IRC 7701 - GENERAL DISCUSSION

By
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1. Introduction

Chapter 79 of the Internal Revenue Code is titled "Definitions." Section 7701(a) of this Chapter contains 46 definitions of miscellaneous words and phrases for general use throughout the Code. Additionally, IRC 7701(k) concerns the treatment of certain amounts (including honoria) paid to charity. This article will focus on those definitions that are most applicable to the exempt organizations area. First discussed will be the definitions of various non-political entities: person, corporation, association, trust, partnership and partner. The discussion will then move to certain entities that are political by creation: State, Indian tribal government, and international organizations. Other definitions discussed or mentioned are employee, collectively bargained agreement, and trade or business. Finally, the discussion will address the treatment of certain amounts (including honoria) paid to charity. For easy reference, a complete list of the 46 definitions under IRC 7701(a) follow:

IRC 7701 Definitions

(a)(1) Person
(2) Partnership and Partner
(3) Corporation
(4) Domestic
(5) Foreign
(6) Fiduciary
(7) Stock
(8) Shareholder
(9) United States
(10) State
(11) Secretary of the Treasury and Secretary
(12) Delegate
(13) Commissioner
(14) Taxpayer
(15) Military, naval forces, U.S. Armed Forces
(16) Withholding agent
(17) Husband and wife
(18) International organization
(19) Domestic building and loan association
(20) Employee
(21) Levy
(22) Attorney General
(23) Taxable year
(a)(24) Fiscal year
(25) Paid or incurred, paid or accrued
(26) Trade or business
(27) Tax Court
(28) Other terms
(29) Internal Revenue Code
(30) United States person
(31) Foreign estate or trust
(32) Cooperative bank
(33) Regulated public utility
(34) [Repealed]
(35) Enrolled actuary
(36) Income tax return preparer
(37) Individual retirement plan
(38) Joint return
(39) Persons residing outside U.S.
(40) Indian tribal government
(41) TIN
(42) Substituted basis property
(43) Transferred basis property
(44) Exchanged basis property
(45) Nonrecognition transaction
(46) Determination of whether there is a collective bargaining agreement

2. Person

IRC 7701(a)(1) does not refer to "person" in the usual sense of a living human being. Rather, Reg. 301.7701-1(a) instructs that the term "person" includes an individual, corporation, partnership, trust or estate, joint-stock company, association, syndicate, group, pool, joint venture or other unincorporated organization or group, guardian, committee, trustee, executor, administrator, trustee in bankruptcy, receiver, assignee for the benefit of creditors, conservator, or any person acting in a fiduciary capacity.

3. Organizations and Other Entities

A. Introduction

The Code prescribes certain categories or classes into which various organizations fall for purposes of federal taxation. These categories or classes include: associations (which are taxable as corporations), trusts, and partnerships. The Code and the regulations prescribe the applicable tests or standards for classifying an organization (i.e., determining whether an organization is an association, partnership, or other taxable entity). Thus, a particular organization might be classified as a trust under the law of one State and as a corporation under the law of another State. However, for purposes of the Code, this organization would be uniformly classified as a "trust," an "association" or some other entity, depending upon its nature under the classification standards of the Code. Similarly, the term "partnership" is not limited to the common-law meaning of partnership, but is broader in its scope and includes groups not commonly called partnerships. Accordingly, the key to categorizing organizations lies in two principles: (1) it is the Code rather than local law that establishes the tests or standards, which will be applied in determining the organization's classification; and (2) local law governs in determining whether the legal relationships, which have been established in the formation of an organization, are such that the standards are met. This key will work with even the most novel entities. For example, under Rev. Rul. 88-76, 1988-2 C.B. 360, an unincorporated organization operating under the Wyoming Limited Liability Company Act is classified as a partnership for federal tax purposes. On the other hand, corporations are rarely reclassified.

B. Corporations

IRC 7701(a)(3) provides that the term "corporation" includes associations, joint-stock companies and insurance companies. In general, the Code treats each corporation as an independent taxpaying entity, unaffected by the personal characteristics of its shareholders or changes in their composition as a result of transfers of stock from old shareholders to new ones. A domestic corporation must ordinarily pay the corporate income tax even though its stock is owned entirely by a tax-exempt organization. Similarly, a corporation's taxable year is not terminated by the fact that some or even all of its stock changes hands.

Usually, corporations are created under corporate statutes of a particular state and this ends the matter for the Service. The Service will rarely interfere with the state's determination that an entity is a corporation and that the entity is taxable as a separate entity. For example, a parent corporation and its corporate subsidiary are recognized as separate taxable entities so long as the purposes for which the subsidiary is incorporated are the equivalent of business activities or the subsidiary subsequently carries on business activities. Moline Properties, Inc. v. Commissioner, 319 U.S. 436, 438 (1943); Britt v. United States, 431 F.2d 227, 234 (5th Cir. 1970). That is, where a corporation is organized with the bona fide intention that it will have some real and substantial business function, its existence may not generally be disregarded for tax purposes. Britt, supra. To disregard the corporate entity requires a finding that the corporation or transaction involved a sham or fraud without any valid business purpose, or a finding of a true agency or trust relationship between the entities. G.C.M. 39326 (January 17, 1985); G.C.M. 35719 (March 11, 1974).

Less often, a corporation may be found to exist, even though the state's secretary of state has not recognized such corporation. Two such non-statutory corporations are: de jure corporations and de facto corporations.

A de jure corporation exists where there has been full compliance, by the incorporators, with the requirements of an existing law permitting the organization of such corporation, but the entity is not a "statutory" corporation because the state has failed to recognize the entity as a corporation. A de facto corporation is a corporation existing under color of law and in pursuance of an effort made in good faith to organize a corporation under the statute. The following two examples may help clarify the difference. If the incorporators "crossed all the T's and dotted all the I's," but the filing clerk lost the file, then that organization might qualify as a de jure corporation. If the incorporators failed to sign one of the filing documents, then that organization would probably not qualify as a de jure corporation, but it might qualify as a de facto corporation. Not all states recognize either de jure corporations or de facto corporations.

A type of unusual corporation that the Exempt Organizations specialist may encounter from time to time is the "corporation sole." A corporation sole is a type of corporation that is controlled by only one person in a designated position whose successor automatically takes over on that person's death or resignation. The purpose of the corporation sole is to give some legal capacities and advantages, particularly that of perpetuity, to people in certain positions which natural persons could not have. The corporation is limited in the main today to bishops and heads of dioceses.

In any event, if the corporate law of the State will recognize the corporation, the Service will rarely pierce the corporate veil, i.e., look beyond the corporate shell. There are some statutory exceptions to this principle. In the exempt organizations area, some examples are found in chapter 42 (private foundation excise taxes). Thus, under IRC 4946(a)(1)(C)(i), the term "disqualified person" includes the owner of more than 20 percent of the total voting power of a corporation that is a substantial contributor to a private foundation. This is an attribution rule and attribution rules are, inter alia, rules that look beyond the corporate shell.

The Exempt Organizations specialist will sometimes be faced with an exempt corporation whose corporate charter has lapsed or been revoked by the state because the corporation has failed to pay the state corporate franchise tax. The question arises, is such entity an exempt organization for that year? We believe the answer is that a lapsed corporate charter will rarely have any adverse effect on the exempt status of an entity. If an entity is neither a statutory corporation, nor a de facto or de jure corporation, then consideration should be given to whether it is an association, which is treated as a corporation for federal tax purposes. Reg. 301.7701-2(a)(1). In almost all cases the lapsed charitable corporation will have directors or others associated to conduct its charitable activities and will otherwise meet the major characteristics of associations discussed below.

C. Associations

The term "association" refers to an organization whose characteristics require it to be classified for purposes of taxation as a corporation rather than as another type of organization such as a partnership or trust. There are a number of major characteristics ordinarily found in a pure corporation which, taken together, distinguish it from other business entities. These are: (i) associates, (ii) an objective to carry on business and divide the gains therefrom, (iii) continuity of life, (iv) centralization of management, (v) liability for corporate debts limited to corporate property, and (vi) free transferability of interests. The presence or absence of these

characteristics will depend on the facts in each individual case. A fortiori, the effect on classification, of the presence or absence of any of these characteristics, will vary with the facts and circumstances of each case. An organization will be treated as an association if the organization's characteristics are such that the organization more nearly resembles a corporation than a partnership or trust. Reg. 301.7701-2(a)(3). An unincorporated organization will more nearly resemble a corporation if, and only if, such organization has more corporate characteristics than noncorporate characteristics.

1. Associates.

2. Objective to carry on business and divide the gains therefrom. Reg. 301.7701-2(a)(2) explains that these two characteristics are essential to finding an association:

> (2) Since associates and an objective to carry on business for joint profit are essential characteristics of all organizations engaged in business for profit (other than the so-called one-man corporation and the sole proprietorship), the absence of either of these essential characteristics will cause an arrangement among co-owners of property for the development of such property for the separate profit of each not to be classified as an association. Some of the major characteristics of a corporation are common to trusts and corporations, and others are common to partnerships and corporations. Characteristics common to trusts and corporations are not material in attempting to distinguish between a trust and an association, and characteristics common to partnerships and corporations are not material in attempting to distinguish between an association and a partnership. For example, since centralization of management, continuity of life, free transferability of interests, and limited liability are generally common to trusts and corporations, the determination of whether a trust which has such characteristics is to be treated for tax purposes as a trust or as an association depends on whether there are associates and an objective to carry on business and divide the gains therefrom. On the other hand, since associates and an objective to carry on business and divide the gains therefrom are generally common to both corporations and partnerships, the determination of whether an organization which has such characteristics is to be treated for tax purposes as a partnership or as an association depends on whether there exists centralization of management, continuity of life, free transferability of interests, and limited liability.

3. Continuity of life. An organization has continuity of life if the death, insanity, bankruptcy, retirement, resignation, or expulsion of any associate will not cause a dissolution of the entity or organization. Reg. 301.7701-2(b)(1). This is true even if the agreement establishing the organization provides that the organization is to continue for a stated time, say five months or five years. Reg. 301.7701-2(b)(3).

Thus, "stated time" means a definite period of time, e.g., four years or ten years, or an indefinite period of time, e.g., the duration of a particular project.

On the other hand, if the death, etc. of any associate will cause a dissolution of the organization, then continuity of life does not exist. Dissolution of an organization means an alteration of the identity of an organization by reason of a change in the relationship between its associates. Whether there has been an alteration of the identity of the organization is determined under local law.

4. Centralization of management. An organization has centralized management if any person (or group of persons that does not include all the associates) has continuing exclusive authority to make the management decisions necessary to the conduct of the organization's business. Thus, the persons who are vested with such management authority resemble, in powers and actions, the directors of a statutory corporation. The persons who have such authority may, or may not, be members of the organization. Such persons may hold office as a result of a selection of the membership, or may be self-perpetuating in office. It is important to note that there can be no centralized management, i.e., a concentration of continuing exclusive authority to make independent business decisions, if the other associates have the power to ratify decisions. Additionally, there is no centralization of continuing exclusive authority to make management decisions, unless the managers have sole authority to make such decisions.

Because of the mutuality of agency in a general partnership, there is no centralization of management in general partnerships. There may be centralized management in a limited partnership if substantially all the interests in the partnership are owned by the limited partners. Reg. 301.7701-2(c)(4).

5. Limited liability. An organization has the corporate characteristic of limited liability if under local law there is no member who is personally liable for the debts or claims against the organization. Personal liability means that a creditor of an organization may seek personal satisfaction from a member of the organization to the extent that the assets of such organization are insufficient to satisfy the creditor's claims. Reg. 301.7701-2(d)(1).

Organizational documents and financial arrangements must be carefully reviewed to determine the absence or existence of limited liability. Consider the following. For the purposes of IRC 7701(a)(3), in the case of an entity formed as a limited partnership, personal liability does not exist with respect to a general partner if: (a) that general partner has no substantial assets (other than his interest in the

partnership) that could be reached by a creditor of the entity and (b) that general partner is merely a "dummy" acting as the agent of the limited partners. Similarly, and notwithstanding the formation of the entity as a limited partnership, when the limited partners act as the principals of such general partner, personal liability will exist with respect to such limited partners. Reg. 301.7701-2(d)(2).

6. Free transferability of interests. An organization has the corporate characteristic of free transferability of interests if each of its associates or those associates owning substantially all of the interests in the organization have the power, without the consent of other members, to substitute for themselves in the same organization a person who is not a member of the organization. In order for this power of substitution to exist in the corporate sense, the member must be able, without the consent of other members, to confer upon his substitute all the attributes of his interest in the organization. Thus, the characteristic of free transferability of interests does not exist in a case in which each member can, without the consent of other members, assign only his right to share in profits but cannot so assign his rights to participate in the management of the organization. Furthermore, although the agreement provides for the transfer of a member's interest, there is no power of substitution and no free transferability of interest if under local law a transfer of a member's interest results in the dissolution of the old organization and the formation of a new organization.

D. Trust

A working definition of "trust" is provided in Reg. 301.7701-4. The term "trust" as used in the Code refers to an arrangement created either by a will or by an inter vivos declaration whereby trustees take title to property for the purpose of protecting or conserving it for the beneficiaries under the ordinary rules applied in chancery or probate courts.

Generally speaking, an arrangement will be treated as a trust under the Code if it can be shown that the purpose of the arrangement is to vest, in trustees, responsibility for the protection and conservation of property for beneficiaries who cannot share in the discharge of this responsibility and, therefore, are not associates in the joint enterprise of the conduct of business for profit.

Usually, the beneficiaries of such a trust do no more than accept the benefits thereof and are not the voluntary planners or creators of the trust arrangement. However, beneficiaries of such a trust may be the persons who create it. In this case, the trust will be recognized as a trust under the Code, if it was created for the purpose

of protecting or conserving the trust property for bona fide beneficiaries. Here, a bona fide beneficiary is a creating beneficiary who stands in the same relation to the trust as if the trust had been created by others.

E. Partnership and Partner

Reg. 301.7701-3 provides that the term "partnership" is broader in scope than the common law meaning of partnership and may include groups not commonly called partnerships. Such groups include a syndicate, group, pool, joint venture, or other unincorporated organization, but only if the group is not otherwise classifiable as a trust or corporation.

However, the Regulations go on to indicate that a joint undertaking merely to share expenses is not a partnership. For example, tenants in common, are only considered to be partners if they actively carry on a trade, business, financial operation, or venture and divide the profits thereof. Thus, a partnership exists if co-owners of an apartment building lease space and in addition provide services to the occupants either directly or through an agent. However, if tenants in common of farm property lease it to a farmer for a cash rental or a share of the crops, they do not necessarily create a partnership. Reg. 301.7701-3(a).

Under Reg. 301.7701-3(d), the term "partner" includes a member of a syndicate, group, pool, joint venture, or any organization that has been determined to be a partnership.

A limited partnership is a creature of State law. Nonetheless, a limited partnership may be classified for purposes of the Code as an ordinary partnership or as an association. A limited partnership will be treated as an association if, applying the principles set forth in Reg. 301.7701-2[which contains the regulatory codification of Morrisey v. Commissioner, 296 U.S. 344 (1935)], the organization more nearly resembles an association.

4. Certain Other Organizations

A. State

IRC 7701(a)(10) explicitly provides that the term "State" shall be construed to include the District of Columbia, where such construction is necessary to carry out the provisions of the Code.

B. Indian Tribal Government

IRC 7701(a)(40) was promulgated in 1982 to address a gap in the common law of the term "political subdivision." Before 1982, Indian tribes held a unique legal status in the tax law because of their unique semi-sovereign status. Under the common law, an Indian tribe is neither a state nor a political subdivision. See G.C.M. 34972 (August 2, 1972). And, it was the Service's position that Indian tribes were not taxable entities. Rev. Rul. 67-284, 1967-2 C.B. 55. Accordingly, Indian tribes were not subject to the Code. Id. Congress stepped in to narrow the gap, and thereby give Indian tribes some of the benefits of the Code.

IRC 7871 states that an Indian tribal government shall be treated as a State for the limited purposes of determining whether and in what amount any contribution or transfer to or for the use of such government (or its political subdivision) is deductible. See Rev. Proc. 83-87, 1983-2 C.B. 606 (lists Indian tribal governments that are to be treated similarly to states); see also Rev. Proc. 84-37, 1984-1 C.B. 513 (provides guidance on the manner for requesting an IRC 7871(a) or 7871(d) determination; see discussion below concerning IRC 7871(d). The purpose for which qualifying Indian entities are treated as states or political subdivisions include: deductibility from federal income tax for charitable contributions (IRC 170); exemption from the special fuels tax (Chapter 31), manufacturers' excise taxes (Chapter 32), communications excise tax (Subchapter B of Chapter 33), and highway use tax (Subchapter D of Chapter 36); IRC 511(a)(2)(B), which relates to colleges and universities which are agencies or instrumentalities of governments or their political subdivisions; public schools employees' ability to participate in tax-sheltered annuity plans (IRC 403(b)); and treatment of discount obligations (IRC 454(b)(2)). Subject to certain restrictions, interest on Indian tribal government obligations may be excluded from income by the recipient (IRC 103). See generally Reg. 305.7871-1 (which provides the situations under which an Indian tribal government will be treated as a State for certain purposes of the Code).

"Indian tribal government" is defined under IRC 7701(a)(40), as amended, to mean the governing body of any tribe, band, community, village or group of Indians, or (if applicable) Alaska natives that is determined by the Secretary of the Treasury, after consultation with the Secretary of the Interior, to exercise governmental functions. IRC 7871(d) states that, for purposes of IRC 7871(a), a subdivision of an Indian tribal government shall be treated as a political subdivision of a state if (and only if) the Secretary of the Treasury determines (after consultation with the Secretary of the Interior) that such subdivision has been delegated the right to exercise one or more of the essential governmental functions of the Indian tribal

government. See Rev. Proc. 84-37, supra; see also Rev. Proc. 84-36, 1984-1 C.B. 510 (lists subdivisions of Indian tribal governments that are to be treated as political subdivisions). Once the Indian tribal government has obtained such determination, the Indian tribal government may get certain favorable excise and income tax treatment. Such treatment will apply exclusively to those transactions involving the exercise of an essential governmental function of the Indian tribal government. See IRC 7871(b) and 7871(c).

An essential governmental function for the purposes of IRC 7871 is a function that is (1) eligible for funding under 25 U.S.C. 13 (concerning expenditures for certain purposes including: industrial assistance, education, police and judicial systems, etc.) and the regulations thereunder; (2) eligible for grants or contracts under 25 U.S.C. 450(f), (g), and (h) (concerning certain federal grants to Indian tribes) and the regulations thereunder; or (3) an essential governmental function under IRC 115 (which provides that gross income does not include income derived from the exercise of any essential governmental function) when the underlying activity is conducted by a State or political subdivision. Reg. 305.7871-1(d).

Also, it is in this context that we determine whether a particular entity is an instrumentality. Whether an entity is an "instrumentality" of the Indian tribal government is determined based on the following factors: (1) whether the entity is used for a governmental purpose and performs a governmental function; (2) whether it performs its function on behalf of one or more Indian tribal governments or entities determined by the Secretary to be political subdivisions; (3) whether private interests are involved, or whether States or political subdivision have the powers and interests of an owner; (4) whether control and supervision of the organization is vested in public authority or authorities; (5) whether express or implied statutory or other authority is needed to create and/or use the entity; and (6) the degree of the organization's financial autonomy and the source of its operating expenses. Rev. Rul. 57-128, 1957-1 C.B. 311; see also 1990 CPE 88, 92-93.

Temporary Reg. 305.7701-1(a) provides:

> (a) [] Designation of a governing body as an Indian tribal government will be by revenue procedure. If a governing body is not currently designated by the applicable revenue procedure as an Indian tribal government, and such governing body believes that it qualifies for such designation, the governing body may apply for a ruling from the Internal Revenue Service. In order to qualify as an Indian tribal government, for purposes of section 7701(a)(40) and this section, such governing body must receive a favorable ruling from the Internal Revenue Service. The request for a ruling shall be made in accordance with all applicable procedural rules set forth in the Statement of

Procedural Rules (26 CFR Part 601) and any applicable revenue procedures relating to the submission of ruling requests. The request shall be submitted to the Internal Revenue Service, Associate Chief Counsel (Technical), Attention: CC:IND:S, Room 6545, 1111 Constitution Avenue, N.W., Washington, D.C. 20224.

This temporary regulation is also proposed as a final regulation effective after December 31, 1982; however, as of June 1991, there is little prospect that this regulation will be finalized in the near future.

C. International Organization

IRC 7701(a)(18) provides that the term "international organization" means a public international organization entitled to enjoy privileges, exemptions, and immunities as an international organization under the International Organizations Immunities Act (22 U.S.C. 288-288f). 22 U.S.C. 288 states that an international organization is a public international organization in which the United States participates pursuant to any treaty or under the authority of any act of Congress authorizing such participation or making an appropriation for such participation, and which shall have been designated by the President through an appropriate executive order as being entitled to enjoy the privileges, exemptions, and immunities of the Act. The President may withhold such status. Additionally, the President is authorized to revoke the designation of any international organization in question, and such organization shall cease to be classed as an international organization. International organizations include, but are not limited to, the Asian Development Bank, Exec. Order No. 11,334 (1983), and the Inter-American Statistical Institute, Exec. Order No. 9751 (1946).

5. Employee

IRC 7701(a)(20) provides that for the purpose of applying the provisions of IRC 79, 101(b), 104, 105, 106, 125, and certain provisions of Subchapter D of Subtitle A, the term "employee" shall include a full-time life insurance salesman who is considered an employee for the purpose of chapter 21 (concerning employment taxes). See 1992 CPE (Employment Taxes) for more on "employees."

6. Collectively Bargained Agreement

IRC 7701(a)(46) provides that in determining whether there is a collective bargaining agreement between employee representatives and one or more employers, the term "employee representatives" shall not include any organization more than

one-half of the members of which are employees who are owners, officers, or executives of the employer. An agreement shall not be treated as a collective bargaining agreement unless it is a bona fide agreement between employee representatives and one or more employers.

IRC 7701(a)(46) became necessary because some so-called "collectively bargained agreements" were in fact composed of owners, officers and executives. This practice was popular because many of the restrictive requirements and rules applicable to welfare benefit plans are less restrictive for plans maintained pursuant to a collective bargaining agreement. 29 U.S.C. 158 provides some insight into the meaning of "collectively bargained agreement." To bargain collectively is the performance of the mutual obligation of the employer and the representative of the employees to meet at reasonable times and confer in good faith with respect to wages, hours, and other terms and conditions of employment. 29 U.S.C. 158 (Law. Co-op. 1988 & Supp. 1990) (see interpretive cases collected therein).

It should be noted that even if

(1) the Secretary of Labor finds the plan is maintained pursuant to a collective bargaining agreement between employee representatives and one or more employers;

(2) the union has been recognized as exempt under IRC 501(c)(5); and

(3) the percentage condition in IRC 7701(a)(46) is satisfied,

the Service has the authority, pursuant to IRC 7701(a)(46), to determine whether there is a collective bargaining agreement under the Code. See Reg. 301.7701-17T Q & A-2(c).

7. Trade or Business

IRC 7701(a)(26) provides that the term "trade or business" includes the performance of the functions of a public office. The IRC 162 deduction provision is the most well known Code provision that uses the term "trade or business." Accordingly, although the phrase is defined in neither IRC 7701(a)(26) nor IRC 162, there is a tremendous amount of case law on the term "trade or business" under IRC 162. Generally, the interpretation of the phrase is the same, whether the use of the term is for IRC 162, 511-514, or 7701(a)(26) purposes.

The Supreme Court suggests that the standard test for the existence of a trade or business for purposes of IRC 162 and IRC 511-514 is whether the activity "was entered into with the dominant hope and intent of realizing a profit." Commissioner v. American Bar Endowment, 477 U.S. 105, 110 n. 1 (1986) (citations omitted). Of course, the phrase "trade or business" connotes something more than an active course of activity engaged in for profit. Indeed, IRC 165(c) distinguishes between a "trade or business" on the one hand and a "transaction entered into for profit" on the other. The trade or business must refer not merely to acts engaged in for profit, but also extensive activity over a substantial period of time during which the taxpayer holds himself out as selling goods or services.

8. Congressional and Senatorial Honoraria

IRC 7701(k) provides that certain payments shall be excludable from federal, state and local taxes. IRC 7701(k) applies in the case of any payment (including honoraria) which, except for the Ethics in Government Act of 1978, might be made to any Congressperson, certain federal officers and employees, or any Delegate or Resident Commissioner to the Federal Government, but which is instead made on behalf of such persons to an organization described in IRC 170(c).

Interestingly, IRC 7701(k) is presently inapplicable to Senators, and most officers and employees of the Senate. See IRC 7701(k) (flush language). However, as this CPE article went to press, the Senate voted to increase senatorial pay and proscribe senatorial honoraria. Such a change in the senatorial compensation package may call for a clarifying amendment to IRC 7701(k).