Sports are no longer mere games. In today’s money-driven culture, they have cultivated into a lucrative business enterprise where everyone—whether professional or amateur; owner or player; coach or spectator—stands to make significant money. Modern sports have also morphed into a landscape encompassing both the traditional athletic events and the more novel esports and daily fantasy sports (DFS) arenas. Across all these physical, digital, and biological spheres, sports revenues are being measured in terms of billions. It thus stands to reason why taxes have become a progressively critical discussion point within U.S. professional and collegiate sports, the video gaming world, and the newly legalized sports gambling industry. This Article is the first to provide a holistic and modern analysis of the impact of U.S. tax law across the contemporary business of sports and explore a more universal approach to the varying tax issues affecting numerous relevant stakeholders, including franchises, business ventures, universities, athletes, individuals, and federal and state taxing jurisdictions.

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INTRODUCTION

It’s not just a game. To many, such sentiment embodies the acuteness of current modern sport in the United States.1 In recent decades,
professional and amateur sports have transcended the boundaries of American politics, economics, community values, and mass media.


3. See, e.g., VLADIMIR ANDREEFF & STEFAN SYMANSKI, HANDBOOK ON THE ECONOMICS OF SPORT (2006) (examining the myriad components of the international sports economy and governance); Daniel A. Rascher et al., The Unique Economic Aspects of Sports, 6 J. GLOB. SPORT MGMT. 1, 1–13 (July 29, 2019) (observing that “what makes the economics of sports different from virtually any other product is that the product itself is unique”); Walter C. Neale, The Peculiar Economics of Professional Sports, 78 Q.J. ECONOMICS 1, 4 (1964) (describing professional sports as natural monopolies).


One need look no further than the social justice movements led by high-profile athletes like Colin Kaepernick and Trevor Lawrence who—among many others—established mobilized platforms to spur collective action. Author Michael Lewis’s bestseller, *Moneyball: The Art of Winning an Unfair Game*, brought to light the impact of game theory on strategizing sports and economics. Society’s longing for increased sports-related virtues like honesty, respect, teamwork, and dedication extends beyond chalk-lined fields into classrooms, workspaces, and communities. Certainly, Hollywood, the video game industry, television broadcasters, sports media companies, and leagues have capitalized on


the premise that sport—no matter its form—is not just a game, but a lucrative enterprise from which to financially capitalize on.⁹

Long gone are the days when athletes competed purely for spectator adoration.¹⁰ Today, sports are a big business where players, coaches, owners, leagues, associations, commercial enterprises, fans, sponsors, the media, and anyone in between stand to make (or lose) considerable money.¹¹ U.S. sports have evolved into a multi-billion dollar industry,¹² encompassing both traditional athletic events and the more novel esports and daily fantasy sports (DFS) arenas.¹³ PricewaterhouseCoopers forecasts the North American sports market value will reach $83.1 billion by 2023.¹⁴ The National Football League (NFL) currently tops U.S. league market revenues at $13 billion with Major League Baseball (MLB) sitting second at $9.5 billion.¹⁵ In fiscal year 2019, Division I college athletics boasted

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¹¹. See Kara Fratto, The Taxation of Professional U.S. Athletes in Both the United States and Canada, 14 SPORTS L. 29, 29 (2007) (opining that increased athlete salaries, ticket prices, franchise costs, and contemporary sporting facilities have propelled professional sports into a big business); see also Kathryn Kisska-Schulze, This Is Our House!—The Tax Man Comes to College Sports, 29 MARQ. SPORTS L. REV. 347, 351–55 (2019) (discussing the lucrative business of college sports).


¹⁴. See PwC 2021, supra note 12, at 2.

revenues of $15.8 billion.\textsuperscript{16} Although historically a mere “subset of sports culture,” esports have since matured into an industry all to its own, with a 2022 market value forecast of $1.8 billion.\textsuperscript{17} In 2018, the U.S. DFS industry generated $2.9 billion.\textsuperscript{18} The recently expanded legalized sports betting industry is funneled millions of dollars into select state coffers monthly,\textsuperscript{19} while in 2018, U.S. sports media rights revenue reached $21.88 billion.\textsuperscript{20} Even youth sports have blossomed into a billion-dollar industry.\textsuperscript{21} Although staggering, these numbers fail to reflect the engorged salaries of coaching staff and professional athletes.\textsuperscript{22}

Measuring figures in terms of “billions” naturally gratifies the paradigm that sport is not just a game anymore. Across the globe, the sports industry is valued between $480 and $620 billion,\textsuperscript{23} eclipsing national gross domestic product (GDP) rates in most countries.\textsuperscript{24} Notably, the U.S. leads the global sports industry with 32.5% of the


\textsuperscript{22} See 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, 29 (2014) (opining that escalating professional athlete salaries have prompted increased scrutiny from state taxing jurisdictions); Lora Wuerdeman, Comment, Sidelines Big Business in Intercollegiate Athletics, How the NCAA Can De-Escalate the Arms Race by Implementing a Budgetary Allocation for Athletic Departments, 99 N.C. CENT. L. REV. 85, 89 (2017) (noting that collegiate coaching salaries have risen 500% since 1985); Fratto, supra note 11, at 29 (opining that professional athletes’ salaries have escalated).


market share.\textsuperscript{25} Thus, it stands to reason why taxation has become a progressively critical discussion point within U.S. professional and amateur sports arenas, the video gaming world, and legalized sports gambling industry. U.S. taxing jurisdictions continue to pursue opportunities to usurp larger portions of this revenue-sharing market.\textsuperscript{26} Such efforts are not surprising, given that the U.S. economy has weathered two recessions since September 11, 2001, and a global pandemic.\textsuperscript{27} Due in large part to these national economic crises, individual states are foraging for alternative revenue sources to counterbalance evaporating federal subsidies, with particular interest paid to the emergent legalized sports betting market.\textsuperscript{28} In addition, Congress has shown increased interest in garnering a larger percentage of professional athletes’ salaries and sports franchise operation revenue,\textsuperscript{29} while making it more difficult for colleges and


\textsuperscript{26} See, e.g., Kathryn Kisska-Schulze & John T. Holden, \textit{Betting on Education}, 81 Ohio St. L.J. 465, 509–10 (2020) (providing that over 100 bills have been introduced in the U.S. to legalize sports betting in an effort to support states’ future budgets); Kisska-Schulze & Epstein, supra note 22, at 29 (noting that escalating professional athletes’ salaries have led states to more closely scrutinize them for tax purposes); Ross Dellenger, \textit{New Congressional NIL Bill Targets Expansive Change to Athlete Compensation, Video Game Licensing}, Sports Illustrated (Feb. 4, 2021), https://www.si.com/college/2021/02/04/ncaa-nil-video-game-rights-congress-bill [https://perma.cc/R987-LUB8] (detailing the Congressional bill granting college athletes the right to strike collective bargaining agreements).

\textsuperscript{27} See Rebecca N. Morrow, \textit{Accelerating Depreciation in Recession}, 19 Fla. Tax Rev. 465, 471 (2016) (noting that there have been two recent recessions, one in 2001 and the second in 2007); see also Rodney P. Mock & Kathryn Kisska-Schulze, \textit{Saving the Nonessential with Radical Tax Policy}, 90 U. Cin. L. Rev. 197, 199 (2021) (offering that the onset of the COVID-19 pandemic resulted in the United States suffering rapid economic decline).


universities to acquire necessary funding for their athletic programs.\textsuperscript{30} Taxes are definitely complicating sports.\textsuperscript{31}

Over the last five decades, sports betting has eclipsed the separate industries that drove its development. In 2008, scholars Robert Holo and Jonathan Talansky published a formative article addressing the tax implications surrounding the “business of sports,” or perhaps more appropriately branded, the “business of American professional franchises.”\textsuperscript{32} In particular, their work detailed the Internal Revenue Service’s (IRS) varied attempts to keep pace with the rapidly growing professional sports industry amidst then-recent legislative and regulatory actions. Holo and Talansky focused primarily on taxing sponsorship and broadcasting revenue,\textsuperscript{33} ticket sales and seat licensing,\textsuperscript{34} franchise player contracts,\textsuperscript{35} intangibles,\textsuperscript{36} individual player contracts,\textsuperscript{37} and catching the home run ball.\textsuperscript{38} While these issues remain germane to professional franchises, thirteen years later the “business of sports” has expanded considerably.\textsuperscript{39} DFS took off in 2009, after Nigel Eccles launched FanDuel, one of the two largest U.S.
fantasy sports sites. Although video games have been integral to U.S. culture since *Space Invaders* entered homes in the 1970s, modern esports exploded after 2010, when the livestreaming gaming platform Twitch turned video games into a spectator sport. In 2017, then-President Donald Trump signed into law the Tax Cuts and Jobs Act (TCJA), impacting both professional and collegiate athletics. Subsequently, in 2018, the U.S. Supreme Court held that the federal prohibition on sports wagering unconstitutionally commandeered state legislatures, thus opening the door for all states to capitalize on sports-betting revenue. Just one year later, California became the first of many states to legislatively allow student-athletes to capitalize on the commercialized use of their name, image, and likeness (NIL). Later, in 2021, the U.S. Supreme Court unanimously struck down the National Collegiate Athletic Association’s (NCAA) rules restricting unlimited, in-kind benefits provided to Division-I basketball and bowl subdivision football student-athletes.

The time is ripe to reexamine the impact of tax across the entire “business of sports” amidst a more contemporary setting. Certainly, there has always existed a connection between sports and taxation. Indeed, the effect of tax law on the U.S. sports industry has cultivated into a rich platform of academic discourse. However, there exists a

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44. See H.R. 1, 115th Cong. § 13704 (2018); see also Kisska-Schulze, supra note 11, at 347–48 (examining the TCJA’s impact on college sports); Smoker et al., supra note 29 (evaluating impact of the TCJA on professional sports trades).
45. See Murphy v. Nat’l Collegiate Athletic Ass’n, 138 S. Ct. 1461, 1478 (2018); see also Kisska-Schulze & Holden, supra note 26, at 509–10 (analyzing the intersection between sports gambling, education, and taxation).
48. See infra Part I.
lacuna in the current literature in providing a holistic picture of the influence of tax across all facets of U.S. sport as it exists today. The purpose of this Article is to fill that void.

This Article adds to present scholarly literature by updating and extending Holo and Talansky’s formative work, providing both historic and modernized analyses of the effect of U.S. tax law across the newly expanded “business of sports.” While Holo, Talansky, and others have focused their analyses on nuanced tax issues affecting professional and amateur sports, video gaming, DFS, and sports gambling, this Article is the first to bring these discussions together to offer a more universal representation of the impact of U.S. taxes across multiple relevant players, including franchises, business ventures, universities, athletes, individuals, and federal and state taxing jurisdictions. This Article then proposes select tax recommendations for the future, in light of this rapidly expanding arena.

To appreciate the evolving tax landscape amidst a revolutionized U.S. sports industry, this Article proceeds as follows. Part I examines the historic connection between U.S. sports and taxation. Part II assesses the impact of tax legislation on the U.S. professional sports industry.


50. To the extent possible, the purpose of this Article is to examine major tax issues impacting professional and collegiate sports, as well as the legalized gambling, DFS, and esports industries. However, the Authors acknowledge that this analysis is not complete across all facets of sport. For example, there exist tax issues within select areas of sport, including the Olympics (see, e.g., United States Appreciation for Olympians and Paralympians Act of 2016, H.R. 5946, 114th Cong. (2016)) and horse racing (see, e.g., Horseracing Integrity and Safety Act of 2020, H.R. 1754, 116th Cong. (2020)), which are not touched on in this Article. Further, this Article does not purport to opine on every conceivable tax issue that may arise among relevant sports industry stakeholders.

arena. Part III identifies the various tax exposures facing the college sports arena, both at the institutional and student-athlete levels. Part IV explores the tax implications surrounding the legalized sports gambling industry, DFS, and esports. Part V provides select tax recommendations surrounding the expanding U.S. sports arena. Finally, this Article concludes that taxes play an integral role in the continuously evolving sports industry, with both Congress and the states progressively targeting it.

I. TAXING U.S. SPORTS: A HISTORICAL EXPLORATION

In 2017, Bloomberg published an article headlined, “Buy a Sports Team, Get a Tax Break.”52 Facialy, such a recommendation may sound absurd to the casual reader; however, following the implementation of the American Jobs Creation Act of 2004,53 sports franchise owners can deduct large portions of their team’s purchase price against their taxable income.54 Such benefits allowed Los Angeles Clippers owner Steve Ballmer to pay just 12% in taxes on his 2018, $656 million earnings.55

Professional sports team owners have long used their franchises to entertain broad tax benefits, with few (if any) being more creative than businessman Bill Veeck.56 After purchasing the Cleveland Indians (soon to be Guardians) baseball team in 1946, Veeck launched a successful lobbying effort to allow team owners to deduct player contracts as depreciable assets, thus codifying the Roster Depreciation Allowance (RDA).57 The RDA allows professional sports team owners to amortize the purchase price of their franchise over a fifteen-year

54. See I.R.C. § 197 (establishing that the deductible amount is amortized over a fifteen-year period); Treas. Reg. § 1.197-2 (b)(10); see also Fox, supra note 52.
period. Some argue that the RDA allows team owners to misrepresent the true value of their ownership stake through “gymnastic bookkeeping techniques.” Although Congress has periodically revised the tax laws that impact the RDA, it has never sought to end the exemption directly.

Even before Veeck’s successful RDA campaign, MLB team owners sued the IRS over the ability to deduct the entirety of player contracts. Even before Veeck’s successful RDA campaign, MLB team owners sued the IRS over the ability to deduct the entirety of player contracts. During that same period, MLB franchise owners were not solely unique in seeking preferential IRS tax treatment. Between 1942 and 2015, the NFL—which morphed from a million into a billion-dollar enterprise thanks in large part to broadcasting rights revenue—was recognized by the IRS as a not-for-profit tax-exempt entity. As professional sports matured, and athletes and coaches were induced by more lucrative contract agreements, state jurisdictions launched individual efforts to gain a piece of the “business of sports” pie.

58. 26 U.S.C. § 197; Keeney, supra note 56.
59. Keeney, supra note 56. The RDA is not wholly unique. Numerous businesses depreciate the costs of tangible and intangible assets. See, e.g., Elizabeth V. Zenet & Stanley C. Ruchelman, Tax Basics of Intellectual Property, LANDSLIDE, July/August 2018, at 39, 40, http://publications.ruchelaw.com/pdfs/2018/tax-basics-intellectual-property.pdf [https://perma.cc/HRT2-W6V3] (discussing depreciating costs in the intellectual property space where amortizable assets include intangible assets such as patents, copyrights, formulas, processes, and designs). However, the RDA is distinctive because it applies to sports franchises. Keeney, supra note 56. Unlike most assets, which become valueless after a period, sports franchise values continue to increase. Id. The normal depreciation allowance generally permits businesses to count losses as a cost of operation; however, the RDA permits companies to count losses on assets with increasing values. Id.
60. Id.
61. Id. (citing Chi. Nat’l League Ball Club v. Comm’r, No. 57620, 1933 WL 4911 (B.T.A. Apr. 17, 1933), aff’d, Comm’r v. Chi. Nat’l League Ball Club, 74 F.2d 1010 (7th Cir. 1935)); see also Comm’r v. Pittsburgh Athletic Co., 72 F.2d 883, 884 (3d Cir. 1934) (affirming the Board of Tax Appeals decision that the cost of a player’s contract is a business expense in the year it was paid including a contract with an option to renew).
64. See infra Section I.A.2.
Across a separate playing sphere, the college sports arena enjoyed vast preferential tax treatment until the implementation of the TCJA. Unlike professional athletes, student-athletes enjoy a wide berth of favorable tax treatment based on their amateur status. Similarly, the college sports industry as a whole has enjoyed relatively amicable tax treatment due to universities, athletic departments, and the NCAA qualifying for tax-exempt status. Some of this geniality, however, is now shifting.

To appreciate the current status of taxation across the broader sports arena, it is beneficial to first appraise a sampling of historic tax issues impacting the greater U.S. sports sphere. As such, Section A examines notable tax issues that have impacted professional sports. Section B explores the historic impact of taxes on college sports.

A. Notable Tax Issues in Professional Sports

In 1789, Benjamin Franklin penned the famous quote: “in this world nothing can be certain, except death and taxes.” No one likes paying taxes; but once revenue or income is generated, it is virtually guaranteed that the tax man cometh. Amidst the billion-dollar professional sports industry, taxes play a critical role. In fact, significant academic literature is dedicated to examining the impact of taxation on both owners and athletes.

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66. Kisska-Schulze & Epstein, supra note 46, at 479.
68. Kisska-Schulze & Epstein, supra note 46, at 480.
areas remain historically pronounced: (1) the preferential tax treatment of franchise owners and stadiums, (2) the jock tax, and (3) professional sports leagues’ tax-exempt status.

1. The preferential tax treatment of franchise owners and stadiums

Numerous scholars have explored the historic use of taxpayer money and tax-exempt bonds to finance professional sports stadiums. Following Veeck’s successful campaign in securing the RDA, then-MLB commissioner Ford Frick began working toward stadium subsidies to likewise revolutionize the business of sports. Frick announced that cities seeking professional baseball teams would be required to subsidize stadium construction. Effectively, tax dollars built professional sports facilities. Prior to Frick’s declaration, many


72. See, e.g., Logan E. Gans, Take Me out to the Ball Game, but Should the Crowd’s Taxes Pay for It?, 29 VA. TAX REV. 751, 754 (2010) (discussing the evolution of stadium construction financing and the taxes local governments use to finance the federally tax-exempt bonds used today); Steven D. Zavodnick, Jr., Note, If You (Pay to) Build It, They Will Come: Rethinking Publicly-Financed Professional Sports Stadiums After the Atlanta Braves Deal with Cobb County, 53 GA. L. REV. 407, 410 (2018) (using the Atlanta Braves’s new stadium as a case study to examine the history of publicly funded stadiums, the bargaining power teams have over municipalities, and the perverse incentives of federal tax laws on local governments); Daniel McClurg, Comment, Leveling the Playing Field: Publicly Financed Professional Sports Facilities, 53 WAKE FOREST L. REV. 233, 234–35 (2018) (providing an overview of the tax loophole that allowed the use of tax-exempt bonds for stadium construction to become the norm and exploring challenges to financing plans); Frank A. Mayer, III, Stadium Financing: Where We Are, How We Got Here, and Where We Are Going, 12 VILL. SPORTS & ENT. L.J. 195, 196–97 (2005) (noting the historic use of private and public funding for stadiums and comparing the benefits and drawbacks of each type of financing); Courtney Gesualdi, Note, Sports Stadiums as Public Works Projects: How to Stop Professional Teams from Exploiting Taxpayers, 13 VA. SPORTS & ENT. L.J. 281, 283, 294 (2014) (examining how the tax code incentivizes local government officials to build professional sports stadiums using public funds).

73. See supra notes 56–60 and accompanying text.


75. Id. Although demands for public financing of professional sports stadiums and arenas originated with Commissioner Frick, public construction of stadiums dates to the early 1800s when stadiums were constructed with a wide range of uses in mind. See id.; Mayer, supra note 72, at 207.

teams played in privately owned stadiums, often constructed and operated by team owners.\footnote{77} While select locales extolled funds to construct stadiums in the hopes of attracting international events like the Olympics during the early part of the twentieth century, it was not until the 1960s that cities began funding professional sports stadiums en masse.\footnote{78} In fact, in the nearly forty years between Frick’s nascent vision and the 1990s, more than 75\% of professional sports teams’ stadiums were erected via public funding.\footnote{79}

The prospect of acquiring a professional sports team prompted cities to seek avenues for enticement. Milwaukee was the first to construct a publicly funded stadium in the hopes of attracting the Braves baseball team in 1953.\footnote{80} The Dodgers left Brooklyn, New York for Los Angeles, California in 1958, due to the City of Angels’s new publicly funded stadium, an event that launched a cascade of similarly funded stadiums across the country.\footnote{81} By the end of the 1950s, MLB team owners saw new stadiums constructed with nearly 100% public financing.\footnote{82} Capitalizing on the demand for baseball, MLB expanded the number of professional teams during the 1960s from sixteen to twenty-four.\footnote{83} With the rise in supply, public funding for stadiums later decreased to a low 60\% range.\footnote{84}

During the 1970s and 1980s, cities continued bidding on professional sports teams with promises of new stadiums. During this period, thirty-nine stadiums were constructed.\footnote{85} Those numbers, who-dont-need-it/?sh=4bee428f3bf6 [https://perma.cc/2EEW-Z8HS] (noting that over the last fifteen years federal taxpayers have spent close to $4 billion funding the thirty-six stadiums build with tax-exempt bonds).

77. NeIL dEmaUSE & JoAnNA cAgAN, FIeld of SCHEmes: hOw tHe GReAt sTaDiUm sWindle tUrNS pUblic mOneY iNTo pRivATe pROfit 28 (2008).
78. Zavodnick, supra note 72, at 411–12.
79. dEmaUSE & cAgAN, supra note 77, at 28.
80. See Marc Edelman, sPorts and the City: hOw to cUrb PROfessional sPorts TEAMs’ Demands for FreE pUblic sTadiums, 6 RUTGERS J.L. & pUb. POL’Y 35, 39–40 (2008) (observing that in the two years after the Braves moved from Boston to Milwaukee, two other teams relocated for publicly funded stadiums as well: the St. Louis Browns, which became the Baltimore Orioles, and the Philadelphia Athletics, which moved to Kansas City).
81. Zavodnick, supra note 72, at 412.
82. Edelman, supra note 80, at 41. Professor Edelman attributes the rise in public financing to the MLB limiting the supply of new baseball teams. By limiting supply, the price for acquiring a team rose, namely in the form of public funding for stadium construction. Id.
83. Id. at 42.
84. Id.
85. Id. at 44.
however, were dwarfed by the next two decades. Between 1990 and 1998, thirty-two stadiums were built with public money, with another forty constructed between 1999 and 2008. In addition, increased demands for sports stadiums ensued across shorter intervals. In 2002, for example, the San Antonio Spurs sought a replacement arena only ten years after the construction of its then-current stadium. In the 1990s, cities began constructing new stadiums that appealed to older stylistics with modern amenities (referred to as the stadium renaissance), originating with the construction of Oriole Park at Camden Yards in Baltimore, Maryland. Along with new construction came corresponding promises of economic redevelopment in surrounding areas; however, many such promises seemingly missed the mark. Despite the shortage of fulfilled returns, stadium construction projects endured with increasing frequency and significant taxpayer money. For example, in 2017, Georgia taxpayers paid $700 million

86. Id.
87. Id. at 45.
90. See Andy McGeady, The Great American Stadium: High Cost, Short Lifespan, IRISH TIMES (May 24, 2016, 6:56 PM), https://www.irishtimes.com/sport/the-great-american-stadium-high-cost-short-lifespan-1.2659341 [https://perma.cc/AR4Y-9TB7] (noting how the lifespan of U.S. stadiums has shortened to twenty years or fewer). There are few areas studied by academic economists that seem to generate as much consensus as the proposition that public financing of sport stadiums fails to economically benefit taxpayers. See Robert A. Baade & Richard F. Dye, Sports Stadiums and Area Development: A Critical Review, 2 ECON. DEV. Q. 265, 274 (1988) (finding the economic development rationale used to justify publicly funding stadiums is weak and unsupported by evidence); John Siegfried & Andrew Zimbalist, A Note on the Local Economic Impact of Sports Expenditures, 3 J. SPORTS ECON. 361, 362 (2002) (noting the economic development argument for publicly funding stadiums has been persuasive despite being incorrect); Dennis Coates & Brad R. Humphreys, Do Economists Reach a Conclusion on Subsidies for Sports Franchises, Stadiums, and Mega-Events, 5 ECON. J. WATCH
for the Atlanta Falcons’s Mercedes-Benz Stadium.\textsuperscript{91} Oriole Park cost Maryland citizens $14 million per year.\textsuperscript{92} In fact, since 1997, NFL teams have received almost $7 billion in taxpayer money to fund new stadiums.\textsuperscript{93} Moreover, professional sports teams have benefited from hundreds of millions of dollars in federal subsidies to finance stadiums via tax-exempt municipal bonds following the passage of the Tax Reform Act of 1986.\textsuperscript{94} These subsidies have accounted for significant construction funding, including $431 million for the new Yankee Stadium in New York, $205 million for Soldier Field in Chicago, and $164 million for Paul Brown Stadium in Cincinnati.\textsuperscript{95} Although some have tried to restrict the use of these tax benefits, tax-exempt bonds (in conjunction with taxpayer funding) continue to serve as the mainstay for funding professional sports facilities.\textsuperscript{96}

\begin{thebibliography}{99}
\bibitem{footnote3} Michael David Smith, \textit{NFL Stadiums Have Received an Estimated $6.7 Billion from Taxpayers}, NBC SPORTS (Mar. 28, 2017, 9:23 AM), https://profootballtalk.nbcspor.ts.com/2017/03/28/nfl-stadiums-have-received-an-estimated-6-7-billion-from-taxpayers [https://perma.cc/D5GT-9GPJ].
2. The jock tax

Like stadium subsidies, much has been written on the so-called “jock tax.” Although cities, counties, and states willingly subsidize stadium construction to the benefit of billionaire owners, many locales have not afforded such gratuitous tax benefits to professional athletes. Jock taxes—which permit states to tax nonresident professional athletes’ income when engaging in sporting events hosted within their jurisdictions—originated in the 1960s, but became more widely familiar in 1991 when California sought to collect taxes from Michael Jordan and his Chicago Bulls teammates following their team’s defeat of the Los Angeles Lakers in the National Basketball Association (NBA) finals. Illinois lawmakers responded in kind by passing “Michael Jordan’s revenge,” which likewise taxed visiting teams playing in their state. Soon after, other states and cities, including Cleveland, Kansas City, Philadelphia, and Detroit, passed similar taxes.


100. Pilon, supra note 98.


The jock tax has certainly been lucrative for select jurisdictions, with California recouping more than $200 million in annual revenue; however, the tax is not imposed universally. While many jurisdictions levy their established income tax rates on nonresident professional athletes, others have been more creative. For example, in 2009, Tennessee imposed a privilege tax on NBA and National Hockey League (NHL) athletes playing in the state. The tax was assessed at $2,500 per game, with a maximum annual tax burden of $7,500. Following outcry from league unions, in 2014, Tennessee repealed the tax, with the state ultimately refunding more than $8 million of the approximately $18 million it acquired.

Similarly, Cleveland faced challenges from players over its jock tax. Former Chicago Bears player Hunter Hillenmeyer sued, arguing that Cleveland’s jock tax violated due process by imposing a tax calculation formula based on games played. Specifically, nonresident athletes who competed in games in Cleveland were taxed as though their sole job responsibility was to play games. By competing in just one game per year in Cleveland (out of a possible twenty), the city assessed a tax on 5% of their salary. Players objected, arguing that their wages were tied to substantially more activities than mere gameplay, and claimed the Cleveland tax burden was unconstitutionally high.

105. Id.
106. Id.
107. Id.
110. Hillenmeyer, 41 N.E.3d at 1167–68.
111. Id. at 1171.
112. Id. at 1168.
Supreme Court agreed, holding that Cleveland’s calculation formula violated constitutional due process. While select jurisdictions continue to impose jock taxes as a means of capturing a piece of the lucrative business pie (despite legal attacks from players and unions), others afford a more generous approach, relieving nonresident professional athletes from tax imposition on their earnings.

3. **Tax exemptions**

The third professional sports matter that historically garnered academic (and congressional) discourse pertains to the NFL and other leagues’ tax-exempt status. The NFL long-enjoyed Internal Revenue Code (I.R.C.) § 501(c)(6) tax-exempt status under the business league exemption. Although the NBA never established tax-exempt status, the MLB enjoyed this preferential tax treatment until voluntarily relinquishing it in 2007. Eight years later, in an abrupt move, the NFL surrendered its tax-exempt status in 2015, acknowledging that its

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113. See id. at 1174.


115. See Loh, *supra* note 103 (noting that Arizona does not tax the earnings of MLB players who are in the state for spring training).


117. See I.R.C. § 501(c)(6); see also Hatton, *supra* note 116, at 170–71.

preferential tax treatment invited public distraction given the organization’s multi-billion dollar annual revenues.\textsuperscript{119}

In 2018, Congress considered abolishing the tax-exempt status of other professional leagues.\textsuperscript{120} Specifically, on June 19, 2018, Iowa Senator Joni Ernst introduced Senate Bill 3086 (S. 3086), or the PRO Sports Act.\textsuperscript{121} The bill’s singular purpose was to stop professional sports leagues from qualifying for tax-exempt status.\textsuperscript{122} The proposed legislation identified the NHL, along with the Professional Golf Association (PGA) Tour and Ladies Professional Golf Association (LPGA) as organizations generating more than one billion dollars in revenue, yet operating under the shield of I.R.C. § 501(c)(6).\textsuperscript{123} While this legislation specifically targeted the three named entities, if passed the law would have stripped tax-exempt status from any organization with gross receipts exceeding $10,000,000.\textsuperscript{124}

Variations of S. 3086 have been introduced repeatedly, but all have failed to gain traction despite the significant revenues many of these tax-exempt leagues enjoy.\textsuperscript{125} Some note that the impetus to strip professional leagues of their preferred tax status is largely inconsequential.\textsuperscript{126} As Professor and Economist Andrew Zimbalist opines, while some leagues enjoy tax-exempt status, the teams themselves (which serve as the profit-generating mechanisms of the

\begin{itemize}
  \item \textsuperscript{120} Fornwalt, \textit{supra} note 116.
  \item \textsuperscript{121} PRO Sports Act, S. 3086, 115th Cong., (2018).
  \item \textsuperscript{122} Id.
  \item \textsuperscript{123} Id.
  \item \textsuperscript{124} Id.
  \item \textsuperscript{125} See, e.g., PRO Sports Act, H.R. 363, 117th Cong., (2021); see also PRO Sports Act, S. 1524, 113th Cong., (2013).
leagues) remain taxable entities. Of import, the debate over the tax-exempt status of sports organizations is not germane to the professional arena. As detailed in the following section, the NCAA’s not-for-profit tax status has likewise been scrutinized.

B. The Historic Relationship Between Taxes and College Sports

In 1906, the NCAA declared that college sports were to be founded on the principle of amateurism. Over a century later, many argue that the primordial student-athlete model is misguided, given the expansive economic growth of contemporary collegiate athletics. Certainly, as this amateur sports arena morphed into a billion-dollar enterprise, increased tax deliberations ensued. Still, prior to the signing of the TCJA, the greater college sports arena enjoyed quite generous tax treatment, even amidst broader debates. As this Section addresses, tax issues that have invited historic dialogue include: (1) the tax-exempt status of the NCAA and its member institutions; (2) the unrelated business income (UBI) tax; (3) taxing student-athletes’ scholarship funds; and (4) the deductibility of charitable donations.

127. Zimbalist, supra note 126.
128. See infra Section I.B.1.
129. Kisska-Schulze, supra note 11, at 350.
1. The NCAA and member institutions’ tax-exempt status

Akin to professional sports leagues as discussed earlier, the NCAA’s tax-exempt status has been deliberated by many. Along with numerous of its member institutions, the NCAA relishes from I.R.C. § 501(c)(3) status, which offers tax exemptions to organizations that advance “national or international amateur sports competition.” Section 501(c)(3) found root in the Tax Reform Act of 1969, which allowed qualifying non-profit entities to operate as private foundations. By 1976, Congress eased restrictions on non-profits to the point that they were permitted to spend up to $1 million a year in lobbying efforts. The rationale for extending such benefits beyond the NCAA and its member institutions, to include their affiliated athletic departments, which are often run as separate entities, resides in the conviction that college athletics compliment the overall academic experience and thus serve an “educational purpose.”

Some argue that the NCAA and many of its member schools are not promoting amateur sports per se, but are instead attempting to


134. I.R.C. § 501(c)(3); see also Colombo, supra note 133, at 113.


136. Id.

“maximize revenue.” Even Congress challenged the NCAA’s status in 2006, following the organization’s evolution into a billion-dollar enterprise; however, such a move failed to gain traction. More recent and creative efforts to eradicate the Association’s tax-exempt status include recommendations that the NCAA’s status be tethered to the opportunities it provides, which would allow student-athletes to monetize their publicity rights. Still, despite the seemingly broad support for reining in tax-exemptions for sports organizations, Congress has thus far failed to act.

2. The unrelated business income tax

While most colleges and universities qualify as tax-exempt entities, any UBI they earn is taxable. Congress enacted the UBI rules in 1950 to help level the playing field between non-profit and for-profit entities when both participate in similar activities. In 2008, the IRS issued a multi-page query to four hundred colleges and universities, requesting detailed information on their governance practices and compliance, to include soliciting data regarding institutions’ activities falling outside the scope of their exempt purposes.

Institutions are permitted to engage in revenue-generating activities outside of their educational missions, which might include running a bookstore or campus ice cream shop, renting facilities, advertising, and offering parking lot services. However, such income is not protected under the purview of I.R.C. § 501(c).

138. Kisska-Schulze, supra note 11, at 365–66; see also Nat’l Collegiate Athletic Ass’n v. Bd. of Regents of the Univ. of Okla., 468 U.S. 85, 100–01 n.22 (1984) (finding that the NCAA and its members are in fact profit seeking entities).
141. See Katz supra note 133 (noting the patent absurdity of the NCAA continuing to maintain non-profit status).
142. Kisska-Schulze, supra note 11, at 361. Unrelated business income refers to earned income that is not substantially related to an institutions’ educational mission. Id.
144. Bailey, supra note 143, at 215, 221.
146. Id. at 362.
historical tax shield given to college athletics includes protecting these programs from the UBI tax, although such issue has periodically been weighed and measured.\textsuperscript{147} Thus, virtually all revenue generated by college sports continues to be recognized as facilitating colleges’ and universities’ greater educational missions and thus not deemed taxable as UBI.\textsuperscript{148}

3. Student-athletes’ grants-in-aid

Currently, student-athletes’ scholarship funds (also referred to as grants-in-aid) enjoy the benefits afforded by I.R.C. § 117, which excludes from gross income monies received in the form of qualified scholarships.\textsuperscript{149} Such exclusion is limited to instances lacking any quid pro quo arrangement.\textsuperscript{150} To date the IRS has denied the existence of quid pro quo relationships in college sports for purposes of student-athletes’ grants-in-aid.\textsuperscript{151} Specifically, in 1977, the IRS drafted Revenue Ruling 77-263, which purports that athletic scholarships “aid the recipients in pursuing their studies” and are thus excludable from gross income.\textsuperscript{152} Almost forty years later, in 2014, the IRS confirmed its position that athletic scholarships remain protected from taxation under the umbrella of I.R.C. § 117.\textsuperscript{153} Following the NCAA’s 2019 announcement in support of student-athletes profiting from the use of their NIL, North Carolina Senator Richard Burr and Congressman Mark Walker proposed that those athletes who “cash in” should pay

\textsuperscript{147} Id.; see also Rev. Rul. 80-295, 1980-2 C.B. 194 (ascertaining that revenue generated by the sale of TV and broadcasting rights by a tax-exempt, national governing body for amateur sports is not UBI); Rev. Rul. 80-296, 1980-2 C.B. 195 (holding that revenue generated by college athletic conference organizations from the sale of broadcasting rights is not UBI); Prop. Treas. Reg. § 1.513-4(f) (Ex. 4) (1983) (demonstrating that payments generated from sponsorships for a college football bowl game do not constitute UBI); 58 Fed. Reg. 5690-91 (g) (Ex. 4) (Jan. 22, 1993) (illustrating that income generated from sponsorships for a college football bowl game is not UBI).

\textsuperscript{148} Kisska-Schulze, supra note 11, at 362.

\textsuperscript{149} See I.R.C. § 117; see also Kisska-Schulze, supra note 11, at 356.

\textsuperscript{150} See I.R.C. § 117(c); see also Bingler v. Johnson, 394 U.S. 741, 753 (1969).

\textsuperscript{151} Kisska-Schulze, supra note 11, at 356.

\textsuperscript{152} Rev. Rul. 77-263, 1977-2 C.B. 47; see also Kisska-Schulze, supra note 11, at 357 (explaining that the quid pro quo standard excludes athletic scholarships).

taxes on their athletic scholarships. Others have likewise criticized the IRS’s interpretation of quid pro quo as it relates to student-athletes and the institutions they play for. Still, currently the IRS has shown little interest in changing its stance on this issue.

4. Charitable donation deductions

The origins of U.S. athletic program donations pre-date modern collegiate athletics, tracing back to 1869 when the YMCA accepted donations to construct exercise class gymnasiums. By the turn of the twentieth century, industrialists like Cecil Rhodes and Andrew Carnegie emphasized the importance of athletics, along with academics, as an important factor in developing character. Carnegie made the first athletic donations, giving funds to Princeton University for the construction of an artificial lake and boathouse, which opened in 1906 as Lake Carnegie. The University of Chicago was among the first to utilize athletics as a means for university growth, using the school’s football team as a marketing device. Exploiting athletics as a marketing tool became popular when oilman and philanthropist Lloyd Noble made donations to the University of Oklahoma to invigorate a winning football program in order to attract top faculty.


155. See, e.g., Schmalbeck & Zelenak, supra note 49, at 1089 (recommending that the IRS reconsider its favoritism toward college sports, and proposing that the Service reconsider its stance on excluding athletic scholarships from taxation); Timothy Davis, Intercollegiate Athletics: Competing Models and Conflicting Realities, 25 Rutgers L.J. 269, 316 (1994) (opining that there exists a quid pro quo relationship between student-athletes and their institutions); Kathryn Kisska-Schulze & Adam Epstein, Northwestern, O’Bannon, and the Future: Cultivating a New Era for Taxing Qualified Scholarships, 49 Akron L. Rev. 771, 789 (2016) (noting that the Bingler standard has not been applied to student-athletes’ scholarship funds); McCormick & McCormick, The Myth of the Student-Athlete, supra note 130, at 115 (promoting that student-athletes’ grants-in-aid are directly related to their decision to play sports, thus evincing a quid pro quo).

156. Schmalbeck & Zelenak, supra note 49, at 1088–89.


158. Id.

159. Id.

160. Id.
and raise the spirits of Oklahoma residents who had been ravaged by the Great Depression.\textsuperscript{161} Years later, using athletics as a marketing ploy became dubbed the “Flutie Effect,” and it has become increasingly popular across institutions.\textsuperscript{162}

The U.S. Tax Code has contributed to philanthropic and alumni donors’ interests in giving charitably to athletic departments. Specifically, I.R.C. § 170 allows taxpayers to deduct gifted contributions made to charitable organizations.\textsuperscript{163} In addition, prior to the enactment of the TCJA, taxpayers could take an 80% charitable deduction on donations made to educational institutions that included a right to purchase preferred seating at athletic events (referred to as the 80/20 rule).\textsuperscript{164}

In the five-year period between 1998 and 2003, athletic department donations increased from 14% to 26% of all college donations.\textsuperscript{165} During the 2006–2007 athletic season, the largest college athletic programs received over $1.2 billion in alumni donations.\textsuperscript{166} Certainly, as will be discussed Part III, the TCJA tax overhaul could play a critical role in some athletic departments abilities to solicit donor funding in the future.\textsuperscript{167} As Bloomberg opines, athletic departments with “less-enthusiastic donor bases” could face financial disaster.\textsuperscript{168}

The above examples illustrate notable and historical connections between U.S. sports and taxation. However, the buck does not stop here. Expanding the “business of sports,” to include novel areas like esports and DFS, the signing of the TCJA into law, and the newly legalized sports betting industry is engorging the scope and impact of taxation across the greater sports industry. To appreciate the current

\textsuperscript{161} Id.
\textsuperscript{162} Murray Sperber, Beer and Circus: How Big-Time College Sports is Crippling Undergraduate Education 60 (2000); see also Feinstein, supra note 157 (offering that these marketing ploys were so-named for former Boston College quarterback Doug Flutie, who led a last-minute comeback over the favored University of Miami in the 1984 Orange Bowl). The “Flutie Factor” is the concept that universities utilize athletic success to market their school. Id.
\textsuperscript{163} See I.R.C. § 170 (b)(1)(B)(ii) (charitable deductions are capped at 50% of taxpayers’ adjusted gross income); see also Rev. Rul. 67-246, 1967-2 C.B. 104 (articulating that so long as they are considered gifts, charitable donations are deductible).
\textsuperscript{164} See I.R.C. § 170(1)(2); see also Rev. Rul. 86-63, 1986-1 C.B. 88.
\textsuperscript{165} Luebchow, supra note 137.
\textsuperscript{166} Id.
\textsuperscript{167} See infra Section IV.A.1.
status of tax across this ever-expanding venture, Part II identifies current tax issues impacting the professional sports arena.

II. TAXING PROFESSIONAL SPORTS: A MODERN UPDATE

Despite the lack of academic support justifying the economic benefits of publicly subsidized stadiums, as discussed in Part I, such structural undertakings continue and are often supported by questionable research promoting their positive impact on local communities. New stadium construction has seen an uptick, and sports team owners and leagues demand that cities, municipalities, and states fund new stadiums (often via taxpayer subsidies) with increasing frequency. In addition, the recently implemented TCJA has impacted the greater professional sports industry. As detailed below, Section A provides an update on publicly funded stadiums. Section B details various TCJA reforms that are affecting professional sports.

A. Financing Public Stadiums

The price tag on professional sports stadiums and arenas continues to rise; a 2019 estimate suggests the average cost of an NFL stadium over the past fifteen years is $1.2 billion. Cities often cite job creation as a means of enticing billionaire owners to entertain new stadium subsidies.

169. See supra Section IA.1.
to finance stadium construction.\textsuperscript{174} Use of these bonds for stadium construction projects was largely ignored by legislators until then-President Barack Obama’s administration sought to end the exemption in its 2015 budget proposal.\textsuperscript{175} This measure was followed by several bipartisan efforts to eliminate federal benefits to subsidize stadium construction; however, to date, these efforts have failed.\textsuperscript{176}

Of the fifty-seven stadiums across the four major American sports leagues that have been constructed or substantially renovated, forty-three were at least partially funded by tax-exempt municipal bonds.\textsuperscript{177} Such subsidies represent an estimated $4.3 billion loss in federal tax revenue.\textsuperscript{178}

To mitigate the use of tax-exempt bonds in constructing sports stadiums, Congress executed the “Private Activity Test” within the purview of I.R.C. § 141 as part of the Tax Reform Act of 1986.\textsuperscript{179} Under this test, federal bonds must qualify under one of two prongs to remain tax-exempt: (1)(a) the private business use test, and (1)(b) the private payment/security test, or (2) the private loan financing test.\textsuperscript{180} Under the private business use test, if a private entity (including a privately owned sports team) consumes over 10% of the stadium’s overall useful services, it can no longer be tax-exempt.\textsuperscript{181} Per the private payment/security test, tax-exempt bonds are confined to those where less than 10% of the principal is secured by a private business property interest, or by revenues derived from that property.\textsuperscript{182}

Rather than depressing the use of tax-exempt bonds to finance sports stadiums, the Private Activity Test actually made taxpayer-funded projects more attractive.\textsuperscript{183} To meet the 10% restriction limit, which ultimately required that 90% of financing come from outside

\begin{enumerate}
\item\textsuperscript{174} See supra Section I.A.1.
\item\textsuperscript{175} Austin J. Drukker et al., Tax-Exempt Municipal Bonds and the Financing of Professional Sports Stadiums, 73 Nat’l Tax J. 157, 158 (2020).
\item\textsuperscript{176} Id.
\item\textsuperscript{177} Id. at 159.
\item\textsuperscript{178} Id.; see also I.R.C. § 141(a).
\item\textsuperscript{180} Bhasin, supra note 96, at 186–87. The Private Loan Financing Test is met if more than the lesser of 5% or $5 million of the proceeds of the issues is to be used (directly or indirectly) to make or finance loans to persons other than governmental persons. Id. at 188; see also I.R.C. § 141(c)(1).
\item\textsuperscript{181} Drukker et al., supra note 175, at 162.
\item\textsuperscript{182} Baker, supra note 179, at 303.
\item\textsuperscript{183} Gans, supra note 72, at 758.
\end{enumerate}
resources unaffiliated with the property interest, localities were under increased pressure to use local tax revenue to fund the majority of these projects. Jurisdictions introduced tourist taxes that levied taxes on items like hotel stays and car rentals to shift some of the tax burden to nonresidents. In addition, sales taxes were assessed to help fund stadium construction. However, as scholar Austin Drukker and his colleagues note, both the tourist taxes and sales taxes are regressive, overly burdening lower income individuals while wealthy sports team owners realize the primary benefits of new stadiums. While alternate means of financing stadiums are available, to date, taxpayer-funded sports stadiums continue to remain in vogue.

B. The TCJA’s Impact on Professional Sports

On December 22, 2017, President Trump signed into law the TCJA. While a major impetus of the TCJA was to reduce the corporate tax rate to 21%, select provisions impacted the greater sports industry. Certainly, the decreased personal income tax rates benefit those within the highest tax bracket, including professional athletes. However, the TCJA likewise limited state and local income, sales, and property tax (SALT) deductions to $10,000 annually. Prior to imposing such limits, SALT deductions were unlimited, thus affording high-income earners (like professional athletes) significant opportunities to reduce their overall tax burdens. With this new (albeit temporary)
limitation in place, professional athletes playing on franchise teams located in high-tax jurisdictions, including California or New York, endure a tangible impact on their earnings, particularly as compared to athletes residing in low or no tax jurisdictions.\textsuperscript{194}

In addition, the I.R.C. allows deductions for certain trade or business expenses that are “ordinary and necessary.”\textsuperscript{195} For professional athletes, expenses that are “(1) paid or incurred during the taxable year, (2) related to . . . [their] playing [a] professional sport[,]” (3) common to professional athletes in a given sport, and (4) are of “reasonable . . . cost” are generally considered ordinary and necessary.\textsuperscript{196} Historically, professional athletes’ deductible expenses included the cost of agents and trainers, workout apparel, gym memberships, mobile phones, training equipment, and business attire.\textsuperscript{197} However, as part of its sweeping overhaul, the TCJA suspended these “miscellaneous itemized deductions,” thus disallowing athletes from deducting numerous unreimbursed employee business expenses previously available to them.\textsuperscript{198}

The TCJA also impacted personnel contracts for professional sports teams. Prior to the law’s signing, trading contracts and draft picks between sports teams qualified for “like-kind” exchange treatment under I.R.C. § 1031.\textsuperscript{199} Essentially, players could be traded without major league sports teams recognizing any gain or loss on the transactions.\textsuperscript{200} The TCJA changed this rule, reducing the types of assets subject to like-kind exchanges to only real property,\textsuperscript{201} thereby subjecting sports franchises to gain (or lose) recognition under I.R.C. § 1001.\textsuperscript{202} To remedy what seemed to be an oversight on Congress’s part in drafting the TCJA, the IRS implemented a safe harbor rule for professional sports teams in 2019 that now allows teams that fall within four


\textsuperscript{195} See I.R.C. § 162(a).

\textsuperscript{196} Kisska-Schulze & Epstein, supra note 46, at 489.

\textsuperscript{197} Id.

\textsuperscript{198} Id. at 489–90; see also I.R.C. § 67(g) (the suspension is in effect until the end of 2025).

\textsuperscript{199} Smoker et al., supra note 29, at 294, 304–05, 305 n.95.

\textsuperscript{200} Id. at 294–95, 304–05.

\textsuperscript{201} Id. at 294–95.

\textsuperscript{202} See I.R.C. § 1001.
prescribed requirements to treat trading contracts as having zero value when calculating gain or loss.\textsuperscript{203} However, absent a legislative exemption for professional sports trades, player exchanges remain fully taxable if they fall outside the boundaries of the newly established safe harbor rule.\textsuperscript{204}

A fourth TCJA issue impacting the professional sports arena pertains to I.R.C. § 199A. Congress established a qualified business income (QBI) deduction that allows select domestic businesses (operating as sole proprietorships, partnerships, S corporations, trusts, or estates) to deduct 20% of their QBI to better align pass-through entity income taxation with the newly decreased corporate income tax rate.\textsuperscript{205} Such a deduction, however, is limited to returns on investment capital, rather than returns on labor.\textsuperscript{206} Any business identified as a “specified services trade[] or business” (SSTB)—which includes any ventures performing athletic services—fails to qualify for the deduction.\textsuperscript{207} The Treasury rejected criticisms from various commentators, including MLB Commissioner Robert Manfred Jr., who argued sports team owners should qualify for the deduction. Critics argued that team owners provide services that fall outside of the definition of SSTB under I.R.C. § 199A.\textsuperscript{208}

Lawmakers raise taxes to collect revenue. As the dollar figures in professional sports escalate, it is unsurprising that Congress has

\textsuperscript{203} See Rev. Proc. 2019-18, 2019-18 I.R.B. 1077 (qualifying for the safe harbor requires (1) “[a]ll parties . . . must use [the] safe harbor;” (2) each trading party “must transfer and receive a personnel contract or draft pick;” (3) no contract or draft pick can be amortizable under I.R.C. § 197; and (4) the team’s financial statements cannot “reflect assets or liabilities resulting from the trade other than cash”); see also Smoker et al., supra note 29, at 319–20.

\textsuperscript{204} Smoker et al., supra note 29, at 321.

\textsuperscript{205} See I.R.C. § 199A (allowing up to 20% deduction of qualified real estate investment trust (REIT) dividends and qualified publicly traded partnership (PTP) income).


\textsuperscript{208} Id.
increasingly sought opportunities to siphon off industry funds. In conjunction, billionaire sports owners expose tax loopholes and advantageously use their teams to minimize otherwise hefty tax bills. Realistically, such bartering will likely endure. Still, as the “business of sports” expands beyond the realm of traditional professional leagues, so too have the tax issues surrounding amateur sports. As Part III details, evidence supports that the collegiate sports industry is Congress’s next target.

### III. TAXING COLLEGE SPORTS

In select ways, professional sports differ from their collegiate counterparts when assessing rules of the game. However, the critical distinction separating professional from collegiate athletics comes down to pay. Professional athletes receive compensation for their athletic prowess, while student-athletes remain subject to the NCAA’s principle of “amateurism.” Such division has prompted significant literary interest, particularly given that college football and basketball

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210. See Fatuarechi et al., supra note 55.


213. See 2020–2021 NCAA DIVISION I MANUAL, art. 2.9, The Principle of Amateurism, http://www.ncaa.com/productdownloads/D121.pdf [https://perma.cc/8GAH-BKSV] (“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.”); see also Daly, supra note 6, at 487–88 (noting the existence of a clear “line of demarcation between college athletics and professional sports” with regard to pay).
have morphed into productive business enterprises over the last seventy years.214

Much has evolved since the earliest days of college sports when Ivy League programs, such as Harvard and Yale, entertained “grudge match” rivalries.215 Significant concerns over intercollegiate sports safety ultimately drew national attention, prompting the NCAA’s founding in 1906.216 From that juncture forward, public interest in amateur sports magnified so that by the 1950s college football’s popularity eclipsed that of its professional equivalent.217


Increased social interest in college sports was due in large part to the advent of televised sports broadcasting. Twenty years after the NCAA threatened the University of Pennsylvania with expulsion following its 1951 refusal to comply with the Association’s prohibition on televised college football games, all major college sports teams were actively pursuing television and media rights, even amidst rigid controls. It was not until 1984, that the U.S. Supreme Court found the NCAA’s restrictive media policies an unreasonable restraint on trade, thus initiating the start of competitive free market amateur sports operations.

Today, broadcast media serves as a significant revenue source for both the NCAA and its member institutions. For example, in 2012, the Atlantic Coast Conference (ACC) and ESPN extended their original twelve-year, $3.6 billion contract, thus allowing $17 million in annual revenue per member school. In 2021, the NCAA generated $850 million in yearly revenue from television broadcasts and licensing.


219. Sanderson & Siegfried, supra note 218, at 309.


Effective 2024, ESPN/ABC entered into a ten year, $300 million annual televised broadcasting contract with the Southeastern Conference (SEC). Combined with ticket sales, branding, and internet broadcasting rights, such resources have fueled college sports growth, particularly among a select group of elite programs that enjoy annual revenues in excess of $100 million.

College sports equate to big money, and big money leads to changes that appreciably impact the entire college sports landscape. Coaching salaries have soared, ushering in the so-called “arms race.” Millions are spent on extravagant new athletic facilities to entice top recruits. Billionaire donors and ardent supporters pour serious money into successful college sports programs. Student-athletes have filed numerous lawsuits in an effort to bridge the gap between amateur and professional sports, seeking employment-type protections under the

224. See Revenue of the NCAA, supra note 222; see also Mike Ozanian, Here’s the College Football TV Money at Stake for Each Conference and Network, FORBES (June 8, 2020, 6:07 PM), https://www.forbes.com/sites/mikeozanian/2020/06/08/heres-the-college-football-tv-money-at-stake-for-each-conference-and-network/?sh=1324919c7de9 [https://perma.cc/S4FY-5NK7].


226. See Kisska-Schulze, supra note 11, at 351; Brad Crawford, Ranking College Sports’ Highest Revenue Producers, 247SPORTS (July 17, 2020), https://247sports.com/LongFormArticle/College-football-revenue-producers-USA-Today-Texas-Longhorns-Ohio-State-Buckeyes-Alabama-Crimson-Tide-149248012/#149248012_1 [https://perma.cc/4QFC-BEKT]. But see Kisska-Schulze & Holden, supra note 26, at 488–89 (offering that while the commercialization of college sports continues to increase, only a “small fraction” of programs actually make money).


auspices of workers’ compensation,\textsuperscript{230} the Fair Labor Standards Act,\textsuperscript{231} unionization and collective bargaining agreements,\textsuperscript{232} and equitable pay-for-play models.\textsuperscript{233} In 2018, the U.S. Supreme Court opened the door for all fifty states and the District of Columbia to legalize sports betting, to include wagers made on college athletic events.\textsuperscript{234} Following California’s recent passage of the Fair Pay to Play Act\textsuperscript{235} (FPTPA), allowing student-athletes to capitalize on the commercialized use of their NIL, the majority of states have either introduced or passed similar laws.\textsuperscript{236} Both the Supreme Court and Congress have become deeply involved in assessing the legality of restrictions on student-

\textsuperscript{230} See, e.g., Univ. of Denver v. Nemeth, 257 P.2d 423, 429–30 (Colo. 1953) (en banc) (holding that a college football player, who was also employed by the university, qualified for workers’ compensation following an injury sustained during practice); State Comp. Ins. Fund v. Indus. Accident Comm’n of Colo., 314 P.2d 288, 290 (Colo. 1957) (en banc) (denying workers’ compensation benefits to the widow of a college football player who died following an injury incurred during a football game); Coleman v. W. Mich. Univ., 336 N.W.2d 224, 225, 228 (Mich. Ct. App. 1983) (per curiam) (holding no employment contract existed between a university and student-athlete that would elevate to a level of workers’ compensation eligibility).


\textsuperscript{235} CAL. EDUC. CODE § 67456 (West 2021).

\textsuperscript{236} See id.; see also Kisska-Schulze & Epstein, supra note 46, at 471–76.
athletes’ payment limits,237 and the implementation of a national standard for student-athlete compensation.238

These important changes have prompted federal and state legislatures, and academic scholars, to assess the tax implications surrounding college sports.239 Although historically protected by rather amiable tax treatment as discussed in Section I.B, more recently college sports have become the target of pointed tax measures.240 In particular, the TCJA both directly and indirectly impacts the collegiate sports arena, indicating that Congress intends to narrow the tax-paying field between amateur and professional sports.241 Still, such legislative action creates tension, particularly given the increased scrutiny over the NCAA’s stance that college sports remain vital to the educational mission of their institutions, and are therefore not professional organizations.242 To better evaluate the greater college sports tax landscape, Section A examines the TCJA’s impact on college sports.

237. See Alston, 141 S. Ct. at 972 (granting certiorari).
239. See, e.g., Kisska-Schulze, supra note 11 (examining the tax implication for college athletics following the implementation of the TCJA); Kisska-Schulze & Epstein, supra note 46, at 461–62 (opining on the federal and state tax issue that could arise following California’s passage of the Fair Pay to Play Act); Kisska-Schulze & Epstein, supra note 67, at 233 (examining the tax ambiguities surrounding student-athlete disability payouts when colleges or universities cover the cost of their insurance policies); Schmalbeck & Zelenak, supra note 49, at 1088–89 (proposing that the IRS consider following Congressional suit, and reassess the amicable tax treatment it has historically granted across the entire college sports arena); Kisska-Schulze & Epstein, supra note 22, at 16–17 (offering an in-depth exploration of the state tax consequences that could arise under a pay-for-play model); 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. 1138, 1140 (2017) (suggesting tax planning options that may diminish the tax impact of student-athletes’ grants-in-aid).
240. Kisska-Schulze, supra note 11, at 355.
Section B addresses the potential tax consequences of student-athletes’ capitalizing on their NIL.

A. The TCJA’s Impact on College Sports

Similar to the professional sports arena, the TCJA also impacts the collegiate sports arena.243 As introduced below, select provisions of the new law that threaten college sports’ viability include (1) the elimination of the 80/20 rule on athletic seating rights, (2) the 21% excise tax on executive compensation, (3) the 1.4% excise tax imposed on private institution endowments, and (4) the impact of the increased standard deduction on charitable giving.

1. Eliminating 80/20

Perceived as a direct hit to college sports, the TCJA repealed the previously introduced 80% tax deduction on athletic booster contributions made in exchange for athletic ticket or seating rights at college athletic events.244 Beginning in 1986, most major universities heavily relied on the 80/20 rule as a significant revenue boost for athletic program budgets.245 Eliminating this deductibility allowance resulted in universities and booster clubs quickly recommending that donors make multi-year contributions before the close of 2017, to help moderate short-term budget shortfalls.246 In conjunction, the TCJA eliminated the 50% deduction previously allowed for corporate business entertainment expenses, including the purchase price of tickets and stadium suites to sporting events.247 Following the COVID-19 pandemic, some anticipate that corporate stadium seat renewals will deplete even further due to the pandemic’s economic impact, thus resulting in additional revenue losses at the collegiate athletic level.248

243. Kisska-Schulze, supra note 11, at 347.
246. Kisska-Schulze & Holden, supra note 26, at 492.
247. Tax Cuts and Jobs Act § 13304, 131 Stat. at 2124 (codified at 26 U.S.C. § 274(a)).
2. **Taxing executive compensation**

Also impacting the college sports arena, the TCJA levied a 21% excise tax on the five highest paid employees at tax-exempt organizations, which include entities fostering “national or international amateur sports competition,” whose compensation exceeds $1 million annually, or is considered an excess parachute payment. The continued arms race in coaching salaries has been dubbed “unsustainable,” yet remains among elite institutions belonging to the NCAA’s Football Bowl Subdivision (FBS). Currently, the average head college football coach earns $2.7 million annually. University of Alabama head coach Nick Saban sits towards the top with a $9.75 million-per-year contract. Across forty U.S. states, NCAA head coaches are the highest paid state employees.

In December 2018, the IRS issued interim guidance on this provision, stipulating that the tax would not apply to college and university coaching salaries if their institutions proactively abandoned tax-exempt status, yet the guidance retained implied sovereign immunity as state instrumentalities. In 2021, the Treasury finalized the I.R.C. § 4960 regulations concerning excess compensation. Pursuant to these regulations, colleges and universities falling within the purview of I.R.C. § 501(a)—which most do—could still be

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251. Id.


253. McMillen & Kirwan, supra note 250.


256. Non-profit universities, and their affiliated athletic departments, generally fall within the purview of I.R.C. § 501(c), which grants non-profit status to those entities
subject to the excise tax. However, the embedded loophole remains, allowing public institutions to claim tax-exempt status as a state unit in lieu of a section 501 organization, thus relieving them from the 21% tax imposition.\textsuperscript{257} Such relief, however, is not so readily available to private institutions.\textsuperscript{258}

3. **Taxing private endowments**

Private institutions took an additional strike with the imposition of a 1.4% excise tax on net investment income at institutions with 500 or more students enrolled and with endowments worth at least $500,000 per student.\textsuperscript{259} Prior to the TCJA’s implementation of such tax, most private non-profit colleges and universities enjoyed tax-exempt status under the umbrella of I.R.C. § 501(c)(3).\textsuperscript{260} In fall 2020, the IRS issued final regulations to clarify the I.R.C. § 4968 excise tax, ultimately subjecting numerous private institutions to the so-called “Harvard tax” on income derived from their controlled and supporting organizations.\textsuperscript{261} Though not a direct impact on college athletic programs, Ivy League sports could be indirectly impacted by their institutions’ revenue losses.\textsuperscript{262}

4. **Disincentivizing charitable giving**

giving. The TCJA almost doubled previous standard deduction amounts for individuals, resulting in millions of taxpayers electing the standard deduction over itemization. Significant concerns emerged regarding taxpayers’ resistance to philanthropic gifting without the hanging carrot of tax deductibility, particularly given that thirty million U.S. households lost this charitable benefit.

Data supports that taxpayers itemized $54 billion less in charitable contributions in 2019; however, one year later, charitable giving actually rose 2%. Fiscal year 2019 reports indicate record high donations to colleges and universities, though such amounts were skewed given Michael Bloomberg’s one-time, $1.8 billion gift to Johns Hopkins University during that period. More than 40% of higher education institutions anticipated a 10% or more decrease in fundraising for fiscal year 2020, with fiscal year 2021 expected to result in more pronounced deterioration with regard to gifted revenue.

Reduced gifting at the college and university levels could result in a trickle-down effect to their affiliated sports programs. Combined with unexpected COVID-19 revenue losses, over 300 college sports

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263. § 11021(a), 131 Stat. at 2072 (codified at 26 U.S.C. § 63(c)(7)(A)(ii)).
264. Kisska-Schulze, supra note 11, at 369–70 (noting that section 11021 of the TCJA now provides standard deductions in the amounts of $12,000 for individuals, $18,000 for heads of households, and $24,000 for married filing jointly through tax year 2025).
271. Id.
teams were eliminated in 2020 across all three NCAA Divisions (I, II, and III), and the National Association of Intercollegiate Athletics (NAIA). Absent increased funding measures, the future of collegiate athletics at some institutions remains uncertain.

B. Taxing NIL Income

A monumental revolution in collegiate sports came to fruition on September 30, 2019, when California Governor Gavin Newsom signed into law the FPTPA (also referred to as Senate Bill 206 (S. 206)). The NCAA quickly attacked the action, threatening to ban California from membership; however, the Association changed course to later support student-athlete NIL revenue earnings so long as such funds are derived within the stricture of the amateur “collegiate model.” Since its passage, most states have introduced similar legislation. To date, nineteen jurisdictions have signed some form of NIL legislation into law.

Less than two years after S. 206’s signing, on June 21, 2021, the U.S. Supreme Court unanimously held that the NCAA cannot limit educational benefits, such as computers, paid internships, study-abroad programs, and graduate scholarships offered to student-athletes by colleges and universities. The Court deemed any limits imposed on education-related benefits to student-athletes as violative of antitrust laws. While on its merits this decision has no direct effect

278. Id.
on NIL licensing, it provides a modicum of protection to institutions and student-athletes from any bar(s) that the NCAA may attempt to enforce with regard to NIL rights.279

Once student-athletes start capitalizing on the commercialized use of their NIL, federal and state tax issues will surface. Paying taxes raise unique issues for student-athletes, particularly given the agreeable tax treatment the IRS has historically showered on them due to their amateur status.280 From a federal income tax perspective, student-athletes capitalizing on the use of their NIL will have to include in their gross income all monetary earnings, as well as the fair market value of any nonmonetary items provided by third parties.281 Specifically, earnings that must be included in a paid student-athletes’ gross income could include endorsement contract royalties,282 constructively received income,283 income earned and held by an agent for their benefit,284 pre-paid income,285 and fringe benefits.286

Any income earned should qualify for some form of tax deduction (whether it be the standard deduction, or through itemization). Since only about 10% of American taxpayers continue to itemize post-TCJA,287 it is reasonable to assume that most student-athletes will claim the standard deduction as well.288 However, those who might

279. Marc Edelman, What Happens Now that the Supreme Court Has Decided Alston v. NCAA?, FORBES (June 22, 2021), https://www.forbes.com/sites/marcedelman/2021/06/22/what-happens-now-that-the-supreme-court-has-decided-alston-v-ncaa/?sh=47a4557937 (noting that the NCAA bans on universities that allow their student-athletes to capitalize on the use of their NIL would likely violate antitrust law).
280. See supra Section I.B.3.
281. See I.R.C. § 61; see also Kisska-Schulze & Epstein, supra note 46, at 481–82.
282. See Kisska-Schulze & Epstein, supra note 46, at 483–84 (noting that royalty payments could derive from a corporate sponsor’s use of a student-athlete’s NIL in their advertising).
283. Id. at 484 (meaning taxpayers have control over their earnings, even if not yet in their actual physical possession).
284. This situation is referred to as the “assignment of income doctrine,” whereby income is taxed by those who earn it, regardless of when it is actually transferred over to them from an agent. See Comm’r v. Banks, 543 U.S. 426, 437 (2005).
286. See id. § 61(a)(1). Fringe benefits refer to compensation beyond the scope of cash earnings, to include items such as personal use of a corporate vehicle, subsidized meals, entertainment tickets, and health insurance.
288. See Kisska-Schulze & Epstein, supra note 46, at 487–93.
financially benefit from itemizing will have to keep detailed records of their business expenses.  

Due to the nature of current NIL legislation (which does not transform student-athletes into employees of their institutions per se, but instead allows them to entertain endorsement deals and/or receive financial benefits from outside third parties), student-athletes will be deemed self-employed taxpayers. As such, most (if not all) student-athletes will be required to file an annual individual income tax return, and likely be subject to quarterly payment obligations. Further, as self-employed taxpayers, student-athletes will have to pay the entire 15.3% self-employment tax on the first $142,800 of net earnings (which would otherwise be split between employer and employee as a payroll tax). However, they can deduct 50% of this tax regardless of whether they choose to itemize or claim the standard deduction.

From a state tax perspective, student-athletes earning NIL income will have to comply with various jurisdictional directives above and beyond their federal income tax obligations. The vast majority of states impose some form of income tax; however, each levies the tax differently and at varying rates. Likewise, state tax residency and nexus requirements differ across jurisdictions, thus requiring that

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289. Id. at 490–91.
290. Kisska-Schulze & Epstein, supra note 46, at 482; see also Board of Governors Starts Process to Enhance Name, Image and Likeness Opportunities, supra note 274 (reaffirming "that student-athletes are students first and not employees of the university").
291. See I.R.C. § 6017; see also Self-Employed Individuals Tax Center, IRS, https://www.irs.gov/businesses/small-businesses-self-employed/self-employed-individuals-tax-center [https://perma.cc/QG8B-G5VM] (stating that self-employed taxpayers who earn $400 or more during the tax year are required to file an individual income tax return).
293. See I.R.C. § 1401(a)–(b).
295. Id. at 495–96.
296. See South Dakota v. Wayfair, Inc., 138 S. Ct. 2080, 2091 (2018). Prior to a tax being legitimately imposed by any jurisdiction under the purview of the Due Process and Commerce Clauses of the U.S. Constitution, there must exist sufficient nexus between the taxpayer and taxing jurisdiction. "Nexus" refers to a taxpayer’s business having some minimum connection, or taxable presence, in a given jurisdiction, even if the taxpayer is not an actual resident of that jurisdiction. Id.
paid student-athletes manage potential dual-residency concerns, as well as multiple states asserting jurisdictional nexus over the same earned income.\textsuperscript{297} In addition, many states require that self-employed taxpayers file quarterly estimated payments (akin to the federal requirements), resulting in student-athletes having to keep detailed records of the amount and location of their earnings.\textsuperscript{298}

As transformations continue within college sports, so too does the evolution of the entire U.S. sports arena. The business of sports no longer encompasses mere traditional athletic events. In the current economic dominion of information technology, sports have expanded to include legalized gambling, DFS, and esports. As Part IV details, taxes play a visible role amidst this ever-expanding enterprise.

IV. TAXING THE EVOLVING U.S. SPORTS INDUSTRY

Once upon a time, the term “sport” was employed to showcase human physical activity.\textsuperscript{299} Words that accentuated historic sports dialogues included the likes of agility, speed, strength, endurance, and flexibility.\textsuperscript{300} If a certain activity was not broadcasted on ESPN, some questioned whether it was an actual sport at all.\textsuperscript{301} In contrast, if an activity was aired on ESPN—like the World Series of Poker—others argued that it simply must qualify as sport.\textsuperscript{302}

The world of sport is not static, but instead, continuously evolving. In this fourth industrial revolution, where artificial intelligence, robotics, and the internet reign prominent, the traditional boundaries of sport have blurred the physical, digital, and biological realms.\textsuperscript{303}

\textsuperscript{297} Kisska-Schulze & Epstein, supra note 46, at 496–98. Multi-state apportionment rules would come into play in those circumstances where earned income is subject to tax in multiple jurisdictions.

\textsuperscript{298} Id. at 498.

\textsuperscript{299} See Sport, MERRIAM-WEBSTER’S COLLEGIATE DICTIONARY (11th ed. 2007) (defining sport as “physical activity engaged in for pleasure”).


\textsuperscript{301} Nathan Deen, There’s No Clear-cut Answer as to What Defines a Sport, BRUNSWICK NEWS (June 4, 2014), https://thebrunswicknews.com/sports/local_sports/theres-no-clear-cut-answer-as-to-what-defines-a-sport/article_e7d2b1d1-fc6a-535d-a7cc-0c6de43a7065.html.

\textsuperscript{302} Id.

\textsuperscript{303} See Julien Chaisse & Cristen Bauer, Cybersecurity and the Protection of Digital Assets: Assessing the Role of International Investment Law and Arbitration, 21 VAND. J. ENT. & TECH.
DFS, which involves fantasy contests where players create virtual teams composed of real-life professional athletes from different sports to compete against other players in cash-prize tournaments, has propelled sports into a fresh and innovative cyber dimension. The newly legalized sports gambling industry enables persons across the nation to lawfully place wagers on a multitude of sports-related predictions. Esports, or competitive video gaming, has transcended the boundaries of what some might otherwise claim as true “sport.”

No matter the noise surrounding the definition of “sport,” a particular activity’s nomenclature, or the industry’s blurring identity lines, one constant remains—sports make money. Esports revenue is projected to hit $1.5 billion by 2023. The U.S. DFS industry generated $2.9 billion in 2018 revenue. In August 2020 alone, Americans wagered a record $2.1 billion in legalized sports betting. Such numbers incite tax implications. To better evaluate this evolving landscape, Section A examines the tax issues surrounding legalized sports gambling. Section B addresses the tax implications of DFS. Section C introduces esports taxation.

L. 549, 555 n.30 (2019) (explaining that sports are not immune from the widespread and transformative nature of the fourth industrial revolution).


305. See generally Jim Sergent, Six Charts Show Sports Betting’s Digital Explosion with NFL Season About to Kick off, USA TODAY (Sept. 12, 2021, 7:36 AM), https://www.usatoday.com/in-depth/graphics/2021/09/09/online-sports-gambling-good-bet-industry-continue-winning-ways/5688836001 [https://perma.cc/E6JM-MVZN] (illustrating that nearly half of U.S. States have fully implemented sports-betting legislation with more on the way, and identifying the current NFL season as a major contributor to the general rise in interest in online sports betting).


A. Taxing Legalized Sports Gambling

For decades, state governments have pursued revenue opportunities outside the strictures of income and property taxes.\(^\text{310}\) Following the U.S. Supreme Court’s 2018 decision in *Murphy v. National Collegiate Athletic Ass’n*,\(^\text{311}\) which ended a near-quarter century freeze on states’ ability to authorize new sports gambling schemes, the majority of jurisdictions perceive gambling taxes as a means to solve fiscal problems.\(^\text{312}\) In fact, thirty-one states have legalized sports gambling, with many citing increased tax revenue as a principal motivator.\(^\text{313}\)

Gambling has long been used as a source of funding for both public and private endeavors dating back to pre-colonial times.\(^\text{314}\) Social approval of U.S. gambling operations has experienced ebbs and flows over the last two centuries.\(^\text{315}\) However, since the reauthorization of the first state lottery in New Hampshire in 1964, the United States has witnessed an ongoing expansion in wagering opportunities.\(^\text{316}\)

\(^{310}\) See Kisska-Schulze & Holden, *supra* note 26, at 480 (discussing the Great Recession’s impact on federal government funding for state and local governments).


\(^{312}\) See Charles Norton, *Why States Are Betting on Sports Gambling to Cover Budget Deficits*, FORBES (July 1, 2020, 8:52 AM), https://www.forbes.com/sites/charlesnorton/2020/07/01/why-states-are-betting-on-sports-gambling-to-cover-budget-deficits/?sh=35c4558f5255 (“Higher state budget deficits could serve as a potential catalyst for faster regulatory approval of sports betting, and its cousin, mobile casino gambling.”); see also Jonathan D. Cohen, *Sports Gambling Could Be the Pandemic’s Biggest Winner*, WASH. POST (Feb. 5, 2021, 6:00 AM), https://www.washingtonpost.com/outlook/2021/02/05/sports-gambling-could-be-pandemics-biggest-winner [https://perma.cc/2FFW-8ELL] (“Gambling is not a panacea, and, as history reveals, it never has been. The profits are small relative to states’ overall income.”).


\(^{315}\) *Id.* at 481–86. Professor Nelson Rose has referred to these ebbs and flows as “waves” of legalized gambling. See J. Nelson Rose, *Gambling and the Law: The Third Wave of Legal Gambling*, 17 VILL. SPORTS & ENT. L.J. 361, 368 (2010).

\(^{316}\) See Kisska-Schulze & Holden, *supra* note 26, at 484 (noting that in 1964, New Hampshire became the first state to reauthorize a state lottery); see also John T. Holden & Marc Edelman, *A Short Treatise on Sports Gambling and the Law: How America Regulates*
number of states moved quickly in an effort to capitalize on the new revenue stream post-Murphy. While the federal government lagged in embracing this long-restricted activity, it has been ardent about taxing it. As depicted below, both (1) federal and (2) state taxes play an integral role in this now legalized industry.

1. Federal taxation of sports gambling

In 1947, Nevada became the first state to allow sports wagering at gambling facilities across the state. Two years later, such wagers were formally legalized. In 1951, the federal government imposed a 10% excise tax on total amounts wagered with a bookmaker as a means of expressing the government’s displeasure with sports betting and its connection to organized crime. A separate annual occupational stamp tax on persons accepting wagers complemented the excise tax. Significant penalties accompanied both taxes, including fines of $1,000 and $5,000 for failure to remit payments, and fines up to $10,000 (and five-years imprisonment) for willful violations.

While the 10% excise tax was promoted to deter organized crime, it was more likely intended as a show of disapproval of Nevada’s regulated gaming industry because organized crime was rarely known

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320. Id. at 110–11.
321. Id.; see also Ulrik Boesen, Arcane Federal Tax on Sports Betting Is Too Much to Handle, TAX FOUND. (Apr. 8, 2021), https://taxfoundation.org/federal-tax-on-sports-betting [https://perma.cc/SM62-EF3T] (offering that revenue projections initially estimated that the excise tax would generate $400 million; however, that estimate was revised to $9 million after only six months).
323. Id.
324. Id.
for prompt and accurate I.R.C. compliance. The 10% tax proved devastating to Nevada operators because it was imposed on the total amount wagered (referred to as the “handle”), even though bookmakers typically retain just a small portion of the handle. For example, between 2000 and 2018, Nevada bookmakers only retained 7.6% of the handle, resulting in their profits failing to meet the minimum amount of tax owed to the federal government. This tax ultimately claimed twenty-one of Nevada’s twenty-four sportsbooks, leading some operators to move their ventures underground while others chose to report just 1% of their handle as a means of staying in business. Following a pair of cases challenging both federal excise taxes, the U.S. Supreme Court found them to be “so unfair and onerous” as to violate bookmakers’ Fifth Amendment rights against self-incrimination. Following years of effort by Nevada’s congressional delegation, in 1974, Senator Howard Cannon succeeded in reducing the 10% excise tax to 2%. This tax was again modified in 1982. It bifurcated legal from illegal wagers, charging legal sports betting operations .25% of the total handle, while maintaining the 2% rate for illegal operations. This excise tax, however, created a narrow carve-out for state-run lotteries deemed exempt

326. Id.
327. See Harris, supra note 326, at 76 (noting the underground movement of Nevada sports gambling); see also Holden & Edelman, supra note 316, at 918 (discussing operators’ need to reduce their handle reporting to stay in business).
328. See Harris, supra note 326, at 76 (noting the underground movement of Nevada sports gambling); see also Holden & Edelman, supra note 316, at 918 (discussing operators’ need to reduce their handle reporting to stay in business).
from the tax. Despite more recent efforts to repeal it, this federal tax remains a substantial outflow of sports betting operator revenue.

While gambling operators face substantial federal tax burdens, so too do professional and recreational sports bettors. Cash winnings and the fair market value of noncash prizes valued in excess of $600 during any taxable year must be reported as income and are taxed at regular individual income tax rates. Unlike capital losses from investments, which can be used to offset other income up to $3,000, gambling loss deductibility is limited to the extent of gambling winnings. In addition, loss deductibility is only available for those taxpayers who itemize.

Beginning in 2018, professional gamblers are temporarily prevented from deducting non-wagering business expenses (such as travel expenses to gambling locations) that exceed their net wagering income.

334. Boesen, supra note 321; see also I.R.C. § 4402 (3).
339. See I.R.C. § 1; see also DesOrmeau, supra note 337.
340. See I.R.C. § 1211 (b).
341. See id. § 165(d); see also Smith, supra note 338.
342. Smith, supra note 338.
344. See I.R.C. § 165(d) (explaining that such modification extends from 2018–2025).
2. **State taxation of sports gambling**

In conjunction with the federal income tax considerations discussed above, sports gambling operators and individual gamblers must account for various state and local tax obligations. States vary in their approaches to taxing operators. Some pursue maximized revenue from legalized sports gambling, typically restricting market access to select firms and imposing high tax rates on revenue. Others elect to follow the Nevada model (or a similar variation), offering attractive tax rates and encouraging market competition in an effort to entice consumers away from the black or gray markets. Still, others have granted sports betting monopolies to resident tribal nations, foregoing any state tax imposition in exchange for a share of tribal gaming revenues via a tribal gaming compact.

For jurisdictions that do impose income taxes on sports betting, most levy their standard rates on gross gaming revenue rather than the total handle. State tax rates range from Nevada’s low of 6.75%, to

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Rhode Island’s high of 51%.

From May 2018 to April 2021, states imposing higher tax rates generated more tax revenue per resident than states supporting a more “industry friendly” tax rate. Nevada, however, remains an outlier due to Las Vegas attracting a significant volume of wagers from out-of-state residents. New Jersey, similarly, benefits from the close proximity of New York residents who cross the state’s boundary to place wagers. As Table 1 illustrates, those states opting for a competitive market have not seen the same tax revenues of states choosing to tax gambling operators at significantly higher percentages of revenue.
Table 1: State Tax Revenue Per Adult

<table>
<thead>
<tr>
<th>State</th>
<th>Population</th>
<th>2020 Handle</th>
<th>2020 Total Taxes Collected</th>
<th>Tax Revenue/Adult</th>
</tr>
</thead>
<tbody>
<tr>
<td>Arkansas</td>
<td>3,017,804</td>
<td>$32,822,807</td>
<td>$586,003</td>
<td>$0.19</td>
</tr>
<tr>
<td>Colorado</td>
<td>5,758,736</td>
<td>$1,185,754,317</td>
<td>$2,964,672</td>
<td>$0.51</td>
</tr>
<tr>
<td>Delaware</td>
<td>973,764</td>
<td>$90,242,755</td>
<td>$12,380,038</td>
<td>$12.71</td>
</tr>
<tr>
<td>Illinois</td>
<td>12,671,821</td>
<td>$1,882,855,414</td>
<td>$18,817,885</td>
<td>$1.49</td>
</tr>
<tr>
<td>Indiana</td>
<td>6,732,219</td>
<td>$1,768,632,211</td>
<td>$13,169,431</td>
<td>$1.96</td>
</tr>
<tr>
<td>Iowa</td>
<td>3,155,070</td>
<td>$575,239,746</td>
<td>$2,858,854</td>
<td>$0.91</td>
</tr>
<tr>
<td>Michigan</td>
<td>9,986,857</td>
<td>$130,793,498</td>
<td>$690,866</td>
<td>$0.07</td>
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<tr>
<td>Mississippi</td>
<td>2,976,149</td>
<td>$363,775,652</td>
<td>$5,256,452</td>
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</tr>
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<td>Montana</td>
<td>1,068,778</td>
<td>$17,779,330</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Nevada</td>
<td>3,080,156</td>
<td>$4,283,213,926</td>
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<td>New Hampshire</td>
<td>1,359,711</td>
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<td>New Jersey</td>
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<td>$6,016,967,699</td>
<td>$50,025,117</td>
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</tr>
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<td>New York</td>
<td>19,453,561</td>
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</tr>
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<td>Oregon</td>
<td>4,217,737</td>
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<tr>
<td>Pennsylvania</td>
<td>12,801,989</td>
<td>$5,580,864,479</td>
<td>$64,498,909</td>
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<td>Rhode Island</td>
<td>1,059,361</td>
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<td>Tennessee</td>
<td>6,829,174</td>
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<td>705,749</td>
<td>$80,527,760</td>
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<td>West Virginia</td>
<td>1,792,147</td>
<td>$392,488,754</td>
<td>$2,248,718</td>
<td>$1.25</td>
</tr>
</tbody>
</table>
A number of states allocate recuperated sports betting revenue to their general funds, while others earmark gambling tax revenue to state education funds. Such interconnection between gambling and education has long existed, despite such a peculiar liaison given that persons under the age of twenty-one are generally not eligible to legally gamble. Although jurisdictions anticipated that sports betting tax revenue would serve as a catalyst for managing distressed budgetary issues, many have not realized the kind of revenue that initially led them to legalize the activity. This disconnect is due in part to the manner in which some jurisdictions draft their rules for calculating gross gaming revenue.

Offering tax deductions for customer comps and promotions have led some states to lose significant revenue. In Colorado, for example, sports betting companies can reduce a significant percentage of their taxable revenue by deducting from their taxable base uncapped, free play, and promotional bets. Further, in this new legalized arena where customer acquisition is key to long-term venture viability, sports betting companies willingly offset current revenue by offering customer promotions in the hopes of gaining a more dominant market position in the future.

357. See Wayne Parry, Mobile Sports Betting Money Tempts Cash-Strapped States, ASSOCIATED PRESS (Apr. 14, 2021), https://apnews.com/article/technology-new-york-smartphones-new-jersey-andrew-cuomo-5629c0abbc42e458cd351b13ee9b4875 (noting that a March 2021 report for the National Conference of State Legislatures highlighted the “gap between the seemingly vast amount of money being wagered and the much smaller amount of it flowing to states as tax revenue”).
358. See Sam McQuillan, FanDuel, DraftKings Save Millions on Taxes Thanks to Free Play, BLOOMBERG TAX (July 1, 2021, 4:46 AM), https://news.bloomberglaw.com/daily-tax-report/fanduel-draftkings-save-millions-on-taxes-thanks-to-free-play [https://perma.cc/398C-HAV3] (highlighting state rules that allow gambling companies to give free plays to customers as promotions, and then deduct these promotions from the revenue they pay to the state).
359. Id.
360. Id. (noting that other states with similar provisions include Pennsylvania, Michigan, and Virginia).
For individual sports bettors, state income tax liability is determined based on the location in which they win money. As there is no universal application of state income taxes across jurisdictions, taxing winnings varies widely across borders. For example, New Jersey levies its state income tax on earnings, while Nevada (which has no income tax) does not impose a tax on winnings. In Maryland, individuals must report winnings between $500 and $5,000, and pay the required tax due within sixty days, whereas Iowa imposes an automatic 5% withholding. In any jurisdiction that imposes an income tax on gambling winnings, failure to report and pay could result in penalties and interest accrual.

**B. Taxing Daily Fantasy Sports**

DFS origins date back to the mid-2000s, when fantasy sports contests (that some argue resemble gambling) became part of the everyday lexicon. Although similarities exist between DFS and gambling, FanDuel and DraftKings—the two largest DFS companies—contend that their virtual products are distinct since they require skill, rather than chance. Despite the substantial efforts and capital expended by

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361. Id.

362. Id.

363. Id.

364. Id.


366. Id. (Iowa’s law applies in circumstances where federal taxes are likewise applied).


368. See Holden et al., *supra* note 367, at 135–48 (discussing DraftKings’ and FanDuel’s efforts to couch their products as something other than gambling). Gambling has three elements: prize, consideration, and chance. The degree of chance is typically the element evaluated by states to determine whether an activity is allowed or prohibited as illegal gambling. State laws vary, but three tests are predominantly used. The any chance test, which deems any activity having a degree of chance as a
these companies to convince legislatures that DFS is not gambling. In a 2020 memorandum issued by the IRS Office of Chief Counsel, Senior Counsel Amy Wei concluded, “[t]he amount paid by a daily fantasy sports player to participate in a daily fantasy sports contest constitutes an amount paid for a wagering transaction under [I.R.C.] § 165(d).” Thus, DFS winnings and losses are subject to the same federal tax treatment as gambling, discussed in Section IV.A. In reviewing the tax implications surrounding DFS, the IRS considered three issues: (1) whether DFS companies should be liable for the gambling excise tax at all; (2) whether the occupational stamp tax should apply to DFS; and (3) whether a DFS operator should be liable for the gambling excise tax at the lower .25% rate, or instead the higher 2% rate. The IRS concluded affirmatively to the first two inquiries. Regarding the third issue, the IRS noted that the applicable rate depends on whether the operators accept wagers in states that have legally authorized DFS.

While numerous operators avoid operating in states where DFS violates state gambling laws, others have flouted state attorney general

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372. See supra Section V.A.


374. Id.

375. Id.

determinations regarding its legality, choosing to maintain operations within those borders regardless of its legal status. Applying the “legal operation” tax rate of 0.25%, data supports that DFS companies would have owed roughly $8 million on their $335 million revenue in 2018. Those operating in states that deem fantasy sports as illegal gambling operations could prove costly, as the “illegal operation” 2% tax on the handle could equate to 20% of total operator revenue. Although DraftKings expressed intent to contest the IRS’s ruling, it has yet to officially challenge the Treasury’s tax determination.

C. Taxing Esports

Esports, one of the fastest-growing segments of the sports and entertainment industries, are competitive video gaming events played in highly organized settings. This sub-industry’s growth and popularity has attracted a diverse group of investors eager to generate significant financial gains. In fact, in 2021, esports revenue is estimated to exceed $1.08 billion. While many perceive esports as a
new phenomenon, its origins can be traced back decades.\textsuperscript{385} Previously it has been argued that pinball machines were the predecessor to video games.\textsuperscript{386} However, in the 1960s, Massachusetts Institute of Technology (MIT) students created the first computerized video game—Spacewar.\textsuperscript{387} Such novelty was created using Cathode Ray Tube monitors and a Programmed Data Processor (PDP-1) that inspired others to commercialize video gaming.\textsuperscript{388} Nolan Bushnell, a pioneer in the video gaming space, was the first to develop a coin-operated machine that helped launch the arcade game industry.\textsuperscript{389}

By the early 1980s, when over 13,000 arcades were in operation in the United States, the professional video gaming concept took root.\textsuperscript{390} The 1980s saw the creation of the U.S. National Video Game Team, which was composed of six of the best video game players who traveled in roadshows across the country.\textsuperscript{391} Contemporary esports are believed to have their origins in 1997, with the launch of the Red Annihilation Quake tournament.\textsuperscript{392} Less than a decade later, tournament prize pools often exceeded $1 million.\textsuperscript{393} Since 2014, eight competitions have individually offered prize pools surpassing $10 million,\textsuperscript{394} with one of the largest international esports tournaments entertaining a pool of $40 million.\textsuperscript{395}

Professional gamers are beginning to rise to the level of popularity of traditional sports athletes.\textsuperscript{396} One of the most prolific esports players currently has an estimated net worth of $6.9 million.\textsuperscript{397} Ninja, a popular

\begin{thebibliography}{99}
\bibitem{385} Holden et al., supra note 13, at 513.
\bibitem{386} Id.
\bibitem{387} Id. at 514.
\bibitem{388} Id.
\bibitem{389} Id.
\bibitem{390} Id. at 515.
\bibitem{392} Holden et al., supra note 13, at 517.
\bibitem{393} Id. at 518.
\bibitem{396} Id.
\bibitem{397} Id.
\end{thebibliography}
American streamer, signed a streaming agreement in 2019 worth $30 million.\textsuperscript{398}

Big money draws big tax issues, and because of the international nature of esports, the U.S. taxes are complicated.\textsuperscript{399} U.S. citizens and resident aliens are taxed on their worldwide income.\textsuperscript{400} Non-resident aliens are subject to U.S. taxes if their earnings derive from U.S. sources.\textsuperscript{401} Thus, whether a gamer is a U.S. citizen, resident, or non-resident alien, income earned from their gaming activities could be subject to U.S. federal income taxes. Esports taxable income may include prize money,\textsuperscript{402} royalties derived from endorsement contracts,\textsuperscript{403} fringe benefits,\textsuperscript{404} donations or tips paid by viewing audiences,\textsuperscript{405} and any other form of employment or independent contractor income earned by professional gamers.\textsuperscript{406} As discussed in Section III.B with regard to student-athletes’ NIL earnings,\textsuperscript{407} deductions (in the form of standard or itemized) can help reduce professional gamers’ taxable income.\textsuperscript{408} In conjunction with federal income taxes, professional gamers must also account for various state tax obligations, including the jock tax as discussed in Section I.A.2 with respect to professional athletes.\textsuperscript{409}

\begin{itemize}
\item \textsuperscript{398} Id.; @Ninja, Twitter (Jan. 2, 2013, 5:14 PM), https://twitter.com/Ninja?ref_src=twsrc%5Egoogle%7Ctwcamp%5Eserp%7Ctwpq%5Eauthor [https://perma.cc/2BHV-U9KN]. Ninja is the online alias for Richard Tyler Blevins.
\item \textsuperscript{399} Id.
\item \textsuperscript{400} See I.R.C. § 61(a); see also Treas. Reg. § 1.1-1 (2020).
\item \textsuperscript{401} See I.R.C. § 871(b). This Article focuses on tax issues relating to U.S. citizens and residents. While international gamers may be subject to tax in the U.S. for their gaming activities, it is beyond the scope of this Article to address United States and foreign jurisdiction tax issues that may apply to those identified as non-resident aliens (i.e., individuals who do not hold a Green Card or who do not qualify under the substantial presence test).
\item \textsuperscript{402} See id. § 74.
\item \textsuperscript{403} See Treas. Reg. § 1.61-8(a).
\item \textsuperscript{404} See I.R.C. § 61(a).
\item \textsuperscript{405} US Tax Considerations for Esports and the Online Games Industry, supra note 395.
\item \textsuperscript{406} See I.R.C. § 61(a); see also id. § 3101 (pertaining to the self-employment tax on income earned by independent contractors); supra Section IV.A.5 for further explanation on the impact of the self-employment tax.
\item \textsuperscript{407} See supra Section IV.A.5.
\item \textsuperscript{408} See I.R.C. § 63.
\item \textsuperscript{409} See supra Section II.A.2.
\end{itemize}
V. RECOMMENDATIONS FOR THE EVOLVING BUSINESS OF SPORTS

In 2008, Holo and Talansky observed a shift in what they referred to as the “special” tax treatment historically conferred upon the professional sports industry.\(^\text{410}\) Not only have there been notable alterations to the federal and state taxing regimes impacting sports, but equally significant is the fact that there has been a monumental evolution of the business of sports since their article was published. Amidst this growing, billion-dollar enterprise encompassing both traditional and cyber events, extending into the professional and collegiate sports arenas—and that allows players, coaches, leagues, associations, commercial ventures, fans, sponsors, and the media to generate considerable income—it is unsurprising that U.S. taxing jurisdictions are pursuing a greater slice of the revenue-sharing pie. Taxes are increasingly impacting the expanding professional and collegiate U.S. sports industry. However, as the world of sports is not static, neither are federal or state tax laws. As such, this Article offers the following recommendations.

First, the federal government should remove the tax incentives afforded to professional sports leagues and teams to renovate or build new stadiums.\(^\text{411}\) Academics and economists concur that stadium construction fails to spur economic development.\(^\text{412}\) The federal government should terminate this program (which heavily benefits billionaire sports team owners) by passing legislation that officially ends tax exemptions for interest payments on municipal bonds.\(^\text{413}\) Congress’s failure to act in this effort has led to dwindling stadium lifespans and increased team owner wealth at the expense of taxpayers.\(^\text{414}\) The amount of public dollars spent on stadium renovations and new construction between 1991 and 2004 was equivalent to “three Nimitz-class nuclear-powered aircraft carriers.”\(^\text{415}\) While it is unclear why Congress continues to allow this blatant tax exploitation to exist, it likely involves the power of sports league

\(^{410}\) Holo & Talansky, supra note 32, at 214.


\(^{412}\) See Zimbalist & Noll, supra note 173; see also Drukker et al., supra note 175; supra Section I.A.

\(^{413}\) See Zimbalist & Noll, supra note 173.

\(^{414}\) Id.

\(^{415}\) Hruby, supra note 411.
Rather than build new stadiums to benefit the wealthy without the spur of economic growth, taxpayer funds and tax-exempt bonds should be geared toward more critical social needs like healthcare, education, and urban development.

Second, the Treasury should amend I.R.C. § 197 to cease application of the RDA to professional sports teams. Although public stadium funding has been the subject of meaningful academic attention to the point where legislators have repeatedly threatened to close available tax loopholes afforded to teams and leagues, the RDA has largely received a pass. The RDA substantially benefits team owners because sports teams are appreciable, rather than depreciable, assets. Allowing team owners to deduct the purchase price of a franchise over a fifteen-year amortization period is an archaic tax benefit, particularly considering that fifty of the most valuable sports franchises continued to enjoy a 9.9% valuation increase during the COVID-19 pandemic. Over the previous five-year period, those same franchises increased in value by 55%. Few tax benefits achieve the inverse of their purported objective as the RDA. As such, the time is ripe for Congress to reevaluate its effectiveness regarding professional sports teams and leagues.

Third, at this juncture, Congress should continue to bestow favorable tax treatment on student-athletes’ grants-in-aid. As pay-for-play traction increases in collegiate sports, queries remain as to whether student-athletes’ scholarship funds should continue to receive preferential tax treatment. As discussed in Section III.B, student-
athletes enjoy meaningful tax amicability with regard to their athletic scholarship funds. Based on the current regime, athletic scholarships are granted based on degree-seeking interests, coupled with athletic ability, while NIL earnings are based on contractual relationships between players and third parties having no direct relationship to the student-athletes’ educational/collegiate sport interests. Student-athletes will have to pay taxes on their NIL earnings; however, such income has no connection to their institutional grants-in-aid and, therefore, should play no role in their scholarship funding. Although such a premise could change if the pay-for-play model eventually morphs into that of an employer-employee relationship between institution and player, that day is not today.

In concert with the above recommendation, allowing student-athletes to benefit economically from the use of their NIL is a step toward increased equality across the lucrative college sports enterprise. However, earnings come at a price. For the first time in history, student-athletes will have to toggle complicated federal and state tax issues while playing sports and earning educational degrees. As there is no precedent for some of the tax issues that may arise due to the unique nature of college sports, this Article recommends that the Treasury promulgate rulings to provide clarity and uniformity on the federal taxability of student-athletes’ NIL income. In addition, the NCAA and individual institutions should proactively assist student-athletes in understanding the complex nature of their tax obligations to help minimize tax penalties and interest accrual.

Fourth, this Article recommends that gambling tax revenue be redirected back into higher education. Between the TCJA’s impact on collegiate athletics, and the more recent COVID-19 pandemic, higher education is in desperate need of funding. Recent funding relief came in the form of the federal Coronavirus Aid, Relief, and Economic


423. See Kisska-Schulze & Holden, supra note 26, at 468 (arguing college administrators should direct attention toward embracing legalized sports wagering to increase revenue to supplement lost income due to the TCJA); see also Emma Whitford, Pandemic’s Fall Financial Toll Adds Up, INSIDE HIGHER ED (Jan. 12, 2021), https://www.insidehighered.com/news/2021/01/12/colleges-spent-millions-covid-19-expenses-fall-even-sources-income-shrank-data-show [https://perma.cc/XG6W-VP7Z] (elaborating on the significant financial losses felt by institutions in the wake of the COVID-19 pandemic).
Security (CARES) Act, which provided $14 billion in financial assistance to colleges and universities impacted by COVID-19 losses. However, even prior to that, another financial relief opportunity came in the form of sports gambling tax revenue. Post-Murphy, over twenty-four states have legalized some form of sports betting. Across those jurisdictions, total taxes collected exceeds $570 million. Although each state earmarks their tax revenue differently, few have officially reinvested any of these earnings back into education.

A portion of this tax revenue should be redirected back into higher education, and, more particularly, back into the same collegiate sports programs generating such newfound income. Already, the University of Colorado at Boulder (CU Boulder) is further capitalizing on sports betting market opportunities by entering into a five-year sponsorship contract with PointsBet, an Australian bookmaker. The $1.6 million agreement requires Buffalo Sports Properties, which holds the media rights for CU Boulder, promote PointsBet on its media channels and at CU Boulder’s Folsom Field and Events Center. In addition, for every new bettor that registers on PointsBet using a Colorado Athletics...
promotion code, the CU Boulder athletics department will earn $30.\textsuperscript{432} For every bet placed in Colorado through a legal, regulated sportsbook like PointsBet, state taxes will be imposed, resulting in increased revenue in the jurisdiction. Whether other institutions entertain similar corporate sponsorships remains to be seen;\textsuperscript{433} however, states should ensure that increased tax revenue generated from the legalized sports-betting market be redirected back into higher education.

Finally, state taxing jurisdictions must consider their primary objectives when crafting tax rates and licensing fees amidst the legalized sports gambling industry.\textsuperscript{434} If a state’s objective is to provide a regulated sports gambling market to recapture revenue from the black or gray markets, it must create an environment that fosters competition, resulting in consumers having a multitude of wagering options at their disposal. Alternatively, if a state’s goal is to maximize jurisdictional tax revenue, it should impose higher taxes on gambling operators and consider granting a monopoly to just one or two high bidders.\textsuperscript{435} Early legalized sports betting returns have demonstrated that states have not been penalized with decreased tax revenue, even when they have imposed significant tax rates.\textsuperscript{436} As a result, states should have great latitude in setting tax rates that coincide with their jurisdictional objectives.

**CONCLUSION**

The “business of sports” is changing. No longer do athletes compete purely for love of the game. Sports have evolved into a highly productive enterprise, where everyone stands to make a buck. The business side of the industry has moved beyond professional sports into

\textsuperscript{432} Id.

\textsuperscript{433} See Brett Smiley, *Recruiting Season: Just How Big a Deal Is the University of Colorado-PointsBet Sportsbook Pact?*, SPORTS HANDLE (Sept. 9, 2020), https://sportshandle.com/pointsbet-colorado-ncaa-sports-betting [https://perma.cc/TG9G-9BSG] (noting that the Colorado University Athletics and a sports betting operator is “one of the few in existence between a sports betting operator and a major NCAA Division I Athletics Program”).

\textsuperscript{434} While licensing fees are not a tax, in some sense they can operate as a tax on operators. Holden, supra note 354.

\textsuperscript{435} See supra Table 1.

the realms of amateur athletics, DFS, esports, and the legalized sports gambling industry, and the dollar signs generated are big.\textsuperscript{437}

Recently, Congress and states have shown increased interest in usurping a greater percentage of these sports-related revenues,\textsuperscript{438} even amidst the more amicable treatment historically bestowed upon professional and collegiate athletics.\textsuperscript{439} The newly legalized sports gambling industry allows states to capture tax revenues not previously available to them.\textsuperscript{440} In addition, the fourth industrial revolution has blurred the traditional lines of sport, inviting significant revenue generation from novel subsets of the sports culture that blend the physical, digital, and biological spheres.\textsuperscript{441} Across this ever-evolving industry, taxes are and will continue to play an integral role. Sport is not just a game anymore, and Congress and states taxing jurisdictions have indicated they are ready to play ball.

\textsuperscript{437} See supra Part IV.
\textsuperscript{438} See supra Parts II, III.
\textsuperscript{439} See supra Part I.
\textsuperscript{440} See supra Section IV.A.
\textsuperscript{441} See supra Sections IV.B–C.