their own business. In some minds, this support clearly shows disregard for any international norms or international human rights laws. Corporate social responsibility relates to corporate self-governance of a business' policies and their effect on the public. The company ensures that they are complying with ethical standards, both home and abroad.[xi] In this case, many feel that these sponsors are shirking their responsibility of adhering to international norms.[xii] With the United Nations having condemned the actions of the Russian government, any sort of support being funneled their way seems to suggest a passive attitude toward the international crimes taking place in Russia.

To date, only Coca-Cola and GE have made any statements regarding their sponsorship. According to Gerhard Heiberg, head of marketing for the International Olympic Committee (IOC), many sponsors, especially American, are afraid of what could happen to them, "this could ruin a lot for all of us." [xiii]

RadioFreeEurope/RadioLiberty contacted all ten of the major sponsors, but none mentioned any plans to drop their sponsorship or publically raise the issue of gay rights during the Olympics.

Hans-Ake Danielsson, Scania's press manager, a Swedish automotive sponsor for the Olympics said, "As long as there are no sanctions on doing business in a certain country, we are doing business." "If you should take into consideration different things like, 'Shall we deliver to countries with the death penalty, for instance the U.S. and China?' ... We have to act on a commercial basis. Otherwise, we couldn't sell almost anywhere in the world." [xiv]

What's Next?

These companies sponsorship will most likely not serious effect their business. Take for example the lack of backlash against Barilla and Chik-Fil-A here in the United States. In a USA Today poll, 53% of people said they would boycott Chik-Fil-A after its president made anti-gay comments, while 43% said they were unaffected.[xv] In a telephone survey conducted by Ramussen Reports, 61% were in favor of Chik-fil-A, while 13% said they would participate in a boycott.[xvi] On Chik-Fil-A Appreciation day, initiated by Arkansas Governor Mike Huckabee, restaurant sales increased by 29.9%.[xvii]

Whatever the impact has been, what is more important, however, is holding corporations liable for violating their corporate social responsibility. Does this case, however, qualify such behavior? Or is it too far removed, as Mr. Danielsson alleges.[xviii]

Having a big brand name endorse something can clearly send a message, and sway people into thinking a certain way; case and point, Chik-fil-A and their surge of purchases in support of the president's comments. However, there is a stark difference between preaching a hateful message, and a situation like this of the Sochi Olympics. It seems a stretch to say that the sponsorship from these companies indicates any sort of direct, or indirect support of these Russian laws, or widespread violence. As many of these companies contend, their sponsorship is directed towards promoting the message of the Olympics, something very opposite to what is happening in Russia. While the full sincerity of these claims can be discussed (of course a major reason for sponsorship is for the benefit of the company), it is not these companies intention to project that they condone or support the Russian anti-gay laws.

That being said, these corporations should take positive steps toward promoting a message of tolerance of all sexual identities, and promote LGBT rights. Doing so would be a definite step in promoting social responsibility, and conforming to the international norms of global society. Failing to do so would

not only be an injustice, but also spread a message that profit-inducing business is the only goal. As many opposed to boycotting the Olympics suggest, bringing these issues to light during these Olympics will put Russia in the hot seat, and make them come to grips with their violations of human rights.[xix] These sponsors should take a stance and make a statement, doing otherwise would be nothing short of an injustice.

[i] Sean Guillory, *Repression and Gay Rights in Russia*, The Nation, September 26, 2013, <http://www.thenation.com/article/176368/repression-and-gay-rights-russia#>.

[ii] *Id.*

[iii] *Id.*

[iv] Tom Balmforth, *In Russia, Violent Videos Show a Startling New Form of Gay Bullying*, The Atlantic, August 2, 2013, <http://www.theatlantic.com/international/archive/2013/08/in-russia-violent-videos-show-a-startling-new-form-of-gay-bullying/278294/>.

[v] *Repression and Gay Rights in Russia*.

[vi] Colin Stewart, *U.N. rights office rejects anti-gay laws of Russia, Moldova, Erasing 76 Crimes*, August 18, 2013, <http://76crimes.com/2013/08/18/u-n-rights-office-rejects-anti-gay-laws-of-russia-moldava/>

[vii] Anthony Deutsch, *Dutch say Russian gay rights violations may warrant asylum*, Reuters, Nov. 5, 2013, <http://uk.reuters.com/article/2013/11/05/uk-netherlands-russia-gays-idUKBRE9A40LZ20131105>.

[viii] Richard Solash, *Gay Rights Activists Confront Corporations on Sochi Olympic Sponsorship*, RadioFreeEurope, RadioLiberty, September 09, 2013, <http://www.rferl.org/content/olympics-sochi-gay-lgbt-sponsors/25100063.html>.

[ix] *Id.*

[x] Adam Taylor, *How the Olympic Games Changed Barcelona Forever*, Business Insider, July 26, 2012, <http://www.businessinsider.com/how-the-olympic-games-changed-barcelona-forever-2012-7>

[xi] Fran Hawthorne, *The Reasons-and Risks-Behind Corporate Social Responsibility*, Chief Executive, January 14, 2013, <http://chiefexecutive.net/the-reasons%E2%80%94and-risks%E2%80%94behind-corporate-social-responsibility>.

[xii] See Keith Weir, *RPT-Olympics-Russian rights rows put pressure on Sochi Sponsors*, Reuters, October 25, 2013, <http://www.reuters.com/article/2013/10/25/olympics-sponsors-idUSL5N0IF1UT20131025> ; See also, Jessica Elgot, *Gay Rights Activists Target Coca-Cola Over Russia's Sochi Winter Olympics*, The Huffingtonpost UK, October 21, 2013, http://www.huffingtonpost.co.uk/2013/10/21/gay-rights-russia-coca-cola_n_4135214.html; See also *Gay Rights Activists Confront Corporations on Sochi Olympic Sponsorship*

[xiii] *Gay Rights Activists Confront Corporations on Sochi Olympic Sponsorship*
[xiv] *Id.*

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