

Winter  
2018

## The Star Spangled Banner: A Lightning Rod for Orchestras

By John Michael Smith, ROPA President

The past couple of years have brought issues for many orchestra musicians regarding the performance of the Star Spangled Banner (SSB). The performance of the SSB is a common occurrence for many orchestras at the first concert of a new season, or for school concerts. However, when captured at sporting events for live broadcast, or live or on-demand streaming on internet sites, questions arise concerning compensation of orchestra musicians under AFM national, regional, or local



media agreements; either through the symphonic Integrated Media Agreement (IMA), or a commercial AFM media agreement. Some managers of orchestras that are signatory to the IMA claim these events are "promotional" for the orchestra and that they are not obligated to compensate the musicians. Even more recently there has been the issue of using the playing of the SSB by orchestra musicians as a vehicle of protest of what is wrong in our country and society.

The AFM IMA Negotiating Committee, on which I serve, has had much discussion about the SSB in preparation for negotiating a new IMA. The AFM filed a grievance in June of 2015 against the Kansas City Symphony (KCS) and the Employers Electronic Media Association (EMA), alleging that the KCS had allowed Fox Sports KC cable network and Major League Baseball to broadcast and stream the performance of the KCS musicians playing the SSB at the



ROPA President  
John Michael Smith

Kansas City Royals opening day baseball game in 2015, without paying the Musicians the compensation required by the appropriate AFM commercial media agreement. The performance was broadcast on the Fox regional TV network, and was also streamed on Major League Baseball's website, where the performance is still available for on-demand

streaming. The AFM's position was that the IMA, an agreement created for symphonic programming, did not apply to the capture and use of this material. The AFM believed this performance fell under a non-symphonic commercial media agreement, as part of a sporting event. The EMA and KCS's position was that it was covered under the promotional use provisions of the IMA, because it was promotional in nature. The opinion of the arbitrator was that the Employers' argument was slightly more persuasive in this case, and in the arbitrator's view there was no violation of the IMA. The grievance was denied in April 2017. The arbitrator was very careful to state that his decision pertained only to the specific facts of that case and that his decision could not be viewed as controlling the outcome of any other case.

The performance of the SSB as an opportunity to protest national and social concerns, including racial and gender equality, the President of the United States, and the divisive policies of the current US govern-

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- The list is open to musicians in ROPA member orchestras and AFM local officers for those

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ment is another current issue. This has been largely driven by SSB protests at National Football League games and other sporting events. There is a long history of using the playing of the SSB as a time to show protest; this is nothing new. Refusing to stand, locking arms, raising a fist, or turning away from the flag have all been used as signs of protest in the past. Protest has occurred many times during the playing of the SSB at sporting events, which are probably the most frequent and familiar times that the SSB is performed and viewed.

Some orchestra musicians have begun using the performance of the SSB at season-opening concerts and school concerts as a time to make a statement of their dissatisfaction with current political or social affairs. Their actions have included choosing not to perform the SSB at all, or individual musicians not playing, standing, or not taking the stage. This action can lead to adverse results for those participating, as highlighted in the recent statement by SSD Director and AFM Special Counsel Rochelle Skolnick and IC-SOM Counsel Kevin Case, which was sent out to ROPA delegates and the ROPA-discussion email group. Such political protest "speech" is generally not protected in

the workplace. The First Amendment prohibits only the government, not private employers, from restricting the exercise of free "speech". It is possible for a musician to be disciplined for engaging in a protest for "just cause". In a grievance procedure an arbitrator, using the facts at hand, might find just cause for some amount of discipline of a musician who engaged in a demonstrative protest during the performance of the SSB.

The SSB is performed most often by orchestras at the start of the season, our sports games, and many governmental events. Whether it is played for fair compensation when performed live, broadcast, or streamed; or as a promotion for the orchestra, its performance is a reminder that we are free to gather, and enjoy the many freedoms we have. The essence of the text of the SSB is that the flag has continued to fly in the struggle for freedom, and at great sacrifice. That freedom we enjoy extends to political and/or social protest and dissention, and some have used the performance of the SSB as a vehicle for this action. Orchestra musicians need to be aware that their rights to protest and dissent may not be protected in their workplace during their performance of the SSB with their orchestras.

## Toledo Symphony Receives Anonymous \$1 million gift

*Reprinted with permission from the Toledo Blade*

An anonymous donor has pledged \$1 million to the Toledo Symphony.

The symphony learned of the gift, which will be broken into two payments of \$500,000 over the next two years, on Giving Tuesday this week. It's one of the largest donations ever made to the symphony.

The first payment will go to the operating budget, while the second will be a dollar-for-dollar matching grant for the orchestra's 75th anniversary season.

"We've learned that this community really values creativity, imagination, and curiosity. This incredible gift embodies that spirit and will allow the orchestra to expand our place in Toledo's creative fabric," President and CEO Zak Vassar said in a statement. "It helps to build our momentum as we kick off our Diamond Anniversary celebrations."

The Toledo Symphony also received more than \$35,000 in other donations on Giving Tuesday, the Tuesday after Thanksgiving that is informally used as a day to give to charitable organizations.

## Symphonic Services Division Message Regarding National Anthem Protest

by Rochelle Skolnick, Director, Symphonic Services and  
Kevin Case, ICSOM General Counsel

There has been heavy news coverage of the National Football League players' protests during performances of the Star-Spangled Banner. It is conceivable that at least some orchestral musicians are considering a similar form of protest when their orchestras perform the SSB. As legal advisors to the AFM and ICSOM, we believe it would be helpful to provide a brief overview of the legal framework involved.

Thus far, to our knowledge, no NFL players have been disciplined for their protests during the playing of the SSB (despite strident urging from some quarters). Because of that, it is tempting to believe that such a form of protest — e.g., sitting during the anthem, not playing, kneeling, etc. — is protected activity that cannot subject the protester to discipline in the workplace. Please be aware that is not the case.

Such political protest speech is generally not protected in the workplace. It is important to remember that the First Amendment prohibits only the government — not private employers — from restricting the exercise of free speech. Similarly, the primary protection of employee speech in the workplace, Section 7 of the National Labor Relations Act, has its limits. Although it generally protects employees from discipline for ex-

pressing opinions about the workplace, the courts and the NLRB have consistently ruled that purely “political” speech, unconnected to workplace issues, does not fall within the protections of Section 7.

Of course, it is widely accepted that in the collective bargaining context there must be “just cause” for any form of discipline. In the event a musician was disciplined for engaging in such a protest and that discipline was grieved, an arbitrator would be the final authority as to the existence of just cause. Arbitrators typically apply a multi-factor test, the outcome of which is heavily dependent on the particular facts. It is possible that an arbitrator would find just cause for some degree of discipline for a musician who engaged in a demonstrative protest during the SSB.

We express no opinion as to whether protesting the SSB is a good or bad idea. That is a choice every individual must make. But please be aware that in the workplace, such a protest could have serious consequences — even if the NFL players have not yet faced them. If you or your colleagues are considering such a protest, we urge you to be in touch with your local union and local counsel. As always, SSD, ICSOM and ROPA stand ready to provide assistance as well.

## SAVE THE DATE: 2018 ROPA Conference

**Tuesday, July 31st – Thursday, Aug. 2nd**

**Negotiating Orchestras Workshop: Monday, July 30th**

University Place Hotel and Conference Center, Portland State University, Portland, Oregon



Mount Hood overlooking downtown Portland. Photo credit: Wikimedia Commons

## The New Tax Act and Its Impact on Musicians

by Scott Stratton, Finance for Musicians Blog

While there have been many last minute changes to the Tax Cuts and Jobs Act (TCJA), I am sad to report that all of concerns which I had for my clients (and myself) have made it into the final version signed by President Trump. The Act applies to your 2018 tax year, so your 2017 tax return (due April 15, 2018) is still under the old rules. Here is an overview of significant changes which will be relevant to musicians as you prepare your taxes.

The final version keeps our current seven bracket structure, but lowers marginal tax rates by 1-4 percent. The current brackets of 10, 15, 25, 28, 33, 35 and 39.6 percent will become 10, 12, 22, 24, 32, 35 and 37 percent. Some taxpayers currently in the 28% bracket will now be in the 32% bracket, and some in 33% rate will be shifted up to the 35% bracket. The income brackets will be linked to inflation, but the IRS will use chained CPI, which will likely have a lower growth rate than the current method of calculating CPI. Most significantly, the lower tax brackets have a sunset after 2025 at which time, the higher rates return. (Note that the corporate tax reduction from 35% to 21%, and the elimination of the Corporate Alternative Minimum Tax, is permanent. That will have to be a conversation for another day!)

The Standard Deduction will increase from \$6,350 single (\$12,700 married) to \$12,000 single (\$24,000 married). However, the personal exemption of \$4,050 is eliminated. So the net change is only from \$10,400 to \$12,000 single, or \$20,800 to \$24,000 for a married couple. Additionally, since the personal exemption applies to dependents, a family of four would actually see their standard deduction and personal exemptions drop from \$28,900 to \$24,000. Offsetting this is the child tax credit, which will increase from \$1,000 to \$2,000. The eligibility for the child tax credit will increase from \$75,000 (single) and \$110,000 (married) to \$200,000 (single) and \$400,000 (married). \$1,400 of the credit is refundable, meaning it can reduce your tax liability to less than zero.

With a higher standard deduction, it will be more difficult for musicians to have enough itemized deductions to claim a tax deduction. As a reminder, itemized deductions currently include state and local income, sales, and property taxes, mortgage interest, charitable donations, and miscellaneous itemized deductions such as unreimbursed employee expenses.

The TCJA caps the tax deduction for state and local taxes, including income, sales, and property taxes, to \$10,000. It is \$10,000 for single and married taxpayers; married couples do not get two deductions (i.e. \$20,000). Starting in 2018, you will no longer be able to deduct home equity loans, if you have one.

The Category of Miscellaneous Itemized Deductions is eliminated. This category includes unreimbursed employee expenses which are very significant to many musicians who are paid as W-2 employees. You will no longer be able to claim: tools and supplies, including instruments, required concert clothing, home office expenses, mileage and travel, union dues or professional organization dues. You also will not be able to deduct tax preparation fees or investment advisory fees.

There are many other changes to Alternative Minimum Tax, the Estate Tax, the individual mandate of the ACA, pass-through entities, and allowing 529 Plans to pay for private and religious schools for K-12. We're aware of these changes and others and are happy to discuss those on an individual basis.

While I cannot provide personal tax advice to non-clients, I can make some general recommendations you may want to consider for your own tax situation. If you currently itemize, you may want to accelerate as many of your deductions into 2017. Before December 31, consider:

Paying your property taxes. Next year, you will be capped to \$10,000. But even if you are below \$10,000, only your itemized deductions above \$24,000 will net you any additional tax sav-

Do you have news about your orchestra?  
An article to submit? A letter to the editor?  
We'd love to have you contribute to  
*The Leading Tone!*

Submit articles to Sharon Jones at  
bellsauf@earthlink.net

The deadline for the next issue of the *Leading Tone* is  
March 1st.

*The Leading Tone* is the official voice of ROPA and reflects ROPA policy. However, we do appreciate and encourage the contribution of articles and letters by others. These submissions may cover topics on which ROPA has no official position; the opinions expressed therein are solely those of the author(s) and not necessarily of ROPA, its officers or members.



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ings versus the standard deduction. Will you have more than \$24,000 in itemized deductions in 2018? It will be more difficult under the new rules.

If you have unreimbursed employee expenses, you might want to make those purchases in 2017: concert clothes, sheet music, tools and supplies, or musical instruments. Buy your plane tickets now for 2018 travel. Pay your dues and subscriptions. Remember that to count as a 2017 expense, you just have to put these on a credit card by December 31.

Making your charitable donations. If you are over age 70 1/2, you really have to look into doing a [Qualified Charitable Donation](#) from your IRA rather than trying to deduct a charitable donation.

Reviewing your sources of 1099 / Schedule C income. If you

have both W-2 and 1099 income, you will want to tie your expenses to your Schedule C business expenses instead of Schedule A itemized deductions starting in 2018. If you are primarily W-2, having some 1099 gigs may allow you to claim expenses which will otherwise be lost.

As a musician and the spouse of a musician, I have spent hundreds of hours in keeping receipts and detailed records of expenses which will no longer be tax deductible for us. It's frustrating, and I believe our taxes will be higher in 2018 as a result. Being a musician is already a challenging way to make a living and this change will complicate things further for many of us.

*Scott Stratton, CFP® , CFA is the founder of Good Life Wealth Management and the publisher of FinanceForMusicians.com. He is also the principal trombone of the Las Colinas Symphony and a member of Local 72-147 (Dallas/Fort Worth).*

**Welcome New ROPA Orchestra!**

**Marin Symphony  
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### **Labor Notes Conference To be Held in Chicago**

The annual Labor Notes Conference will be held Friday, April 6th – Sunday, April 8th in Chicago at the Hyatt Regency O'Hare Hotel. ROPA has offered scholarships for members of ROPA Orchestras to attend through the Lew Waldeck Fund. Registration is \$150 (early bird registration by February 23 is \$105) and hotel is \$135 a night. If you are interested in applying for a scholarship, please contact ROPA President Mike Smith.  
<http://labornotes.org/2018#register>



Regional Orchestra Players' Association



A conference of the American Federation of Musicians, AFL-CIO

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