

## THE TAXABLE FUTURE OF COLLEGE SPORTS

*John T. Holden & Kathryn Kisska-Schulze*

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# THE TAXABLE FUTURE OF COLLEGE SPORTS

John T. Holden\* & Kathryn Kiska-Schulze\*\*

*College sports are changing. Historically, the National Collegiate Athletic Association (NCAA) exercised a strong arm to prohibit college athletes from receiving any form of compensation beyond scholarships and room and board. Today, a power shift is occurring across the entire college sports arena. Gone are the days of college athlete earnings prohibitions; the NCAA is losing strength and influence, while the athletes themselves are taking to the courtroom to break down century-long restraints on trade. Since 2021, name, image, and likeness (NIL) compensation has become the new norm, revenue-sharing between institutions and their athletes is coming, conferences are expanding to further capitalize on increased broadcast revenue, and the Third Circuit Court of Appeals set the stage for college athletes to one day be deemed employees of their institutions under select labor laws.*

*Amidst this rapidly evolving, billion-dollar industry, questions have emerged about the potential tax consequences resulting from such changes. Historically, the greater college sports arena largely enjoyed significant shielding from the bounds of taxation. However, as college sports enters a new era that is inherently different and distinct from the NCAA's archaic ideology of pure amateurism, tax questions relating to the classification of college athletes as employees versus independent contractors, differing earnings models tied to revenue sharing versus NIL opportunities, and the financial impact of college athletic conference expansion are surfacing. The purpose of this Article is to take a deep dive into the impending tax considerations that could impact the future of college sports.*

## INTRODUCTION

College sports is a billion-dollar enterprise. The NCAA, a nonprofit entity, enjoys revenue of more than one billion dollars annually.<sup>1</sup> The Southeastern Conference (SEC) and Big Ten currently stand as the two highest net-worth collegiate conferences at \$13.3 billion and \$13.2 billion, respectively.<sup>2</sup> In spring 2024, ESPN and the College Football Playoff (CFP) entered into a \$7.8 billion broadcasting contract through the 2031 season, paying the CFP and

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1. See Darren Rovell, *NCAA Tops \$1 Billion in Revenue During 2016-17 School Year*, ESPN (Mar. 7, 2018, at 13:58 ET), [https://www.espn.com/college-sports/story/\\_/id/22678988/ncaa-tops-1-billion-revenue-first](https://www.espn.com/college-sports/story/_/id/22678988/ncaa-tops-1-billion-revenue-first) [<https://perma.cc/Y9T4-SY5N>]. While the NCAA first generated \$1 billion in revenue in 2016, by 2019 college sports broadly generated \$15.8 billion in revenues. See BCSGuestWriter, *The Multibillion-Dollar Industry: Unveiling the Business of College Sports*, BUS. OF COLL. SPORTS (Oct. 27, 2023), <https://businessofcollegesports.com/other/the-multibillion-dollar-industry-unveiling-the-business-of-college-sports/> [<https://perma.cc/A2H4-UC63>].

2. Michael Ozanian, *What the Top 75 College Sports Programs Are Worth*, CNBC (Jan. 6, 2025, at 08:24 ET), <https://www.cnbc.com/2024/12/19/college-sports-programs-valuations.html> [<https://perma.cc/7L8D-BMML>].

participating conferences \$1.3 billion annually.<sup>3</sup> Forty-nine college athletic programs individually generate revenue of more than \$100 million each year, with the five highest-profit programs generating over \$200 million annually.<sup>4</sup> Such extraordinary revenues helped bolster the arms race in college coaching and administrator salaries,<sup>5</sup> resulting in eight football coaches earning at least \$10 million annually,<sup>6</sup> six men's basketball coaches earning \$5 million or more,<sup>7</sup> and ten athletic directors earning at least \$1.5 million annually.<sup>8</sup> Until recently, however, college athletes were seemingly the sole working group prohibited from partaking in the financial benefits of this industry because of the NCAA's strict adherence to its "amateurism" model.<sup>9</sup>

Only in recent years have college athletes gained more economic power, so they now have the ability to capitalize on the use of their NIL financially.<sup>10</sup> In a landmark move that changed the face of college sports forever, at least some athletes are now able to participate in direct revenue sharing with their institutions per the *House v. National Collegiate Athletic Association* settlement agreement.<sup>11</sup> Under this novel earnings model in college sports, where institutions are permitted to pay college athletes directly up to an established

3. Ralph D. Russo, *ESPN Will Remain the Home of the College Football Playoff Through 2031 Under the \$7.8 Billion Deal*, ASSOCIATED PRESS (Mar. 19, 2024, at 13:46 CT), <https://apnews.com/article/espn-cfp-9d75671decaa5e47ca2d1caef8a0b693> [https://perma.cc/XA8S-2CTK].

4. The five programs that generate over \$200 million annually are Ohio State, Texas, Alabama, Michigan, and Georgia. *NCAA Finances: Revenue and Expenses by School*, USA TODAY (Mar. 14, 2024, at 14:05 CT) [hereinafter *NCAA Finances*], <https://sportsdata.usatoday.com/ncaa/finances> [https://perma.cc/NJ8M-WWPP].

5. See, e.g., Amanda Christovich, Doug Greenberg & Rodney Reeves, *Who Is Highest-Paid Coach in College Football?*, FRONT OFF. SPORTS (May 29, 2025, at 16:29 CT), <https://frontofficesports.com/who-are-highest-paid-college-football-coaches/> [https://perma.cc/82ER-6AFN] (observing that at least twenty-five college football coaches earn \$7 million or more in annual salaries); see also Matt Johnson, *Highest Paid Athletic Directors 2025: Texas, Tennessee, Michigan Lead 10 Top AD Salaries*, SPORTSNAUT (May 17, 2024), <https://sportsnaut.com/list/highest-paid-athletic-directors/> [https://perma.cc/X8JT-QAGQ] (noting that at least ten athletic directors are earning more than \$1 million per year).

6. See Christovich, Greenberg & Reeves, *supra* note 5.

7. See *30 Highest Paid College Basketball Coaches in 2025*, COLL. TRANSITIONS (Feb. 27, 2025), <https://www.collegetransitions.com/blog/highest-paid-college-basketball-coaches/> [https://perma.cc/RL5E-M92K].

8. See Alexander O'Reilly, *Top 10 Highest-Paid Athletic Directors in NCAA Ft. Danny White*, SPORTSKEEDA (Aug. 29, 2024, at 17:51 GMT), <https://www.sportskeeda.com/college-football/top-10-highest-paid-athletic-directors-ncaa-ft-danny-white> [https://perma.cc/P6M8-RRTZ].

9. See John T. Holden & Kathryn Kisska-Schulze, *Taxing Sports*, 71 AM. U. L. REV. 845, 866 (2022) [hereinafter *Taxing Sports*] (noting that many argued "that the primordial student-athlete model is misguided, given the expansive economic growth of contemporary collegiate athletics").

10. See Kathryn Kisska-Schulze, *Narrowing the Playing Field on NIL Collectives*, 34 MARQ. SPORTS L. REV. 59, 59 (2024) [hereinafter *Narrowing the Playing Field*].

11. See *House v. NCAA*, 545 F. Supp. 3d. 804, 814–20 (N.D. Cal. 2021); see also Dan Murphy, *Judge OK's \$2.8B Settlement, Paving Way for Colleges to Pay Athletes*, ESPN (June 6, 2025, at 21:58 ET) [https://www.espn.com/college-sports/story/\\_/id/45467505/judge-grants-final-approval-house-v-ncaa-settlement](https://www.espn.com/college-sports/story/_/id/45467505/judge-grants-final-approval-house-v-ncaa-settlement) [https://perma.cc/S17T-RYLJ] (describing the House settlement's implications for collegiate-athlete compensation).

revenue-sharing cap,<sup>12</sup> the NCAA and its member institutions have not moved to consider reclassifying any college athletes as employees.<sup>13</sup> In the wake of this settlement agreement, and amidst the NCAA's continued adherence to what some argue is a broad and parochial classification of college athletes as "student-athletes" rather than "employee-athletes,"<sup>14</sup> there exist two pending legal challenges before the National Labor Relations Board (NLRB) panels, and another in federal court, that could one day recharacterize some college athletes as employees of their institutions from a labor law perspective.<sup>15</sup>

The rapidly changing landscape of college sports is not solely restricted to athlete compensation and employment classification; collegiate athletic conferences are also undergoing significant changes. What was once a collection of closely aligned and geographically situated groupings of colleges and universities tasked with promoting collegiate sports competition under the umbrella of higher education,<sup>16</sup> now more closely resembles for-profit professional sports models that at times seemingly disregard the human cost to the athletes.<sup>17</sup> As one article posits, because of college football's conference

12. *Estimated NCAA Revenue Sharing 2025-26*, NIL-NCAA, [https://nil-ncaa.com/\[https://perma.cc/9H5W-X966\]](https://nil-ncaa.com/[https://perma.cc/9H5W-X966]) (last visited Sep. 3, 2025) [hereinafter *Estimated NCAA Revenue Sharing*].

13. Although the purpose of this Article is to reflect upon potential tax considerations surrounding the future of college sports more generally, many have posited that at least some college athletes should be deemed employees of their institutions. *See, e.g.*, Mark J. Drozdowski, *Federal Court Says College Athletes Should Be Considered Employees*, BEST COLLS. (July 23, 2024), <https://www.bestcolleges.com/news/federal-court-says-college-athletes-should-be-employees/> [https://perma.cc/8F3J-R3TM]; Insight Staff, *College Athletes Fight for Employee Status*, INSIGHT INTO ACADEMIA (July 12, 2024), <https://insightintoacademia.com/college-athletes-fight-for-employee-status/> [https://perma.cc/W62M-YS6T]; Tyler J. Murry, Note, *The Path to Employee Status for College Athletes Post-Alston*, 24 VAND. J. ENT. & TECH. L. 787, 787 (2022).

14. *See* NAT'L COLLEGIATE ATHLETIC ASS'N CONST. art. 1, § B, <https://www.ncaapublications.com/productdownloads/D125.pdf> [https://perma.cc/5MMS-4K9A] ("Student-athletes may not be compensated by a member institution for participating in a sport but may receive educational and other benefits in accordance with guidelines established by their NCAA division."); *see also* Robert A. McCormick & Amy Christian McCormick, *The Myth of the Student-Athlete: The College Athlete as Employee*, 81 WASH. L. REV. 71, 71 (2006) (arguing that student-athletes qualify as "employees" under the National Labor Relations Act); Marc Edelman, Michael A. McCann & John T. Holden, *The Collegiate Employee-Athlete*, 2024 U. ILL. L. REV. 1, 3 (2024) [hereinafter *The Collegiate Employee-Athlete*] (describing labor law challenges to the "student-athlete" classification).

15. *See* John T. Holden, Marc Edelman & Michael McCann, *(Still) Anticompetitive College Sports*, 66 B.C. L. REV. 1627, 1661–64 (2025) [hereinafter *(Still) Anticompetitive College Sports*], (noting that there are NLRB challenges involving both men's basketball players from Dartmouth University, basketball and football players from the University of Southern California, as well as challenges involving athletes in the U.S. District Court for the Eastern District of Pennsylvania).

16. *See* NAT'L COLLEGIATE ATHLETIC ASS'N BYLAWS art. 20, § 20.02.3.2, <https://www.ncaapublications.com/productdownloads/D125.pdf> [https://perma.cc/5MMS-4K9A] ("A member conference is a group of colleges and/or universities that conducts competition among its members and determines a conference champion in one or more sports . . .").

17. *See generally* Drew Thornley & John T. Holden, *Rethinking College Football Grant of Rights Agreements*, 34 MARQ. SPORTS L. REV. 319, 343–47 (2024) [hereinafter *Rethinking Grant of Rights Agreements*] (describing college football grant of rights agreements and conference members departing conferences for new alignments with greater payouts); *see also* Susan M. Shaw, *The Human Cost of Conference Realignment*, FORBES (Oct. 3, 2023 at 08:47 ET), <https://www.forbes.com/sites/susanmshaw/2023/10/03/the-human-cost-of-conference-realignment/> [https://perma.cc/VN6Z-3XUK] (noting the impact of conference realignment on

realignment, the University of California at Berkeley (which is now part of the Atlantic Coast Conference (ACC)) “will travel 83% of Earth’s distance in miles in 2024.”<sup>18</sup>

Historically recognized as Internal Revenue Code (I.R.C.) Section 501(c)(3) charitable organizations, revenue derived from college athletic conferences goes largely untaxed.<sup>19</sup> Such preferential treatment stems from them being deemed “educational organizations” due to their pervasive entwinement with higher education.<sup>20</sup> Their continued protective shield is intriguing, given that in 2021 just one percent of the \$3.3 billion total income reported by the Power 5 (which included the ACC, Big 12, Big Ten, Pac-12, and SEC)<sup>21</sup> derived from charitable donations.<sup>22</sup> While their tax-exempt status continues to remain unchecked, in recent years Congress began scrutinizing (and in some cases threatening to remove) the tax-exempt status of other sports enterprises, including the NCAA,<sup>23</sup> Major League Baseball (MLB), the National Football League (NFL),<sup>24</sup> and most recently the Professional Golf Association (PGA) after its recently proposed merger between the PGA Tour and LIV Golf.<sup>25</sup>

One of the main goals of the Internal Revenue Service (IRS) is to “promote consistent treatment of similarly situated taxpayers and sound tax administration.”<sup>26</sup> While the IRS may attempt to offer “positional consistency,” it does not ensure identical treatment across different taxpayer groups.<sup>27</sup> To

the athletes themselves, including missing more classes, jetlag, accompanying exhaustion, and their families being unable to attend games because of cross-country travel costs).

18. James Parks, *College Football Realignment: Cal Will Travel 83% of Earth’s Distance in Miles in 2024*, SI.COM: ON SI (July 10, 2024), <https://www.si.com/fannation/college/cfb-hq/news/college-football-realignment-cal-travel-schedule-2024> [https://perma.cc/FWT5-DUZH].

19. Scott Hodge, *The Big Business of Tax-Free College Sports*, TAX FOUND. (Aug. 21, 2023), <https://taxfoundation.org/blog/college-sports-tax-free-revenue/> [https://perma.cc/U5CV-8GWJ].

20. See *infra* Part II.B.

21. In 2024, the NCAA Division-1 Board removed the autonomous-conference status of the Pac-12. See Bob Lundeberg, *The Pac-12 Is No Longer a ‘Power Conference’*, SI.COM: ON SI (Aug. 1, 2025), <https://www.si.com/college/boise-state/football/pac-12-is-no-longer-power-conference> [https://perma.cc/9HBD-ZBVJ]. Because of this, the “Power Five” conferences began being referred to as the Power Four, which includes the ACC, Big Ten, Big 12, and the SEC. *Id.* At present, the Pac-12 continues to exist and includes the following schools: Oregon State, Washington State, Boise State, Colorado State, Fresno State, San Diego State, Utah State, Gonzaga, and Texas State. *Id.*

22. See Hodge, *supra* note 19.

23. See *infra* Part II.B.

24. See *infra* Part III.C.

25. Tim Shaw, *PGA Tax-Exempt Status in the Rough Following LIV Golf Merger*, THOMSON REUTERS (June 21, 2023), <https://tax.thomsonreuters.com/news/pga-tax-exempt-status-in-the-rough-following-liv-golf-merger/> [https://perma.cc/5P8Z-LAU9]; see also Luis C. Calderón Gómez, *Taxation’s Limits*, 119 NW. U. L. REV. 571, 575 (2024) (noting that calls have been made to end the PGA Tour’s tax-exempt status).

26. Hodge, *supra* note 19 (quoting Memorandum from Lynne A. Camillo, Deputy Assoc. Chief Couns. to Stephen A. Martin, Dir., EO Rulings & Agreements & Lynn Brinkley, Dir., EO Examinations IRS Memorandum AM 2023-004, Whether Operation of an NIL Collective Furthers an Exempt Purpose Under Section 501(c)(3) (May 23, 2023), <https://www.irs.gov/pub/irsoia/am-2023-004-508v.pdf> [https://perma.cc/UCA8-DCZG]).

27. Steve R. Johnson, *An IRS Duty of Consistency: The Failure of Common Law Making and a Proposed Statutory Solution*, 77 TENN. L. REV. 563, 565 (2010).

date, college athletics have largely enjoyed significant shielding from the bounds of taxation, even as the industry savors its billion-dollar enterprise status.<sup>28</sup> Examining the various tax issues encapsulating college sports has evolved into a rich body of legal scholarship over the last decade.<sup>29</sup> Tax questions about the effects of reclassifying college athletes as employees versus independent contractors, differing earnings models tied to revenue-sharing versus NIL opportunities, and college athletic conference expansion abound.

As the college sports industry continues to transform in ways that are more revenue driven than student-centric, the time is ripe to once again scrutinize the potential tax consequences that could follow. This Article endeavors to do just that. Part I offers a historical analysis of the business of college sports, providing a deep dive into the industry's birth, continued growth, and ultimate rise to its current multibillion-dollar state. Part II discusses the historical tax treatment of college sports, focusing on the tax amicability currently afforded to college athletes, the tax-exempt status of the NCAA, its member institutions, and college athletic conferences, and changes to historic tax rules governing charitable contributions to college sports. Part III then delves into the impending tax considerations that could impact the future of college sports.

First, Part III analyzes the tax considerations facing college athletes from two distinct lenses: employment characterization and type-of-compensation

28. Professor Murray Sperber observed that college sports served a marketing function for many schools. See MURRAY SPERBER, BEER and CIRCUS: HOW BIG-TIME COLLEGE SPORTS IS CRIPPLING UNDERGRADUATE EDUCATION 56–57 (1st ed. 2000).

29. See generally Kathryn Kisska-Schulze & Adam Epstein, “Show Me the Money!” – *Analyzing the Potential State Tax Implications of Paying Student-Athletes*, 14 VA. SPORTS & ENT. L.J. 13 (2014) (discussing the tax implications for college sports); Eric Rubin, Note, *Knowing An “Educational Institution” When You See One: Applying the Commerciality Approach to Tax Exemptions for Universities Under § 501(c)(3)*, 92 WASH. U. L. REV. 1055 (2015) (same); Kathryn Kisska-Schulze & Adam Epstein, *Northwestern, O’Bannon and the Future: Cultivating a New Era for Taxing Qualified Scholarships*, 49 AKRON L. REV. 771 (2016) [hereinafter *Northwestern, O’Bannon and the Future*] (same); Kathryn Kisska-Schulze, *Analyzing the Applicability of IRC § 162 on the Pay-For-Play Model*, 16 VA. SPORTS & ENT. L.J. 190 (2017) (same); Patrick Michael & Dylan Patrick Williams, *The Expensive Truth: The Possible Tax Implications Related to Scholarship and Cost of Attendance Payments for Athletes*, 27 J. LEGAL ASPECTS SPORT 145 (2017) (same); Marc Edelman, *From Student-Athletes to Employee-Athletes: Why a “Pay for Play” Model of College Sports Would Not Necessarily Make Educational Scholarships Taxable*, 58 B.C. L. REV. 1137 (2017) [hereinafter *From Student-Athletes to Employee-Athletes*] (same); Kathryn Kisska-Schulze & Adam Epstein, *The Claim Game: Analyzing the Tax Implications of Student-Athlete Insurance Policy Payouts*, 25 JEFFREY S. MOORAD SPORTS L.J. 231 (2018) [hereinafter *The Claim Game*] (same); Kathryn Kisska-Schulze, *This Is Our House! – The Tax Man Comes to College Sports*, 29 MARQ. SPORTS L. REV. 347 (2019) [hereinafter *This Is Our House!*] (same); Richard Schmalbeck & Lawrence Zelenak, *The NCAA and the IRS: Life at the Intersection of College Sports and the Federal Income Tax*, 92 S. CAL. L. REV. 1087 (2019) (same); Kathryn Kisska-Schulze & John T. Holden, *Betting on Education*, 81 OHIO ST. L.J. 465 (2020) (same); Kathryn Kisska-Schulze & Adam Epstein, *Changing the Face of College Sports One Tax Return at a Time*, 73 OKLA. L. REV. 457 (2021) [hereinafter *Changing the Face of College Sports*] (same); *Taxing Sports*, *supra* note 9 (same); Molly Richard, Note, *More than an Athlete: The Student-Athlete Compensation Debate and Its Potential Tax Consequences on the NCAA*, 55 SUFFOLK U. L. REV. 267 (2022) (same); Courtney Seams, Note, *How Name, Image, and Likeness Reforms Are Eroding Amateurism in the NCAA and How That Will Affect the NCAA’s Tax-Exempt Status*, 5 BUS. & FIN. L. REV. 28 (2022) (same); Kathryn Kisska-Schulze, NIL: *The Title IV Financial Aid Enigma*, 76 OKLA. L. REV. 145 (2023) [hereinafter *The Title IV Financial Aid Enigma*] (same); *Narrowing the Playing Field*, *supra* note 10 (same); Haley A. Ritter, Note, *Stars on the Field, Benchwarmers on the Tax Return: Student-Athletes and the Tax Ramifications of Name, Image, and Likeness Deals*, 26 CHAP. L. REV. 401 (2022) (same).

model. Next, Part III evaluates the possible tax impact of college-athlete employee status and direct revenue sharing on athletic scholarships. Last, Part III proposes that the tax-exempt status of college athletic conferences is likely in jeopardy, given the significant changes reshaping college sports that align more with the professional sports industry rather than an educational mission. Finally, this Article offers concluding remarks.

## I. THE HISTORICAL BUSINESS OF COLLEGE SPORTS

Since its inception, college sports has matured into a big business.<sup>30</sup> It has significantly changed from its humble beginnings when, in 1906, the NCAA was created to promote uniform safety regulations for college football.<sup>31</sup> Today, it is a revenue generator. Much of that revenue stems from broadcasting contracts where college athletic conferences and individual schools (like the University of Notre Dame<sup>32</sup>) enter into multimillion-dollar agreements with major television networks.<sup>33</sup> Earnings also derive from bowl games and tournaments, merchandise and licensing, and ticket sales.<sup>34</sup> The financial growth of college sports into one of the most valuable segments of the broader sports industry took root in the latter half of the twentieth century, particularly after the U.S. Supreme Court's 1984 ruling that NCAA restrictions on college football broadcasting rights violated the federal Sherman Act.<sup>35</sup> Almost forty years later, college athletics earned over \$13 billion in revenue in 2022.<sup>36</sup> While this number is lower than what the four major U.S. professional sports leagues earned that same year, it was higher than the MLB, the National Basketball

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30. Serena Morones & Paul Heidt, *Following the Money in College Sports*, MORONES ANALYTICS, <https://moronesanalytics.com/following-the-money-in-college-sports/> [https://perma.cc/2Y6N-YEZL] (last visited Oct. 6, 2025).

31. See W. Burlette Carter, *The Age of Innocence: The First 25 Years of the National Collegiate Athletic Association, 1906 to 1931*, 8 VAND. J. ENT. & TECH. L. 211, 215–220, 225 (2006); see generally Rodney K. Smith, *A Brief History of the National Collegiate Athletic Association's Role in Regulating Intercollegiate Athletics*, 11 MARQ. SPORTS L. REV. 9, 12 (2000) (describing a 1905 meeting at the White House and the leaders of various colleges to “determine whether football could be regulated or had to be abolished”).

32. The University of Notre Dame, a school that remains independent of an athletic conference in football, has negotiated its own broadcast contracts with NBC since 1991. Associated Press, *Notre Dame Football Extends TV Deal with NBC Through 2029*, ESPN (Nov. 18, 2023, at 16:49 ET), [https://www.espn.com/college-football/story/\\_/id/38928501/notre-dame-football-extends-tv-deal-nbc-2029](https://www.espn.com/college-football/story/_/id/38928501/notre-dame-football-extends-tv-deal-nbc-2029) [https://perma.cc/95Q2-R634].

33. Morones & Heidt, *supra* note 30.

34. *Id.*

35. See NCAA v. Bd. of Regents of Univ. of Okla., 468 U.S. 85, 120 (1984). The decision arguably created the current marketplace where even low-ranked schools have broadcasts available for fans on streaming platforms. See, e.g., Jared Greenspan, *College Football Games on TV Today: Full Schedule, Times, Channels, Live Streams to Watch Saturday NCAA Games*, SPORTING NEWS (Oct. 19, 2024 at 06:38 CT), <https://www.sportingnews.com/us/ncaa-football/news/college-football-games-tv-today-schedule-times-channels-live-streams-watch/650485fabce9590827d0d4b6> [https://perma.cc/UKZ6-XKZ2] (noting that games were broadcast on fourteen over-the-air channels as well as four separate streaming platforms during the 2024 college football season).

36. Morones & Heidt, *supra* note 30.

Association (NBA), and the National Hockey League (NHL), individually.<sup>37</sup> Given its rapid growth and the potential tax consequences of the myriad of changes happening across today's college sports landscape, it is helpful to understand how college sports got here. Part I.A discusses the birth of intercollegiate athletics, Part I.B describes the growth of the NCAA under Walter Byers's early leadership, Part I.C examines the transformation of college sports into a commercialized enterprise, and Part I.D presents the new era of collegiate athlete earnings opportunities.

### A. *The Birth of Intercollegiate Sports*

The first known American intercollegiate sporting event occurred on August 3, 1852, between the Harvard University and Yale University rowing teams.<sup>38</sup> Dubbed a “grudge match,”<sup>39</sup> it was not only motivated by collegiate rivalry but also economics—the Boston, Concord, and Montreal Railroads sponsored the event to help promote railroad passenger routes.<sup>40</sup> Soon after, other competitive sports emerged on college campuses, including the first baseball game in July 1859.<sup>41</sup> In 1869, the first college football game was played,<sup>42</sup> followed by another just one week later;<sup>43</sup> however, it took several decades before college athletics became a centrally organized endeavor.<sup>44</sup>

After the reported deaths of eighteen players in 1905 and a series of recorded injuries by more than 150 others, the future of intercollegiate football was in peril.<sup>45</sup> The matter was so pressing that President Theodore Roosevelt, whose own son had been injured during a Harvard University football

37. *Id.* In the aggregate, the NFL, MLB, NBA, and NHL had \$46 billion in revenue in 2022. However, individually, the MLB enjoyed revenue of just \$10.9 billion; the NBA, just \$9.9 billion; and the NHL, just \$6 billion. *Id.*

38. See Thomas C. Mendenhall, *The First Boat Race*, YALE ALUMNI MAG., (Mar. 1993), [https://archives.yalealumnimagazine.com/issues/93\\_03/regatta.html](https://archives.yalealumnimagazine.com/issues/93_03/regatta.html) [<https://perma.cc/3ry4-hem5>]; (*Still*) *Anticompetitive College Sports* *supra*, note 15, at 1631. While the event is widely viewed as the first American intercollegiate sporting event, Oxford and Cambridge Universities held a “boat race” thirteen years before the American schools. See Alan Oldham, “*The Race*”. *How Yale and Harvard Kick-Started US College Sport 170 Years Ago This Month*, WORLD ROWING (Sep. 2, 2022), <https://worldrowing.com/2022/09/02/the-race-how-yale-and-harvard-kick-started-us-college-sport-170-years-ago-this-month/> [<https://perma.cc/24T2-SUUK>].

39. *Taxing Sports*, *supra* note 9, at 878.

40. *Harvard-Yale Boat Race Turns 150*, HARV. MAG., (May 1, 2002), <https://www.harvardmagazine.com/2002/05/harvard-yale-boat-race-t.html> [<https://perma.cc/NQQ3-S676>].

41. (*Still*) *Anticompetitive College Sports*, *supra* note 15, at 1632.

42. *Id.*

43. Sam Richmond, *1st College Football Game Ever was New Jersey vs. Rutgers in 1869*, NCAA (Nov. 6, 2023), [https://www.ncaa.com/news/football/article/2017-11-06/college-football-history-heres-when-1st-game-was-played#:~:text=Rutgers%20and%20New%20Jersey%20\(later,on%20hand%2C%20according%20to%20Rutgers](https://www.ncaa.com/news/football/article/2017-11-06/college-football-history-heres-when-1st-game-was-played#:~:text=Rutgers%20and%20New%20Jersey%20(later,on%20hand%2C%20according%20to%20Rutgers) [<https://perma.cc/LFS7-M3AF>].

44. See Carter, *supra* note 31, at 214–15 (describing the conditions that gave birth to the NCAA).

45. *Id.* at 215.



practice,<sup>46</sup> called for collegiate leaders to unite and create boundaries on what was permissible in college football to protect the athletes.<sup>47</sup> Following that White House summit, representatives of sixty-eight collegiate institutions created the Intercollegiate Athletic Association of the United States in 1905, crafting a constitution to govern college sports, which, among other things, sought to drive out schools that used elite athletes who failed to meet academic standards.<sup>48</sup> Established bylaws and guiding principles set the groundwork for the organization, and in 1910, it renamed itself the National Collegiate Athletic Association.<sup>49</sup>

During its first decade, the NCAA primarily focused on promulgating uniform rules and eligibility requirements for athletes.<sup>50</sup> The 1921 Track and Field National Championship at Stagg Field in Chicago was the NCAA's first sanctioned tournament.<sup>51</sup> Soon, questions emerged about the commercialization of college sports, with the Carnegie Foundation expressing concerns that athletics were supplanting academics as a primary priority on some college campuses.<sup>52</sup> During the ensuing three decades, the NCAA faced calls for reform.<sup>53</sup> The first call came arguably from former University of North Carolina President Frank Graham, who sought to insert more faculty control over athletics and transparency in athletics finances.<sup>54</sup> Despite support from several administrators, *The Graham Plan* (as it became known) was never implemented because it attempted to rein in athletics spending amidst opposing efforts by the SEC to expand economic support for college athletics.<sup>55</sup>

A second effort to deemphasize athletics emerged after World War II when NCAA institutions implemented the *Sanity Code*, which restricted athlete

46. *The Collegiate Employee-Athlete*, *supra* note 14, at 6.

47. Of particular concern were two plays, the “flying wedge” and the “hurdle play.” The former involved what amounted to a ten-on-one attack against an opposing player, and the latter involved physically throwing a smaller player over defensive players. See Marc Edelman et al., *Exploring College Sports in the Time of COVID-19: A Legal, Medical, and Ethical Analysis*, 2021 MICH. ST. L. REV. 469, 496 (2021).

48. *(Still) Anticompetitive College Sports*, *supra* note 15, at 1633.

49. John T. Holden, Marc Edelman & Michael A. McCann, *A Short Treatise on College-Athlete Name, Image, and Likeness Rights: How America Regulates College Sports' New Economic Frontier*, 57 GA. L. REV. 1, 25 (2022) [hereinafter *A Short Treatise on NIL*].

50. *Id.*

51. See *id.*; see also Mike Pearson, *Illini Legends, Lists and Lore: The First NCAA Track and Field Champion*, THE NEWS-GAZETTE (June 18, 2023), [https://www.news-gazette.com/sports/illini-legends-lists-and-lore-the-first-ncaa-track-and-field-champion/article\\_18c3d63a-cc6a-5d8e-8226-1094981bc740.html](https://www.news-gazette.com/sports/illini-legends-lists-and-lore-the-first-ncaa-track-and-field-champion/article_18c3d63a-cc6a-5d8e-8226-1094981bc740.html) [https://perma.cc/V279-RXQK] (explaining the results of the tournament).

52. Smith, *supra* note 31, at 13.

53. *A Short Treatise on NIL*, *supra* note 49, at 25–26.

54. *Id.*

55. *Id.* at 26; see also Jennifer Coggins, *The Graham Plan for Intercollegiate Athletics, 1935*, UNC UNIV. LIBRS.: FOR THE RECORD (Oct. 23, 2017), <https://blogs.lib.unc.edu/uarms/2017/10/23/the-graham-plan-for-intercollegiate-athletics-1935/> [https://perma.cc/QNS4-99QM] (“Despite having support from administrators at many other colleges and universities, the [Graham Plan] faced significant opposition and was not successfully implemented.”).

compensation to just the cost of attending an institution.<sup>56</sup> Its ultimate downfall was the fact that it allowed just one punishment: expulsion.<sup>57</sup> The *Sanity Code*'s limited sanction option meant violators were expelled from the NCAA.<sup>58</sup> Given the fact that there was not just one but at least seven bad actors (the sinful seven), including Boston College, the University of Maryland, the University of Virginia, and Virginia Tech University, college leaders realized such restrictions were unattainable, thus bringing an end to those constraints.<sup>59</sup> The *Sanity Code*'s failure exposed a flaw in the NCAA's governance model: without teeth, its rules were essentially optional.<sup>60</sup> As a result, the NCAA turned to a twenty-nine year-old college-dropout-turned-journalist named Walter Byers, who became the organization's first executive director.<sup>61</sup>

### B. NCAA Growth under Walter Byers

Few have had an impact on an industry quite the way Walter Byers did on college sports.<sup>62</sup> In 1951, he was hired to serve as executive director of the NCAA, creating a full-time office staff of five employees, growing to over 150 before he retired twenty-nine years later.<sup>63</sup> From day one, Byers faced challenges; not only had the *Sanity Code* proven untenable, but college sports were damaged by a match-fixing scandal involving top college basketball teams, including the University of Kentucky.<sup>64</sup> Byers breathed authority into the NCAA, sanctioning the Kentucky men's basketball team with a one-season suspension by reportedly organizing a boycott.<sup>65</sup> The NCAA's most significant weakness during its first five decades was the absence of genuine authority; Byers effectively enforced sanctions without the organization falling apart or requiring structural change.<sup>66</sup>

Byers's ability to create an aura of authority within the NCAA was significant; however, his role in promoting college athletes to a unique worker

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56. *A Short Treatise on NIL*, *supra* note 49, at 26.

57. *Id.* at 26–27.

58. *Id.* at 26.

59. *Id.* at 26–27, 27 n.156.

60. *Id.* at 27 n.156.

61. Taylor Branch, *The Shame of College Sports*, *THE ATLANTIC*, (Oct. 15, 2011), <https://www.theatlantic.com/magazine/archive/2011/10/the-shame-of-college-sports/308643> [<https://perma.cc/D38X-73B8>].

62. Jim O'Connell, *Byers, NCAA's 1<sup>st</sup> Executive Director, Dies at 93*, *NCAA* (May 28, 2015), <https://www.ncaa.com/news/ncaa/article/2015-05-28/walter-byers-first-ncaa-executive-director-dies-93> [<https://perma.cc/D7TD-RCQN>].

63. *Id.*

64. *The Collegiate Employee-Athlete*, *supra* note 14, at 9.

65. *Id.* (reporting that Kentucky coach Adolph Rupp attempted to push back unsuccessfully against the sanction); *see also* JOE NOCERA & BEN STRAUSS, *INDENTURED: THE BATTLE TO END EXPLOITATION OF COLLEGE ATHLETES* 17 (2016) (elaborating on the disciplinary process).

66. *The Collegiate Employee-Athlete*, *supra* note 14, at 9.

status likewise drew attention.<sup>67</sup> During an April 1950 spring practice, University of Denver (DU) football player Ernest Nemeth injured his back.<sup>68</sup> In addition to playing football, Nemeth was paid and housed by DU to maintain its tennis courts and provide menial labor.<sup>69</sup> Nemeth argued that “participation in athletic activities was within the scope of his employment and compensable[.]” thus entitling him to workers’ compensation.<sup>70</sup> DU pushed back against his assertion, implying that if athletes were employees covered under workers’ compensation, it would be forced to terminate its athletic aid awards.<sup>71</sup> DU further argued that while the University unquestionably employed Nemeth, “he was not employed to play football.”<sup>72</sup> The Colorado Supreme Court was unconvinced, concluding that Nemeth’s employment at the University was tied to his continued participation on the football team.<sup>73</sup> This decision posed an existential threat to college sports in the minds of many college athletics administrators.<sup>74</sup>

Byers responded by creating the term student-athlete to denote the role of athletes on campus.<sup>75</sup> It signaled that college athletes were students first, existing in a separate realm from campus employees.<sup>76</sup> Such a response proved successful when, in 1955, the widow of Fort Lewis A&M football player Ray Dennison (who died after suffering a head injury during a game) sought and was denied benefits akin to those payable to workers killed on the job.<sup>77</sup> The phrase student-athlete stuck and continues to be widely used across all collegiate sports, even though its original purpose has seemingly been lost by many who use it today.<sup>78</sup> The NCAA has remained steadfast in stating that all college athletes possess a classification other than employees.<sup>79</sup> This term, however,

67. *Id.* at 10.

68. *See* Univ. of Denver v. Nemeth, 257 P.2d 423, 424 (Colo. 1953).

69. *See id.* (explaining that menial labor included cleaning a furnace and keeping sidewalks clear).

70. *Id.* at 425.

71. *See id.* (“If the award is allowed to stand, the more than 800 students who are presently being assisted to obtain their education at the University of Denver must seek work elsewhere or quit their education.”).

72. *Id.*

73. *Id.* at 427.

74. *The Collegiate Employee-Athlete*, *supra* note 14, at 11.

75. *Id.*; *see also* WALTER BYERS WITH CHARLES HAMMER, UNSPORTSMANLIKE CONDUCT: EXPLOITING COLLEGE ATHLETES 69 (1995).

76. *The Collegiate Employee-Athlete*, *supra* note 14, at 11.

77. Liz Clarke, *The NCAA Coined the Term ‘Student-Athlete’ in the 1950s. Its Time Might Be Up.*, WASH. POST (Oct. 28, 2021, at 09:00 ET), <https://www.washingtonpost.com/sports/2021/10/27/ncaa-student-athlete-1950s/> [https://perma.cc/XPA9-R7GA].

78. *Id.* There have been some calls in recent years to abolish use of the term. *See, e.g.*, Molly Harry, *Abolish the Term “Student-Athlete,”* EDU LEDGER (July 29, 2020), <https://www.theeduledger.com/sports/article/15107434/abolish-the-term-student-athlete> [https://perma.cc/J6FL-SP2Q].

79. Loretta8 Loretta8, *Friendly Reminder: The NCAA Invented the Term “Student-Athlete” to Get Out of Paying Worker’s Comp*, INSIDE NU (Jan. 28, 2014, at 20:57 CT),

precludes athletes from receiving the statutory benefits afforded to employees in many states and relegates them to a position on college campuses where their benefits are dictated rather than negotiated.<sup>80</sup>

Byers's success in creating an aura of authority and protecting the NCAA by cleverly crafting the term student-athlete may be dwarfed by his accomplishments in growing the NCAA's bottom line.<sup>81</sup> In large part, he created the pathway to what is now March Madness by deciding that the NCAA basketball tournament should increase the number of invited teams.<sup>82</sup> Under Byers' leadership and vision, college sports's popularity and the value of collegiate sports broadcasting rights began to rise.<sup>83</sup> He ensured that broadcasting rights were pooled by the NCAA (rather than member institutions) and sold as a package to broadcasters, thus funneling television revenues through the NCAA before redistributing them to the schools.<sup>84</sup> While Byers initially proposed that the NCAA should keep 60% of early broadcast revenues, he settled for 12%.<sup>85</sup> It is unlikely that any event during the Byers era had the same effect as the 1978–79 March Madness championship that featured generational superstars Ervin “Magic” Johnson and his Michigan State Spartans facing off against Larry Bird and his Indiana State Sycamores in a game that drew approximately twenty million viewers.<sup>86</sup> The NCAA tournament continued to expand in value, and the number of teams allowed to participate grew from fifty-three to sixty-four in 1985.<sup>87</sup>

Byers grew the NCAA from 381 members to over 1,000 and oversaw seventy-four national championships before he left.<sup>88</sup> He also raised NCAA revenue to nearly \$100 million when he retired, which has only increased since his departure in 1987.<sup>89</sup> However, his NCAA legacy remains complicated. Byers bolstered the NCAA organizationally and financially and solidified a position

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<https://www.insidenu.com/2014/1/28/5355988/ncaa-student-athlete-kain-colter-union-workers-comp> [<https://perma.cc/MS57-JQ8M>].

80. *Id.*; see also Charlie Henry, *NCAA to Provide Schools Post-Eligibility Injury Insurance Option for Student-Athletes*, NCAA (Aug. 2, 2023, 12:00 CT), <https://www.ncaa.org/news/2023/8/2/media-center-ncaa-to-provide-schools-post-eligibility-injury-insurance-option-for-student-athletes.aspx> [<https://perma.cc/TQ8B-VGEP>] (noting it was only in 2023 that the NCAA began providing schools with “post-eligibility injury insurance” for athletes).

81. Rick Eckstein, *The Man Responsible for Making March Madness the Moneymaking Bonanza It Is Today*, CONVERSATION (Mar. 14, 2018, 06:49 ET), <https://theconversation.com/the-man-responsible-for-making-march-madness-the-moneymaking-bonanza-it-is-today-91732> [<https://perma.cc/N9B4-GEHT>].

82. *Id.*

83. See *Rethinking Grant of Rights Agreements*, *supra* note 17, at 329.

84. *Id.*

85. *Id.*

86. *Id.* at 332.

87. *Id.* at 332–33.

88. Bruce Weber, *Walter Byers, Ex-N.C.A.A. Leader Who Rued Corruption, Dies at 93*, N.Y. TIMES (May 27, 2015), <https://www.nytimes.com/2015/05/28/sports/walter-byers-ex-ncaa-leader-who-rued-corruption-dies-at-93.html> [<https://perma.cc/2RHC-R6ZK>].

89. *Id.*

for college athletics within the American cultural landscape.<sup>90</sup> But when he left, he expressed some regret over his role in the system.<sup>91</sup> By the end of his NCAA tenure, “he viewed the college sports landscape with increasing cynicism, recognizing . . . that the high stakes of the sports business had led to rampant corruption, made the notion of amateurism quaint and outdated, and gave an air of hypocrisy to the N.C.A.A.’s insistence on maintaining it.”<sup>92</sup> Byers was so disillusioned with college sports by the mid-1980s that he suggested the NCAA should create an “open division” where athletes could be treated as “semiprofessional[s].”<sup>93</sup> As college athletes continue to remain under the NCAA’s strict adherence to amateurism, the industry is financially exploding.<sup>94</sup>

### C. The Rise of Big-Time College Sports

In 2010, sports law professors Robert and Amy McCormick referred to modern college sports as “flourish[ing] on the basis of an apartheid system.”<sup>95</sup> They urged that the U.S. college sports system was funded from the labor of primarily “African-American young men for the enormous pecuniary gain of mostly European Americans associated with major universities . . . as well as for the great entertainment of millions of mostly European Americans.”<sup>96</sup> It has since been argued that collegiate *amateurism* disappeared by the turn of the millennium.<sup>97</sup> In 2019, the NCAA Men’s March Madness tournament generated nearly \$1 billion in revenue.<sup>98</sup> In 2022, NCAA Division I sports (as a whole) reportedly generated \$17.5 billion in revenue, equating to a 31% increase over the prior year.<sup>99</sup> No matter the financial growth of the industry, no funds have been distributed to the collegiate athletes whose performances generate

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90. *Id.*

91. *Id.*

92. *Id.*

93. *Id.*

94. *NCAA Generates Nearly \$1.3 Billion in Revenue for 2022-23*, ESPN (Feb. 1, 2024, at 22:05 ET), [https://www.espn.com/college-sports/story/\\_/id/39439274/ncaa-generates-nearly-13-billion-revenue-2022-23](https://www.espn.com/college-sports/story/_/id/39439274/ncaa-generates-nearly-13-billion-revenue-2022-23) [<https://perma.cc/J5VC-QNAH>].

95. Robert A. McCormick & Amy Christian McCormick, *Major College Sports: A Modern Apartheid*, 12 TEX. REV. ENT. & SPORTS L. 13, 14 (2010).

96. *Id.* (internal footnote omitted).

97. See Lynda Wray Black, *The Day the Fight Song Died: The Alston Concurrence that Became the Playbook*, 53 U. MEMPHIS L. REV. 1009, 1010 (2023); see generally Michael P. Acain, *Revenue Sharing: A Simple Cure for the Exploitation of College Athletes*, 18 LOY. L.A. ENT. L. J. 307, 335–36 (1997) (proposing revenue sharing as a means of alleviating the exploitative conditions in college sports).

98. Sheldon Anderson, *The Big Business of “Amateur” Intercollegiate Sports*, ORIGINS (Mar. 2023), <https://origins.osu.edu/read/big-business-amateur-intercollegiate-sports> [<https://perma.cc/QL5H-KT9LJ>].

99. *Division I Athletics Finances 10-Year Trends from 2013 to 2022*, NCAA RESEARCH (Dec. 2023), [https://ncaaorg.s3.amazonaws.com/research/Finances/2023RES\\_DI-RevExpReport\\_FINAL.pdf](https://ncaaorg.s3.amazonaws.com/research/Finances/2023RES_DI-RevExpReport_FINAL.pdf) [<https://perma.cc/B7ZA-724QJ>].

viewer interest.<sup>100</sup> By contrast, collegiate coaching salaries have skyrocketed.<sup>101</sup> By 2016, the average Division I football coaching salary per year was \$4.1 million.<sup>102</sup> In 2013, the highest-paid public employee in forty states was either a college football or men's basketball coach.<sup>103</sup> While the benefits of athletic spending are difficult to measure, one study estimates that colleges invest between three and six times more in college athletes than non-athlete students, even without compensating college athletes under some form of revenue-sharing opportunity.<sup>104</sup> The benefits afforded to institutions are likewise difficult to calculate; however, college athletics have become the "front porch" of American universities, serving as an access point for the public to interact with the institution.<sup>105</sup> In addition, there appears to be a direct correlation between college football and men's basketball successes and increased undergraduate applications.<sup>106</sup>

Modern college athletic departments are not traditional amateur sports programs but "complex commercial enterprises that look far more like professional sports organizations than extracurricular endeavors."<sup>107</sup> The value that athletes bring to their colleges or universities varies; however, one study observed that by 2005, each NFL draft pick added roughly \$1 million in additional revenue to their university's balance sheet.<sup>108</sup> Other research indicates that the marginal revenue produced by college football and men's basketball players exceeds the value of college scholarships offered at Power 5 schools.<sup>109</sup> A 2022 study found that as college sports revenues increase, institutions have engaged in rent-sharing, which translates primarily into additional spending on coaching salaries and athletic facility upgrades.<sup>110</sup>

100. *Id.* at 10–13.

101. Charles Davidson, *College Sports are Big Business, but Not Nearly as Big as College Itself*, ECON. MATTERS: REG'L. ECON., at 2 (Nov. 28, 2016), [hereinafter *College Sports are Big Business*] <https://fraser.stlouisfed.org/title/economy-matters-8590/college-sports-big-business-nearly-big-college-659376> [https://perma.cc/77HH-HWFU].

102. *Id.* at 3.

103. Ruben Fischer-Baum, *Infographic: Is Your State's Highest-Paid Employee a Coach? (Probably)*, DEADSPIN (May 9, 2013, at 15:23 CT), <https://deadspin.com/infographic-is-your-states-highest-paid-employee-a-co-489635228/> [https://perma.cc/CF7A-5UJ6].

104. *College Sports are Big Business*, *supra* note 101, at 4.

105. Daniel J. Ennis, *Claiming the Front Porch*, INSIDE HIGHER ED (Sep. 15, 2019), <https://www.insidehighered.com/views/2019/09/16/universities-should-rethink-how-they-incentivize-and-reward-academic-outreach> [https://perma.cc/ZK2Y-BD5H].

106. See Doug J. Chung, *The Dynamic Advertising Effect of Collegiate Athletics*, HARV. BUS. SCHOOL, at 2 (Harv. Bus. School, Working Paper No. 13-067, Jan. 31, 2013), <https://www.hbs.edu/ris/Publication%20Files/13-067.pdf> [https://perma.cc/A7X7-NTY7].

107. Craig Garthwaite et al., *Who Profits from Amateurism? Rent-Sharing in Modern College Sports*, NAT'L BUR. ECON. RES., at 6 (Sep. 2022), [https://users.nber.org/~notom/research/GKNO\\_ncaa\\_sept2022.pdf](https://users.nber.org/~notom/research/GKNO_ncaa_sept2022.pdf) [https://perma.cc/AML2-8WLL].

108. *Id.* at 9–10.

109. *Id.* at 10.

110. See *id.* at 4; see also David Hale, *Take a Tour of Clemson's Ridiculously Cool New Facility*, ESPN (Feb. 6, 2017, at 09:00 ET), [https://www.espn.com/college-football/story/\\_/id/18614393/take-tour-clemson](https://www.espn.com/college-football/story/_/id/18614393/take-tour-clemson)

Despite such data, college athletics administrators avoided making structural changes that would permit (at least some) athletes to receive compensation beyond scholarships and cost of attendance until they were effectively mandated to do so.<sup>111</sup>

Over the last decade, the federal court system and state legislatures entered the arena, forcing the NCAA's hand in making fundamental changes to the greater college sports landscape.<sup>112</sup> The fruits of those efforts began in 2021 when the NCAA found no choice but to take steps to allow college athletes to capitalize off their NIL, thus better reflecting the financial reality of modern-day college sports.<sup>113</sup> Still, the NCAA continues to resist further changes, beckoning Congress to provide solutions that would limit organizational exposure for past behavior and ensure a blanket legislative provision that would bind all college athletes to amateur status rather than employee status.<sup>114</sup>

#### D. Changes Coming to Modern-Day College Sports

In June 2021, a unanimous U.S. Supreme Court held that NCAA rules restricting the amount of academic aid colleges and universities can provide their athletes violates the Sherman Antitrust Act.<sup>115</sup> Justice Stevens wrote in dicta in 1984:

The NCAA plays a critical role in the maintenance of a revered tradition of amateurism in college sports. There can be no question but that it needs ample latitude to play that role, or that the preservation of the student-athlete in higher education adds richness and diversity to intercollegiate athletics and is

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tigers-ridiculously-cool-new-facility [https://perma.cc/U2Q8-S57B] (noting that Clemson University's new football facility contains both a slide and a barber shop).

111. See generally Dan Wolken, *Failed Leaders and Pathetic Backstabbers are Ruining College Sports*, USA TODAY (Aug. 3, 2023, at 21: 13 ET), <https://www.usatoday.com/story/sports/college/columnist/dan-wolken/2023/08/03/college-sports-ruined-failed-leaders-expansion-ncaa-pac-12/70519616007/> [https://perma.cc/3UGN-8K7Y] (observing that college athletics suffers from a leadership crisis).

112. See John T. Holden et al., *Reimagining the Governance of College Sports After Alston*, 74 FLA. L. REV. 427, 453–63 (2022) [hereinafter *Reimagining the Governance of College Sports*] (observing that fundamental changes occurred in the summer of 2021 following the Supreme Court's decision in *Alston*, and state NIL legislation coming into effect).

113. *NCAA Finances*, *supra* note 4.

114. See *NCAA's Charlie Baker Urges Congress to Act Amid NIL 'Dysfunction'*, ESPN (Sep. 27, 2024, at 20:09 ET), [https://www.espn.com/college-football/story/\\_/id/41480474/ncaa-charlie-baker-urges-congress-act-amid-nil-dysfunction](https://www.espn.com/college-football/story/_/id/41480474/ncaa-charlie-baker-urges-congress-act-amid-nil-dysfunction) [https://perma.cc/F94J-2S5C]. To date, the NCAA has had little success in lobbying for change. See Alicia Jessop et al., *Charting a New Path: Regulating College Athlete Name, Image and Likeness After NCAA v. Alston Through Collective Bargaining*, 37 J. SPORT MGMT. 307, 309 (2023).

115. See *NCAA v. Alston*, 594 U.S. 69, 92 (2021) (holding that the NCAA could not place limits on the amount of academic aid schools award to athletes without violating the Sherman Antitrust Act). Additionally, facing a July 1 deadline for various state laws to take effect allowing athletes to monetize their NIL rights, the NCAA gave in and issued an interim policy, which effectively deferred to individual schools, provided that NIL deals were not so-called "pay-to-play" agreements where athletes would be compensated based on on-field (on-court, on-course, or on-rink) performance. See Michelle Brutlag Hosick, *NCAA Adopts Interim Name, Image and Likeness Policy*, NCAA (June 30, 2021), <https://www.ncaa.org/news/2021/6/30/ncaa-adopts-interim-name-image-and-likeness-policy.aspx> [https://perma.cc/LY3E-UB4F].

entirely consistent with the goals of the Sherman Act. But consistent with the Sherman Act, the role of the NCAA must be to *preserve* a tradition that might otherwise die; rules that restrict output are hardly consistent with this role.<sup>116</sup>

It was Justice Kavanaugh's concurring opinion in *NCAA v. Alston*, nearly forty years later, however, that directly quashed the NCAA's historic governance model, articulating, "The NCAA is not above the law,"<sup>117</sup> and seemingly calling for plaintiffs to bring additional challenges to NCAA regulations, given that the Court was restricted to the case before it.<sup>118</sup> To mitigate further judicial explosion, the NCAA ended its long prohibition on college athletes monetizing their rights of publicity without losing their academic eligibility.<sup>119</sup> This end came on the eve of state laws coming into effect that would have forced the NCAA into submission.<sup>120</sup>

Since the emergence of NIL opportunities, some college athletes (primarily football players at Power 4 schools) have made significant money, others have received some added financial benefits, but many have seen little to no change in their finances.<sup>121</sup> In addition, many athletes began receiving so-called "*Alston Awards*," allowing NCAA member institutions to pay college athletes up to \$5,980 annually for education-related expenses.<sup>122</sup> Although some claimed that paying college athletes would result in the demise of college sports, such has not been the case; broadcast viewership has increased.<sup>123</sup>

Since 2021, continued challenges have been made against NCAA policies, and numerous lawsuits have been filed.<sup>124</sup> Three of the most prominent lawsuits were settled under a case initially filed in 2016 and captioned under the name of former Arizona State swimmer Grant House.<sup>125</sup> The combined *House v.*

116. *NCAA v. Bd. of Regents of Univ. of Okla.*, 468 U.S. 85, 120 (1984).

117. *Alston*, at 112 (2021) (Kavanaugh, J., concurring).

118. *See id.* at 109.

119. John T. Holden, Thomas A. Baker II & Joanna Wall Tweedie, *The Collective Conundrum*, 76 OKLA. L. REV. 113, 124 (2023) [hereinafter *The Collective Conundrum*].

120. *Id.*

121. *See generally* Joe Drape & Allison McCann, *In College Sports' Big Money Era, Here's Where the Dollars Go*, N.Y. TIMES (Aug. 31, 2024), <https://www.nytimes.com/interactive/2024/08/31/business/nil-money-ncaa.html> [https://perma.cc/F8T7-8Y4N] (noting estimates of NIL earnings by sport).

122. Lisa Greene-Lewis, *What are Alston Awards and the Tax Implications?*, INTUIT TURBOTAX: BLOG (June 24, 2024), <https://blog.turbotax.intuit.com/work/student-athlete/what-are-alston-awards-and-the-tax-implications-84053/> [https://perma.cc/9TVP-SWYS].

123. Indeed, college sports may be as popular now as it has ever been. Viewership in 2023 was up 12% and 28% over the last five years. *See* Stewart Mandel, *College Football is Booming, After All the Hand-Wringing, Thanks to NIL and the Transfer Portal*, THE ATHLETIC (Dec. 4, 2023), <https://www.nytimes.com/athletic/4958639/2023/10/13/college-football-nil-transfer-portal-booming/> [https://perma.cc/U2T9-D977].

124. *How Many Legal Challenges Is the NCAA Facing? It Is a Lot and the Impacts Could Be Big*, ASSOCIATED PRESS (Mar. 5, 2024 at 13:02 CT), <https://apnews.com/article/ncaa-lawsuits-d3abf6cdbe606668eb9a91ffd2218f72> [https://perma.cc/V7L7-D6EQ].

125. *See* Marc Edelman, John T. Holden & Michael A. McCann, *Life After Employee-Status in College Sports*, 93 FORDHAM L. REV. 1619, 1627–28 (2025); *see also* (Still) *Anticompetitive College Sports*, *supra* note 15, at 1649–57 (discussing how the *House* case, *Hubbard v. NCAA*, and *Carter v. NCAA* formed a trifecta of cases



NCAA case challenged the NCAA's past anti-competitive restrictions on athletes being able to monetize their NIL and sought payments for lost earnings associated with those restrictions.<sup>126</sup> In October 2024, Judge Claudia Wilkins of the U.S. District Court for the Northern District of California granted preliminary approval to the settlement agreement.<sup>127</sup> On June 6, 2025, Judge Wilkins officially approved the settlement, which requires that the NCAA make back payments totaling \$2.8 billion to former college athletes over the next ten years.<sup>128</sup>

The settlement also allows schools (at their discretion and financial ability) to share media, ticket, and sponsorship revenue with college athletes to a cap of approximately \$20.5 million per year, create new roster sizes, eliminate partial scholarships in some sports, and raise the number of athletes who can be granted scholarships in other sports.<sup>129</sup> It does not, however, resolve all issues facing the NCAA, including whether college athletes should be deemed employees of their institutions and whether to extend the athlete eligibility window.<sup>130</sup> Even before the *House* decision, college athletes sought employee recognition and the ability to unionize under labor laws.<sup>131</sup> In 2014, football players at Northwestern University attempted to unionize.<sup>132</sup> A Chicago-based regional director of the NLRB initially ruled that football players at the private institution could vote to form a union; however, that ruling was overturned by the full NLRB in August 2015, thus ending the possibility of collective bargaining for those athletes.<sup>133</sup> Six years later, on September 29, 2021, NLRB General Counsel Jennifer Abruzzo issued a memo to all NLRB field offices with "updated guidance" on her view of the status of certain college athletes.<sup>134</sup> The memo repositioned the NLRB's stance on college athletes, noting that athletic conferences could be found to be joint employers along with schools—a far broader scope than what the national appellate board initially considered

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that collectively challenged many of the NCAA's restrictions on a wide swath of issues and sought restitution for past anticompetitive behavior).

126. See (Still) *Anticompetitive College Sports*, *supra* note 15, at 1649–57.

127. Ross Dellenger, *Historic House-NCAA Settlement Leaving Hundreds of Olympic Sport Athletes in Peril*, YAHOO SPORTS (Oct. 25, 2024), <https://sports.yahoo.com/historic-house-ncaa-settlement-leaving-hundreds-of-olympic-sport-athletes-in-peril-125238713.html> [<https://perma.cc/FVR6-5ZXS>].

128. See Murphy, *supra* note 11.

129. See *NCAA Revenue Sharing & NIL Estimates 2025*, *supra* note 12; see also Dellenger, *supra* note 127 (discussing the impact of the settlement on roster spots for athletes).

130. See Murphy, *supra* note 11.

131. See, e.g., William J. Judge, *Student-Athletes as Employees: Income Tax Consequences*, 13 J. COLL. & U. L. 285, 303–04 (1986) (discussing whether college athletes may be employees under an analysis of IRS rules).

132. See *Northwestern Football Union Timeline*, ESPN (Aug. 17, 2015, at 14:37 ET), [https://www.espn.com/college-football/story/\\_/id/13456482/northwestern-football-union-line](https://www.espn.com/college-football/story/_/id/13456482/northwestern-football-union-line) [<https://perma.cc/F9HA-NNTT>].

133. *Id.*

134. NLRB General Counsel Jennifer Abruzzo Issues Memo on Employee Status of Players at Academic Institutions, NAT'L LAB. RELS. BD. (Sep. 29, 2021), <https://www.nlr.gov/news-outreach/news-story/nlr-general-counsel-jennifer-abruzzo-issues-memo-on-employee-status-of> [<https://perma.cc/MGC9-T7EX>].

in Northwestern University's appeal, given that its focus in 2015 was solely on private institutions.<sup>135</sup> Abruzzo's memo indicated that a joint employer relationship could exist between private and public colleges and the NCAA.<sup>136</sup> While not an entirely new opinion among members of the NLRB, it put all institutes of higher education on notice that change could be on the horizon.<sup>137</sup>

Even before the Abruzzo memo was issued, there was another challenge to classifying athletes. Unlike the *Northwestern University* NLRB case, *Johnson v. NCAA* challenges the classification of athletes under the Fair Labor Standards Act (FLSA), arguing that athletes at various universities within the Third Circuit's purview were entitled to compensation that (at a minimum) complied with the wage and hours requirements of the FLSA.<sup>138</sup> The *Johnson* case was filed on behalf of Trey Johnson, a former football player at Villanova University, and other similarly situated plaintiffs.<sup>139</sup> The plaintiffs argue that due to their athletic commitments to their universities, they should be classified as employees under the FLSA and entitled to "wages for the time they were required to train and compete in college sports."<sup>140</sup> In July 2024, the Third Circuit affirmed that "college athletes were not precluded from bringing a claim under the FLSA"<sup>141</sup> but rejected the test that the District Court relied on in favor of a common law "'right-of-control' test," which was used in a case involving teaching assistants at Columbia University.<sup>142</sup> The Third Circuit's focus on the right-of-control test could prove favorable to athletes seeking employee status, as the Court suggested that *Glatt*, which dealt with unpaid interns, was not analogous to the situation of collegiate athletes because the plaintiffs, not the employers, were the primary beneficiaries of their work experiences.<sup>143</sup> The Third Circuit remanded the case back to the district court for the Eastern District of Pennsylvania with a penultimate statement of the

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135. See Memorandum from Jennifer Abruzzo, Gen. Couns., Nat'l Lab. Rels. Bd., to All Reg'l Dirs., Officers-in-Charge, & Resident Officers, Nat'l Lab. Rels. Bd., 9 n.34 (Sep. 29, 2021) (on file with Nat'l Lab. Rels. Bd.).

136. See *Collegiate Employee-Athlete*, *supra* note 14, at 43.

137. See Michael McCann, *College Athletes Are Employees*, NLRB Counsel Says, SPORTICO (Sep. 29, 2021, at 13:01 CT), <https://www.sportico.com/law/analysis/2021/nlr-b-college-athlete-memo-1234641056/> [<https://perma.cc/NK23-3299>] ("In January 2017, the general counsel at the time, Richard Griffin, offered the same basic opinion in a memorandum.").

138. See generally Complaint at 77–87, *Johnson v. NCAA*, 556 F. Supp. 3d 491 (E.D. Pa. 2021) (No. 19 Civ. 5320), *aff'd in part, vacated in part*, 108 F.4th 163 (3d Cir. 2024) (arguing that NCAA institutions are "willful" violators of FLSA wage and hour requirements).

139. Michael McCann, *NCAA Denied Appeal in College Athlete Employee Case*, SPORTICO (July 11, 2024, at 13:02 CT), <https://www.sportico.com/law/analysis/2024/third-circuit-johnson-ncaa-flsa-case-1234780117/> [<https://perma.cc/TH94-B7YQ>].

140. JIMMY BALSER, CONG. RSCH. SERV., LSB11223, *JOHNSON V. NATIONAL COLLEGIATE ATHLETIC ASSOCIATION: THIRD CIRCUIT ALLOWS COLLEGE ATHLETES' CLAIM FOR WAGES TO MOVE FORWARD* (2024).

141. See *id.*; *Johnson v. NCAA*, 108 F.4th 163, 167 (3d Cir. 2024).

142. See BALSER, *supra* note 140; *Johnson*, 108 F.4th at 178.

143. *Johnson*, 108 F.4th at 180.

majority opinion that closely followed Justice Kavanaugh's concluding statement in *Alston*,<sup>144</sup> noting, "we also hold that college athletes cannot be barred as a matter of law from asserting FLSA claims simply by virtue of a 'revered tradition of amateurism' in D-I athletics."<sup>145</sup> While the Third Circuit directed the attention of the District Court to a case involving the National Labor Relations Act (NLRA), *Trustees of Columbia University in New York*,<sup>146</sup> at the time there also existed several other efforts to classify college athletes as employees under the purview of the FLSA before various agency boards in New England and California.<sup>147</sup> As of the date of this publication, this case remains open, and is proceeding in the U.S. District Court for the Eastern District of Pennsylvania.

In May 2023, an NLRB official in the Los Angeles office issued a complaint against the University of Southern California, the Pac-12, and the NCAA, alleging that these organizations have been misclassifying college athletes as something other than employees, thus denying them access to NLRA rights.<sup>148</sup> The complaint followed a charge—a process for initiating an NLRB investigation—effectively notifying the NLRB of a potential violation of the NLRA from Ramogi Huma, Executive Director of the National College Players Association, who was instrumental in helping to organize football players at Northwestern University in 2014.<sup>149</sup> In-person hearings concluded in 2024; however, a request was made to withdraw the charge before a decision by the NLRB was issued.<sup>150</sup>

In March 2023, the Dartmouth men's basketball team voted in favor of forming a union; however, the university refused to collectively bargain with the players, resulting in the players' union filing a complaint with the NLRB.<sup>151</sup> The school maintained that it was not obligated to bargain with the union

144. *NCAA v. Alston*, 594 U.S. 69, 112 (2021) (Kavanaugh, J., concurring) ("The NCAA is *not* above the law." (emphasis added)).

145. *Johnson*, 108 F.4th at 182 (quoting *NCAA v. Bd. of Regents of Univ. of Okla.*, 468 U.S. 85, 120 (1984)).

146. *Id.* at 178 (citing 364 NLRB 1080, 1081 (2016)).

147. See Parker Purifoy, *NCAA Settlement Bolsters Bids to Treat Athletes as Employees*, BLOOMBERG LAW (May 25, 2024, at 03:00 CT), <https://news.bloomberglaw.com/daily-labor-report/ncaa-settlement-bolsters-bids-to-treat-athletes-as-employees>.

148. See Nick Niedzwiedek & Juan Perez Jr., *Labor Cop Tackles USC, NCAA in Athletes' Rights Case*, POLITICO (May 19, 2023, at 10:01 ET), <https://www.politico.com/news/2023/05/18/nlr-usc-ncaa-athletes-rights-00097794> [<https://perma.cc/5ED9-X2K2>].

149. See *id.*; Dennis Dodd, *Meet Ramogi Huma, Whose Decades-Long Crusade for Fairness in College Athletics Is Finally Coming to Fruition*, CBS SPORTS (May 15, 2024, at 20:45 ET), <https://www.cbssports.com/college-football/news/meet-ramogi-huma-whose-decades-long-crusade-for-fairness-in-college-athletics-is-finally-coming-to-fruition/>.

150. See Daniel Libit, *College Players Group Drops NLRB Charge Against USC, NCAA and PAC-12*, SPORTICO (Jan. 10, 2025, at 14:38 ET), <https://www.sportico.com/leagues/college-sports/2025/ncpa-withdraws-unfair-labor-practice-charge-1234823448/> [<https://perma.cc/JCS8-GZ3L>].

151. Jonathan L. Israel, *Losing for Winning: Dartmouth Basketball Team's Ill-Fated Unionization Effort*, FOLEY & LARDNER LLP (Oct. 21, 2024), <https://www.foley.com/insights/publications/2024/10/dartmouth-basketball-teams-ill-fated-unionization-effort/> [<https://perma.cc/4MHD-PDZM>].

because the players should not have been characterized as employees.<sup>152</sup> On December 31, 2024, the players union withdrew its petition to form the first college athlete labor union, in what some have identified as a “strategic shift” to “preserve the precedent” established by the team’s 13-2 vote in favor of unionizing amidst the incoming political administration, which appears less favorable to college athletes being characterized as employees.<sup>153</sup> Beyond the potential of political stalling,<sup>154</sup> there is an increasing consensus that—given the trajectory of college sports and barring congressional action that would effectively prohibit such—at least some spectrum of college athletes could be classified as employees in the future.<sup>155</sup>

Today’s college sports landscape differs from the earliest days of Ivy League grudge matches. Given the myriad of rapid changes that have and will continue to occur across the entire college sports industry, questions about the tax implications of such have inevitably emerged. To better understand the prospective tax considerations, the following Part briefly discusses various tax courtesies historically afforded to college sports.

## II. A HISTORY OF TAXING COLLEGIATE ATHLETICS

As addressed, the world of college sports is undergoing significant realignment, primarily driven by the industry’s rapid growth and commercialization.<sup>156</sup> The early days of true collegiate “amateurism” are seemingly gone, where the love of sport—without the pursuit of money—was enough.<sup>157</sup> Many have questioned the authenticity of the NCAA’s historic model of amateurism.<sup>158</sup> As momentous changes shift the entire college sports

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152. *Id.*

153. See Ryan Golden, *Dartmouth Basketball Players Withdraw Labor Union Bid*, HIGHER ED DIVE (Jan. 7, 2025), <https://www.highereddive.com/news/dartmouth-basketball-players-withdraw-labor-union-bid/736553/> [https://perma.cc/EN89-UBNE].

154. See Michael McCann, *10 Reasons Why GOP Takeover Won’t Stop College Athletes as Employees*, SPORTICO (Nov. 8, 2024, at 09:30 CT), <https://www.sportico.com/law/analysis/2024/trump-congress-college-athletes-employees-1234804247/> [https://archive.is/ZzLJL].

155. See Michael McCann, *Colleges Declaring Athletes Are Employees Might Make Sense*, SPORTICO (Feb. 20, 2024, at 05:55 CT), <https://www.sportico.com/law/analysis/2024/college-president-declaring-athletes-employees-1234767315/> [https://perma.cc/D2FB-XPLC].

156. See *Narrowing the Playing Field*, *supra* note 10, at 62 (noting that the “increased commercialization of college sports in recent decades has invoked strong dissent on the issue [of amateurism in college sports]”).

157. *Id.*; see also Laura M. DeMarco, *The Necessary Extinction of the Amateur Golfer*, 27 U. DENV. SPORTS & ENT. L.J. 1, 1 (2023) (defining “amateur” as one “who dedicates themselves to a pursuit not for the money but for love”).

158. See generally NCAA DIVISION I MANUAL 2023-24, NATIONAL COLLEGIATE ATHLETIC ASSOCIATION 34–67 (2023), <https://www.ncaapublications.com/productdownloads/D124.pdf> [https://perma.cc/B3NG-82C7] (outlining the NCAA’s amateurism model); see also, e.g., Orion Riggs, *The Facade of Amateurism: The Inequities of Major-College Athletics*, 5 KAN. J.L. & PUB. POL’Y, 137, 137–38 (1996) (“Major college athletics is big business: a system directly conflicting with the traditional concept of amateurism the NCAA purports to advance. Although there certainly is a place for amateurism in college athletics, it is no longer appropriate in the context of Division I football and men’s basketball.”); Marc

landscape away from a model “motivated primarily by education and by the physical, mental and social benefits to be derived,”<sup>159</sup> and instead toward some form of professionalism,<sup>160</sup> it is essential to reexamine the potential tax impacts that may ensue.<sup>161</sup> However, before ruminating on latent tax implications surrounding the *future* of college sports, it is helpful to take a step back and appreciate the historic-to-current tax status of various aspects of the broader college sports arena. As such, this Part offers a brief historical primer on (A) the tax benefits afforded to college athletes; (B) the tax-exempt status of the NCAA, its member institutions, and college athletic conferences; and (C) changes in charitable tax benefits for donors of college athletic programs.

### A. The Tax Benefits Afforded to College Athletes

In 2006, a law review article depicted Division I football and men’s basketball players as “employee-athletes”—a term that stands in stark contrast

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Edelman, Note, *Reevaluating Amateurism Standards in Men’s College Basketball*, 35 U. MICH. J.L. REFORM 861, 889 (2002) (“The changing economics of college athletics has played a significant role in the emergence of the NCAA as a cartel, which agrees to maintain wealth in the hands of a select few administrators, athletic directors, and coaches.”); Stanton Wheeler, *Rethinking Amateurism and the NCAA*, 15 STAN. L. & POL’Y REV. 213, 227 (2004) (“[O]ne thing seems clear. By extending normal seasons into preseasons and postseasons, by converting playoffs into media events, by collaborating with the NBA and NFL to feature star athletes as they make their move to the pros while the great bulk of varsity football and basketball players must find their careers elsewhere, the NCAA and its Division I-A presidents put themselves in a difficult moral position from which to trumpet the virtues of amateurism.”); Nathaniel Grow, *The Future of College Sports After Alston: Reforming the NCAA via Conditional Antitrust Immunity*, 64 WM. & MARY L. REV. 385, 388 (2022) (“For years, the [NCAA’s] ‘amateur’ model of intercollegiate athletics has been under attack, with critics highlighting the system’s perceived exploitation of its student-athletes.”).

159. See 2000-01 NCAA DIVISION I MANUAL, NATIONAL COLLEGIATE ATHLETIC ASSOCIATION 5 (2000), <https://www.ncaapublications.com/productdownloads/MAN0001.pdf> [https://perma.cc/KUU5-7HZZ] (“Student-athletes shall be amateurs in an intercollegiate sport, and their participation should be motivated primarily by education and by the physical, mental and social benefits to be derived. Student participation in intercollegiate athletics is an avocation, and student-athletes should be protected from exploitation by professional and commercial enterprises.”).

160. See Adam Epstein, Nathaniel Grow & Kathryn Kisska-Schulze, *An Evolving Landscape: Name, Image, and Likeness Rights in High School Athletics*, 77 VAND. L. REV. 845, 850 (2024) (“The transition from amateurism toward professionalism in college sports has generated considerable debate in recent decades.”).

161. Tax issues in college sports have increasingly played a prominent role in recent academic scholarship due to the industry’s changing landscape. See, e.g., *Changing the Face of College Sports*, *supra* note 29 (examining various potential federal and state tax consequences following California and other states’ passage of the Fair Pay to Play Act); *Narrowing the Playing Field*, *supra* note 10 (examining the potential tax implications of NIL Collectives following the IRS’s Memorandum questioning the tax-exempt status of these entities); *This Is Our House*, *supra* note 29 (examining select sections of the 2018 Tax Cuts and Jobs Act that could impact college sports); *Taxing Sports*, *supra* note 9 (providing a holistic analysis of the impact of U.S. tax law across all areas of contemporary sports); Seams, *supra* note 29 (examining how the evolution of NIL in college sports could impact the NCAA’s tax-exempt status); *The Claim Game*, *supra* note 29 (examining the taxability of the NCAA’s Exceptional Student-Athlete Disability Insurance (ESDI) and loss-of-value (LOV) insurance); Erik M. Jensen, *Developments Affecting Intercollegiate Athletics and Taxation*, J. TAX’N INV. 61 (2021) (examining the tax consequences of compensated student-athletes); Schmalbeck & Zelenak, *supra* note 29 (providing a history and status of the intersection between federal tax and college sports).

to the NCAA's enduring promotion of "student-athletes"<sup>162</sup>—based on evidence that college athletes "produce the product" without receipt of a "market wage."<sup>163</sup> The term employee-athlete has since been utilized to exemplify views of exploitation and market realities of select Division I athletes, particularly within the realm of football and men's basketball.<sup>164</sup> While classifying collegiate athletes as employees of their colleges and universities will likely evolve and expand under the legal spectrums of the FLSA and NLRA,<sup>165</sup> the IRS has yet to move in that direction, instead maintaining that college athletes are "students" pursuing studies for tax purposes.<sup>166</sup>

Currently, college athletes do not pay taxes on the receipt of their athletic scholarships,<sup>167</sup> a protection not universally granted to all students engaged in higher education. Organically, I.R.C. Section 117 excludes from gross income<sup>168</sup> any amounts received in the form of qualified scholarships<sup>169</sup> by degree-seeking candidates at educational organizations.<sup>170</sup> However, such a protective shield has limits; evidence of a quid pro quo relationship as a condition of accepting a scholarship negates the exclusion.<sup>171</sup> Both the U.S. Supreme Court and U.S. Tax Court have examined this relational concern, identifying circumstances where the taxation of qualified scholarships is appropriate when evidence suggests a

162. See Robert J. Romano, *The NCAA's Student-Athlete Scholarship – A Modern Version of Baseball's Old Reserve System*, 12 ARIZ. ST. SPORTS & ENT. L.J. 1, 21 (2023).

163. McCormick & McCormick, *supra* note 14, at 75.

164. See, e.g., *From Student-Athletes to Employee Athletes*, *supra* note 29 (examining tax issues of athletic scholarships through the lens of the employee-athlete); William W. Berry III, *Employee-Athletes, Antitrust, and the Future of College Sports*, 28 STAN. L. & POL'Y REV. 245 (2017) (comparing and contrasting employee-athletes and student-athletes and providing a roadmap for institutions to consider as college sports shifts away from solely student toward employee-athletes); Marc Edelman, *Redesigning U.S. Intercollegiate Athletics to Better Conform with UNESCO's Best Practices in Student Affairs*, 29 J. LEGAL ASPECTS SPORT 186, 194–95 (2019) (examining the employee-athlete model of college sports); William W. Berry, III, *Beyond NIL*, 26 VAND. J. ENT. & TECH. L. 275 (2024) (arguing that employee-athletes would enjoy greater sports career benefits as compared to the current student-athlete model); *The Collegiate Employee-Athlete*, *supra* note 14 (providing model criteria for assessing employee-athlete status).

165. See *supra* Part I.D.

166. See Rev. Rul. 77-263, 1977-2 C.B. 47 ("[A]thletic scholarships are awarded by the university primarily to aid the recipients in pursuing their studies.").

167. See I.R.C. § 117.

168. See I.R.C. § 61 (defining the term "gross income"); see also I.R.C. § 63(a) (defining the term "taxable income" as "gross income minus . . . deductions . . .").

169. See I.R.C. § 117(b) (defining "qualified scholarship" as "any amount received by an individual as a scholarship or fellowship grant to the extent the individual establishes that, in accordance with the conditions of the grant, such amount was used for qualified tuition and related expenses"). The term "qualified tuition and related expenses" includes tuition, fees, and any books, supplies, and equipment required for courses of instruction. See I.R.C. § 117(b)(2).

170. I.R.C. § 117(a); see also I.R.C. § 170(b)(1)(A)(ii) (defining "educational organization" as "an educational organization which normally maintains a regular faculty and curriculum and normally has a regularly enrolled body of pupils or students in attendance at the place where its educational activities are regularly carried on").

171. See I.R.C. § 117(c)(1) (limiting the exclusion available under I.R.C. § 117(a): "[e]xcept as [otherwise] provided . . . any amount received which represents payment for teaching, research, or other services by the student required as a condition for receiving the qualified scholarship").

quid pro quo requirement for receipt of funds, particularly in instances of work in exchange for fellowship or grant funding.<sup>172</sup> In 1969, the U.S. Supreme Court articulated a “no-strings attached” mandate for qualified scholarships to be excluded from taxation.<sup>173</sup> While evidence of quid pro quo has been identified in cases where Ph.D. students receive funding in exchange for teaching or research demands, and resident physicians receive funding in exchange for patient care and treatment, it has not (thus far) been identified in cases where college athletes receive athletic scholarships in exchange for play.<sup>174</sup>

In 1977, long before the term employee-athlete took root, the IRS issued Revenue Ruling 77-263 to address the taxability of athletic scholarships, pronouncing that they are excludable from gross income because they primarily “aid the recipients in pursuing their studies.”<sup>175</sup> The IRS reaffirmed such declaration in 2014 after the Chicago District (Region 13) NLRB decision that Northwestern University football players were “employees” under the NLRA.<sup>176</sup> The IRS has not since indicated further that its stance has changed. Thus, at present, athletic scholarships remain generally non-taxable.<sup>177</sup>

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172. See, e.g., *Bingler v. Johnson*, 394 U.S. 741 (1969) (deeming a Ph.D. student’s fellowship grant taxable because the student was required to work in exchange for receipt of those funds); *Bonn v. Comm’r*, 34 T.C. 64 (1960) (where a graduate physician’s funding from the Veteran’s Administration was found taxable because receipt of those funds was conditional on the provision of care and treatment of patients); *Proskey v. Comm’r*, 51 T.C. 918 (1969) (deeming a resident physician’s stipends taxable because they were likewise conditioned on the physician providing care and treatment to patients).

173. See *Bingler*, 394 U.S. at 751; see also *Northwestern, O’Bannon and the Future*, *supra* note 29, at 787 (noting that the *Bingler* Court unequivocally stressed the importance of applying the quid pro quo test to scholarships and grants).

174. See *Northwestern, O’Bannon and the Future*, *supra* note 29, at 789 (“Although the quid pro quo interpretation of Section 117 and the Treasury Regulations as enunciated in *Bingler* seems clear, such application has not necessarily been an operational reality at the collegiate level.”); *This Is Our House!*, *supra* note 29, at 356 (“The IRS has held the position that there is currently no evidence of quid pro quo in college sports . . .”); *Changing the Face of College Sports*, *supra* note 29, at 480 n.148 (noting the exclusion of athletic scholarships from the I.R.C. Section 117 quid pro quo limitation).

175. See Rev. Rul. 77-263, 1977-2 C.B. 47.

176. See Letter from John A. Koskinen, IRS Comm’r, U.S. Dep’t of Treasury, to Richard Burr, Senator (R-N.C.), U.S. Senate (Apr. 9, 2014) [hereinafter *Letter from the IRS Commissioner*] (available at <https://www.collegeathletespa.org/IRS-Letter-on-NLRB-Ruling.pdf> [<https://perma.cc/VYG3-FD7J>]); see also Nw. Univ. & Coll. Athletes Players Ass’n, No. 13-RC-121359, 2014 NLRB LEXIS 221 (NLRB Mar. 26 2014). This decision was overturned one year later in Nw. Univ. & College Athletes Players Ass’n, No. 13-RC-121359, 362 NLRB 1350, 1352–53 (NLRB 2015) (recognizing that, like other employees, Northwestern football players were subject to their coaches’ control in performance of their duties and were receiving funding for their services in the form of scholarships).

177. It is important to note that funds received beyond that of tuition, fees, and books (like room and board) are taxable. See I.R.C. § 61; I.R.C. § 63(a); I.R.C. § 117.

B. *The Tax-Exempt Status of the NCAA, Its Member Institutions, and College Athletic Conferences*

Federal tax exemption of non-profit organizations was incorporated into the modern Tax Code over half a century ago.<sup>178</sup> The Revenue Act of 1954 immortalized such allowance by introducing I.R.C. section 501(c)(3), which exempts from taxation organizations operating for religious, charitable, scientific, public safety, literary, and educational purposes, as well as other select entities like civic and business leagues, recreational clubs, and fraternal beneficial societies.<sup>179</sup> The Tax Reform Act of 1976 further amended section 501(c)(3) to include tax exemption for entities that “foster national or international amateur sports competition.”<sup>180</sup> From that point forward, the NCAA secured its posture as a tax-exempt entity under the purview of section 501(c)(3).<sup>181</sup>

To qualify as a section 501(c)(3) tax-exempt entity, an organization must meet two tests: an organizational test and an operational test.<sup>182</sup> Under the organizational test, an entity must be “organized exclusively for one or more [tax] exempt purposes”—for example, fostering national or international sports competitions.<sup>183</sup> An organization will fail this test if its exempt purpose is an insubstantial part of its overall activities.<sup>184</sup> Under the operational test, an organization must operate to further its tax-exempt purpose, effectively demonstrating that it “engages primarily in activities” that accomplish its exempt purpose.<sup>185</sup> An organization can fail this test if evidence purports that its net earnings “inure in whole or in part to the benefit of private shareholders or individuals.”<sup>186</sup>

The NCAA leans on its mission of fostering amateur sports competition by supporting college athletes in pursuing higher education to maintain its tax-exempt purpose.<sup>187</sup> In 2005, then-NCAA President Myles Brand penned in a letter to Congress, “[a]thletics contests are the laboratory for lessons taught in

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178. Seams, *supra* note 29, at 38.

179. See I.R.C. § 501(c)(3) (1954).

180. See Seams, *supra* note 29, at 38; see also I.R.C. § 501(c)(3) (1976) (clarifying that the current iteration of the I.R.C. includes such entities).

181. See Seams, *supra* note 29, at 38.

182. See Treas. Reg. § 1.501(c)(3)-1 (2024). To meet such exclusion, section 501(c)(3) organizations must pass both an operational test (which requires that a business operate in such a manner that furthers its tax-exempt purpose), and an organizational test (requiring that an organization be organized exclusively for a charitable purpose). *Id.* Thus far, the NCAA has met both. See Seams, *supra* note 29, at 38.

183. See I.R.C. § 501(c)(3); see also Treas. Reg. § 1.501(c)(3)-1(b)(1)(i) (detailing the circumstances under which different types of § 501(c)(3) entities could pass the organizational test).

184. See Treas. Reg. § 1.501(c)(3)-1(b)(1)(iii).

185. See Treas. Reg. § 1.501(c)(3)-1(c)(1).

186. See Treas. Reg. § 1.501(c)(3)-1(c)(2).

187. See Media Center, *NCAA Statement on Improving Student-Athlete Experience*, NCAA (Mar. 14, 2019, at 17:50 CT), <https://www.ncaa.org/news/2019/3/14/ncaa-statement-on-improving-student-athlete-experience.aspx> [<https://perma.cc/G6E3-W63N>].



practice in the same way theatrical or musical performances provide practical application of the lessons taught in rehearsals.”<sup>188</sup> He likened college sports to classroom offerings, noting that (as an example) psychology classes generate more revenue than philosophy classes in the same way that football and men’s basketball generate more revenue than lesser-revenue-generating sports; yet in both circumstances, lower-revenue programs (whether in the form of courses offered, or athletics) rely on higher-revenue-generating programs to subsist.<sup>189</sup> Although the NCAA has benefited from tax-exempt status since 1956,<sup>190</sup> it has not come without scrutiny.<sup>191</sup>

Some question the NCAA’s favorable tax status, given the financial benefits it has afforded through increased college sports commercialization and the fact that the organization has grown into a billion-dollar enterprise.<sup>192</sup> Others appear more optimistic about the NCAA’s continued mission to support amateur sports competition.<sup>193</sup> While Congress has—on just one occasion—overtly questioned the NCAA’s tax-exempt status, the organization successfully defended its stature, thus allowing it to remain in the IRS’s good graces.<sup>194</sup>

188. Elia Powers, *The NCAA Responds*, INSIDE HIGHER ED (Nov. 15, 2006), <https://www.insidehighered.com/news/2006/11/16/ncaa-responds> [<https://perma.cc/5ZS3-BN5P>].

189. See *id.*

190. See *National Collegiate Athletic Association*, PROPUBLICA, <https://projects.propublica.org/nonprofits/organizations/440567264> [<https://perma.cc/LSY5-9A5U>] (last visited Sep. 2, 2025).

191. Seams, *supra* note 29, at 38–39.

192. Daniel Libit & Eben Novy-Williams, *NCAA Took in Record Revenue in 2023 on Investment Jump*, SPORTICO (Feb. 1, 2024, at 15:50 CT), <https://www.sportico.com/leagues/college-sports/2024/ncaa-revenue-2023-financials-1234765147/> [<https://perma.cc/X98D-4WNW>]; see also *NCAA v. Bd. of Regents of Univ. of Okla.*, 468 U.S. 85, 100 n.22 (1984) (addressing how the NCAA and its member institutions are profit-seeking entities).

193. See, e.g., Brett T. Smith, *The Tax-Exempt Status of the NCAA: Has the IRS Fumbled the Ball?*, 17 SPORTS L.J. 117, 121–25 (2010) (finding that the NCAA easily satisfies both the organizational and operational tests required of I.R.C. Section 501(c)(3)); J. Winston Busby, Comment, *Playing for Love: Why the NCAA Rules Must Require a Knowledge-Intent Element to Affect the Eligibility of Student-Athletes*, 42 CUMB. L. REV. 135, 168 (2011–2012) (“Promoting amateurism may be an impossible task if the rules designed to promote the organization’s purpose violate anti-trust laws. Consequently, the NCAA cannot afford a successful anti-trust challenge to the enforcement of the amateurism rules . . .”). See generally Elliot DiGioia, Note, *Improving the NCAA Through Tax—Or Lack Thereof: An Examination of the NCAA and Its 501(c)(3) Status After Rule Changes for Name, Image, and Likeness*, 84 U. PITT. L. REV. 743 (2023) (proposing that even with name, image, and likeness allowances now afforded to college athletes, the NCAA should be successful in maintaining its 501(c)(3) tax-exempt status).

194. See Associated Press, *Congressman Asks NCAA to Justify Tax-Exempt Status*, ESPN (Oct. 4, 2006, at 17:01 ET), <https://www.espn.com/college-sports/news/story?id=2613027> [<https://perma.cc/644N-VTVF>]; *The Claim Game*, *supra* note 29, at 256 (noting that, in 2006, the NCAA had to defend its tax-exempt status to Congress); see also Andrew D. Appleby, *For the Love of the Game: The Justification for Tax Exemption in Intercollegiate Athletics*, 44 J. MARSHALL L. REV. 179, 189 (2010) (“Then-NCAA President Myles Brand responded [to a letter sent by House Ways and Means Committee Chairman Bill Thomas questioning the NCAA’s tax-exempt status] with a detailed and cogent justification that satisfied Congress.”).

In addition to the NCAA, most (if not all) of the approximately 1,100 NCAA member institutions across all three Divisions<sup>195</sup> benefit from section 501(c)(3) tax-exempt status.<sup>196</sup> Such a protective shield is because colleges and universities typically organize and operate exclusively for educational purposes.<sup>197</sup> Tax exemption likewise extends to college and university athletic programs, as both the IRS and the judicial system have, on numerous occasions, deemed these programs essential to furthering the educational mission of their affiliated colleges and universities.<sup>198</sup> Further, college athletic conferences are also considered “educational organizations” and thus similarly qualify for tax exemption under section 501(c)(3).<sup>199</sup> Effectively, the entire collegiate athletic arena—from the regulatory to the institutional and program levels—enjoys tax-exempt status.<sup>200</sup>

### C. *Changes in Charitable Tax Benefits Under the Tax Cuts and Jobs Act*

Charitable donations are a significant source of funding for college athletic programs. During fiscal year 2021–2022, 24% of all Power 5 athletic department revenue came from charitable donations.<sup>201</sup> These funds are not

195. See *Overview*, NCAA, <https://www.ncaa.org/sports/2021/2/16/overview.aspx> [https://perma.cc/W46J-RG3X] (last visited Sep. 28, 2025).

196. See Kathryn Kisska-Schulze & Adam Epstein, *Taxing Missy: Operation Gold and the 2012 Proposed Olympic Tax Elimination Act*, 14 TEX. REV. ENT. & SPORTS L. 95, 98 (2013).

197. *Tax-Exempt Status of Universities and Colleges*, ASS'N OF AM. UNIVS. (Oct. 2, 2022), <https://www.aau.edu/key-issues/tax-exempt-status-universities-and-colleges> [https://perma.cc/V4KX-9QJ6].

198. See Karla M. Nettleton, *I.R.C. § 4960's Impact on College Sports: In Light of IRS Guidance Certain Universities Will Need to Engage in Tax Planning*, 32 MARQ. SPORTS L. REV. 117, 119–20 (2021) (noting that university athletic programs are “integral” to the educational process of their affiliated institutions and thus qualify for federal tax exemption); see also Rev. Rul. 67-291, 1967-2 C.B. 184 (“The athletic program of a university conducted for the physical development and betterment of the students is considered to be an integral part of its overall educational activities. Since the organization’s purposes and activities further the educational program of the university by providing necessary services to the student athletes and coaches, it qualifies for exemption from Federal income tax under section 501(c)(3) of the Code.”); Rev. Rul. 80-296, 1980-2 C.B. 195 (“College and university athletic organizations that promote certain aspects of athletic competition have generally been held to be educational and thus exempt from federal income tax. An athletic program is considered to be an integral part of the educational process of a university, and activities providing necessary services to student athletes and coaches further the educational purposes of the university.”); Rev. Rul. 64-275, 1964-2 C.B. 142 (“In the area of judicial construction, the courts have consistently held that training in athletic and physical fitness is ‘educational.’”); see also, e.g., *Kondos v. W. Va. Bd. of Regents*, 318 F. Supp. 394, 396 (S.D. W. Va. 1970) (“[T]he carrying on of an athletic program is an important and necessary element in the educational process, especially at institutions of higher learning.”) *aff’d*, 441 F.2d 1172 (4th Cir. 1971); *Harris v. Univ. of Mich. Bd. of Regents*, 558 N.W.2d 225, 230 (Mich. Ct. App. 1996) (“Congress apparently considers collegiate athletics sufficiently related to higher education to embrace such activities within the exemption from federal income tax accorded to educational institutions under § 501(c)(3) of the Internal Revenue Code . . .”).

199. Hodge, *supra* note 19.

200. See *supra* notes 181, 196, 199 and accompanying text.

201. Lev Akabas & Eben Novy-Williams, *Athletic Department Donations Up Despite Rise of NIL Collectives*, SPORTICO (Jan. 23, 2024, at 09:00 CT), <https://www.sportico.com/leagues/college-sports/2024/college-sports-donations-nil-money-1234763721/> [https://perma.cc/LTV8-T3C4].

insubstantial; Texas A&M's athletic program donations jumped from \$54.15 million in 2022 to \$115.4 million in 2023.<sup>202</sup> During fiscal year 2022–2023, ten individual college athletic programs received over \$50 million in charitable donations.<sup>203</sup> During fiscal year 2023–2024, the University of Oklahoma Athletics Department raised a record-setting \$110.3 million in donations.<sup>204</sup> While most of these funds go to collegiate football programs, charitable donations fund scholarships, equipment, facilities, and travel across all sports.<sup>205</sup> Because college athletic departments fall under the purview of I.R.C. section 501(c),<sup>206</sup> donors can generally deduct charitable donations so long as such donations are not linked to season ticket purchase rights.<sup>207</sup> This limitation, however, did not always exist.

Before the 2018 Tax Cuts and Jobs Act (TCJA),<sup>208</sup> college sports enjoyed broad and amicable tax treatment because of the tax-exempt status given to colleges, universities, athletic departments, and the NCAA, along with the IRS's long-standing protection against taxing athletic scholarships.<sup>209</sup> Historically, athletic program donors benefitted from what was referred to as the "80/20 rule," which afforded an 80% deduction on charitable donations made in exchange for college sports seating rights.<sup>210</sup> In addition, corporate taxpayers were allowed a 50% deduction on sports tickets and stadium suite expenses.<sup>211</sup> The TCJA repealed both tax benefits.<sup>212</sup> Doomsayers predicted those changes would significantly diminish charitable giving to college sports programs;<sup>213</sup>

202. Grant Hughes, *College Athletics' 25 Fat Cats Who Received Largest 2023 Donations*, 247SPORTS (July 13, 2023, at 09:43 CT), <https://247sports.com/longformarticle/college-athletics-25-fat-cats-who-received-largest-2023-donations-233773309/#2444763> [<https://perma.cc/SE5T-3B6E>].

203. *Id.* (noting that those programs were: Florida State University (\$54.2 million), Ohio State University (\$57.8 million), Louisiana State University (\$58.9 million), University of Oklahoma (\$60.7 million), University of Nebraska (\$61 million), University of Tennessee (\$62.3 million), University of Georgia (\$75.9 million), Clemson University (\$84.3 million), University of Texas (\$86 million), and Texas A&M University (\$115.4 million)).

204. See Univ. of Okla. Athletics, *OU Athletics Sets Fundraising Record for Second Time in Three Years*, SOONERSPORTS (Aug. 20, 2024), <https://soonersports.com/news/2024/8/20/athletics-ou-athletics-sets-fundraising-record-for-second-time-in-three-years> [<https://perma.cc/7CLX-TVL2>].

205. *The Benefits of Donating to College Athletics*, GRAND COMMONWEALTH (Apr. 11, 2022), <https://grand-commonwealth.com/2022/04/11/the-benefits-of-donating-to-college-athletics/> [<https://perma.cc/6HPE-GLWF>].

206. See *supra* Part II.B.

207. See I.R.C. § 170 (permitting taxpayers to deduct contributions made to charitable organizations).

208. See Tax Cuts and Jobs Act of 2017 § 13304, Pub. L. No. 115-97, 131 Stat. 2124 (codified at I.R.C. § 274(a)).

209. See *This Is Our House!*, *supra* note 29, at 348–49.

210. *Narrowing the Playing Field*, *supra* note 10, at 80–81.

211. *Id.*

212. See Tax Cuts and Jobs Act § 13304.

213. *Narrowing the Playing Field*, *supra* note 10, at 81.

however, such has not been the case. In fact, between 2018 and 2022, charitable donations increased by 20%.<sup>214</sup>

Of even greater intrigue, college athletic donations have continued to increase despite the emergence of NIL collectives in 2021.<sup>215</sup> NIL collectives are donor-driven fundraising programs affiliated with colleges and universities, but they remain entirely independent of them.<sup>216</sup> These private entities rely on pooled donations from athletic boosters and outside supporters to fund NIL opportunities for college athletes.<sup>217</sup> In fiscal year 2023–2024, the total NIL Market across all institutions (including Power 5 schools, Group of Five schools, other NCAA Division I schools, and all other NCAA Division schools) was projected at \$1.17 billion.<sup>218</sup> Of that, about \$817 million was generated from NIL collectives.<sup>219</sup>

Currently, there are over 225 Division I NIL collectives in operation.<sup>220</sup> Estimates indicate that these collectives comprised approximately 80% of all NIL funds spent to secure top players for the 2024 college football season.<sup>221</sup> In 2023, about 80 NIL collectives were registered as I.R.C. Section 501(c)(3) tax-exempt entities.<sup>222</sup> Such favorable tax status meant donor contributions to those select collectives were tax deductible.<sup>223</sup> However, on March 23, 2023, the IRS issued a Memorandum strongly indicating that most NIL collectives do not further any tax-exempt purposes under section 501(c)(3), thus calling their tax-exempt status into question.<sup>224</sup> The IRS's stance was based on whether the private benefits afforded to college athletes by tax-exempt NIL collectives were truly incidental to these organizations' charitable missions.<sup>225</sup> Since the release of its Memo, the IRS has issued three private-letter rulings denying recognition of the tax-exempt status of NIL collectives.<sup>226</sup> On the cusp of fiscal year 2025,

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214. Akabas & Novy-Williams, *supra* note 201 (noting this increase across NCAA Division I Football Bowl Subdivisions (FBS)).

215. *Id.*

216. *Narrowing the Playing Field*, *supra* note 10, at 60.

217. *Id.*

218. *Methodology*, NIL-NCAA.COM, <https://nil-ncaa.com/methodology/> [<https://perma.cc/U2ZV-KGKP>] (last visited Sep. 28, 2025).

219. *Id.*

220. Daniel Libit, *NIL Collectives Take Tax Shelter Amid Storm of College Cash*, SPORTICO (Jan. 5, 2024), <https://www.sportico.com/leagues/college-sports/2024/blueprint-sports-nil-collective-nonprofit-1234761748/> [<https://perma.cc/MV3A-YESE>].

221. Pete Nakos, *On3's Top 15 NIL Collectives in College Sports*, ON3 (Aug. 29, 2024), <https://www.on3.com/nil/news/on3s-top-15-nil-collectives-in-college-sports/> [<https://perma.cc/JZ5G-V8MB>].

222. *Narrowing the Playing Field*, *supra* note 10, at 60.

223. *Id.* at 60–61.

224. *Id.* at 61; Memorandum from Lynn A. Camillo, Deputy Assoc. Chief Couns. to Stephen A. Martin, Dir., EO Rulings & Agreements & Lynn Brinkley, Dir., EO Examinations (May 23, 2023) (on file with the IRS), <https://www.irs.gov/pub/lanoa/am-2023-004-508v.pdf> [<https://perma.cc/UCA8-DCZG>].

225. See Camillo, *supra* note 224, at 2.

226. I.R.S. Priv. Ltr. Rul. 202414007 (Jan. 10, 2024); I.R.S. Priv. Ltr. Rul. 202416015 (Jan. 24, 2024); I.R.S. Priv. Ltr. Rul. 202428008 (July 12, 2024). In each of these PLRs, the IRS determined that the requesting

the IRS listed tax-exempt NIL collectives as one of the agency's compliance enforcement priorities,<sup>227</sup> indicating a likely end to any remaining tax-exempt NIL collectives.<sup>228</sup>

Given the IRS's direct targeting of these organizations, donors' inability to reap charitable tax benefits, and the forthcoming revenue-sharing models that will allow institutions to pay college athletes directly, NIL collectives' continued longevity is dubious.<sup>229</sup> As select college athletes begin recouping revenue-sharing opportunities under the *House* settlement, as efforts by college athletes to unionize and be classified as employees of their institutions continue to come forward, and as collegiate athletic conferences purposefully realign to drive increased broadcasting, questions loom as to the potential tax consequences that may ensue.<sup>230</sup> The next Part endeavors to address some of these issues.

### III. THE FUTURE OF COLLEGE SPORTS AND THE POTENTIAL TAX CONSEQUENCES

Professionalizing college sports has been in motion for some time. With indirect and direct compensation of college athletes the new reality,<sup>231</sup> and with college athletes moving toward unionization and employment recognition, the taxable consequences of these events raise complex considerations.<sup>232</sup> As such, Part III.A offers tax considerations for two specific parameters impacting college sports: employment versus independent contractor characterization and NIL versus direct revenue-sharing compensation models; Part III.B discusses potential tax considerations surrounding athletic scholarships as the industry moves into the era of direct revenue-sharing with college athletes; and Part III.C provides thoughtful discourse surrounding the continued tax-exempt status of college athletic conferences.

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NIL collective failed to meet the tax-exempt operational test, as the primary purpose of their activities was not found to accomplish tax-exempt purposes as specified in I.R.C. section 501(c)(3) (i.e., a charitable purpose).

227. Letter from Edward Killen, Tax Exempt & Gov't Entities Comm'r & Robert Choi, Tax Exempt & Gov't Entities Deputy Comm'r (Fiscal Year 2025) (on file with the IRS), [https://www.irs.gov/pub/irs-access/p5313\\_accessible.pdf](https://www.irs.gov/pub/irs-access/p5313_accessible.pdf) [<https://perma.cc/PTF8-C7UY>].

228. Eli Henderson, *NIL Collectives in IRS Crosshairs: Schools Brace for Major Changes*, SPORTS ILLUSTRATED (Dec. 3, 2024), <https://www.msn.com/en-us/money/other/nil-collectives-in-irs-crosshairs-schools-brace-for-major-changes/ar-AA1vcNWJ> [<https://perma.cc/R54Z-KG38>].

229. See Ross Dellenger, *The Next Evolution of NIL Collectives and the Battles that Await: This is a Big Inflection Point*, YAHOO SPORTS (May 28, 2024), <https://sports.yahoo.com/the-next-evolution-of-nil-collectives-and-the-battles-that-await-this-is-a-big-inflection-point-120051261.html> [<https://perma.cc/YT95-5VXM>].

230. See *infra* Part III; *supra* Part I.C.

231. See *supra* Part I.C.

232. See, e.g., Erik M. Jensen, *Taxation, the Student Athlete, and the Professionalization of College Athletics*, 1987 UTAH L. REV. 35, 37–38 (1987) (concluding in 1987 that the transformation of college athletics into a professional entity would likely create significant tax consequences for both athletes and institutions).

*A. The Next Frontier in College Sports: Direct Revenue-Sharing*

For almost as long as the NCAA has existed, there have been efforts to compensate college athletes for their performances.<sup>233</sup> The climactic moment that opened the door for college athletes to be paid came in 2019 when California passed the Fair Pay to Play Act (FPTPA), which created a right for any athlete at a four-year college in California to monetize their NIL, effective July 1, 2021.<sup>234</sup> Despite a great deal of bluster from the NCAA—including threats to challenge the constitutionality of California’s law—the organization did not file a lawsuit; instead, it sat idly as many states passed similar legislation.<sup>235</sup> As the effective date loomed, and having lost *NCAA v. Alston* just days ahead of the FPTPA coming to fruition, all eyes focused on the NCAA’s response.<sup>236</sup> Ultimately, the NCAA conceded, issuing an interim policy at the end of June 2021 that allowed college athletes to benefit from using their NIL financially.<sup>237</sup>

While the NCAA’s interim policy did not permit unfettered earnings by college athletes, the legislation was more permissive than some state laws allowed.<sup>238</sup> Effectively, the NCAA’s policy deferred to state law and individual school policies while allowing college athletes the ability to retain representation to negotiate NIL contracts.<sup>239</sup> However, the NCAA did maintain its “pay-for-play” prohibition, which was intended to stop third parties from inducing athletes to attend specific institutions based on NIL agreements.<sup>240</sup> Even the NCAA’s minor guardrails surrounding NIL rights were challenged in a wave of

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233. While there has arguably always been a tension between aspects of professionalism and intercollegiate athletics, the amounts of money flowing into college athletics since the 1980s, the increase in media attention, and the value of broadcast contracts has forced the issue to the surface even more than in the past. *See generally*, *Reimagining the Governance of College Sports*, *supra* note 112, at 434–38 (noting new stories from D1 sports programs that highlight the pros and cons of collegiate professionalism).

234. S.B. 206, 2019 Reg. Sess. (Cal. 2019).

235. *See NCAA Responds to California Senate Bill 206*, NCAA (Sep. 11, 2019, at 10:08 CT), <https://www.ncaa.org/news/2019/9/11/ncaa-responds-to-california-senate-bill-206.aspx> [<https://perma.cc/JA6J-7NW7>] (“We urge the state of California to reconsider this harmful and, we believe, unconstitutional bill and hope the state will be a constructive partner in our efforts to develop a fair name, image and likeness approach for all 50 states.”). Dozens of states passed NIL enabling legislation following California. *See NIL College Rules*, ON3, <https://www.on3.com/nil/laws/college/> [<https://perma.cc/H99M-D2G9>] (last visited Sep. 28, 2025).

236. *Narrowing the Playing Field*, *supra* note 10, at 65.

237. Michelle Brutlag Hosick, *NCAA Adopts Interim Name, Image and Likeness Policy*, NCAA (June 30, 2021, at 16:20 CT), <https://www.ncaa.org/news/2021/6/30/ncaa-adopts-interim-name-image-and-likeness-policy.aspx> [<https://perma.cc/9ZS7-SB8K>].

238. *The Collective Conundrum*, *supra* note 120, at 124.

239. Hosick, *supra* note 237.

240. *See id.* While the NCAA maintained its prohibition on using NIL deals to induce athletes to attend certain schools, the prohibition at least appeared to be a ban in name only. *See generally* Josh Moody, *The Current State of NIL*, INSIDE HIGHER ED. (June 7, 2023), <https://www.insidehighered.com/news/students/athletics/2023/06/07/two-years-nil-fueling-chaos-college-athletics> [<https://perma.cc/RWY4-L3S4>] (noting the emergence of collectives and their role and influence in NIL agreements).

antitrust lawsuits, with one federal judge striking down the NCAA's ban on NIL use as a roster inducement.<sup>241</sup> The initial rollout of college athletes being compensated for their NIL was arguably chaotic due to a lack of uniformity across state laws.<sup>242</sup> While some states imposed financial literacy education as part of their NIL laws, others did not, and any available tax education provided to college athletes who received NIL funds was largely unknown.<sup>243</sup>

While some athletes likely secure professional tax filing and planning assistance rivaling that of professional athletes, many do not.<sup>244</sup> Since 2021, it is unclear to what extent meaningful improvements have been made across the collegiate landscape to ensure college athletes earning compensation for their NIL are educated on the applicable tax consequences of independent contractor status and the potential impact such earnings can have on their future financial needs.<sup>245</sup>

Earnings that college athletes derive from the *House* settlement will likely pose more complicated tax questions.<sup>246</sup> Revenue-sharing commenced on July 1, 2025, raising additional questions about what these distributions will look like, given that the settlement did not lay out a standardized formula for distribution.<sup>247</sup> Issues with intended distributions could be further complicated by the multiple lawsuits that have been filed to challenge the *House* settlement

241. See Brandon Marcello, *NIL Landscape in College Sports Changing: NCAA Losing Its Grip, Amateur vs. Employee Battle Looms*, CBS (Apr. 23, 2024), <https://www.cbssports.com/college-football/news/nil-landscape-in-college-sports-changes-as-ncaa-loses-grip-amateur-vs-employee-battle-looms/> [<https://perma.cc/7DM9-BDNP>].

242. See *Narrowing the Playing Field*, *supra* note 10, at 67–68 (noting that the patchwork of nonuniform state laws surrounding NIL resulted in the “wild west” of college sports.).

243. See *NIL State Laws*, NIL NETWORK (Aug. 27, 2022), <https://www.nilnetwork.com/nil-laws-by-state/> [<https://perma.cc/49HG-LAN5>] (providing details of various state NIL laws); see also *Changing the Face of College Sports*, *supra* note 29, at 500–02 (suggesting that the NCAA create a position or department dedicated to tax resources for college athletes, that the organization create or sponsor a basic tax literacy course for college athletes, and that member institutions provide additional tax support to their athletes).

244. Nathan Goldman & Christina Lewellen, *The Tax Bill for NIL*, POOLE THOUGHT LEADERSHIP (Sep. 5, 2024), <https://poole.ncsu.edu/thought-leadership/article/the-tax-bill-for-nil/> [<https://perma.cc/LG6U-AMVB>].

245. For its part, the NCAA released a three paragraph note on its NIL Assist page along with a one-minute video in partnership with TurboTax on July 31, 2024. *Tax Tips for NIL Athletes*, NCAA (March 19, 2025), <https://nilassist.ncaa.org/tax-tips-for-nil-athletes/1> [<https://perma.cc/8842-RB3R>]; see also *infra* Part III (discussing the impact of compensatory earnings on college athletes' federal need-based aid).

246. While there have undoubtedly been complications surrounding the rollout of NIL rights—notably, questions about how, or whether, international athletes may engage in NIL activities—there do not appear to have been widespread tax issues to date. See Noah Henderson, *NIL Confusion Remains for International Athletes*, SPORTS ILLUSTRATED (Nov. 29, 2023), <https://www.si.com/fannation/name-image-likeness/news/nil-confusion-remains-for-international-athletes-noah9> [<https://archive.is/BD0Rz>].

247. Noah Henderson, *With NCAA Revenue Sharing Emerges a New Antitrust Challenge*, SPORTS ILLUSTRATED (Oct. 8, 2024), <https://www.si.com/fannation/name-image-likeness/nil-news/with-ncaa-revenue-sharing-emerges-a-new-antitrust-challenge> [<https://perma.cc/6SQS-7KHX>]; see also Plaintiffs' Notice of Motion & Motion for Preliminary Settlement Approval, *In re Coll. Athlete NIL Litig.* at 11–13, 4:20-cv-03919 (N.D. Cal. July 26, 2024) (explaining the distribution plan for the NIL Settlement Fund).

and its potential Title IX implications.<sup>248</sup> While schools that have opted into revenue-sharing have a pool of roughly \$20 million to distribute to athletes—above and beyond scholarship funding—it is unclear how such funds are being shared across athletes and sports.<sup>249</sup> In addition, the settlement agreement did not specify whether these payments will render college athletes employees of their institutions.<sup>250</sup> Classifying college athletes as independent contractors versus employees will have differing tax consequences.<sup>251</sup>

### 1. *Employee versus Independent Contractor Classification: A Tax Primer*

The future tax implications facing college athletes under various compensation models<sup>252</sup> are mainly dependent on their classification as independent contractors, or instead employees, given that employees are treated differently from independent contractors for tax law purposes.<sup>253</sup> The IRS applies a twenty-factor test to ascertain whether an employer-employee relationship exists.<sup>254</sup> These factors range from behavioral to financial to relational; however, significant focus is directed at the extent of control exerted by the employer on the worker when analyzing whether a worker is an employee for tax purposes.<sup>255</sup> In simplistic terms, where a party calls for the performance of a task, and that same party controls the details surrounding the execution of that task, workers subjected to that party's overhead control are more likely to

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248. See Mike Scarcella, *NCAA Faces Appeals After Judge Approves Landmark \$2.8 Billion Settlement*, REUTERS (July 3, 2025, at 12:00 CT), <https://www.reuters.com/legal/litigation/ncaa-faces-appeals-after-judge-approves-landmark-28-billion-settlement-2025-07-03/> [https://perma.cc/27Y4-6NTX]

249. Ross Dellenger, *NCAA Settlement Q&A: How Will Schools Distribute Revenue, What is the Future of NIL Collectives and More*, YAHOO SPORTS (May 24, 2024), <https://sports.yahoo.com/ncaa-settlement-qa-how-will-schools-distribute-revenue-what-is-the-future-of-nil-collectives-and-more-125519681.html> [https://perma.cc/YBG3-L2W9]. One of the major questions lingering over the settlement is whether Title IX requires equal distribution between men's and women's sports. *Id.*

250. *Knight Commission's Sept. 18 Public Meeting Discusses House Settlement, Athlete Employment Cases and a New DI Model*, KNIGHT COMM'N OF INTERCOLLEGIATE ATHLETICS (Sep. 19, 2024), <https://www.knightcommission.org/2024/09/september-2024-public-meeting> [https://perma.cc/W8H6-3AXX].

251. While various cases around the country could determine the employment status of athletes under the Fair Labor Standards Act and the National Labor Relations Act, the IRS employs its own test for determining the classification of an individual. See generally *Independent Contractor (Self-Employed) or Employee?*, IRS (Aug. 7, 2025) <https://www.irs.gov/businesses/small-businesses-self-employed/independent-contractor-self-employed-or-employee> [https://perma.cc/X4WG-SVWA] (describing the various classifications of worker that the IRS uses).

252. We use the term “compensation model” to differentiate the two ways in which college athletes may earn income in the future: either via NIL payments that generally result in the athletes receiving an IRS Form 1099 for Nonemployee Compensation, or direct revenue sharing from institutions which, at this time, could open the door for college athletes to be deemed employees of their institutions.

253. Sarah Lytal, Comment, *Ending the Amateur Façade—Pay College Athletes*, 9 HOU. L. REV. 158, 180 (2019).

254. See *The Claim Game*, *supra* note 29, at 266–67; see also Rev. Rul. 87-41, 1987-1 C.B. 296 (distinguishing employees from independent contractors), and Treas. Reg. § 31.3121(d)-1(c) (discussing the relevance of “control” within the context of the common law employee).

255. Shu-Yi Oei & Diane M. Ring, *Tax Law's Workplace Shift*, 100 B.U. L. REV. 651, 683–85 (2020).



be identified as employees for tax purposes.<sup>256</sup> Alternatively, in situations where a worker controls the details surrounding the performance of a task, and the party calling for such a task merely controls its end result, the worker is more likely to be identified as an independent contractor for tax purposes.<sup>257</sup>

Because independent contracting (also referred to as self-employment) often results in less overhead control, it allows workers greater flexibility than traditional employment roles.<sup>258</sup> However, determining proper worker characterization is critical for tax purposes. Under a traditional employment relationship, employers withhold income taxes on wages earned by their employees and must submit quarterly tax installments on each employee's behalf.<sup>259</sup> In addition, employers and employees share the burden of paying federal employment taxes (made up of a 12.4% Social Security tax and 2.9% Medicare tax), thus providing an added financial benefit for employees, over and above their earnings.<sup>260</sup> Employees also enjoy having few—if any—tax filing or payment obligations during the tax year outside of filing their annual individual income tax return to reconcile their tax obligations.<sup>261</sup> Instead, employers carry the burden of quarterly withholding, depositing, and reporting employment taxes.<sup>262</sup> In addition, employers have the added cost of contributing their 50% share of each employee's federal and state unemployment taxes.<sup>263</sup>

In contrast, an independent contractor has no employer upon which they can rely for tax withholding and payment obligations; instead, they are responsible for paying income and self-employment taxes on their own behalf.<sup>264</sup> Independent contractors having net earnings of at least \$400 annually must file a federal income tax return<sup>265</sup> and are generally required to submit quarterly tax payments.<sup>266</sup> Further, independent contractors must pay self-

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256. See *id.* at 684.

257. *Id.*

258. Kathleen DeLaney Thomas, *Taxing the Gig Economy*, 166 U. PA. L. REV. 1415, 1420 (2018).

259. *Id.* at 1422; see also I.R.C. § 3402 (requiring employers to withhold taxes on paid wages).

260. Thomas, *supra* note 258, at 1422–23.

261. *Id.* at 1423 (noting that employees can “effectively ignore” a number of tax obligations during the tax year that their employers are instead responsible for).

262. See I.R.C. § 3402(a) (denoting employer withholding requirements); I.R.C. § 3301 (documenting requisite employer withholding rates).

263. See I.R.C. § 3111 (detailing employer payment requirements for Social Security and Medicare taxes); see also I.R.C. § 3301 (documenting employer requirements for federal unemployment taxes).

264. See I.R.C. § 1402.

265. See I.R.C. § 6017; see also I.R.C. § 1402(a) (defining net earnings as gross income, minus allowable trade or business deductions). Independent contractors must report their income on Schedule C (Form 1040), Profit or Loss from Business (Sole Proprietorship). See *About Schedule C (Form 1040), Profit or Loss from Business (Sole Proprietorship)*, IRS, <https://www.irs.gov/forms-pubs/about-schedule-c-form-1040>, [<https://perma.cc/8TXJ-UJNV>] (last visited Sep. 28, 2025).

266. *Taxing Sports*, *supra* note 9, at 889.

employment tax on the first \$176,100 of income earned.<sup>267</sup> However, unlike traditional employees, they can deduct 50% of such tax.<sup>268</sup> It is important to note that while traditional employees generally earn income in cash wages,<sup>269</sup> independent contractors' income may derive from a multitude of sources that include both monetary<sup>270</sup> and non-monetary items like royalties,<sup>271</sup> goods and services (for example, the use of a car or residence),<sup>272</sup> and digital assets like cryptocurrencies,<sup>273</sup> all of which are taxable.<sup>274</sup> Independent contractors can deduct available business expenses when calculating their taxable income.<sup>275</sup> Although filing and payment obligations throughout the taxable year are more arduous for independent contractors than traditional employees, independent contractors can enjoy significant tax benefits from the many business expense deduction allowances that are available.<sup>276</sup>

In addition to federal tax obligations, traditional employees and independent contractors must consider the various state tax implications associated with their earnings.<sup>277</sup> This could prove particularly burdensome for independent contractors, depending on the number of states where they derive income, since states levy income taxes differently and at unique and contrasting rates.<sup>278</sup> Likewise, independent contractors must comply with non-uniform

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267. See *Publication 15-A (2025), Employer's Supplemental Tax Guide*, IRS, <https://www.irs.gov/publications/p15a> [<https://perma.cc/5RPW-QTGW>] (last visited Sep. 28, 2025) (noting that the Social Security Wage base limit (which increases for inflation) is \$176,100 for tax year 2025); see also *Self-Employment Tax (Social Security and Medicare taxes)*, IRS, <https://www.irs.gov/businesses/small-businesses-self-employed/self-employment-tax-social-security-and-medicare-taxes> [<https://perma.cc/FB2F-JKAU>] (last visited Sep. 28, 2025) (noting that the 15.3% self-employment tax rate is a combination of 12.4% Social Security tax, and 2.9% Medicare tax on net earnings).

268. *Taxing Sports*, *supra* note 9, at 889. The standard deduction increases each year for inflation. For 2025, the standard deduction for single taxpayers and married taxpayers filing separately is \$15,000; \$30,000 for married couples filing jointly; and \$22,500 for heads of households.

269. See Adam Hayes, *Cash Wages: What it is, Reporting, Example*, INVESTOPEDIA (Nov. 1, 2023), <https://www.investopedia.com/terms/c/cash-wages.asp> [<https://perma.cc/CAU3-KU5H>] (noting that "cash wages normally make up the bulk of employment compensation for most workers, and are generally taxable").

270. See I.R.C. § 61(a).

271. See I.R.C. § 61(a)(6).

272. See I.R.C. § 61(a)(2).

273. See I.R.C. § 61(a)(3) (The IRS treats digital assets, like cryptocurrency, as property, so any gain on the sale or exchange of a digital asset is considered a taxable event).

274. See I.R.C. § 61(a).

275. Taxable income equals one's total income (made up of gross income less any exempt income), minus any allowable deductions, plus any taxable capital gains. See I.R.C. § 63(a).

276. Thomas, *supra* note 258, at 1423 (noting that self-employed persons benefit from above-the-line business deductions (which effectively reduce gross income dollar-for-dollar to calculate one's adjusted gross income (AGI)), while traditional employees include business expenses as below-the-line deductions, which are taken after calculating one's AGI, and are thus less beneficial); see also I.R.C. §§ 62(a)(1), 63(a)–(b) (defining adjusted gross income and taxable income).

277. *Taxing Sports*, *supra* note 9, at 889.

278. *Id.* at 889–90.

state tax filing obligations and varying residency and nexus rules.<sup>279</sup> As the following Part details, questions remain about what employment classification college athletes will fall into under the impending revenue-sharing distributions.<sup>280</sup>

## 2. *College Sports Compensation Models: Important Tax Considerations*

From a federal tax perspective, the IRS has thus far not identified college athletes as employees of their institutions. Collegiate athletes who entertain contracts with outside parties (including NIL collectives) to capitalize off the use of their NIL have thus far generally been deemed independent contractors.<sup>281</sup> However, direct payment allowances under the *House* settlement could change how the IRS characterizes college athletes from a tax perspective.

The College Football Players Association (CFBPA) seeks to create a revenue-sharing model allowing college athletes to bargain with their conferences and schools collectively.<sup>282</sup> Still, it prohibits them from being classified as employees.<sup>283</sup> For the CFBPA to succeed in this effort, Congress would have to pass legislation prohibiting college athletes from being classified as employees of their institutions for federal and state purposes.<sup>284</sup> Legislation to this effect was introduced in Congress in 2024.<sup>285</sup> At present, no such bill has passed, and while Congress has entertained hearings on matters of athlete pay and employment classification for labor law purposes,<sup>286</sup> moving the needle

279. See *Changing the Face of College Sports*, *supra* note 29, at 495–99 (discussing the various state tax obligations that college athletes may be subject to as independent contractors). The term “nexus” refers to a non-resident person having a physical presence in a taxing jurisdiction. *Id.* at 495. If such person has a physical presence in any given jurisdiction while earning income there, they must comply with that particular jurisdiction’s tax laws. *Id.*

280. Due to immigration and visa restrictions, international college athletes are unable to financially benefit from the use of their NIL. See Henderson, *supra* note 246. While outside the scope of this Article to assess the tax implications facing foreign collegiate athletes under revenue-sharing models, the complexities of such invite future research opportunities.

281. See *Taxing Sports*, *supra* note 9, at 889; *Narrowing the Playing Field*, *supra* note 10, at 75.

282. Ben Portnoy, *A House v. NCAA Settlement Might Be Coming, but Employment Status Remains a Looming Battle*, SPORTS BUS. J. (May 13, 2024), <https://www.sportsbusinessjournal.com/Articles/2024/05/13/future-of-college-athletics> [<https://perma.cc/8EQK-4KQW>].

283. *Id.*

284. *Id.*

285. See, e.g., Protecting Student Athletes’ Economic Freedom Act of 2024, H.R. 8534, 118th Cong. (2024). This bill, entitled “Protecting Student Athletes’ Economic Freedom Act of 2024,” provides, “Notwithstanding any other provision of Federal or State law, a student athlete (or former student athlete) may not be considered an employee of an institution, a conference, or an association under any Federal or State law or regulation based on participation of the student athlete (or former student athlete) in a varsity intercollegiate athletics program or a varsity intercollegiate athletics competition, or the existence of rules or requirements for being a member of any varsity sports team.” *Id.*

286. See, e.g., *Recent Congressional Hearings Signal Major NIL Changes Are Coming*, MCCARTER & ENGLISH (Nov. 9, 2023), <https://www.mccarter.com/insights/recent-congressional-hearings-signal-major-nil-changes-are-coming/> [<https://perma.cc/WDF9-DH2S>]; Daniel Libit, *House NIL Hearing Exposes Partisan Divide on Athlete Pay*, SPORTICO (Jan. 19, 2024, at 00:01 CT),

toward any form of congressional action has been sluggish.<sup>287</sup> Absent federal legislation, the door remains open for the IRS to assess whether college athletes should be classified as employees under current revenue-sharing models. While the IRS is not obligated to do so, some suggest that expanding the classification of college athletes as employees under labor laws could sway the agency to consider the same.<sup>288</sup>

Given the uncertainty of the issue, and as college sports continue to evolve into newfound forms of compensation models, college athletes need to consider how best to navigate potential tax issues. Those who earn cash and/or non-monetary goods and services for the use of their NIL and who ultimately derive earnings from future revenue-sharing plans will enormously benefit from a professional accountant or tax attorney's guidance for several reasons. First, athletes who earn money, goods, or services in exchange for the use of their NIL must include those earnings as taxable income.<sup>289</sup> Documenting cash earnings is a relatively straightforward endeavor from a tax perspective; however, determining the fair market value of non-cash benefits in order to calculate taxable income can prove more onerous.<sup>290</sup> In addition, reporting taxable transactions of digital currency (like cryptocurrency and nonfungible tokens (NFTs)) requires that college athletes keep detailed records to calculate capital gain or loss.<sup>291</sup> Further, as noted above, college athletes with net self-employment earnings of at least \$400 will generally have to file federal—and possibly state—income tax returns and make quarterly tax payments.<sup>292</sup> In addition, college athletes must consider the various state tax implications, including the so-called Jock Tax, which permits states to tax non-resident athletes on income earned within their borders.<sup>293</sup> Because states do

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<https://www.sportico.com/law/analysis/2024/congressional-nil-hearing-bipartisanship-breakdown-1234763402/> [<https://perma.cc/Z7JV-E4CR>]; *Chairs Good, Owens to Hold Joint Hearing on Student-Athletes – Tomorrow at 10:15 AM*, COMMITTEE ON ED. & THE WORKFORCE (Mar. 11, 2024), <https://edworkforce.house.gov/news/documentsingle.aspx?DocumentID=410257> [<https://perma.cc/HBU9-CTCH>].

287. Jack D. Hepburn, *Capitol Hill Roundtable Discussion Highlights Differing NIL Perspectives*, MCLANE MIDDLETON (Mar. 20, 2024), <https://www.mclane.com/insights/capitol-hill-roundtable-discussion-highlights-differing-nil-perspectives/> [<https://perma.cc/T2TH-6RR3>] (noting the sluggish movement of federal action in regard to college athletes, even amidst bipartisan efforts).

288. Diego Areas Munhoz & Samantha Handler, *College Athlete Unions Raise Specter of Scholarship Tax Hit*, BLOOMBERG L. (Apr. 8, 2024), <https://news.bloomberglaw.com/daily-labor-report/college-athlete-unions-raise-specter-of-scholarship-tax-hit> [<https://perma.cc/SDD8-3N88>].

289. *Taxing Sports*, *supra* note 9, at 888.

290. See *Student-Athletes Involved in Name Image Likeness (NIL) Agreements Should Be Aware of Their Tax Obligations*, BLOG TAXPAYER ADVOC. SERV. (Sep. 12, 2025), <https://www.taxpayeradvocate.irs.gov/news/nta-blog/nta-blog-student-athletes-involved-in-nil-agreements-should-be-aware-of-their-tax-obligations/2023/12/> [<https://perma.cc/KK5E-HP7Z>].

291. For information regarding how to report digital asset transactions for tax purposes, see *Digital Assets*, IRS, <https://www.irs.gov/filing/digital-assets> [<https://perma.cc/X3C4-QHGE>] (last visited Sep. 28, 2025).

292. See *supra* text accompanying notes 265–66.

293. *Taxing Sports*, *supra* note 9, at 862.

not impose the Jock Tax uniformly, athletes must keep detailed records of where their earnings derive and potentially make quarterly state tax payments.

A second form of NIL compensation, the *Alston* Awards,<sup>294</sup> could likewise have tax consequences for college athletes. These awards allow NCAA member institutions to pay college athletes up to \$5,980 annually to be used toward education-related expenses.<sup>295</sup> So long as the funds are used toward qualified educational expenses (akin to funds used for scholarships or grants, including tuition, fees, books, supplies, and equipment), they should not be taxable.<sup>296</sup> However, that portion would be taxable if any or all awarded funds are used for non-qualified education expenses, like room and board, travel, and non-education-related equipment.<sup>297</sup> Taxable *Alston* Award money and other NIL income earned can be reduced if the taxpayer-athlete has incurred related deductible business expenses.<sup>298</sup>

Some college athletes have begun setting up Limited Liability Companies (LLCs) to manage their NIL income.<sup>299</sup> LLCs allow taxpayers to separate business activities from personal assets, offering personal liability protection not available to sole proprietor independent contractors.<sup>300</sup> Although outside the scope of this Article to discuss the various pros and cons of establishing an LLC, this entity does offer member-owners certain tax benefits not afforded to self-employed individuals. Still, it requires additional effort both in upstart and upkeep,<sup>301</sup> thus bolstering this Article's promotion that college athletes seek professional guidance before considering establishing an LLC.

If the IRS eventually moves to classify college athletes as employees of their institutions for purposes of revenue-sharing, reporting and payment obligations

294. See *supra* text accompanying note 122.

295. Greene-Lewis, *supra* note 122.

296. *Id.*

297. *Id.*

298. *Id.* (noting that if the college athlete has no NIL income, but taxable *Alston* Award money, they can use the standard deduction to reduce their overall tax obligation).

299. See Tyler Jones, *Why Every College Athlete Making NIL Money Needs an LLC*, SUBSTACK (Nov. 19, 2024), [https://arenatylerjones.substack.com/p/why-every-college-athletemaking?utm\\_campaign=post&utm\\_medium=web](https://arenatylerjones.substack.com/p/why-every-college-athletemaking?utm_campaign=post&utm_medium=web) [<https://perma.cc/G7J2-YTVZ>].

300. *Id.*

301. While outside the scope of this Article to analyze the tax differences between sole proprietors and LLCs, some suggest that college athletes earning income from the use of their NIL are, or should, be establishing LLCs. See, e.g., Sandra Feldman, *College Athlete Entrepreneurs: What You Need to Know About Your LLC or Corporation*, WOLTERS KLUWER (Aug. 24, 2022), <https://www.wolterskluwer.com/en/expert-insights/college-athlete-entrepreneurs-what-you-need-to-know-about-your-llc-or-corporation> [<https://perma.cc/8Z9W-4HAB>]; Joni Sweet, *NIL: Setting Up an LLC and 501(c)(3) for Student-Athletes*, LEGALZOOM (Mar. 21, 2024), <https://www.legalzoom.com/articles/nil-setting-up-an-llc-and-501c3-for-student-athletes> [<https://perma.cc/WJ3U-P89X>]; Sophie Miller, *Essential Tax Strategies for College Athletes in the NIL Era*, LARSON (Mar. 31, 2025), <https://larsco.com/blog/essential-tax-strategies-for-college-athletes-in-the-nil-era> [<https://perma.cc/7ZQT-LXJS>]; Mit Winter, *The Time Is Now for College and High School Athletes to Prepare for the Name, Image, and Likeness Revolution*, KENNYHERTZ PERRY (Feb. 19, 2021), <https://kennyhertzperry.com/news/the-time-is-now-for-college-and-high-school-athletes-to-prepare-for-the-name-image-and-likeness-revolution> [<https://perma.cc/T2NM-EZHK>].

tied to those earnings will become less burdensome for the athletes. However, this could open the door for other items to remain taxable, including room and board,<sup>302</sup> personal travel benefits received,<sup>303</sup> employer-provided memberships to country clubs or social clubs,<sup>304</sup> and relocation and moving expenses.<sup>305</sup>

It is important to note that if those same employee-athletes also earn income from third-party NIL contracts, they will likely remain classified as independent contractors for those contractual agreements.<sup>306</sup> Such dual classification will increase college athletes' tax filing complexities, requiring that they report and pay tax on both traditional employment earnings and independent contractor earnings—something that could inevitably escalate their likelihood of future IRS audits.<sup>307</sup>

Another consideration that college athletes (and their families) should consider is a potential change to their historic tax dependency status. Parents generally claim their children as dependents on their income tax returns to reduce parental tax liability.<sup>308</sup> To identify whether a child is a dependent for tax purposes, five items must be considered: the relationship between the parent-taxpayer and the child,<sup>309</sup> the child's residency status,<sup>310</sup> the child's age,<sup>311</sup> the support received by the child from the parent-taxpayer,<sup>312</sup> and whether the child has filed a joint return.<sup>313</sup> For purposes of college athletes

302. *But see* I.R.C. § 119 (providing a tax exclusion for meals or lodging furnished for the convenience of the employer).

303. *See* Treas. Reg. § 1.61-21(a) (as amended in 2020).

304. *Id.*

305. *See* I.R.C. § 217 (moving expenses, while includable in gross income for tax purposes, are deductible by employees and self-employed individuals when in connection with the commencement of work).

306. *See supra* note 281 and accompanying text.

307. *See* Robert Hernandez, *From the HR Support Center: Can the Same Person Be Both an Employee and an Independent Contractor?*, PAYROLL PARTNERS (Aug. 13, 2024, at 08:39 CT), <https://www.payrollpartners.com/can-the-same-person-be-both-an-employee-and-an-independent-contractor/> [<https://perma.cc/87NH-B23X>].

308. *See generally* *Rules for Claiming Dependents on Taxes*, INTUIT TAX (Aug. 4, 2025, at 11:37 CT), <https://turbotax.intuit.com/tax-tips/family/rules-for-claiming-a-dependent-on-your-tax-return/L8LODbx94> [<https://perma.cc/6QFX-CS9Z>] (discussing requirements and restrictions on claiming dependents to reduce taxable income).

309. *See* I.R.C. § 152(c)(2) (“[A]n individual bears a relationship to the taxpayer described in this paragraph if such individual is—(A) a child of the taxpayer or a descendant of such a child, or (B) a brother, sister, stepbrother, or stepsister of the taxpayer or a descendant of any such relative.”).

310. *See* I.R.C. § 152(c)(1)(B) (A qualifying child is one “who has the same principal place of abode as the taxpayer for more than one-half of such taxable year”).

311. *See* I.R.C. § 152(c)(3) (“[A]n individual meets the requirements of this paragraph if such individual is younger than the taxpayer claiming such individual as a qualifying child and—(i) has not attained the age of 19 as of the close of the calendar year in which the taxable year of the taxpayer begins, or (ii) is a student who has not attained the age of 24 as of the close of such calendar year.”).

312. *See* I.R.C. § 152(c)(1)(D) (With some exceptions, a qualifying child is an individual “who has not provided over one-half of such individual's own support for the calendar year in which the taxable year of the taxpayer begins.”).

313. *See* I.R.C. § 152(c)(1)(E) (A qualifying child cannot file a “joint return (other than only for a claim of refund) with the individual's spouse . . .”).

earning income, a threshold issue is whether their parents can continue to claim them as dependents on their income tax returns. If a college athlete provides over one-half of their support for the calendar year, their parents cannot claim them as a dependent for tax purposes.<sup>314</sup> Given the combination of NIL earnings and revenue-sharing opportunities that select college athletes will benefit from, some college athletes could earn more income than the support received from their parents, thus disallowing their parents from including them as dependents on their own individual income tax returns.<sup>315</sup>

Finally, college athletes should consider the impact of their earnings on their Free Application for Federal Student Aid (FAFSA) applications. Almost half of all college athletes require some form of federal financial aid.<sup>316</sup> FAFSA applications apply a two-year lookback rule, requiring applicants to use tax return information from two years prior.<sup>317</sup> The lower the income input into a FAFSA application, the greater the opportunity for applicants to receive more considerable need-based aid.<sup>318</sup> Those earning income from NIL contracts and future revenue-sharing distributions may unexpectedly find that they are disqualified from receiving federal need-based assistance in the coming years.<sup>319</sup> Although college athletes who earn funds from NIL contracts and/or revenue-sharing plans may not currently require any form of federal aid, they should be aware of the potential impact that present-day earnings could have on future need-based aid—particularly if their market value should drop to such a degree that their earnings opportunities deplete, or entirely cease. Those athletes may have to personally finance the remainder of their college or graduate program experience, yet without proactive financial planning and saving at the time of their earnings, they may not have enough funds in place.<sup>320</sup>

### B. *The Potential Impact of Employment Status on College Athletic Scholarship*

As billions of dollars flow into college sports, more emphasis has been placed on athletes who have little negotiable input yet produce the labor

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314. See I.R.C. § 152(c)(1)(D).

315. Katharina Reekmans, *A Parent's Guide to NIL: Navigating Your College Athlete's Taxes*, INTUIT TAX (Apr. 15, 2025), <https://blog.turbotax.intuit.com/self-employed/a-parents-guide-to-nil-navigating-your-college-athletes-taxes-53889/> [https://perma.cc/J4V9-R77J].

316. See *The Title IV Financial Aid Enigma*, *supra* note 29, at 148.

317. *Id.* at 163. Thus, for example, if filing a FAFSA application for Fall 2025, applicants must input income tax data from 2023.

318. *Id.* at 163–64.

319. See *id.* at 164.

320. Future revenue-sharing models are likely to be based on college athletes' fair market value (FMV), an issue that has yet to be solidified. To read more about FMV revenue-sharing models, see Pete Nakos, *Opendorse Releases NIL Budgets, Fair Market Value Tech for Revenue Sharing*, ON3 (June 6, 2024), <https://www.on3.com/nil/news/opendorse-releases-nil-budgets-fair-market-value-tech-for-revenue-sharing/> [https://perma.cc/GW6F-ZS5H].

output.<sup>321</sup> For athletes to successfully unionize and collectively bargain under the NLRA, they must first be recognized as employees.<sup>322</sup> As discussed, efforts have been, and continue to be, made by college athletes to gain employment status on dual tracks: the first via litigation in *Johnson v. NCAA* under the FLSA,<sup>323</sup> and the second under charges filed with the NLRB challenging the classifications of athletes at various private institutions.<sup>324</sup> It remains unclear when, or to what extent, college athletes will gain employee status, even as pressure to recognize at least some athletes as employees under labor law standards has increased.<sup>325</sup> Still, and as discussed, the potential tax consequences facing college athletes under various compensation models will differ depending on their classification as employees or independent contractors for tax law purposes.<sup>326</sup> Under this premise, consideration should likewise be given to the future tax-amicability of college athletes' athletic scholarships under newfound direct compensation models.

While athletic scholarships currently remain beyond the taxable interest of the IRS,<sup>327</sup> some question the continued durability of these scholarships.<sup>328</sup> The IRS's most recent assurance came in a 2014 letter from the IRS Commissioner stating, "[T]he athletic scholarship awarded by the university is primarily to aid the recipients in pursuing their studies and, therefore, is excludable under

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321. Edelman et al., *supra* note 47, at 499–501 (discussing how college athletes may benefit from unionization).

322. See Nona B. Fumerton, *The Collective Bargaining Agreement and Its Legal Effects*, 17 WASH. L. REV. & ST. BAR J. 181, 182 (1942) (noting "A collective bargaining agreement is characterized principally by the essential fact that one of the parties is a collective group representing a body of employees, that is, the union. The other party to the understanding, representing the employer, may be either an individual employer or a collective group, an employers' association").

323. *Johnson v. NCAA*, 108 F.4th 163, 167 (3d Cir. 2024).

324. See *supra* Part I.D.

325. Indeed, the concurrence in the Third Circuit *Johnson* decision recognized that all college athletes may not qualify for employee status. See *Johnson*, 108 F.4th at 186 (Porter, J., concurring).

326. See *supra* Parts III.A.–B.

327. See *supra* Part II.A.

328. See Annie Nova & Tucker Higgins, *Republican Sen. Richard Burr Proposes Taxing Scholarships of Student Athletes Who 'Cash In'*, CNBC (Oct. 29, 2019, at 18:13 ET), <https://www.cnbc.com/2019/10/29/richard-burr-proposes-taxing-scholarships-of-student-athletes-who-cash-in.html> [<https://perma.cc/A5ZV-WL35>]; *Senator Burr Introduces NIL Scholarship Tax Act to Protect Integrity of Collegiate Sports Model*, U.S. SENATE COMM. ON HEALTH, EDUC., LAB. & PENSIONS (Sep. 29, 2021), <https://www.help.senate.gov/ranking/newsroom/press/senator-burr-introduces-nil-scholarship-tax-act-to-protect-integrity-of-collegiate-sports-model> [<https://perma.cc/Q82L-D8P4>]; *Northwestern, O'Bannon and The Future*, *supra* note 29, at 775 ("The momentum of law surrounding student-athletes' employment characterization indicates that qualified scholarships could be heavily scrutinized in the future and found to fall within the scope of taxable federal income."); Schmalbeck & Zelenak, *supra* note 29, at 1132 ("It does not seem possible, under the current NCAA scholarship regime, to construct a serious argument that athletic scholarships qualify as tax-free under § 117, because it is so clear that a scholarship cancellable for voluntary nonparticipation constitutes compensation for services. As compensation for services, athletic scholarships should be subject not only to the federal income tax but also to the employer and employee federal payroll taxes."); Ritter, *supra* note 29, at 420 (Richard Burr's "challenge to the traditional preferential tax treatment for student-athletes is likely a benchmark for the beginning of a trend toward more heightened scrutiny in taxing student athletics.").



section 117.”<sup>329</sup> Such a protective stance came on the heels of the regional NLRB’s decision that Northwestern University football players could be deemed employees and unionize.<sup>330</sup>

In 2019, North Carolina Senator Richard Burr and Congressman Mark Walker proposed that college athletes receiving NIL funds should pay taxes on their athletic scholarships.<sup>331</sup> Burr again introduced similar legislation in 2021 with the *NIL Scholarship Tax Act* that would permit college athletes to select whether they prefer to receive a tax-free scholarship or instead have the opportunity to earn money for the use of their NIL.<sup>332</sup> Neither bill has made meaningful progress in Congress at the time of this Article.

The IRS is not required to reconsider or change its stance on athletic scholarships. However, its last assurance could eventually be called into question under the new revenue-sharing models, where at least some college athletes are being directly paid by their institutions—which arguably exert significant control over them. Indeed, the extent of control that institutions have over their athletes has been strongly analyzed in academic literature,<sup>333</sup> evidencing that an employee-employer relationship already exists under the IRS’s twenty-factor test<sup>334</sup>—even before direct revenue-sharing between colleges, universities, and their athletes was even possible.

In 2021, the *Johnson* case identified parallels between non-athlete work-study students who are employees under the FLSA and college athletes who play sports on behalf of their institutions.<sup>335</sup> In fact, *Johnson* is perhaps less about paying college athletes market wages and allowing them to unionize, and more

329. See Letter from John A. Koskinen, IRS Comm’r, *supra* note 176.

330. Northwestern Univ., Case No. 13-RC-121459 (NLRB Region 13 Mar. 26, 2014) *rev’d*, Case No. 13-RC-121359 (NLRB Aug. 17, 2015) (declining to assert jurisdiction and declining to determine whether players were employees under the NLRA).

331. *Changing the Face of College Sports*, *supra* note 29, at 480; see also H.R. 1804, 116th Cong. (2019) (amending the Internal Revenue Code of 1986 to include athletic scholarships as taxable income when the recipient receives income from their name, image, or likeness).

332. See S. 2897, 117th Cong. (2021).

333. See, e.g., McCormick & McCormick, *supra* note 14, at 97–119 (examining the extent of control that institutions have over their college athletes); Justin C. Vine, Note, *Leveling the Playing Field: Student Athletes Are Employees of their University*, 12 CARDOZO PUB. L. POL’Y. & ETHICS J. 235, 251 (2013) (noting that college athletic departments exercise significant control over their athletes); Nicholas Fram & T. Ward Frampton, *A Union of Amateurs: A Legal Blueprint to Reshape Big-Time College Athletics*, 60 BUFF. L. REV. 1003, 1032 (2012) (providing that universities exert significant control over their college athletes both on and off the field); Steven L. Willborn, *College Athletes as Employees: An Overflowing Quiver*, 69 U. MIA. L. REV. 65, 102 (2014) (indicating the degree of control that institutions have over their athletes); *Northwestern, O’Bannon and the Future*, *supra* note 29, at 795–801 (arguing that an employer-employee relationship arguably exists between institutions and their college athletes under the IRS twenty-factor test).

334. See *supra* text accompanying notes 257–58.

335. See Michael A. McCann, *New Amateuism*, 11 TEX. A&M L. REV. 869, 891 (2024); see also Denying Motion to Dismiss, *Johnson v. NCAA*, No. 19-5230 n.7 (E.D. Pa. Aug. 25, 2021) (“We also note that many students are ‘employed’ to do paid work, such as students who have work-study positions with their respective universities. Accordingly, we reject the [Attended Schools Defendant’s] contention that student athletes who play intercollegiate sports cannot be ‘employees’ under the FLSA because the common usage of the terms ‘employment’ and ‘work’ do not encompass students playing sports.”).

about treating them in the same vein as work-study students.<sup>336</sup> It is important to recall that the U.S. Supreme Court has long held that students earning educational stipends under work-study programs are taxable.<sup>337</sup>

Given the revenue-sharing opportunities now available to college athletes, in conjunction with the NLRB's recent support of a joint-employee model, the IRS could be pressured to reconsider whether a quid pro quo relationship does in fact exist between college athletes and the institutions they play for.<sup>338</sup> Some have indicated that change could be on the horizon, given increased movements to recharacterize college athletes as employees.<sup>339</sup> While the greater college sports atmosphere was undoubtedly a different industry when the IRS last issued an interpretation on the matter (given that neither NIL nor direct-revenue sharing was permitted at the time), the IRS may soon be asked to clarify its position.

### C. *Tax Considerations Surrounding Athletic Conference Realignment*

As discussed, most professional sports leagues are now considered for-profit entities. At the same time, the NCAA, its member institutions, and college athletic conferences all operate under the tax-protective umbrella of I.R.C. Section 501(c)(3).<sup>340</sup> Of these, the continued tax-exempt status of athletic conferences is particularly intriguing given the revenue they generate. In 2021, for example, the Power 5 collectively generated about \$3.3 billion in revenue, with just one of its affiliated conferences, the Pac-12, reporting any unrelated business income (UBI), which is taxable.<sup>341</sup> Although college sports may have once supported the notion that the role of collegiate athletic conferences primarily supported the educational institutions of NCAA members, they now seem focused mainly on maximizing television and broadcasting revenue.<sup>342</sup>

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336. See Michael McCann, *Concurrence in Johnson v. NCAA Complicates Employee Test*, SPORTICO (July 15, 2024, at 05:55 CT), <https://www.sportico.com/law/analysis/2024/johnson-v-ncaa-concurring-opinion-1234789300/> [<https://perma.cc/ZR86-NA68>].

337. See *Bingler v. Johnson*, 394 U.S. 741, 755–56 (1969); see also Michael & Williams, *supra* note 29, at 150 (discussing the taxability of work-study students under *Bingler*).

338. See Munhoz & Handler, *supra* note 288.

339. See, e.g., *College Athlete Deals Risk Tax-Free Scholarship*, ALBUQUERQUE J. (Jan. 23, 2022), [https://www.abqjournal.com/news/local/article\\_51d93294-c022-539c-a869-0fa5b3dc6080.html](https://www.abqjournal.com/news/local/article_51d93294-c022-539c-a869-0fa5b3dc6080.html) [<https://perma.cc/2N49-ZFF9>] (noting the changes in the relationship between athletes and their educational institutions in the era of name, image, and likeness deals); Munhoz & Handler, *supra* note 288 (exploring recent perspectives on athletes' potential status as employees of their institutions).

340. See *supra* Part II.B.

341. UBI is income earned from a trade or business that has no substantial relationship to the actual tax-exempt purpose of the entity. See I.R.C. § 512 (2024); see also Treas. Reg. 1.513-1(a) (defining UBI).

342. See Ralph D. Russo, *ACC Eyes Revenue Distribution Models that Could Quell Disputes with FSU, Clemson*, AP Sources Say, ASSOCIATED PRESS (Sep. 17, 2024, at 22:48 CT), <https://apnews.com/article/acc-lawsuit-florida-state-clemson-0f5726ebcb688cc0978326e09970b> [<https://perma.cc/CF44-KRPY>] (noting that the Atlantic Coast Conference sued both Florida State University and Clemson University over a dispute tied to media rights).

In just one year, college athletic conferences took on a new form that appeared less in favor of supporting the educational opportunities for college athletes and more about the money. Significant changes to the college athletic conference arena began in February 2023 when it was announced that the University of Oklahoma and the University of Texas would depart the Big 12 one year earlier than scheduled.<sup>343</sup> These early departures were facilitated by the two institutions agreeing to pay the remaining Conference members \$100 million.<sup>344</sup> While the Big 12 initially sought upwards of \$168 million for their exodus, the natural consensus was that there was substantially more value in the schools leaving early and paying \$100 million than waiting an additional year.<sup>345</sup> These departures, however, set off one of the most significant conference realignments in history, resulting in the near elimination of the Pac-12.<sup>346</sup> It was not educational pursuits that drove conference realignment: it was revenue.<sup>347</sup>

As college athletic departments continue operating more like commercialized professional leagues, arguments that these institutions should cease to be classified as tax-exempt entities have become more tenuous.<sup>348</sup> The justification of their non-profit status may become even more precarious if *super leagues* (otherwise called super conferences) are created.<sup>349</sup> Although beyond the scope of this Article to analyze the future of super leagues, discussions have emerged about separating top Football Bowl Subdivisions (FBS) football

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343. Adam Silverstein, *Texas, Oklahoma Leaving Big 12 Early, Joining SEC in 2024 Season After Reaching Exit Agreement*, CBS SPORTS (Feb. 9, 2023, at 21:45 ET), <https://www.cbssports.com/college-football/news/texas-oklahoma-leaving-big-12-early-joining-sec-in-2024-season-after-reaching-exit-agreement/> [https://perma.cc/NL55-ES9Z].

344. *Id.*

345. *Id.*

346. Craig Meyer, *What Happened to the Pac-12? Why Conference Now Has Only Oregon State, Washington State, but Others Pending*, USA TODAY (Sep. 14, 2024, at 17:08 ET), <https://www.usatoday.com/story/sports/ncaaf/pac12/2024/09/14/pac-12-conference-realignment-oregon-state-washington-state-big-ten-expansion-mountain-west/75182021007/> [https://perma.cc/SS3J-HXFF].

347. Margaret Fleming, *The Huge Money Behind College Football's Wild Realignment*, FRONT OFF. SPORTS (Aug. 30, 2024, at 08:24 CT), <https://frontofficesports.com/every-college-football-conference-move/> [https://perma.cc/5HBU-72LS].

348. Individual schools have been courting private equity, an industry that does not historically operate on a not-for-profit basis. *See, e.g.*, Ben Unglesbee, *Private Equity-Backed Venture Wants to Cash In on College Sports*, HIGHER ED DIVE (May 24, 2024), <https://www.highereddive.com/news/private-equity-college-sports-athletics/717059/> [https://perma.cc/E9L4-74D4] (describing one private equity firm's efforts to provide capital and advising in return for a portion of the institution's revenue). One University of Colorado football coach reportedly traveled to Saudi Arabia and arranged a meeting to gauge possible investment from the country's sovereign wealth fund. *See* Ian Casselberry, *Colorado Assistant Football Coach Attempted to Raise NIL Funding from Saudi Arabia: Report*, YAHOO SPORTS (Aug. 22, 2024), <https://sports.yahoo.com/colorado-assistant-football-coach-attempted-to-raise-nil-funding-from-saudi-arabia-report-000742707.html> [https://perma.cc/YTS6-B7RK].

349. *See* Justin Williams, *College Football 'Super League' Details Unveiled, Would Be Called 'College Student Football League'*, THE ATHLETIC (Oct. 17, 2024), <https://www.nytimes.com/athletic/5809686/2024/10/01/college-football-super-league-student/> [https://perma.cc/7K8S-5L53].

brands from the NCAA to drive revenue opportunities, increase player negotiability, and allow for direct compensation.<sup>350</sup>

As the trajectory of collegiate revenue-generating sports continues to morph toward something more akin to professional sports, questions have emerged about whether college athletic conferences should remain tax-exempt.<sup>351</sup> College athletic conferences are identified as “educational institutions,” thus permitting them to qualify for I.R.C. section 501(c)(3) status.<sup>352</sup> While the NCAA, member institutions, and their affiliated athletic conferences continue to enjoy significant tax benefits due to their tax-exempt status, such benefits do not extend to UBI. Income identified as UBI is taxable, even though earned by a tax-exempt entity.<sup>353</sup> The premise behind UBI taxation is to better align the playing field between tax-exempt and for-profit entities when the tax-exempt entities’ earnings have no direct tie to a tax-exempt mission.<sup>354</sup>

Colleges and universities regularly engage in commercial activities that directly correlate to their tax-exempt educational mission(s) (which generally include teaching, public service, and/or research), like running a bookstore, leasing on-campus residential housing, and providing dining facilities.<sup>355</sup> Alternatively, commercial activities that could generate UBI (and are thus taxable) for a college or university include advertising, travel tour offerings, and renting institutional equipment to outside parties.<sup>356</sup>

350. See Nick Messineo, *Breaking Down the Revenue Sharing Proposals for College Sports*, BCS (Apr. 16, 2024), <https://businessofcollegesports.com/finance/breaking-down-the-revenue-sharing-proposals-for-college-sports/> [https://perma.cc/CK2W-HCK3].

351. See, e.g., Hodge, *supra* note 19; Howard Gleckman, *Why Are Big-Time College Sports Revenues Exempt From Income Tax?*, TAX POL’Y CTR. (Dec. 21, 2023) [hereinafter *Why Are Big-Time College Sports Exempt?*], <https://taxpolicycenter.org/taxvox/why-are-big-time-college-sports-revenues-exempt-income-tax> [https://perma.cc/6XGP-PG7Q]; Howard Gleckman, *Big-Time College Sports Revenues Shouldn’t Be Exempt From Income Taxes*, FORBES (Dec. 21, 2023, at 14:37 ET) [hereinafter *Big-Time College Sports Revenues Shouldn’t Be Exempt*], <https://www.forbes.com/sites/howardgleckman/2023/12/21/big-time-college-sports-revenues-shouldnt-be-exempt-from-income-taxes/> [https://perma.cc/TB2S-WCQ3]; Mike McIntire, *The College Sports Tax Dodge*, N.Y. TIMES (Dec. 28, 2017), <https://www.nytimes.com/2017/12/28/sunday-review/college-sports-tax-dodge.html> [https://perma.cc/W7CG-PALL].

352. See *supra* Part II.B.

353. See I.R.C. § 512 (2024); see also Treas. Reg. § 1.513-1(a) (defining the term unrelated business income as used in the I.R.C.).

354. See Treas. Reg. § 1.513-1(b) (2024) (“The primary objective of adoption of the unrelated business income tax was to eliminate a source of unfair competition by placing the unrelated business activities of certain exempt organizations upon the same tax basis as the nonexempt business endeavors with which they compete.”).

355. See *The Marketing of Goods and Services by Institutions of Higher Learning – UBIT Implications*, IRS, <https://www.irs.gov/pub/irs-tege/eotopicq80.pdf> [https://perma.cc/FDF3-GZY3] (last visited Dec. 11, 2024).

356. See *Identifying Unrelated Business Income*, VA. TECH. OFF. OF THE U. CONTROLLER, [https://www.controller.vt.edu/content/dam/controller\\_vt\\_edu/procedures/financialreporting/identifying-unrelated-business-income.pdf](https://www.controller.vt.edu/content/dam/controller_vt_edu/procedures/financialreporting/identifying-unrelated-business-income.pdf) [https://perma.cc/8B5C-3ZNE] (last visited Dec. 11, 2024).

One area that has garnered closer inspection across the athletic arena is broadcasting revenue.<sup>357</sup> When assessing whether revenue derived from the sale of television and broadcasting rights to outside parties from either a national governing body for amateur athletics or a regional college athletic conference organization<sup>358</sup> is UBI, the IRS has taken a more liberal approach. In 1980, the IRS issued two rulings directing that television and broadcasting revenues are *not* UBI but, instead, incomes used to facilitate the tax-exempt missions of the NCAA, colleges, and universities.<sup>359</sup> At that time, collegiate sports television and broadcasting revenues were not as grandiose as they are today; for example, NCAA March Madness tournament revenue in 1980 generated just \$8.86 million,<sup>360</sup> while in 1981, NCAA television broadcasting revenue (in total) amounted to just \$31 million.<sup>361</sup> These low numbers are unsurprising, given that the NCAA was restricting college football game broadcasting to keep spectator attendance inside the stadiums<sup>362</sup> and that broadcasting was limited to local television channels and radio.<sup>363</sup> When the U.S. Supreme Court ended those restrictions in 1984 with its *NCAA v. Board of Regents of the University of Oklahoma* decision, broadcasting revenues across college sports rapidly and dramatically increased.<sup>364</sup>

In 1990, the U.S. Court of Appeals for the Tenth Circuit reversed a U.S. Tax Court decision that NCAA revenue deriving from March Madness advertising constituted UBI.<sup>365</sup> The case centered around a purported NCAA

357. See, e.g., Molly Richard, Note, *More than an Athlete: The Student-Athlete Compensation Debate and Its Potential Tax Consequences on the NCAA*, 55 SUFFOLK U. L. REV. 267, 292 (2022) (suggesting that revenue derived from D-1 football and men's and women's basketball programs should be deemed UBI because these sports are regularly carried on as a trade or business by colleges and universities); see also Hodge, *supra* note 19 (opining on the tax-free allowance of television income in college sports).

358. See Rev. Rul. 80-296, 1980-2 C.B. 195 (“The sale of broadcasting rights, under the circumstances described, is substantially related to the purpose constituting the basis for the organization’s exemption and is not unrelated trade or business . . .”). In this case, the IRS identified that the organization at issue “was created by a regional collegiate athletic conference, made up of universities exempt under section 501 (c) (3) of the Code, for the purpose of conducting an annual competitive athletic game between the champion of the conference and another collegiate team.” *Id.*

359. See *id.*

360. See *Television Revenue NCAA College Basketball Tournament from 1980 to 2013*, STATISTA, <https://www.statista.com/statistics/287522/ncaa-basketball-tournament-television-revenue/> [<https://perma.cc/VXU4-HVBV>] (last visited Sep. 29, 2025).

361. See Michael Oriard, *The Era of Television*, BRITANNICA (Aug. 21, 2025), <https://www.britannica.com/sports/American-football/The-era-of-television> [<https://perma.cc/8YZ7-BKAY>] (noting that NCAA TV revenue had grown from \$3 million in 1961 to \$31 million in 1981).

362. See *NCAA v. Bd. Regents Univ. Okla.*, 468 U.S. 85, 90 (1984).

363. Gleckman, *Why Are Big-Time College Sports Revenues Exempt?*, *supra* note 351.

364. See *Bd. Regents Univ. Okla.*, 468 U.S. at 121 (finding that the NCAA’s restraints on college sports television broadcasting violated Section 1 of the Sherman Act); see also Mary H. Tolbert & D. Kent Meyers, *The Lasting Impact of NCAA v. Bd. of Regents of The University of Oklahoma: The Football Fan Wins*, OKLA. BAR J., at 22 (2018), <https://www.okbar.org/barjournal/oct2018/obj8926tolbertmeyers/> [<https://perma.cc/XYV6-8SZW>] (discussing the financial aftermath of the Court’s decision).

365. See *NCAA v. Comm’r*, 914 F.2d 1417, 1426 (10th Cir. 1990) (reversing *NCAA v. Comm’r Internal Revenue*, 92 T.C. 456 (T.C. 1989)).

tax deficiency relating to advertising revenue earned during fiscal year 1981–1982.<sup>366</sup> At issue was whether that revenue constituted UBI.<sup>367</sup> While the Tax Court found that such income was UBI, particularly given the little evidence that supported the NCAA’s insistence that such advertising efforts were intermittent (and thus not UBI because they were not regularly carried on),<sup>368</sup> on appeal, the Tenth Circuit held that NCAA activities related to March Madness advertising are *not* regularly carried on throughout the year, and thus failed to qualify as taxable UBI.<sup>369</sup>

One year after the Tenth Circuit’s decision, March Madness broadcasting revenue jumped to over \$112 million.<sup>370</sup> That same year, the College Football Association (CFA)—formed in 1977 to negotiate broadcasting contracts for elite football programs—entered into two separate television contracts: ABC worth \$210 million, and ESPN worth \$110 million.<sup>371</sup> Also, in 1991, the University of Notre Dame negotiated its own television broadcasting contract with NBC worth \$185 million.<sup>372</sup> That year, the IRS backpedaled from its previous stance that college sports broadcasting revenue fell outside the boundaries of UBI, instead issuing a National Office Technical Advice Memorandum in 1991 that identified a substantial payment made by Mobil Oil Corporation to the Cotton Bowl Athletic Association (a tax-exempt organization) that included both commercial advertising and bowl game naming rights was taxable UBI.<sup>373</sup> Soon after, the IRS issued additional guidelines noting, “where an exempt organization performs valuable advertising, marketing, and similar services, on a quid pro quo basis, for the corporate sponsor, payments made to an exempt organization are not contributions to the exempt organization, and questions of unrelated trade or business arise.”<sup>374</sup>

No matter that broadcasting revenues were multiplying, the idea that the IRS might want a piece of this lucrative revenue-generating pie drew immense

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366. *Id.* at 1418.

367. *Id.*

368. NCAA v. Comm’r, 92 T.C. at 467–68.

369. NCAA v. Comm’r, 914 F.2d at 1422–26.

370. See *Television Revenue NCAA College Basketball Tournament from 1980 to 2013*, *supra* note 360.

371. Matthew Dixon, *College Football TV Contracts Since 1984: How Much Higher Can They Go?*, SPORTS ENTHUSIASTS (July 8, 2023), [https://sportsenthusiasts.net/2023/07/08/a-comprehensive-history-of-college-football-tv-contracts-since-1984-how-much-higher-can-they-go/#google\\_vignette](https://sportsenthusiasts.net/2023/07/08/a-comprehensive-history-of-college-football-tv-contracts-since-1984-how-much-higher-can-they-go/#google_vignette) [<https://perma.cc/XY52-Q2WX>] (noting that the ABC contract was through the 1995 season, while the ESPN contract was through the 1994 season).

372. *Id.*

373. See Tech. Adv. Mem. 91-47-007 (Nov. 22, 1991); see also James L. Musselman, *Recent Federal Income Tax Issues Regarding Professional and Amateur Sports*, 13 MARQ. SPORTS L. REV. 195, 208–09 (2003) (discussing the IRS Technical Advice Memorandum issued after Mobil Oil’s sponsorship of the Cotton Bowl).

374. IRS Announcement 92-15, 1992-5 I.R.B. 51; see also Musselman, *supra* note 373, at 209 (discussing the response to the IRS ruling by tax-exempt organizations and Congress).

backlash,<sup>375</sup> so much so that Congress issued proposed regulations that overturned the IRS's evolving position on the matter.<sup>376</sup> More than thirty years later, television and broadcasting revenue derived from the NCAA and athletic conferences remains beyond the purview of taxable UBI.<sup>377</sup>

Such continued benefit raises questions, given that the NFL and MLB have either voluntarily relinquished or revoked their tax-exempt status due to significant financial scrutiny.<sup>378</sup> These entities, which initially fell under the protective purview of I.R.C. section 501(c)(6),<sup>379</sup> chose to forgo such status for various reasons. The MLB, for example, dropped its section 501(c)(6) status to avoid disclosing top executive compensation on its annual tax returns.<sup>380</sup> The NFL did the same following political threats that its status would be forcibly revoked.<sup>381</sup> This has resulted in television contracts, ticket sales, and merchandise licensing being taxable income at the professional sports level.<sup>382</sup> Although the PGA remains tax-exempt under section 501(c)(6), Congress has

375. See Nathan Wirschafter, Notes and Comments, *Fourth Quarter Choke: How the IRS Blew the Corporate Sponsorship Game*, 27 LOY. L.A. L. REV. 1465, 1466 (1994) (“The exempt organization community responded by lobbying Congress and writing letters to the IRS. Those efforts were extraordinarily successful . . .”).

376. See Treas. Reg. 1.513-4(f), 26 C.F.R. (Example 4) (Identifying the following example as not taxable UBI: “P conducts an annual college football bowl game. P sells to commercial broadcasters the right to broadcast the bowl game on television and radio. A major corporation agrees to be the exclusive sponsor of the bowl game. The detailed contract between P and the corporation provides that the name of the bowl game will include the name of the corporation. The contract further provides that the corporation’s name and established logo will appear on players’ helmets and uniforms, on the scoreboard and stadium signs, on the playing field, on cups used to serve drinks at the game, and on all related printed material distributed in connection with the game. The [sponsorship] agreement is contingent upon the game being broadcast on television and radio, but the amount of the [sponsorship] payment is not contingent upon the number of people attending the game or the television ratings. The contract provides that television cameras will focus on the corporation’s name and logo on the field at certain intervals during the game. P’s [conduct] constitutes acknowledgment of the sponsorship . . . [and] [t]he entire payment is a qualified sponsorship payment, which is not income from an unrelated trade or business.”).

377. See, e.g., *Harris v. Univ. of Mich. Bd. of Regents*, 588 N.W.2d 225, 230 (Mich. Ct. App. 1996) (finding that “Congress apparently considers collegiate athletics sufficiently related to higher education to embrace such activities within the exemption from federal income tax accorded to educational institutions under § 501(c)(3) of the Internal Revenue Code, 26 U.S.C. § 501(c)(3)—income generated by university or college sports teams from admission tickets and broadcasting revenue is not considered ‘unrelated business income’ subject to tax”).

378. See *Taxing Sports*, *supra* note 9, at 864–66 (specifically noting that Major League Baseball (MLB) relinquished its tax-exempt status in 2007, while the National Football League (NFL) surrendered its status in 2015); see also Joseph Stromberg, *Why the NFL Just Gave Up Its Nonprofit Status: To Escape Scrutiny*, VOX (Apr. 28, 2015, at 14:50 C.T.), <https://www.vox.com/2015/4/28/8509767/nfl-tax-exempt-nonprofit> [<https://perma.cc/J99J-KEB4>] (explaining how all thirty-two NFL team owners voted to get rid of the NFL’s tax-exempt status following scrutiny); *Baseball League Loses Exemption*, TAX NOTES (Dec. 27, 2016), <https://www.taxnotes.com/research/federal/irs-private-rulings/letter-rulings-technical-advice/baseball-league-loses-exemption/sy3w> [<https://perma.cc/X425-6B7D>] (revoking the MLB’s tax-exempt status for pursuing income for private interests and not for benefiting the public).

379. See I.R.C. § 501(c)(6).

380. Dylan P. Williams, *Taking a Knee: An Analysis of the NFL’s Decision to Relinquish Its § 501(c)(6) Federal Tax Exemption*, 26 J. LEGAL ASPECTS SPORT, 127, 131 (2016).

381. Laurel C. Montag, Comment, *It’s (Not) All Par for the Course: An In-Depth Analysis of the PGA’s Controversial Nonprofit Status*, 32 MARQ. SPORTS L. REV. 569, 580–81 (2022).

382. Hodge, *supra* note 19.

also targeted it to remove such status.<sup>383</sup> In fact, the proposed Sports League Tax-Exempt Status Limitation Act, introduced in Congress in 2023, would modify section 501(c)(6) to exclude tax exemption for sports organizations with assets exceeding \$500 million.<sup>384</sup>

While the tax protections afforded to college athletic conferences under I.R.C. section 501 differ from those of professional sports leagues because of their pervasive entwinement with educational organizations, changes could be on the horizon given the *House* decision and conference expansion. In 2023, the Power 5 conferences reported over \$3 billion in “program service revenue,” which includes broadcast rights, ticket sales, bowl games, and merchandise licensing, that went untaxed because of their section 501(c)(3) status.<sup>385</sup> A separate 2024 estimate indicated that the Power 5 sports conferences (and their member institutions) will earn \$25 billion in multi-year broadcasting contracts.<sup>386</sup> These numbers have prompted arguments that television revenues from college sports have “no credible connection” to educational institutions’ tax-exempt status and should be taxable.<sup>387</sup> The recent collegiate sports conference expansion was not about ensuring educational opportunities for college athletes, but instead increased revenue opportunities.<sup>388</sup> Some further claim that expanded conferences significantly hinder non-revenue-generating college sports.<sup>389</sup> Without a “compelling connection to the educational mission” required for section 501(c)(3) status, combined with a reduction in the “value of the educational experience of [non-revenue-generating] student-athlete[s],”<sup>390</sup> continued college athletic conference expansion should unquestionably increase their tax-exempt scrutiny. As proposed recently in *Forbes*, “selling your football games to major sports television networks and streaming services, where the vast majority of viewers have no academic connection to the teams they are watching, looks more like a business than an educational venture.”<sup>391</sup>

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383. See Wyden Introduces Bills Revoking PGA Tour’s Tax Exemption, Saudi Public Investment Fund’s Special Tax Break, U.S. SENATE COMM. ON FIN. (July 26, 2023), <https://www.finance.senate.gov/chairmans-news/wyden-introduces-bills-revoking-pga-tours-tax-exemption-saudi-public-investment-funds-special-tax-break> [<https://perma.cc/W7ZR-A3XT>].

384. See S. 2519, 118th Cong. (2023).

385. See Hodge, *supra* note 19.

386. *Why Are Big-Time College Sports Revenues Exempt?*, *supra* note 351.

387. *Id.*

388. See Fleming, *supra* note 347.

389. See Kevin Faigle, *Changes in College Football Driven by Dollars (and Sense?)*, EXPERT INSIGHTS: JAG WIRE (May 31, 2024), <https://jagwire.augusta.edu/changes-in-college-football-driven-by-dollars-and-sense/> [<https://perma.cc/RZD3-L9UW>]; *Financial Implications of Conference Realignment*, SIGNING DAY SPORTS: THE WIRE (Sep. 22, 2023), <https://thewire.signingdaysports.com/football/financial-implications-of-conference-realignment/> [<https://perma.cc/XZ2R-9VH8>].

390. See Schmalbeck & Zelenak, *supra* note 29, at 1091.

391. *Big-Time College Sports Revenues Shouldn’t Be Exempt*, *supra* note 351.



Should the IRS continue its hesitancy in reconsidering the tax-exempt status of college athletic conferences, it could undoubtedly reconsider whether college athletic broadcasting revenue should remain non-taxable UBI, at least for purposes of Division I football and basketball programming, given the present reality that these sports are business-driven, rather than educationally-oriented.<sup>392</sup> With college athletes now earning money directly from their institutions,<sup>393</sup> it seems inevitable that tax changes will be the next significant movement in college sports.

## CONCLUSION

College sports are changing. No longer can the NCAA exercise its strong arm to prohibit college athletes from being compensated,<sup>394</sup> either indirectly by outside third parties, or directly by their own institutions through revenue-sharing.<sup>395</sup> The power model across college sports has shifted away from the NCAA and to the athletes who are taking to the legal battlefield to dismantle collegiate market power restrictions<sup>396</sup> and emphasize their intent to be recharacterized as employees under labor laws.<sup>397</sup> NIL compensation has become the norm in college sports, and beginning in 2025, revenue-sharing opportunities abound.<sup>398</sup> Amid these changes, college athletic conferences are expanding to capitalize off broadcast and media rights licensing further.<sup>399</sup>

Significant changes invite questions about the potential tax considerations facing this new model of college sports. Historically, college sports have enjoyed amicable tax benefits toward the athletes,<sup>400</sup> the NCAA, its member institutions, college athletic conferences,<sup>401</sup> and charitable donors.<sup>402</sup> However, as the new frontier in college sports takes shape, the IRS's near-blanket tax amicability across the industry may change. Potentially reclassifying college athletes as employees of the institutions that pay them would certainly invite new tax considerations.<sup>403</sup> Likewise, the tax consequences facing college athletes under the two types of compensation models they are now eligible for,

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392. See Schmalbeck & Zelenak, *supra* note 29, at 1095 (noting there “seem[s] to be a prima facie case for the argument that Division I football and basketball should be subject to the UBIT”).

393. See *Estimated NCAA Athlete Revenue Sharing*, *supra* note 12 (noting, for example, that 77% will go to football players, 16% to men’s basketball, 1.2% to women’s basketball, and less than 1% to the remaining Olympic sports).

394. See *supra* Part I.A–B.

395. See *supra* Part I.C–D.

396. See *supra* Part I.C–D.

397. See *supra* Part I.D.

398. See *supra* Part I.D.

399. See *supra* Part III.C.

400. See *supra* Part II.A.

401. See *supra* Part II.B.

402. See *supra* Part III.C.

403. See *supra* Part III.A.1.

NIL earnings and direct revenue-sharing, must be considered.<sup>404</sup> Reclassifying college athletes as employees under direct revenue-sharing compensation models could also impact the tax treatment of athletic scholarships.<sup>405</sup> Finally, as college athletic conferences continue to realign in ways that seemingly embrace revenue generation over education, the tax-exempt status of these entities is likely in peril.<sup>406</sup> As the college sports landscape continues to evolve in ways never before witnessed, regular and systematic reassessment of the potential impacts tax law will have on the industry will be critical.

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404. *See supra* Part III.A.2.

405. *See supra* Part III.B.

406. *See supra* Part III.C.