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CHANGING THE FACE OF COLLEGE SPORTS ONE TAX RETURN AT A TIME

KATHRYN KISSKA-SCHULZE* & ADAM EPSTEIN**

Abstract

On September 30, 2019, California Governor Gavin Newsom signed into law the Fair Pay to Play Act (FPTPA), allowing student-athletes to hire agents and financially benefit from their college sports activities by permitting commercialized use of their name, image, and likeness (NIL). California's law circumvented the National Collegiate Athletic Association's (NCAA) historic injunction on student-athletes receiving compensation outside of scholarships; however, after its passage, the NCAA reformed its stance to allow student-athletes to profit from the use of their NIL. With the NCAA's approval, and with numerous states pushing legislation similar to the FPTPA, the face of college sports is changing. However, as quickly as the NCAA transformed its posture on student-athletes being compensated, the term tax emerged. Once student-athletes earn income under the FPTPA, they must become familiar with complicated tax filing and payment obligations that may result in adverse and unexpected consequences. This Article provides a history of the pay-for-play debate in college sports, analyzes the intricacies of the FPTPA, introduces applicable tax considerations at the federal and state levels that may impact student-athletes, and makes recommendations to better educate and protect student-athletes' financial interests.

Introduction

On September 30, 2019, California became the first state to allow student-athletes to receive compensation for the use of their name, image and likeness (NIL) after Governor Gavin Newsom signed the Fair Pay to Play Act (FPTPA) into law.¹ Effective 2023, the FPTPA will circumvent

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1. See Fair Pay to Play Act, CAL. EDUC. CODE § 67456 (2020); see also Press Release, Off. of Governor Gavin Newsom, Governor Newsom Signs SB 206, Taking on Long-Standing Power Imbalance in College Sports (Sept. 30, 2019), <https://www.gov.ca.gov/>

the National College Athletic Association's (NCAA) historic injunction on student-athletes receiving any form of compensation outside their institutions' grants-in-aid (GIA) programs.² While the NCAA initially characterized the law as unconstitutional and an existential threat,³ it quickly reformed its stance in October 2019 when the NCAA's Board of Governors unanimously voted to allow student-athletes to profit from the use of their NIL "in a manner consistent with the collegiate model."⁴

The FPTPA allows student-athletes to hire agents, entertain endorsement deals, and benefit financially from their college sport-related activities by

2019/09/30/governor-newsom-signs-sb-206-taking-on-long-standing-power-imbalance-in-college-sports/; Letter from Gavin Newsom, Governor of Cal., to the Members of the California State Senate (Sept. 30, 2019), <https://www.gov.ca.gov/wp-content/uploads/2019/09/SB-206-Signing-Message-2019.pdf> ("SB 206 addresses an injustice in our higher education system. Other college students with a talent, whether it be literature, music, or technological innovation, can monetize their skill and hard work. Student athletes, however, are prohibited from being compensated while their respective colleges and universities make millions, often at great risk to athletes' health, academics and professional careers.").

2. See Jack Kelly, *Newly Passed California Fair Pay to Play Act Will Allow Student Athletes to Receive Compensation*, FORBES (Oct. 1, 2019, 12:36 PM EDT), <https://www.forbes.com/sites/jackkelly/2019/10/01/in-a-revolutionary-change-newly-passed-california-fair-pay-to-play-act-will-allow-student-athletes-to-receive-compensation/#4a8797fb57d0>.

3. See Agota Peterfy & Kevin Carron, *Show Me the Money! NCAA Considering Paying Student-Athletes*, 76 J. MO. BAR 68, 71 (2020); see also Kate Sheehy, *California Defies NCAA with Law Allowing College Athletes to Make Money*, N.Y. POST (Sept. 30, 2019, 12:31 PM), <https://nypost.com/2019/09/30/california-defies-ncaa-with-law-allowing-college-athletes-to-make-money/> ("The National Collegiate Athletic Association-college sports' governing body-warned that the unilateral move would create an uneven playing field for the rest of the nation's schools, leaving California players possibly barred from NCAA competition."); *id.* (quoting an NCAA statement) ("It is clear that a patchwork of different laws from different states will make unattainable the goal of providing a fair and level playing field for 1,100 campuses and nearly half a million student-athletes nationwide . . .").

4. See *Board of Governors Starts Process to Enhance Name, Image and Likeness Opportunities*, NCAA (Oct. 29, 2019, 1:08 PM), <http://www.ncaa.org/about/resources/media-center/news/board-governors-starts-process-enhance-name-image-and-likeness-opportunities> ("In the Association's continuing efforts to support college athletes, the NCAA's top governing board voted unanimously to permit students participating in athletics the opportunity to benefit from the use of their name, image and likeness in a manner consistent with the collegiate model. The Board of Governors' action directs each of the NCAA's three divisions to immediately consider updates to relevant bylaws and policies for the 21st century, said Michael V. Drake, chair of the board and president of The Ohio State University.").

permitting use of their NIL to promote products, services, and companies.⁵ Although only a nominal fraction of student-athletes will likely command the marketability required to trigger the benefits of California's new law, as quickly as the NCAA transformed its historic stance on amateurism, the term "tax" entered the discussion.⁶ In recent years, there has been a substantial uptick in academic attention over the tax implications germane to collegiate pay-for-play models.⁷ As structured, the FPTPA is a variation

5. See Kelly, *supra* note 2; see also Fair Pay to Play Act, S.B. 206, 2019-2020 Leg., Reg. Sess. (Cal. 2019); Press Release, Off. of Governor Gavin Newsom, *supra* note 1 ("Starting on Jan. 1, 2023, the Fair Pay to Play Act will allow all student athletes enrolled in public and private four-year colleges and universities in California to earn money from their name, image, or likeness. Student athletes will also be able to hire sports agents, and not lose their scholarships if they receive income for their work. Further, SB 206 prohibits California colleges from enforcing NCAA rules that prevent student athletes from earning compensation, and will prevent the NCAA from banning California universities from intercollegiate sports if their athletes sign sponsorship deals.").

6. On October 29, 2019, Senator Richard Burr of North Carolina tweeted, "If college athletes are going to make money off their likenesses while in school, their scholarships should be treated like income. I'll be introducing legislation that subjects scholarships given to athletes who choose to 'cash in' to income taxes." @SenatorBurr, TWITTER (Oct. 29, 2019, 2:28 PM), <https://twitter.com/SenatorBurr/status/1189262863552208896> (quoted in Annie Nova & Tucker Higgins, *Republican Sen. Richard Burr Proposes Taxing Scholarships of Student Athletes Who 'Cash in'*, CNBC (Oct. 29, 2019, 6:13 PM EDT), <https://www.cnbc.com/2019/10/29/richard-burr-proposes-taxing-scholarships-of-student-athletes-who-cash-in.html>); see also Ryan Prete, *California's Fair Pay to Play Act Should Boost Income Tax Revenue*, BLOOMBERG TAX (Oct. 4, 2019, 2:10 PM), <https://news.bloombergtax.com/daily-tax-report-state/californias-fair-pay-to-play-act-should-boost-income-tax-revenue>.

7. See, e.g., Marc Edelman, *From Student-Athletes to Employee-Athletes: Why a "Pay For Play" Model of College Sports Would Not Necessarily Make Educational Scholarships Taxable*, 58 B.C. L. REV. 1137, 1151-55 (2017) (exploring tax planning opportunities in an effort to minimize the tax exposure of employee-athletes' qualified scholarships); David A. Grenardo, *The Duke Model: A Performance-Based Solution for Compensating College Athletes*, 83 BROOK. L. REV. 157, 203-206 (2017) (noting that the pay-for-play model raises tax issues); Kathryn Kisska-Schulze, *Analyzing the Applicability of IRC § 162 on the Pay-for-Play Model*, 16 VA. SPORTS & ENT. L.J. 190, 190 (2017) [hereinafter Kisska-Schulze, *Analyzing*] (examining how the Internal Revenue Code identifies the proper tax home of paid student-athletes); Kathryn Kisska-Schulze & Adam Epstein, *Northwestern, O'Bannon and the Future: Cultivating a New Era for Taxing Qualified Scholarships*, 49 AKRON L. REV. 771, 775 (2016) [hereinafter Kisska-Schulze & Epstein, *Northwestern, O'Bannon and the Future*] (concluding that the IRS could consider taxing student-athletes' grants-in-aid if eventually deemed employees of their institutions); 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, 23 (2014) [hereinafter Kisska-Schulze &

of more traditional notions of pay-for-play, which theorize that colleges and universities offer some form of direct compensation to student-athletes.⁸ While the FPTPA does not transform student-athletes into employees of their institutions,⁹ income earned from the use of their NIL will be subject to significant federal and state tax obligations.¹⁰

Once student-athletes earn income under the FPTPA, they must consider myriad factors, including: the various types of income earned,¹¹ the timing of profits received,¹² deductions which might reduce their taxable

Epstein, “*Show Me the Money!*”] (analyzing the state tax consequences of the pay-for-play model); Richard Schmalbeck & Lawrence Zelenak, *The NCAA and the IRS: Life at the Intersection of College Sports and the Federal Income Tax*, 92 S. CAL. L. REV. 1087, 1088 (2019) (examining the intersection between the federal income tax code and college sports); Patrick Michael Tutka & Dylan Williams, *The Expensive Truth: The Possible Tax Implications Related to Scholarship and Cost of Attendance Payments for Athletes*, 27 J. LEGAL ASPECTS SPORT 145, 145 (2017) (examining the taxability of student-athletes’ cost of attendance scholarships).

8. See, e.g., William W. Berry III, *Amending Amateurism Saving Intercollegiate Athletics Through Conference-Athlete Revenue Sharing*, 68 ALA. L. REV. 551, 552 (2016) (noting the debate over whether student-athletes should receive compensation beyond room, board, and tuition for their participation in college sports); Edelman, *supra* note 7, at 1142–43 (documenting that “pay for play” embodies an NCAA member institution offering some form of financial benefit to student-athletes); Robert Grimmer-Norris, Comment, *Roadblocks: Examining Title IX & the Fair Compensation of Division I Intercollegiate Student-Athletes*, 34 ST. LOUIS U. PUB. L. REV. 435, 448 (2015) (noting that pay-for-play entails a student-athlete being compensated for participating in athletic programs via a monthly stipend); Kisska-Schulze & Epstein, “*Show Me the Money!*”, *supra* note 7, at 16 (making the case for state tax considerations under a pay-for-play model where colleges pay student-athletes); Ellen J. Staurowsky, “*A Radical Proposal*”: *Title IX Has No Role in College Sport Pay-for-Play Discussions*, 22 MARQ. SPORTS L. REV. 575, 581–85 (2012) (anchoring the notion of pay-for-play to athletic scholarships); see also John Thelin, *Paying College Athletes*, INSIDE HIGHER ED (Feb. 12, 2018), <https://www.insidehighered.com/views/2018/02/12/impact-college-sports-programs-if-athletes-are-paid-opinion> (querying how athletic programs can afford to pay student-athletes); Brennan Thomas, *Pay for Play: Should College Athletes Be Compensated?*, BLEACHER REP. (Apr. 4, 2011), <https://bleacherreport.com/articles/654808-pay-for-play-should-college-athletes-be-compensated> (querying whether student-athletes should be paid a stipend by their universities for participating in sports).

9. See *infra* Part II.

10. See Katie Davis, *How Taxes Could Disrupt the Gameplan of Paying Student-Athletes*, JAMES MOORE, <https://www.jmco.com/student-athlete-tax-issues/> (last visited Jan. 7, 2021) (identifying student-athletes as being self-employed under California’s Fair Pay to Play Act).

11. See *infra* Section III.A.1.

12. See *infra* Section III.A.1.

earnings,¹³ the effect of the self-employment tax,¹⁴ quarterly filing obligations,¹⁵ the location of their tax home for federal purposes,¹⁶ the impact and extent of domicile for state tax purposes,¹⁷ and multistate tax filing obligations.¹⁸ Convoluted filing and payment requirements may result in negative externalities, including student-athletes being subject to audits, tax penalties, and interest accrual. Such adverse consequences could prove pervasive amidst an academic-athletic populous largely unfamiliar with income tax requirements, particularly across multiple jurisdictions.¹⁹

The FPTPA has materialized as a pivotal and profound effort to compensate student-athletes amidst an increasing surge of public interest support.²⁰ However, unlike previous litigation attempts confronting issues of pay-for-play by current or former student-athletes,²¹ California's law has resulted in cascading legislation across multiple U.S. jurisdictions. By the close of 2020, thirty-five states either introduced similar legislation, or expressed an intent to do so.²² Six states have now passed legislation allowing for student-athlete NIL compensation.²³ Such nascent interest

13. *See infra* Section III.A.2.

14. *See infra* Section III.A.3.

15. *See infra* Section III.A.3.

16. *See infra* Section III.A.2.c.

17. *See infra* Section III.B.

18. *See infra* Section III.B.

19. *See* Davis, *supra* note 10 (noting that few student-athletes have experience in tax matters).

20. *See, e.g.*, Marc Edelman, *A Short Treatise on Amateurism and Antitrust Law: Why the NCAA's No-Pay Rules Violate Section 1 of the Sherman Act*, 64 CASE W. RES. L. REV. 61 (2013) (making the case that the NCAA's "no-pay" rules violate the Sherman Act); Sam C. Ehrlich, *The FLSA and the NCAA's Potential Terrible, Horrible, No Good, Very Bad Day*, 39 LOY. L.A. ENT. L. REV. 77, 81 (2019) (suggesting that proactive action would allow the NCAA to work alongside student-athletes towards an employment-style arrangement with their institutions); Grenardo, *supra* note 7 (arguing for a removal of the prohibition on compensating student-athletes through the development and implementation of the Duke Model); Lee Goldman, *Sports and Antitrust: Should College Students Be Paid to Play?*, 65 NOTRE DAME L. REV. 206, 208 (1990) (arguing for a free-market approach to student-athlete compensation); Chaz J. Gross, Note, *Modifying Amateurism: A Performance-Based Solution to Compensating Student-Athletes for Licensing Their Names, Images, and Likenesses*, 16 CHI.-KENT J. INTELL. PROP. 259, 263 (2017) (making the case for student-athlete compensation through performance-based scholarships).

21. *See infra* Part I.

22. *See infra* notes 89–132 and accompanying text.

23. *See infra* notes 89–132 and accompanying text.

evidences an unprecedented effort by state legislators to change the face of college sports.

This Article addresses the implications surrounding pay-for-play by examining the tax consequences specific to the FPTPA and the resulting spillover effect on student-athletes. To better evaluate these issues, this Article is divided into five sections. Part I offers a fundamental background of the pay-for-play debate, including the growing litigation surrounding compensation for the use of student-athletes' NIL. Part II analyzes the FPTPA, the NCAA's reformed position following Governor Newsom's signing of the law, and other states' efforts to legislate in this area. Part III introduces various tax considerations at the federal and state levels that will become relevant once student-athletes begin profiting from the use of their NIL. Part IV offers specific recommendations to better educate and protect student-athletes' financial interests. Finally, Part V concludes that tax considerations must be incorporated into the overall discussion surrounding student-athlete compensation under the FPTPA and similar legislation.

I. History of Pay-for-Play

To conceptualize the varied tax implications of the FPTPA, it is beneficial to first explore the evolution of pay-for-play in collegiate sports that paved the way for California's revolutionary law. For decades, student-athletes and others have appealed for some form of intercollegiate athletic compensation, particularly within the lucrative business of college football and men's basketball.²⁴ Today, there is no shortage of academic literature examining the pros and cons of professionalizing college sports.²⁵

24. See *Berger v. NCAA*, 843 F.3d 285, 291–92 (7th Cir. 2016) (citing Adam Epstein & Paul Anderson, *The Relationship Between a Collegiate Student-Athlete and the University: An Historical and Legal Perspective*, 26 MARQ. SPORTS L. REV. 287, 297 (2016) (collecting cases where courts have held that student-athletes are not employees under a legal standard)); see also Kathryn Kisska-Schulze & Adam Epstein, *The Claim Game: Analyzing the Tax Implications of Student-Athlete Insurance Policy Payouts*, 25 JEFFREY S. MOORAD SPORTS L.J. 231, 249–50 (2018) [hereinafter Kisska-Schulze & Epstein, *The Claim Game*] (noting that the debate concerning paying student-athletes has gained traction).

25. See, e.g., Berry III, *supra* note 8, at 556 (proposing that athletic conferences provide student-athlete revenue sharing opportunities as a middle ground to amateurism and pay-for-play); Kevin Brown & Antonio Williams, *Out of Bounds: A Critical Race Theory Perspective on 'Pay for Play'*, 29 J. LEGAL ASPECTS SPORT 30 (2019) (examining the amateur/education model as applied to college revenue-generating sports); Marc Edelman, *The Future of College Athlete Players Unions: Lessons Learned from Northwestern University and Potential Next Steps in the College Athletes' Rights Movement*, 38 CARDOZO

Beginning in the 1950s, legal analyses querying whether college football players should be entitled to payment hinged on whether those student-athletes were *employees* of their institutions under state workers' compensation laws.²⁶ Two early Colorado cases established the precedent that student-athletes are not employees, and thus not entitled to workers' compensation.²⁷ Thereafter, virtually every court decision on the issue followed suit, evidencing that workers' compensation claims are insufficient approaches for student-athletes seeking compensation.²⁸

L. REV. 1627 (2017) (offering strategies for student-athletes to consider in promoting unionization); Alexander Knuth, *Lane Violation: Why the NCAA's Amateurism Rules Have Overstepped Antitrust Protection & How to Correct*, 95 NOTRE DAME L. REV. REFLECTION 74 (2019) (arguing that the NCAA should allow for a system where student-athletes are compensated for their non-game-related name, image, and likeness rights); César F. Rosado Marzán & Alex Tillett-Saks, *Work, Study, Organize!: Why the Northwestern University Football Players Are Employees Under the National Labor Relations Act*, 32 HOFSTRA LAB. & EMP. L.J. 301, 303–04 (2015) (discussing the commercialization and professionalization of college sports); Josephine R. Potuto, William H. Lyons & Kevin N. Rask, *What's in a Name? The Collegiate Mark, the Collegiate Model, and the Treatment of Student-Athletes*, 92 OR. L. REV. 879 (2014) (analyzing the shift from amateurism to professionalism in college sports); Andrew Steckler, Note, *Time to Pay College Athletes? Why the O'Bannon Decision Makes Pay-For-Play Ripe for Mediation*, 17 CARDOZO J. CONFLICT RESOL. 1071 (2016) (analyzing the impact of mediation on future pay-for-play models).

26. Epstein & Anderson, *supra* note 24, at 294; *see also* Univ. of Denver v. Nemeth, 257 P.2d 423, 427 (Colo. 1953) (ruling in favor of the football player Ernest Nemeth, who was employed and compensated by the university in various capacities in exchange for his participation on the football team, and had therefore qualified for workers' compensation after sustaining injuries during a football practice).

27. *See Nemeth*, 257 P.2d at 427; State Comp. Ins. Fund v. Indus. Comm'n, 314 P.2d 288, 289–90 (Colo. 1957) (denying workers' compensation benefits to the widow of Fort Lewis A&M player Ray Dennison, who was killed in 1955 after an injury suffered during a football game, finding no existence of a contractual obligation to play football between the decedent and the university thereby disqualifying a claim for compensation).

28. *See Rensing v. Ind. State Univ. Bd. of Trs.*, 444 N.E.2d 1170, 1170, 1175 (Ind. 1983) (denying recovery to a football player who was rendered a quadriplegic during a collegiate sporting event); *Coleman v. W. Mich. Univ.*, 336 N.W.2d 224, 228 (Mich. Ct. App. 1983) (holding that a scholarship agreement between an athlete and institution does not entitle the athlete to workers' compensation); *Taylor v. Wake Forest Univ.*, 191 S.E.2d 379, 382 (N.C. Ct. App. 1972) (excusing a university's obligation to provide financial assistance to a student-athlete who refused to play football as a result of his poor academic showing); *Waldrep v. Tex. Emps. Ins. Ass'n*, 21 S.W.3d 692, 697 (Tex. App. 2000) (affirming the district court's conclusion that Waldrep was not an employee of TCU when he suffered a spinal cord injury playing football which led to paralysis). *But see Van Horn v. Indus. Accident Comm'n*, 33 Cal. Rptr. 169, 173 (Ct. App. 1963) (“[O]ne who participates for compensation as a member of an athletic team may be an employee within the statutory

However, reforming college sports to allow for some form of student-athlete compensation gained considerable momentum when former Texas A&M University quarterback Johnny Manziel publicly displayed “show me the money” hand gestures throughout the 2013 college football season.²⁹ Even before *Time Magazine*’s cover shoot displaying Manziel in uniform with the caption, “It’s Time to Pay College Athletes,”³⁰ former Division I college quarterback Sam Keller and former UCLA basketball player Ed O’Bannon had merged separately filed lawsuits into a single suit against the NCAA and EA Sports for the unauthorized use of their images in the popular EA Sports videogame series.³¹ Soon after, in 2014, Senior District Judge Claudia Wilken of the U.S. District Court for the Northern District of California ruled in favor of O’Bannon, characterizing the unauthorized use of his image in the video games as violating antitrust law.³² Judge Wilken also held that NCAA member institutions could provide student-athletes with deferred compensation of \$5,000 or less.³³ Nonetheless, the Ninth Circuit ruled against Judge Wilken’s proposal to pay deferred compensation, but upheld her finding that the NCAA violated the Sherman Antitrust Act by prohibiting student-athletes from being compensated for the use of their NIL.³⁴

scheme of the Workmen’s Compensation Act.”); *Shepard v. Loy*, Marymount Univ., 125 Cal. Rptr. 2d 829, 842 (Ct. App. 2002) (referencing *Van Horn* and stating that as a direct result of that decision, California’s Labor Code section 3352, subdivision (k) “excludes a student athlete receiving an athletic scholarship from the term ‘employee’”).

29. See Kisska-Schulze & Epstein, “*Show Me the Money!*”, *supra* note 7, at 23.

30. See Sean Gregory, *It’s Time to Pay College Athletes*, TIME (Sept. 16, 2013), <http://content.time.com/time/magazine/article/0,9171,2151167,00.html>.

31. Kisska-Schulze & Epstein, *Northwestern, O’Bannon and the Future*, *supra* note 7, at 778.

32. See *O’Bannon v. NCAA*, 7 F. Supp. 3d 955, 1008–09 (N.D. Cal. 2014).

33. *Id.* at 1008; see also Kisska-Schulze & Epstein, *Northwestern, O’Bannon and the Future*, *supra* note 7, at 779.

34. See *O’Bannon v. NCAA*, 802 F.3d 1049, 1079 (9th Cir. 2015) (vacating portion of injunction requiring NCAA to allow schools to pay deferred compensation but otherwise affirming the district court). Also in 2015, the National Labor Relations Board (NLRB) overturned a Chicago District (Region 13) NLRB ruling that Northwestern University football players could unionize and bargain collectively. See *Nw. Univ. & Coll. Athletes Players Ass’n*, 362 N.L.R.B. 1350, 1350 (2015) (stating that the Regional Director in the initial proceeding found that Northwestern University’s football players are employees within the meaning of the National Labor Relations Act); see also Kisska-Schulze & Epstein, *Northwestern, O’Bannon and the Future*, *supra* note 7, at 772; Adam Epstein & Kathryn Kisska-Schulze, *Northwestern University, the University of Missouri, and the*

In a subsequent 2019 antitrust case involving prominent football plaintiffs Shawne Alston and Martin Jenkins, Judge Wilken again ruled in favor of compensating student-athletes.³⁵ Judge Wilken wrote that the NCAA may “limit compensation and benefits that are unrelated to education,” but may not impose restrictive limits on “other education-related benefits that can be provided on top of a grant-in-aid” when earned by student-athletes participating in Division I men’s or women’s basketball or in the Football Bowl Subdivision (FBS).³⁶ Intermixed within these headline cases were less publicized complaints filed by former student-athletes pursuing compensation reform at the intercollegiate level.³⁷

Overt pay-to-play legal claims—while largely unsuccessful—have expanded in scope to include allegations of violations of the Fair Labor Standards Act (FLSA)³⁸ and right of publicity and property rights interests

“*Student-Athlete*”: *Mobilization Efforts and the Future*, 26 J. LEGAL ASPECTS SPORT 71, 92–95 (2016).

35. *In re Nat’l Collegiate Athletic Ass’n Athletic Grant-in-Aid Cap Antitrust Litig.*, 375 F. Supp. 3d 1058, 1063 (N.D. Cal. 2019), *aff’d*, 958 F.3d 1239 (9th Cir. 2020), *cert. granted sub nom.* *Am. Athletic Conf. v. Alston*, 141 S. Ct. 972 (2020), *and cert. granted sub nom.* *NCAA v. Alston*, No. 20-512, 2020 WL 7366281 (U.S. Dec. 16, 2020) (No. 20-520). On December 16, 2020, the U.S. Supreme Court granted certiorari.

36. *In re Nat’l Collegiate Athletic Ass’n*, 375 F. Supp. 3d at 1109.

37. *See, e.g.*, Epstein & Anderson, *supra* note 24, at 294–97 (discussing several cases including Northwestern University’s football team’s attempt to organize as a union with the goal of characterizing its members as employees) (“Although litigation over the issue has continued, the courts have been consistent finding that student-athletes are not recognized as employees under any legal standard, whether bringing claims under workers’ compensation laws, the NLRA or FLSA.”); *see also* Complaint & Jury Demand at 19, *Sackos v. NCAA*, No. 1:14-CV-1710 WTL-MJD (S.D. Ind. Oct. 20, 2014) (alleging that, under the Fair Labor Standards Act, student-athletes are in an employer-employee relationship with their institutions and thus entitled to compensation); *Dawson v. NCAA*, 250 F. Supp. 3d 401, 403 (N.D. Cal. 2017) (discussing a suit filed by Lamar Dawson, claiming his status as a Division I football player created an employment contract with the NCAA and the Pac-12 conference); *Livers v. NCAA*, No. 17-4271, 2018 WL 3609839, at *1 (E.D. Pa. July 26, 2018) (stating that plaintiff Lawrence Livers argued that his status as a football player for Villanova University constituted an employment relationship).

38. *See Berger v. NCAA*, 843 F.3d 285, 294 (7th Cir. 2016) (concluding as a matter of law that student-athletes are not employees under the FLSA); *Dawson*, 250 F. Supp. 3d at 408 (finding no legal basis to consider student-athletes employees under the FLSA); *see also* Dan Murphy, *Lawsuit Makes Another Attempt at Wages for All College Athletes*, ESPN (Nov. 7, 2019), https://www.espn.com/college-sports/story/_/id/28029070/lawsuit-makes-another-attempt-wages-all-college-athletes (offering that two cases, both brought by Villanova University football players, have claimed that “college athletes should be viewed

involving student-athletes' names and images on television broadcasts.³⁹ Throughout, the NCAA has remained committed to its position that students should not be able to profit from the use of their NIL or be characterized as employees of their institutions.⁴⁰ Violating such restrictions would otherwise disrupt the NCAA's foundational principle of amateurism.⁴¹

While remaining steadfast in its mantra to enforce amateurism, the NCAA has adopted rules seemingly more flexible than its bedrock principle. For example, in 2011 the NCAA revised its bylaws to allow for multi-year GIA as opposed to single-year athletic scholarships amidst increasing concerns over antitrust lawsuits and prohibitions against compensating student-athletes.⁴² In 2014, the NCAA created a waiver allowing premier student-athletes, or their affiliated institutions, to purchase loss-of-value (LOV) insurance policies to protect against a drop in their professional draft stock following a non-career-ending college sport injury.⁴³ One year later, the NCAA authorized Division I schools to provide cost-of-attendance (COA) scholarships, covering student-athletes' actual cost of college beyond tuition, books, room, and board.⁴⁴ Additional

as employees and paid like other students who participate in work-study programs on campus").

39. See *Marshall v. ESPN*, 668 F. App'x 155, 157 (6th Cir. 2016) (stating that plaintiff's claims failed under Tennessee law, the Sherman Act, and the Lanham Act, and authoring that the plaintiff's right of publicity argument amounted to a "legal fantasy" and with regard to the Lanham Act that "ordinary consumers have more sense than the theory itself does").

40. ADAM EPSTEIN, *SPORTS LAW* 25–26 (2013).

41. *Id.*; see also Kathryn Kisska-Schulze, *This Is Our House! – The Tax Man Comes to College Sports*, 29 MARQ. SPORTS L. REV. 347, 350 (2019) [hereinafter Kisska-Schulze, *The Tax Man*] (discussing the NCAA's bedrock principle of amateurism in college sports).

42. See Thomas Bright, *NCAA Institutes Multi-Year Scholarships*, 8 DEPAUL J. SPORTS L. & CONTEMP. PROBS. 179, 179 (2012) (explaining the NCAA's decision to pass multi-year scholarship legislation).

43. See generally Kisska-Schulze & Epstein, *The Claim Game*, *supra* note 24 (discussing LOV insurance policies); see also *NCAA Approves Waiver to Allow Purchase of Loss-of-Value Insurance*, SPORTS ILLUSTRATED (Oct. 15, 2014), <https://www.si.com/college/2014/10/15/ncaa-waiver-draft-stock-loss-of-value-insurance> (documenting 2014 as the institutional year of LOV insurance policy options for Division I student-athletes).

44. See Jon Solomon, *NCAA, Conferences Agree to Pay \$208.7 Million in Cost of Attendance Settlement*, CBS SPORTS (Feb. 3, 2017, 10:23 PM ET), <https://www.cbssports.com/college-football/news/ncaa-conferences-agree-to-pay-208-7-million-in-cost-of-attendance-settlement/> ("Filed in 2014 by former West Virginia football player Shawne Alston and later consolidated with other cases, the lawsuit claimed the NCAA and conferences violated antitrust law by capping the value of an athletic scholarship at less than

changes included the NCAA's announcement of a transfer-portal process for student-athletes desiring to enroll at other institutions,⁴⁵ an amendment to its rules that allowed Division I football players to participate in up to four games without losing "red-shirt" status,⁴⁶ and the creation of a working group to address changes in NCAA policies related to NIL compensation.⁴⁷

Even with such transformations, many still question the NCAA's true intentions.⁴⁸ When President Theodore Roosevelt sanctioned the NCAA's establishment in 1906, its primary objective was to protect student-athletes from dangerous and exploitive practices.⁴⁹ Over a century later, critics assert that student-athletes are unfairly exploited in this multibillion-dollar, commercial enterprise.⁵⁰ Elite college athletic programs generate substantial revenue through charitable donations, ticket sales, broadcasting contracts, and intellectual property rights.⁵¹ As of 2019, thirteen college football

the actual cost of attending college. The NCAA and conferences have since changed their rule to allow cost-of-attendance stipends."); *see also* Brian D. Shannon, *The Revised NCAA Division I Governance Structure After Three Years: A Scorecard*, 5 TEX. A&M L. REV. 65, 78–86 (2017) (detailing the NCAA's decision to allow COA scholarships).

45. *See* David A. Martin, Note, *Breaking (from) Board: Putting "Student" in "Student-Athlete" NCAA Basketball Transfer Regulations*, 2019 U. ILL. L. REV. 1117, 1126.

46. Evan Kaniz, Comment, *Changing the NCAA's "Year-in-Residency" Rule: Narrowing Supreme Court Precedent from Below*, 52 UIC J. MARSHALL L. REV. 1085, 1112–13 (2019).

47. *See* Michelle Brutlag Hosick, *NCAA Working Group to Examine Name, Image and Likeness*, NCAA (May 14, 2019, 2:40 PM), <http://www.ncaa.org/about/resources/media-center/news/ncaa-working-group-examine-name-image-and-likeness>.

48. *See* Kisska-Schulze, *The Tax Man*, *supra* note 41, at 354–55.

49. *See id.* at 350.

50. *See e.g.*, Brandi Collins-Dexter, *NCAA's Amateurism Rule Exploits Black Athletes as Slave Labor*, UNDEFEATED (Mar. 27, 2018), <https://theundefeated.com/features/ncaas-amateurism-rule-exploits-black-athletes-as-slave-labor/>; Jay Connor, *The NCAA Is Big Business for Everybody but Black Players*, ROOT (Nov. 15, 2019, 12:30 PM), <https://www.theroot.com/the-ncaa-is-big-business-for-everybody-but-black-player-1839890040>; Mario Koran, 'Game Changer': Inside the Fight to End Exploitation of Athletes at US Colleges, GUARDIAN (Oct. 5, 2019, 1:00 AM EDT), <https://www.theguardian.com/sport/2019/oct/04/ncaa-california-law-pay-student-athletes-colleges>; Travis Waldron, *The NCAA Is Losing Its Fight to Keep Exploiting College Athletes*, HUFFPOST (Apr. 6, 2019, 8:00 AM ET), https://www.huffpost.com/entry/ncaa-pay-college-athletes-final-four_n_5ca61cb9e4b082d775e1d201; *see also* Jemele Hill, *The NCAA Will Never Fix Itself*, ATLANTIC (Oct. 14, 2019), <https://www.theatlantic.com/ideas/archive/2019/10/cory-booker-trying-save-ncaa-itself/599926/> (noting that college sports have evolved into a multibillion-dollar business).

51. Kathryn Kisska-Schulze & John T. Holden, *Betting on Education*, 81 OHIO STATE L.J. 465, 487 (2020).

programs were valued at more than \$500 million, three topped the billion-dollar mark, and the FBS adjusted revenues surpassed \$5.5 billion.⁵² In addition, there exists an unrelenting arms race in competitive coaching salaries.⁵³ Calendar year 2019 set a new record salary of \$9.3 million for the highest paid college coach in the nation.⁵⁴ Currently, eighty-three NCAA football and seventy NCAA basketball coaches earn annual salaries of more than \$1 million.⁵⁵ In more than half of all U.S. states, college football and basketball coaches are the highest paid public employees in their jurisdictions.⁵⁶

Adding tension to student-athlete exploitation allegations is the public's waning perception and support of the NCAA. Many have scrutinized its status as a not-for-profit organization amidst annual revenues of \$1 billion.⁵⁷ In 2017, NCAA President Mark Emmert netted almost \$3 million in compensation, with another three of his executives earning over \$1 million each.⁵⁸ That same year, Emmert publicly shared that more than 50%

52. See Andrew Beaton, *How Much Is Your College Football Team Worth?*, WALL ST. J. (Jan. 7, 2019, 10:31 AM ET), <https://www.wsj.com/articles/how-much-is-your-college-football-team-worth-11546875092>.

53. *Id.*

54. See Brad Crawford, *College Football's 20 Highest Paid Coaches in 2020*, 247 SPORTS (Mar. 30, 2020), https://247sports.com/LongFormArticle/College-football-highest-paid-coaches-in-2020-Nick-Saban-Kirby-Smart-Dabo-Swinney-Ed-Orgeron-Jim-Harbaugh-145532077/#145532077_7 (listing Clemson University's Dabo Swinney as the highest paid coach in college football).

55. See Steve Berkowitz et al., *NCAA Salaries: NCAAF Coaches*, USA TODAY, <https://sports.usatoday.com/ncaa/salaries/> (last visited Jan. 8, 2020) (documenting NCAA football coaching salaries); Steve Berkowitz et al., *NCAA Salaries: NCAAB Coaches*, USA TODAY, <https://sports.usatoday.com/ncaa/salaries/mens-basketball/coach> (last visited Jan. 8, 2020) (documenting NCAA basketball coaching salaries).

56. Kisska-Schulze, *The Tax Man*, *supra* note 41, at 374 (citing Evan Comen et al., *The Highest Paid Public Employee in Every State*, 24/7 WALL ST. (Sept. 20, 2016), <https://247wallst.com/special-report/2016/09/20/the-highest-paid-public-employee-in-every-state/>).

57. *Id.* at 352, 364–66; see also Steve Cameron, *The NCAA Brings in \$1 Billion a Year – Here's Why It Refuses to Pay Its College Athletes*, BUS. INSIDER (Mar. 26, 2019, 9:14 AM), <https://www.businessinsider.com/ncaa-college-athletes-march-madness-basketball-football-sports-not-paid-2019-3> (noting the NCAA's billion-dollar annual revenue); Otis Fulton & Katrina Van Huss, *Opinion: The NCAA Should Have Its Nonprofit Status Revoked*, NONPROFIT PRO (Mar. 21, 2019), <https://www.nonprofitpro.com/post/opinion-the-ncaa-should-have-its-nonprofit-status-revoked/>.

58. Steve Berkowitz, *NCAA President Mark Emmert Had Net Pay of \$2.9 Million in 2017 Calendar Year*, USA TODAY (May 23, 2019, 5:27 PM ET), <https://www.usatoday.com>.

of Americans polled believe the NCAA plays a role in universities putting money ahead of students.⁵⁹ Public confidence in the organization continues to falter,⁶⁰ particularly after revelations of criminal misconduct at member institutions,⁶¹ inconsistent rules enforcement,⁶² numerous lawsuits filed against the NCAA for personal injury mistreatment,⁶³ unchecked overtraining,⁶⁴ student-athlete deaths,⁶⁵ and concerns over the general lack of safety and welfare of student-athletes at member schools.⁶⁶

com/story/sports/college/2019/05/23/ncaa-president-mark-emmert-2-9-million-net-salary-2017/1207369001/.

59. Mitch Sherman, *Mark Emmert Says Public Losing Confidence in NCAA*, ESPN (Oct. 30, 2017), https://www.espn.com/college-sports/story/_/id/21227671/ncaa-president-mark-emmert-says-public-losing-confidence-governance-collegiate-athletics.

60. See Dan Murphy, *NCAA President Mark Emmert Meets with Legislators as Demand for Changes in Rules Grows*, ESPN (Dec. 18, 2019), https://www.espn.com/college-sports/story/_/id/28324530/ncaa-president-mark-emmert-meets-legislators-demand-changes-rules-grows (noting that as of 2019, public confidence in the NCAA has continued to deteriorate); see also Alex Silverman, *Contrary to Emmert's Quip, Voters More Confident in News Media Than NCAA*, MORNING CONSULT (Dec. 20, 2019, 6:35 PM ET), <https://morningconsult.com/2019/12/20/mark-emmert-ncaa-president-journalism-confidence/>.

61. See, e.g., Will Hobson, *Basketball Corruption Trials Conclude, Leaving NCAA to Sort Through Aftermath*, WASH. POST (May 8, 2019, 4:34 PM CDT), https://www.washingtonpost.com/sports/colleges/basketball-corruption-trials-conclude-leaving-ncaa-to-sort-through-aftermath/2019/05/08/41100eea-71b3-11e9-9f06-5fc2ee80027a_story.html; see also Pat Forde, *Key Informant Cooperating with NCAA in Federal College Basketball Probe*, SI (Jan. 31, 2020), <https://www.si.com/college/2020/01/31/ncaa-college-basketball-investigation-corruption>.

62. See, e.g., Dan Kane, *NCAA Drops Proposed Academic Fraud Reform*, NEWS & OBSERVER (Aug. 9, 2019, 12:39 PM), <https://www.newsobserver.com/news/local/education/unc-scandal/article233693507.html> (discussing the NCAA's failure to pursue reform pertaining to academic misconduct).

63. See Ralph D. Russo, *Wave of Concussion Lawsuits to Test NCAA's Liability*, AP NEWS (Feb. 7, 2019), <https://apnews.com/4a4ed68e4c3a426abc4e34606ae4a399>.

64. See Dennis Dodd, *College Football's Unchecked Conditioning Culture Is Dangerous for Players*, CBS SPORTS (Jan. 17, 2017, 1:44 PM ET), <https://www.cbssports.com/college-football/news/college-footballs-unregulated-conditioning-culture-is-dangerous-for-all-players/>.

65. See Dan Bernstein, *NCAA's Role in Protecting Student-Athletes Could Be Clouded by Legal Liability, Among Other Factors*, U. CONN. (Mar. 14, 2019), <https://ksi.uconn.edu/2019/03/14/ncaas-role-in-protecting-student-athletes-could-be-clouded-by-legal-liability-among-other-factors-sporting-news/#> (“At least 27 Division I college football players have died in offseason conditioning sessions from non-traumatic causes since 2000.”).

66. See, e.g., Tom VanHaaren, *UCLA Players Demand Third-Party Oversight for Health, Safety Administration*, ESPN (June 19, 2020), https://www.espn.com/college-football/story/_/id/29335616/ucla-players-demand-third-party-oversight-health-safety-

Amid this decreasing public support of the NCAA and its bedrock principle of amateurism, skyrocketing revenues, and salaries enriching all affiliated parties except student-athletes, the timing was ripe to throw a curveball—and California walked up to the mound and pitched.

II. California's Revolution: The Fair Pay to Play Act

One year after Judge Wilken's 2014 ruling in favor of O'Bannon,⁶⁷ a sports economist criticized the NCAA's rules barring pay-for-play in college sports at an Oakland, California Rotary Club meeting.⁶⁸ In attendance was Nancy Skinner who, following her election to California's Ninth Senate District in 2016, introduced Senate Bill 206 on February 4, 2019.⁶⁹ The bill aimed to help "level the playing field" for California student-athletes by allowing them to financially benefit from sponsorship deals, similar to the rules for Olympic athletes.⁷⁰ Effectively, the bill opened the door for student-athletes to enter into endorsement agreements with outside third parties for the use of their NIL, regardless of prohibitive NCAA bylaws.

As introduced, Senate Bill 206 included several provisions intended to allow student-athletes to earn compensation from the use of their NIL. First, it barred any indicia of an employer-employee relationship between collegiate institutions and their athletes.⁷¹ Specifically, the bill prevented

administration; see also Marc Tracy, *N.C.A.A. Opens Investigation of Michigan State over Nassar Case*, N.Y. TIMES (Jan. 23, 2018), <https://www.nytimes.com/2018/01/23/sports/michigan-state-ncaa-investigation.html>. But see Kyle Austin, *Michigan State Cleared of NCAA Wrongdoing in Nassar Probe*, MLIVE (Jan. 30, 2019), https://www.mlive.com/spartans/2018/08/ncaa_clears_michigan_state_in.html.

67. See *supra* note 32 and accompanying text.

68. See Billy Witz, *California Lawmakers Vote to Undo N.C.A.A. Amateurism*, N.Y. TIMES (Sept. 9, 2019), <https://www.nytimes.com/2019/09/09/sports/college-athlete-pay-california.html>.

69. See Press Release, Sen. Nancy Skinner, Senator Nancy Skinner Announces "The Fair Pay to Play Act" (Feb. 5, 2019), <https://sd09.senate.ca.gov/news/20190205-senator-nancy-skinner-announces--fair-pay-play-act>".

70. *Id.*; see also Witz, *supra* note 68.

71. See Legislative Counsel's Digest, Fair Pay to Play Act, S.B. 206, 2019-2020 Leg., Reg. Sess. (Cal. 2019) (prohibiting "California postsecondary educational institutions except community colleges, and every athletic association, conference, or other group or organization with authority over intercollegiate athletics, from providing a prospective intercollegiate student athlete with compensation in relation to the athlete's name, image, or likeness, or preventing a student participating in intercollegiate athletics from earning compensation as a result of the use of the student's name, image, or likeness or obtaining

colleges, universities, athletic associations, conferences, or any other organization with authoritative power over intercollegiate athletics from directly compensating student-athletes.⁷² In addition, it prohibited intercollegiate oversight groups such as the NCAA from estopping student-athletes from participating in college sports should they capitalize on their NIL.⁷³ Finally, Senate Bill 206 disallowed the revocation of student-athletes' GIA based on their earning compensation for the use of their NIL.⁷⁴ Proactively, the legislation required that student-athletes seek professional representation from persons holding state licenses, that athlete agents comply with federal law, and that student-athletes and their institutions abide by established team contracts.⁷⁵

Senate Bill 206 earned the support of the California Assembly on May 22, 2019 in a 31-4 bipartisan vote,⁷⁶ and passed unanimously in the California Assembly less than four months later.⁷⁷ State Senator Scott Wilk, who co-authored the bill, stated,

professional representation relating to the student's participation in intercollegiate athletics").

72. *Id.*

73. *Id.* ("The bill also would prohibit an athletic association, conference, or other group or organization with authority over intercollegiate athletics from preventing a postsecondary educational institution other than a community college from participating in intercollegiate athletics as a result of the compensation of a student athlete for the use of the student's name, image, or likeness.").

74. *Id.* ("The bill would prohibit the revocation of a student's scholarship as a result of earning compensation or obtaining legal representation as authorized under these provisions.").

75. *Id.* ("The bill would require professional representation obtained by student athletes to be from persons licensed by the state. The bill would specify that athlete agents shall comply with federal law in their relationships with student athletes. . . . The bill would prohibit a student athlete from entering into a contract providing compensation to the athlete for use of the athlete's name, image, or likeness if a provision of the contract is in conflict with a provision of the athlete's team contract. The bill would prohibit a team contract from preventing a student athlete from using the athlete's name, image, or likeness for a commercial purpose when the athlete is not engaged in official team activities, as specified.").

76. Press Release, Sen. Nancy Skinner, Calif. State Senate Greenlights SB 206, the Fair Pay to Play Act (May 22, 2019), <https://sd09.senate.ca.gov/news/20190522-calif-state-senate-greenlights-sb-206-fair-pay-play-act>.

77. See Press Release, SCVSports.net, California Legislature OK's SB 206, 'Fair Pay to Play Act' (Sept. 13, 2019), <https://scvnews.com/california-legislature-oks-sb-206-fair-pay-to-play-act/> (stating that the Fair Pay to Play Act was authored by Sen. Nancy Skinner, D-

California will no longer tolerate the NCAA – which is a billion-dollar industry – treating our student-athletes like they are chattel. These young men and women deserve every opportunity to benefit financially from their hard work, just like any other talented young person.⁷⁸

In a monumental movement toward collegiate pay-for-play, Governor Newsom signed the FPTPA on September 30, 2019.⁷⁹

The law, which encapsulates Senate Bill 206 in its entirety, received national attention.⁸⁰ Current and former National Basketball Association (NBA) players—including LeBron James, Draymond Green, and Ed O’Bannon—publicly supported the FPTPA, as did Senator Bernie Sanders of Vermont.⁸¹ However, opponents included current professional baseball and former professional and Heisman Trophy-winning college football player Tim Tebow, who noted, “[The FPTPA] changes what’s special about college football. We turn it into the NFL, where who has the most money, that’s where you go.”⁸² California State University, Stanford University, the University of California, and the University of Southern California all decried the FPTPA as going against judicial precedent.⁸³ These institutions also claimed the law posed a risk to athletic departments because the

Berkeley, and co-authored by both Sen. Scott Wilk, R-Santa Clarita, and Sen. Steven Bradford, D-Gardena).

78. *Id.* Senator Skinner noted,

For me, it’s a combination of first starting out as a civil rights issue and then, wait a minute: This is like flat-out exploitation of any student. . . . I don’t know of any other industry that can rely on a large set of people’s talent for which they deny them any earnings and all compensation.

Witz, *supra* note 68.

79. See Steven A. Bank, *The Olympic-Sized Loophole in California’s Fair Pay to Play Act*, 120 COLUM. L. REV. FORUM 109, 109 (2020).

80. Melody Gutierrez & Nathan Fenno, *California Will Allow College Athletes to Profit from Endorsements Under Bill Signed by Newsom*, L.A. TIMES (Sept. 30, 2019, 5:00 PM), <https://www.latimes.com/california/story/2019-09-30/college-athlete-endorsement-deals-ncaa-california-law>.

81. *Id.*; see also Kelly, *supra* note 2 (quoting a Bernie Sanders tweet from September 6, 2019) (“College athletes are workers. Pay them.”).

82. See Kelly, *supra* note 2.

83. S.B. 206, 2019-2020 Leg., Assembly Committee on Arts, Entertainment, Sports, Tourism, and Internet Media 7–8 (Cal. 2019), http://leginfo.legislature.ca.gov/faces/billAnalysisClient.xhtml?bill_id=201920200SB206 (under “Bill Analysis,” select “6/24/19-Assembly Arts, Entertainment, Sports, Tourism, and Internet Media”).

NCAA could deem student-athletes ineligible to play if they capitalized on NIL financial benefits in violation of NCAA bylaws.⁸⁴

Immediately following the FPTPA's passage into law, the NCAA threatened to ban California schools from membership.⁸⁵ However, the NCAA unexpectedly reversed its stance just one month later, announcing that its Board of Governors voted to support student-athletes being compensated for the use of their NIL.⁸⁶ This reversal came after numerous states began introducing similar Fair Pay to Play legislation. In particular, Florida introduced analogous legislation the same day as the FPTPA's signing,⁸⁷ while the New York College Athletic Participation Compensation Act was introduced in New York one day prior.⁸⁸ The following chart documents the status of legislation akin to the FPTPA that has thus far been introduced in various jurisdictions.⁸⁹

State	Statute/Bill	Date Passed/ Filed	Status
Alabama	HB 82 ⁹⁰	02/04/2020	Filed
Arizona	HB 2143 ⁹¹	01/28/2020	Filed
California	SB 206 ⁹²	09/30/2019	Passed
Colorado	SB 20-123 ⁹³	03/20/2020	Passed
Connecticut	SB 306 ⁹⁴	02/28/2020	Died

84. Hillary Hughes & Erika Johnson, *Fair Pay to Play Act: Legislation Allowing NCAA Athlete Compensation Signed into Law by California Gov. Gavin Newsom*, JD SUPRA (Oct. 14, 2019), <https://www.jdsupra.com/legalnews/fair-pay-to-play-act-legislation-17188/>.

85. *Id.* ("In its letter to California's Governor, Gavin Newsom, the NCAA argues that the bill 'would erase the distinction between college and professional athletics,' and that the California schools would be given an 'unfair recruiting advantage.'").

86. *See Board of Governors Starts Process to Enhance Name, Image and Likeness Opportunities*, *supra* note 4.

87. *See* H.B. 251, 2019 Leg., Reg. Sess. (Fla. 2019).

88. *See* S. 6722B, 2019–2020 Leg., Reg. Sess. (N.Y. 2019).

89. This subsection provides a chart summarizing the current status of state legislation as of March 7, 2021. As this is a quickly evolving area of law, readers should be aware that after March 7, 2021, information provided within this chart may have changed.

90. *See* H.B. 82, 2020 Reg. Sess. (Ala. 2020).

91. *See* H.B. 2143, 54th Leg., 2d Reg. Sess. (Ariz. 2020).

92. *See* S.B. 206, 2019–2020 Leg., Reg. Sess. (Cal. 2019).

93. *See* S.B. 20-123, 72nd Gen. Assemb., Reg. Sess. (Colo. 2020).

State	Statute/Bill	Date Passed/ Filed	Status
Florida	SB 646 ⁹⁵	06/12/2020	Passed
Georgia	HB 743 ⁹⁶	01/16/2020	Filed
Hawaii	SB 2673 ⁹⁷	03/09/2020	Died
Illinois	HB 3904 ⁹⁸	09/30/2019	Filed
Iowa	SF 2330 ⁹⁹	02/19/2020	Filed
Kansas	SB 474 ¹⁰⁰	02/26/2020	Died
Kentucky	SB 238 ¹⁰¹	03/02/2020	Died
Louisiana	SB 239 ¹⁰² HB 566 ¹⁰³	02/27/2020 02/28/2020	Died Died
Maryland	HB 533 ¹⁰⁴	01/27/2020	Died
Massachusetts	S 2454 ¹⁰⁵ HD 4559 ¹⁰⁶	12/05/2019 10/23/2019	Filed Filed
Michigan	SB 0660 ¹⁰⁷ (extends to high school students)	12/03/2019	Filed
	HB 5217 ¹⁰⁸ (limited to college athletes)	12/31/2020	Passed

94. See S.B. 306, 2020 Gen. Assemb., Reg. Sess. (Conn. 2020).

95. See S.B. 646, 2020 Leg., Reg. Sess. (Fla. 2020).

96. See H.B. 743, 2019–2020 Gen. Assemb., Reg. Sess. (Ga. 2019).

97. See S.B. 2673, 2020 Reg. Sess. (Haw. 2020).

98. See H.B. 3904, 101st Gen. Assemb., Reg. Sess. (Ill. 2019).

99. See S.F. 2330, 88th Gen. Assemb., Reg. Sess. (Iowa 2020).

100. See S.B. 474, 2019–2020 Leg. Sess. (Kan. 2020).

101. See S.B. 238, 2020 Gen. Assemb., Reg. Sess. (Ky. 2020).

102. See S.B. 239, 2020 Reg. Sess. (La. 2020).

103. See H.B. 566, 2020 Reg. Sess. (La. 2020).

104. See H.B. 533, 2020 Reg. Sess. (Md. 2020).

105. See S. 2454, 191st Leg. Sess. (Mass. 2019).

106. See H.D. 4559, 191st Leg. Sess. (Mass. 2019).

107. See S.B. 0660, 2019 Leg., Reg. Sess. (Mich. 2019).

108. See H.B. 5217, 2020 Leg., Reg. Sess. (Mich. 2019).

State	Statute/Bill	Date Passed/ Filed	Status
Minnesota	HF 3329 ¹⁰⁹	02/13/2020	Died
Mississippi	SB 2313 ¹¹⁰ HB 1030 ¹¹¹	01/14/2021 01/18/2021	Filed Filed
Missouri	HB 1564 ¹¹² HB 1748 ¹¹³ HB 1792 ¹¹⁴	12/03/2019 12/12/2019 12/13/2019	Filed Filed Filed
Nebraska	LB 962 ¹¹⁵	07/27/2020	Passed
New Jersey	S971 ¹¹⁶	07/30/2020	Passed
New Hampshire	HB 1505 ¹¹⁷	12/03/2019	Filed
New Mexico	SB 94 ¹¹⁸	01/19/2021	Filed
New York	S6722B ¹¹⁹	09/16/2019	Filed
North Carolina	SB 759 ¹²⁰	05/14/2020	Filed
Oklahoma	HB 3347 ¹²¹	01/09/2020	Filed
Oregon	SB 1501 ¹²²	01/27/2020	Filed
Pennsylvania	HB 1909 ¹²³	10/15/2019	Filed
Rhode Island	HB 7806 ¹²⁴	02/26/2020	Filed

109. See H.F. 3329, 191st Leg. (Minn. 2020).

110. See S.B. 2313, 2021 Reg. Sess. (Miss. 2021).

111. See H.B. 1030, 2021 Reg. Sess. (Miss. 2021).

112. See H.B. 1564, 100th Gen. Assemb., 2d Reg. Sess. (Mo. 2019).

113. See H.B. 1748, 100th Gen. Assemb., 2d Reg. Sess. (Mo. 2019).

114. See H.B. 1792, 100th Gen. Assemb., 2d Reg. Sess. (Mo. 2019).

115. See L.B. 962, 106th Leg., 2d Sess. (Neb. 2020).

116. See S. 971, 219th Leg., Reg. Sess. (N.J. 2020).

117. See H.B. 1505, 2020 Reg. Sess. (N.H. 2020).

118. See S.B. 94, 55th Leg. Sess. (N.M. 2021).

119. See S. 6722B, 2019–2020 Leg., Reg. Sess. (N.Y. 2019).

120. See S.B. 759, 2019–2020 Gen. Sess. (N.C. 2020).

121. See H.B. 3347, 57th Leg., 2d Sess. (Okla. 2020).

122. See S.B. 1501, 2020 Reg. Sess. (Or. 2020).

123. See H.B. 1909, 2019–2020 Reg. Sess. (Pa. 2019).

State	Statute/Bill	Date Passed/ Filed	Status
South Carolina	S 935 ¹²⁵	12/11/2019	Died
Tennessee	SB 1636 ¹²⁶ HB 1694 ¹²⁷	01/16/2020 01/16/2020	Died Died
Vermont	S.328 ¹²⁸	01/21/2020	Died
Virginia	HB 300 ¹²⁹ SB 464 ¹³⁰	12/30/2019 01/07/2020	Died Died
Washington	HB 1084 ¹³¹	01/03/2019	Filed
West Virginia	HB 4921 ¹³²	02/11/2020	Died

In addition to the above legislative action, lawmakers in jurisdictions including Kentucky,¹³³ Nevada,¹³⁴ and Pennsylvania¹³⁵ have expressed interest in considering legislation that would allow student-athletes to be compensated for the use of their NIL.

Perhaps as a result of this increased pressure from states, the NCAA eventually confronted the NIL issue directly. In April 2020, the NCAA announced its decision to conduct an internal review of its amateurism

124. See H.B. 7806, 2020 Leg. Sess. (R.I. 2020).

125. See S. 935, 2019–2020 Gen. Assem., 123rd Sess. (S.C. 2019).

126. See S.B. 1636, 111th Gen. Assem., 2d Sess. (Tenn. 2020).

127. See H.B. 1694, 111th Gen. Assem., 2d Sess. (Tenn. 2020).

128. See S. 328, 2019–2020 Reg. Sess. (Vt. 2020).

129. See H.B. 300, 2020 Reg. Sess. (Va. 2020).

130. See S.B. 464, 2020 Reg. Sess. (Va. 2020).

131. See H.B. 1084, 66th Leg., 2d Sess. (Wash. 2019).

132. See H.B. 4919, 85th Leg., 2020 Reg. Sess. (W. Va. 2020).

133. Joe Sonka, *Kentucky Lawmaker Drafting Bill to Allow State's College Athletes to Receive Compensation*, COURIER J. (Oct. 1, 2019, 6:18 PM ET), <https://www.courier-journal.com/story/news/politics/2019/10/01/college-sports-kentucky-may-follow-california-challenging-ncaa-pay-to-play/3834282002/>.

134. Colton Lochhead, *Nevada May Consider Letting College Athletes Get Paid*, LAS VEGAS REV. J. (Sept. 30, 2019, 7:13 PM), <https://www.reviewjournal.com/news/politics-and-government/nevada-may-consider-letting-college-athletes-get-paid-1860537/>.

135. Craig Meyer, *Pennsylvania Taking Steps Toward Its Own 'Fair Pay to Play Act'*, PITTSBURGH POST-GAZETTE (Oct. 1, 2019, 3:04 PM), <https://www.post-gazette.com/news/politics-state/2019/10/01/california-fair-pay-to-play-act-gavin-newsom-pennsylvania/stories/201910010178>.

model to formulate a plan which would ease restrictions so student-athletes could profit from their NIL by 2021.¹³⁶ An initial round of consideration promulgated by the NCAA Board of Governors showed support for NIL compensation so long as *guardrails* are established,¹³⁷ however, some are calling on Congress to enact a blanket bill that would supersede various state laws to create a uniform, nationwide policy.¹³⁸ Indeed, there remains concern over whether the NCAA could police endorsement income at all.¹³⁹

Regardless of the ultimate source of NIL regulation—state legislation, the NCAA, Congress, or an amalgamation of all invested parties—taxes are ubiquitous. Student-athletes, therefore, will have to consider the complexities of the Internal Revenue Code (Code), as well as various tax laws across multiple jurisdictions. Without guidance and assistance from affiliated intercollegiate programs or the U.S. Department of Treasury (Treasury), some student-athletes may be wholly unprepared for the negative externalities that could result from income tax liability. To address these issues, Part III analyzes both the federal and state tax considerations that may impact student-athletes under the FPTPA or similar model.

III. Taxing Student-Athletes' Name, Image, and Likeness

The relevance and impact of tax law across all areas of U.S. sports has evolved into a fruitful arena of academic discourse. Discussions

136. Timothy Liam Epstein, *NCAA Searching for New Way Forward Amid Fair Pay to Play*, CHI. DAILY L. BULLETIN (May 19, 2020, 10:34 AM), <https://www.chicagolawbulletin.com/timothy-epstein-ncaa-third-party-endorsements-20200519>.

137. See Ralph D. Russo, *Skeptics Loom as NCAA Builds Guardrails Around Compensation*, AP NEWS (Apr. 29, 2020), <https://apnews.com/e1d5efbe231c1b70134ace013a008036>.

138. See Dan Murphy, *Most ADs Polled Think NCAA Is Incapable of Policing Athletes' Endorsement Deals*, ESPN (June 4, 2020), https://www.espn.com/college-sports/story/_/id/29268117/most-ads-polled-think-ncaa-incapable-policing-athletes-endorsement-deals; see also Steve Berkowitz, *Sen. Rubio Introduces Bill Allowing NCAA Athletes to Cash in on Name, Image, Likeness*, USA TODAY (June 18, 2020, 6:00 AM ET), <https://www.usatoday.com/story/sports/ncaaf/2020/06/18/sen-marco-rubio-introduce-bill-addressing-name-image-likeness/3210488001/> (providing that “Rubio’s measure would force the NCAA to establish a new setup no later than June 30, 2021”); *NCAA Statement on Sen. Marco Rubio Bill*, NCAA (June 18, 2020, 2:33 PM), <https://www.ncaa.org/about/resources/media-center/news/ncaa-statement-sen-marco-rubio-bill> (commending Senator Rubio for introducing a bill that “sets out federal parameters for allowing student-athletes to profit from the use of their name, image and likeness without turning them into employees”).

139. Murphy, *supra* note 138.

surrounding the tax considerations applicable to professional athletes are widely entertained, particularly given the migratory movement across jurisdictions that professional athletes endure to maintain their trade.¹⁴⁰ Much has been written on the tax implications surrounding Olympic athletes, particularly with regard to their medal-winning prize money.¹⁴¹ Recent scholars have provided insight into the legal and financial complexities facing parties like athletes, coaches, owners, stakeholders,

140. See, e.g., Jeffrey L. Krasney, *State Income Taxation of Nonresident Professional Athletes*, 2 SPORTS LAWS. J. 127 (1995) (examining the multistate tax consequences of professional athletes); Addison Fontein, *The Home Team Advantage: Why Lawmakers and the Judiciary Should Bench the Jock Tax*, 7 ARIZ. ST. SPORTS & ENT. L.J. 327 (2018) (arguing against the constitutionality of the jock tax, which allows a state to tax the income of nonresident professional athletes when they engage in athletic contests within that state's jurisdiction); Kevin Koresky, *Tax Considerations for U.S. Athletes Performing in Multinational Team Sport Leagues or "You Mean I Don't Get All of My Contract Money?!"*, 8 SPORTS L.J. 101 (2001) (offering a framework for identifying income tax issues that professional athletes encounter); Alan Pogroszewski & Kari Smoker, *My Tax Accountant Says I Can Deduct My Hot Tub. He's the Expert – Should I Question Him? An Overview of Tax Deductions for Professional Athletes and the Responsibility of Tax Preparers Who Sign Off on Their Returns*, 25 MARQ. SPORTS L. REV. 435 (2015) [hereinafter Pogroszewski & Smoker, *An Overview of Tax Deductions for Professional Athletes*] (detailing the relevant tax deductions available to professional athletes); Alan Pogroszewski, *When Is a CPA as Important as Your ERA? A Comprehensive Evaluation and Examination of State Tax Issues on Professional Athletes*, 19 MARQ. SPORTS L. REV. 395 (2009) (evaluating state tax laws as applied to professional athletes); Kara Fratto, *The Taxation of Professional U.S. Athletes in Both the United States and Canada*, 14 SPORTS L.J. 29 (2007) (examining a variety of income tax rules applicable to professional athletes); Alan Pogroszewski & Kari Smoker, *Cross-Checking: An Overview of the International Tax Issues for Professional Hockey Players*, 22 MARQ. SPORTS L. REV. 187 (2011) [hereinafter Pogroszewski & Smoker, *Cross-Checking*] (evaluating U.S. and Canadian tax laws as applied to multinational professional hockey players).

141. See, e.g., Kathryn Kisska-Schulze & Adam Epstein, *Taxing Missy: Operation Gold and the 2012 Proposed Olympic Tax Elimination Act*, 14 TEX. REV. ENT. & SPORTS L. 95 (2013) [hereinafter Kisska-Schulze & Epstein, *Taxing Missy*] (analyzing Senator Marco Rubio's proposal of the Olympic Tax Elimination Act and its potential impact on U.S. Olympians); Cody Walls, *Olympian's Medal and Money Exemption: How Congress's Addition to Internal Revenue Code Section 74 Does Very Little for Very Few*, 43 S. ILL. U. L.J. 463 (2019) (examining the various tax-related issues pertaining to Olympic athletes); Dena Guttmann, Note, *Dear Olympic Medalists, Thank You for Representing Our Country in the Olympics, but It's Time to Pay Up!*, 22 CARDOZO J. INT'L & COMP. L. 85 (2013) (arguing for a more uniform approach across jurisdictions with regard to the taxing of Olympic prizes); Samantha Goewey, Comment, *Taxing the Gold: The Tax Treatment of Olympians*, 24 SETON HALL J. SPORTS & ENT. L. 179 (2014) (arguing against the implementation of the Olympic Tax Elimination Act).

teams, and legislators. These scholars have focused on areas including: the use of tax subsidies for sporting facilities,¹⁴² incentives for luring professional teams to new cities,¹⁴³ the tax-exempt status of sports-related private clubs,¹⁴⁴ capitalizing on state tax revenues generated by the newly legalized sports gambling industry,¹⁴⁵ and the impact of the Tax Cuts and Jobs Act (TCJA) on the world of sports.¹⁴⁶ As previously noted, a fair amount of academic discussion entertains the tax consequences associated with the pay-for-play model in college sports.¹⁴⁷ Adding to that literature, this Article examines the tax consequences specific to the FPTPA which will impact a student population that has thus far been largely shielded from taxation.

Student-athletes have historically enjoyed favorable tax treatment due to their amateur status. Particularly, the Internal Revenue Service (IRS) has shown little interest in taxing student-athletes' GIA awards, even amidst

142. See Kay Bell, *Tax Subsidies for Sports Facilities Under Fire Again*, DON'T MESS WITH TAXES (Oct. 12, 2017, 1:47 PM), <https://www.dontmesswithtaxes.com/2017/10/tax-subsidies-for-sports-facilities-under-fire-again.html>; see also Nathaniel Grow, *Regulating Professional Sports Leagues*, 72 WASH. & LEE L. REV. 573, 599–600 (2015) (observing that communities are not likely to offer tax subsidies to new leagues, particularly if a new stadium already exists for a more dominant league).

143. See Mitchell Nathanson, *What's in a Name or, Better Yet, What's It Worth? Cities, Sports Teams and the Right of Publicity*, 58 CASE W. RES. L. REV. 167, 190 (2007) (noting the historical use of tax breaks to lure professional sports teams to new locations); see also Evan Grossman, *States Could Leverage 'Integrity Tax' on Sports Betting to Lure Franchises*, N.Y. DAILY NEWS (May 15, 2018, 1:15 AM), <https://www.nydailynews.com/sports/states-leverage-integrity-tax-lure-franchises-article-1.3989640>.

144. See William A. Drennan, *Promoting Health with Sports: When Should Nonprofits Qualify for Tax Benefits?*, 68 SMU L. REV. 469 (2015) (recommending that sports and athletic organizations be given tax-exempt status); Jennifer Jolly-Ryan, *Teed Off About Private Club Discrimination on the Taxpayer's Dime: Tax Exemptions and Other Government Privileges to Discriminatory Private Clubs*, 13 WM. & MARY J. WOMEN & L. 235 (2006) (arguing against tax exemptions for private clubs that discriminate based on race, gender, or religion).

145. See generally Kisska-Schulze & Holden, *supra* note 51 (recommending that a portion of state tax revenue derived from legalized sports gambling go back to colleges and universities).

146. See, e.g., Schmalbeck & Zelenak, *supra* note 7 (recommending that the IRS reconsider the tax favoritism historically granted to college sports, particularly following Congress' move to target certain sectors of college sports with the Tax Cuts and Jobs Act); Kisska-Schulze, *The Tax Man*, *supra* note 41 (examining the financial impact on college sports following the enactment of the Tax Cuts and Jobs Act).

147. See *supra* note 7.

claims of quid pro quo relationships between players and their institutions.¹⁴⁸ Likewise, the college sports industry has generally benefitted from amiable tax positions due to the tax-exempt nature of universities, athletic departments, and the NCAA.¹⁴⁹ Some of this affability has now changed.¹⁵⁰

While the TCJA did not go so far as to tax student-athletes' scholarship funds, it put higher education on notice that Congress has its eye on college sports.¹⁵¹ There is little doubt that the IRS will monitor student-athletes' revenue-generating activities once the FPTPA (or a similar legislative model) becomes effective. In addition, Senator Richard Burr (R-NC) and Congressman Mark Walker (R-NC) have both suggested plans for even greater tax burdens on student-athletes and the NCAA once the FPTPA becomes operative.¹⁵² As the face of college sports changes under this latest reform, tax considerations will play a significant role for select student-athletes. To appreciate the tax consequences specific to student-athletes

148. See I.R.C. § 117 (2018); Rev. Rul. 77-263, 1977-2 C.B. 47 (excluding athletic scholarships from the quid pro quo limitation of I.R.C. § 117(c)); Letter from John A. Koskinen, Comm'r, Internal Revenue Serv., to Richard Burr, Senator, U.S. Senate (Apr. 9, 2014), <https://www.irs.gov/pub/irs-wd/14-0016.pdf> ("It has long been the position of the Internal Revenue Service that athletic scholarships can qualify for exclusion from income under section 117."); see also Kisska-Schulze & Epstein, Northwestern, O'Bannon *and the Future*, *supra* note 7, at 790 (noting that the IRS has not sought to tax student-athletes' grants in aid and numerous academics have questioned this decision).

149. Kisska-Schulze & Epstein, *The Claim Game*, *supra* note 24, at 250.

150. Kisska-Schulze, *The Tax Man*, *supra* note 41, at 368 (stating that the Tax Cuts and Jobs Act could prove costly for college athletics programs). *But see* Samuel McQuillan & Laura Davison, *IRS Rules Target Coaches at Duke, Notre Dame, Hospital Chiefs*, ACCT. TODAY (June 8, 2020, 10:26 AM EDT), <https://www.accountingtoday.com/articles/irs-rules-target-coaches-at-duke-notre-dame-hospital-chiefs> ("The IRS issued guidance on Friday that implements a change in the 2017 tax overhaul, and levies a 21 percent excise tax on some nonprofit employees' salaries above \$1 million. The tax could also hit many highly compensated private college coaches as well as non-profit hospital executives Yet there's a big loophole: The law doesn't apply to employees at many public colleges. That means Clemson University football coach Dabo Swinney is able to duck the tax on his more than \$9 million salary, as is University of Kansas basketball's Bill Self on his \$4 million income. Those institutions can claim tax-exempt status as a government unit, and not as a tax code section 501 organization.")

151. See Kisska-Schulze, *The Tax Man*, *supra* note 41, at 368-69.

152. See H.R. 1804, 116th Cong. (1st Sess. 2019); see also Preston Cooper, *Richard Burr's Bizarre Plan to Tax Student Athletes*, FORBES (Oct. 31, 2019, 2:30 AM EDT), <https://www.forbes.com/sites/prestoncooper2/2019/10/31/richard-burrs-bizarre-plan-to-tax-student-athletes/#2406db0b23ee>.

under the FPTPA, this Part analyzes both (A) federal and (B) state tax laws that could apply to student-athletes profiting from their NIL in the future.

A. Federal Tax Considerations of the Fair Pay to Play Act

Under U.S. tax law, citizens are taxed on their worldwide income no matter the source derived.¹⁵³ While resident aliens are subject to the same tax laws as U.S. citizens, nonresident aliens are subject to U.S. taxes on income categorized as U.S.-source, including income connected to a U.S. trade or business.¹⁵⁴

Within this taxing structure, student-athletes—whether citizens, residents, or nonresident aliens—who earn income for the use of their NIL will be subject to U.S. federal tax rules.¹⁵⁵ Effectively, this means that all of a student-athlete’s NIL earnings (which could encompass endorsement income and merchandise sales revenues) will be included in his overall gross income unless otherwise excluded by law.¹⁵⁶

In addition to the receipt of actual cash, gross income also includes non-monetary items including the fair market value of property, meals,

153. See I.R.C. § 61(a) (2018) (“[G]ross income means all income from whatever source derived . . .”).

154. See I.R.C. § 871(b) (2018); Treas. Reg. § 1.1-1(a) (2020); see also I.R.C. § 7701(b)(2018) (defining a resident alien as a non-U.S. citizen individual who passes either the green card or substantial presence test for the calendar year, and a nonresident alien as one who does not pass either the green card or substantial presence test during the calendar year); Pogroszewski & Smoker, *An Overview of Tax Deductions for Professional Athletes*, *supra* note 140, at 437 n.4; Pogroszewski & Smoker, *Cross-Checking*, *supra* note 140, at 192–93 (noting that a nonresident alien’s income must be U.S.-sourced for it to be taxable in the U.S.).

155. This Article focuses on income tax issues specific to U.S. citizens and resident aliens. While numerous international student-athletes play college sports in the U.S., it is outside the scope of this Article to address U.S. and foreign jurisdiction tax issues that might apply to those identified as non-resident aliens (i.e., individuals not holding a green card, or who fall outside the parameters of the substantial presence test). For a more thorough discussion of international tax issues applicable to nonresident alien professional athletes, see Pogroszewski & Smoker, *Cross-Checking*, *supra* note 140.

156. See I.R.C. § 61(a); see also Part III of the U.S. Tax Code, I.R.C. §§ 101-140, and applicable U.S. Treasury Regulations which designate items specifically excludable from a taxpayer’s gross income. In particular, I.R.C. § 117 allows for an exclusion from gross income of qualified scholarships, an issue which has been heavily discussed in academic literature with respect to student-athletes. See, e.g., Adam Hoeflich, Note, *The Taxation of Athletic Scholarships: A Problem of Consistency*, 1991 U. ILL. L. REV. 581; Kisska-Schulze & Epstein, Northwestern, O’ Bannon and the Future, *supra* note 7; Tutka & Williams, *supra* note 7; Edelman, *supra* note 7.

accommodations, and services provided.¹⁵⁷ Thus, it would make no difference if a car dealership paid a student-athlete \$5,000 for the use of his NIL or if the dealership loaned him a car with a fair value of \$5,000 for the period of time used; either way, the student-athlete would have to report \$5,000 as gross income.¹⁵⁸

Unlike professional athletes, who are employees of their respective teams, student-athletes who eventually earn compensation for the use of their NIL will likely be deemed self-employed from a federal tax perspective.¹⁵⁹ The NCAA has made its position clear: while the organization supports modernizing college athletics in a manner that allows student-athletes to benefit from the use of their NIL, student-athletes playing sports at member institutions will not be deemed athlete-employees of the colleges or universities for which they play.¹⁶⁰ In addition, endorsement contracts—which allow a company to use another’s NIL for promotional purposes—generally do not give rise to employment contracts between parties.¹⁶¹ Endorsement earnings are normally categorized as self-employment income.¹⁶² Thus, any student-athlete fortunate enough to enter into an endorsement agreement with a company like Adidas, Nike, or Under Armour will be required to report his earnings as if he were self-employed.¹⁶³

157. See Treas. Reg. § 1.61-1(a) (2020).

158. Although outside the scope of this Article, it should be noted that two types of accounting methods exist: cash basis and accrual basis. The method a taxpayer adopts will determine the timing of income recognition for tax purposes. For those who are self-employed, cash accounting generally offers more simplicity. See Jim Woodruff, *Difference Between Accrual & Cash Basis Tax Returns*, CHRON (Dec. 17, 2018), <https://smallbusiness.chron.com/difference-between-accrual-cash-basis-tax-returns-25144.html>.

159. *ProSportsTax's Frequently Asked Questions*, PROSPORTSTAX, <http://www.prosportstax.com/faq-from-pro-sports-tax.shtm> (last visited Jan. 11, 2021) (noting that the majority of professional athletes are employees of the teams they play for; exceptions include athletes like golfers who do not play for a structured team).

160. *Board of Governors Starts Process to Enhance Name, Image and Likeness Opportunities*, *supra* note 4.

161. *Endorsement and Appearance Contracts*, USLEGAL, <https://sportslaw.uslegal.com/sports-agents-and-contracts/endorsement-and-appearance-contracts/> (last visited Jan. 11, 2021).

162. *ProSportsTax's Frequently Asked Questions*, *supra* note 159.

163. See I.R.C. § 6017 (requiring that individuals who have self-employment earnings of at least \$400 file an individual income tax return with respect to self-employment tax); Khristopher J. Brooks, *NCAA Athletes Getting Paid: Thousands Could Be in Their Futures*, CBS NEWS (Nov. 1, 2019, 1:38 PM), <https://www.cbsnews.com/news/ncaa-athletes-getting->

Indeed, it will be important for student-athletes to understand the various types of income they might receive. While tax deductions may reduce student-athletes' taxable income, self-employment taxes could increase their tax burden. To consider the various types of income, deductions, and taxes that may play a role in student-athletes' tax planning, Section (1) provides brief discussion points on the types of income that may apply to student-athletes under the FPTPA model, Section (2) identifies the role of tax deductions in reducing taxable income, and Section (3) introduces the self-employment tax.

1. Taxable Income

Unless otherwise excluded by law, any income received by an individual is taxable.¹⁶⁴ The following subsections introduce certain types of income that may be applicable to student-athletes earning compensation for the use of their NIL and provide brief examples for each.

a) Royalties

Income derived from endorsement contracts is the most common type of revenue earned by professional athletes.¹⁶⁵ Royalty income is generally earned in one of two ways. In "on-court" (or "on-course") contracts, an athlete agrees to wear a sponsor's brand during athletic performances.¹⁶⁶ In contrast, "off-court" or ("off-course") contracts allow a sponsor to use an athlete's NIL outside of an athletic performance in exchange for compensation.¹⁶⁷ Royalty payments, which typically derive from a sponsor's use of an athlete's NIL in its advertising, will play an integral role in calculating student-athletes' taxable income under the FPTPA model.¹⁶⁸

paid-thousands-could-be-in-their-future/ (identifying potential third parties, like Adidas, that may be interesting in dipping into the student-athlete pool for endorsement deals).

164. I.R.C. § 61(a).

165. Michael J. Bruno, Steven Hadjiligiou & Robert H. Moore, *The Taxation of Royalty Payments to International Athletes*, LANDSLIDE, Nov./Dec. 2016, at 36, 37, https://www.bakermckenzie.com/en/-/media/files/insight/publications/2016/11/ar_taxationroyaltypayments_2016.pdf.

166. *Id.*

167. *Id.*; see also Carli Marcello, Comment, *I'm Entertained, but Who's Doing the Entertaining? A Look at the International Tax Consequences for International "Entertainers"*, 28 TUL. J. INT'L & COMP. L. 125, 131 (2019).

168. Bruno, Hadjiligiou & Moore, *supra* note 165, at 37; see also Sam McQuillan, *NCAA Athletes Sure to Face Tax Hit as Endorsement Checks Arrive*, BLOOMBERG TAX (Oct.

Royalty income is generally considered self-employment income and is subject to ordinary income tax rates.¹⁶⁹

To help illustrate the relationship between endorsement contracts and royalty payments for a student-athlete, consider the story of hypothetical Player *X*. Assume Player *X* is a star forward on the University of Southern California (USC) women's basketball roster. In 2024, Player *X* enters into an agreement with Company *A* (a hypothetical company located in Los Angeles) for the use of her NIL on select 2024 advertisements.¹⁷⁰ If the endorsement agreement allows Company *A* to use Player *X*'s picture in its TV advertising during Fall 2024 in exchange for \$10,000, the entire \$10,000 must be included as royalty income on Player *X*'s Form 1040, U.S. Individual Income Tax Return.¹⁷¹

b) Constructively Received Income

For cash-method taxpayers, income must be reported when earnings are either actually or constructively received.¹⁷² Income is *actually* received when in the physical possession of the taxpayer. *Constructively* received income, on the other hand, is available to the taxpayer without restriction even though it may not be in their actual physical possession.¹⁷³ Under either circumstance, the income is taxable in the year received.

Continuing with the above hypothetical, Company *A* agrees to compensate Player *X* \$10,000 for the use of her NIL in its Fall 2024 TV advertisements. Company *A* transfers the funds directly into Player *X*'s PayPal account on December 31, 2024. Even if Player *X* does not log into her PayPal account until January 3, 2025, the \$10,000 must be included in her 2024 income because she constructively received it on December 31 of that year.

30, 2019, 9:00 AM), <https://news.bloombergtax.com/daily-tax-report/ncaa-opens-door-to-paying-athletes-for-fame-and-possible-tax-issues>.

169. See I.R.C. § 61(a)(6); Treas. Reg. § 1.61-8(a) (2020).

170. For purposes of this and any remaining hypothetical examples, we will assume the taxpayer is a cash-method taxpayer since the majority of self-employed persons use the cash-method of accounting.

171. Generally, royalty income from people who are self-employed is reported on Schedule C of IRS Form 1040. See INTERNAL REVENUE SERV., DEP'T OF THE TREAS., TAXABLE AND NONTAXABLE INCOME 17 (2020).

172. See I.R.C. § 451(c)(4)(C); see also Gordon T. Butler, *Economic Benefit: Formulating A Workable Theory of Income Recognition*, 27 SETON HALL L. REV. 70, 71 (1996).

173. See Treas. Reg. 1.451-2(a) (2020).

c) Assignment of Income

The “assignment of income doctrine” is a court-developed principle that provides guidance on income reporting when a prior transfer has taken place.¹⁷⁴ The Supreme Court has acknowledged that “income must be taxed to him who earns it.”¹⁷⁵ Under this ideology, any income received by an agent on behalf of a taxpayer is deemed to be constructively received by the taxpayer, regardless of when such income is actually transferred over to them.¹⁷⁶

For student-athletes earning compensation under the FPTPA model—which permits the hiring of agents—the assignment of income doctrine would come into play.¹⁷⁷ Assume in this case that Player *X* hires an agent to negotiate endorsement contracts on her behalf, which includes the \$10,000 agreement with Company *A* for the use of her NIL. Instead of directly paying Player *X*, Company *A* transfers the \$10,000 to her agent on December 30, 2024. In this scenario, Player *X* must still report that amount as taxable income on her 2024 Form 1040 even if her agent does not actually transfer the \$10,000 to her until January 3, 2025.

d) Prepaid Income

Prepaid income, or income received in advance of services to be performed at a later date, is generally taxable in the year received.¹⁷⁸ Thus, if Company *A* enters into an endorsement contract with Player *X*, which requires that it pay her \$10,000 in 2024 but not use her NIL on any advertisements until Spring 2025, Player *X* will still include \$10,000 on her 2024 IRS Form 1040.

174. Brant J. Hellwig, *The Supreme Court’s Casual Use of the Assignment of Income Doctrine*, 2006 U. ILL. L. REV. 751, 751–52.

175. *Id.* at 751 (quoting *Comm’r v. Culbertson*, 337 U.S. 733, 739–40 (1949)).

176. *See id.* at 762 (quoting *Comm’r v. Banks*, 543 U.S. 426, 437 (2005)).

177. *See* Legislative Counsel’s Digest, Fair Pay to Play Act, S.B. 206, 2019-2020 Leg., Reg. Sess. (Cal. 2019) (“[A]thlete agents shall comply with federal law in their relationships with student athletes.”).

178. *See* I.R.C. § 451(a). Note, however, that for taxpayers that use the accrual method of accounting, prepaid income can be deferred until the services are actually performed. *Id.* § 451(c).

e) Fringe Benefits

Gross income also includes the receipt of fringe benefits,¹⁷⁹ unless they are otherwise specifically excluded from income by established law.¹⁸⁰ Fringe benefits are compensation falling outside the scope of a worker's actual cash earnings.¹⁸¹ In essence, they are extra benefits provided to a worker within the context of their employment.¹⁸² Fringe benefits, however, are not solely innate to employer-employee relationships; such benefits can be conferred to independent contractors as well.¹⁸³

Taxable fringe benefits may include frequent flier miles, hotel points, and mixed-use business/personal assets such as cell phones and internet services.¹⁸⁴ In addition, they might include perks like an employer-provided vehicle, a flight on an employer-provided aircraft, free or discounted commercial airline flights, vacations, and tickets to an entertainment or sports event.¹⁸⁵ If a student-athlete receives any of these benefits in connection with the performance of services related to his NIL, he must include the value of those benefits in his taxable income.¹⁸⁶ If, however, the student-athlete pays fair value for the benefit, or such benefit is otherwise excludable, then it would not be included in their gross income.¹⁸⁷

Thus, for example, if in 2024 Company *A* gives Player *X* \$5,000 in cash, provides her with a Jeep Wrangler with a use value of \$3,000 for the period she has access to it, and gives her tickets to a Los Angeles Lakers game valued at \$2,000—all in exchange for the use of her NIL—she must include a total of \$10,000 in her 2024 income. In contrast, if Player *X* paid the fair

179. I.R.C. § 61(a)(1).

180. I.R.C. § 132(a); Treas. Reg. § 1.61-21(a)(2) (2020).

181. See Treas. Reg. § 1.61-21(a).

182. Sharon Alice Pouzar, Comment, *Frequent Flyer Awards as Taxable Income: Time to Pay the Taxman*, 5 TEX. WESLEYAN L. REV. 55, 66 (1998).

183. See Shu-Yi Oei & Diane M. Ring, *Tax Law's Workplace Shift*, 100 B.U. L. REV. 651, 673–74 (2020) (discussing the impact of fringe benefits on independent contractors versus employees); see also *Independent Contractor (Self-Employed) or Employee?*, IRS, <https://www.irs.gov/businesses/small-businesses-self-employed/independent-contractor-self-employed-or-employee> (last visited Jan. 12, 2021) (explaining that, for tax purposes, independent contractors are considered self-employed).

184. Jay A. Soled & Kathleen DeLaney Thomas, *Revisiting the Taxation of Fringe Benefits*, 91 WASH. L. REV. 761, 763–64 (2016).

185. Treas. Reg. § 1.61-21.

186. See I.R.C. § 61(a)(1). *But see* Treas. Reg. § 1.61-21(a)(2) (documenting fringe benefits that are excludable from gross income).

187. Treas. Reg. § 1.61-21(b)(i)–(ii).

market value for these benefits in exchange for her NIL, then the reporting requirement does not apply to Player X's 2024 income.

2. *The Role of Tax Deductions*

Tax deductions are available to reduce a person's taxable income. The two principal forms of deductions under U.S. tax law are standard and itemized deductions.¹⁸⁸ The TCJA's 2018 overhaul significantly increased the standard deduction.¹⁸⁹ In fact, the TCJA nearly doubled the standard deduction previously available.¹⁹⁰ Following this change, the Joint Committee on Taxation estimated that 90% of taxpayers will benefit from taking the standard deduction, as compared to itemizing.¹⁹¹

For those whose earnings fall below the standard deduction, filing a federal income tax return is not required; however, such benefit does not extend to the self-employed.¹⁹² Although self-employed individuals can claim the standard deduction on their federal income tax returns, the Code still requires that they file a federal return if they earn at least \$400 during the taxable year.¹⁹³ For taxpayers whose trade or business expenses exceed the standard deduction amount,¹⁹⁴ itemization is recommended.

In the future, most, if not all, self-employed student-athletes earning compensation for the use of their NIL will likely have to file federal income tax returns. And of those, there may only be a few who choose to itemize rather than take the standard deduction. However, itemizing requires that (a) earnings are derived from a trade or business, (b) expenses are ordinary

188. See I.R.C. § 63.

189. Act of Dec. 22, 2017, Pub. L. No. 115-97, § 11021, 131 Stat. 2054, 2072–73; see also I.R.C. § 63(c)(7)(B) (providing that the standard deduction adjusts annually for inflation). For 2020, the standard deduction is \$12,400 for single filers. *IRS Provides Tax Inflation Adjustments for Tax Year 2020*, IRS (Nov. 6, 2019), <https://www.irs.gov/newsroom/irs-provides-tax-inflation-adjustments-for-tax-year-2020#:~:text=For%20single%20taxpayers%20and%20married,tax%20year%202020%2C%20up%20%24300>.

190. § 11021, 131 Stat. at 2072.

191. Erica York, *Nearly 90 Percent of Taxpayers Are Projected to Take the TCJA's Expanded Standard Deduction*, TAX FOUND. (Sept. 26, 2018), <https://taxfoundation.org/90-percent-taxpayers-projected-tcja-expanded-standard-deduction/>.

192. See I.R.C. § 6012(f)(1); INTERNAL REVENUE SERV., DEP'T OF THE TREAS., DEPENDENTS, STANDARD DEDUCTION, AND FILING INFORMATION 5 tbl.3 (2020), <https://www.irs.gov/pub/irs-pdf/p501.pdf>.

193. See I.R.C. § 6017.

194. See I.R.C. § 162(a); Treas. Reg. § 1.162-1(a) (2020); INTERNAL REVENUE SERV., *supra* note 192, at 23 (recommending that taxpayers should itemize if their total deductions exceed the standard deduction amount).

and necessary, and (c) the location of their tax home is properly identified.¹⁹⁵ The following subsections briefly discuss each of these issues.

a) Participating in a Trade or Business

Those who earn income while participating in a trade or business (as opposed to a hobby) can deduct certain business expenses.¹⁹⁶ Although the Code makes reference to “trade or business” in numerous sections, the term itself is not defined.¹⁹⁷ The Supreme Court has documented that “not every income producing and profit-making endeavor constitutes a trade or business,” and that such determination is based on individual facts and circumstances of any particular case.¹⁹⁸ Across academic lines, whether an activity rises to the level of a “trade or business” generally requires some indication that the activity is driven by profit motivation.¹⁹⁹ For professional athletes, playing a sport for profit may constitute a trade or business.²⁰⁰ In addition, athletes receiving endorsement income in exchange for the use of their NIL amounts to a trade or business.²⁰¹

Although ultimately a determination for the IRS, student-athletes securing endorsement contracts while playing college sports will arguably not be doing so for hobby, but “with the actual and honest objective of making a profit.”²⁰² College sports is a billion-dollar industry, and student-athletes are the only participants not receiving a piece of the pie. In designing the FPTPA, the California state legislature highlighted the industry’s failure in financially supplementing student-athletes, while simultaneously reaping benefits that would be otherwise nonexistent

195. See I.R.C. § 162(a).

196. See Kisska-Schulze & Epstein, *Taxing Missy*, *supra* note 141, at 115–16 (comparing a trade or business to a hobby).

197. Kisska-Schulze, *Analyzing*, *supra* note 7, at 193.

198. *Id.* (quoting *Comm’r v. Groetzinger*, 480 U.S. 23, 35–36 (1986)).

199. *Id.* (first citing Anthony P. Polito, *Trade or Business Within the United States as an Interpretive Problem Under the Internal Revenue Code: Five Propositions*, 4 HASTINGS BUS. L.J. 251, 252 (2008); and then citing Carol Duane Olson, *Toward a Neutral Definition of “Trade or Business” in the Internal Revenue Code*, 54 U. CIN. L. REV. 1199, 1200 (1986)).

200. See Kisska-Schulze, *Analyzing*, *supra* note 7, at 194.

201. See Treas. Reg. § 1.199A-5(b)(3)(xv) (2020).

202. See *Dreicer v. Comm’r*, 78 T.C. 642, 645 (1982), *aff’d*, 702 F.2d 1205 (D.C. Cir. 1983). *But see* NCAA, 2020-21 NCAA DIVISION I MANUAL 3 (2020) (“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.”).

without players.²⁰³ With the NCAA's support that student-athletes should "profit" from the use of their NIL,²⁰⁴ there should be little question that those earning compensation for the use of their NIL will be doing so as part of their trade or business.

b) Ordinary and Necessary Business Expenses

The Code allows taxpayers to take deductions for trade or business expenses that are "ordinary and necessary."²⁰⁵ Identifying whether an expense is "ordinary and necessary," however, is subjective, as neither the Code nor Treasury Regulations provide sufficient guidance as to what the expression actually means.²⁰⁶ The Supreme Court has interpreted ordinary expenses as those customary or usual for a particular trade,²⁰⁷ and necessary expenses as those "appropriate and helpful" to a taxpayer's business.²⁰⁸

For professional athletes, ordinary and necessary expenses include those "(1) paid or incurred during the taxable year, (2) related to the business of playing professional sports, (3) common to that particular business, and (4) reasonable in cost."²⁰⁹ In addition, travel costs specific to professional athletes' endorsement earnings and autograph signings are deductible if directly related to their pursuit of business and not otherwise reimbursable by their teams or sponsors.²¹⁰

Historically, professional athletes could also deduct agent and trainer fees, gym memberships, training equipment, supplements, and business suits.²¹¹ However, the TCJA suspended "miscellaneous itemized

203. See Matt Strauser, *Let the Kids Play: How College Athletes Can Use California's Prohibition on Noncompete Clauses to Circumvent the NCAA's Year-In-Residence Rule*, 27 JEFFREY S. MOORAD SPORTS L.J. 1, 15 (2020).

204. *Id.*

205. I.R.C. § 162(a).

206. See Kisska-Schulze, *Analyzing*, *supra* note 7, at 193.

207. See *Welch v. Helvering*, 290 U.S. 111, 114–15 (1933) (noting that to be an "ordinary" expense, one must determine whether an expense is normal or common within the business community).

208. *Id.* at 113 (citing *McCulloch v. Maryland*, 17 U.S. (4 Wheat.) 316 (1819)).

209. Kisska-Schulze, *Analyzing*, *supra* note 7, at 193.

210. Fratto, *supra* note 140, at 36.

211. Ken Rubin, *Tax Consequences for Professional Athletes in 2018*, TAX ADVISOR (Apr. 11, 2019), <https://www.thetaxadviser.com/newsletters/2019/apr/tax-consequences-professional-athletes-2018.html>; see I.R.C. § 67 (permitting miscellaneous itemized deductions if the aggregate of those deductions exceeds 2% of a taxpayer's adjusted gross income).

deductions,²¹² thus eliminating numerous tax benefits previously available.²¹³ Still, travel expenses—which include associated meal and lodging costs—incurred in relation to their trade or business that are not otherwise reimbursable, remain deductible.²¹⁴

For student-athletes whose trade or business expenses exceed the standard deduction, itemization would be reasonable; however, the likelihood of student-athletes needing to itemize is relatively low.²¹⁵ While costs directly relating their income-generating activity (such as air travel and vehicle mileage expenses)²¹⁶ could be deductible,²¹⁷ expenses already covered by their institutions (such as training equipment, massage therapy, and travel related to their sport) would not be.²¹⁸ In addition, since agent fees are not currently deductible under the TCJA, student-athletes will be unable to deduct the cost of hiring a licensed athlete agent on their behalf.²¹⁹

The TCJA made other significant changes that could impact student-athletes who might qualify for itemization, including a \$10,000 cap on state and local taxes paid.²²⁰ Further, as self-employed taxpayers, student-athletes who elect to itemize will be able to deduct 50% of the total cost of Social Security and Medicare as a business expense.²²¹ Overall, those who might benefit from itemizing rather than taking the standard deduction will have

212. I.R.C. § 67(g) (scheduling a suspension through tax year 2025).

213. Rubin, *supra* note 211.

214. I.R.C. § 162(a)(2) (excluding, however, means and lodging identified as “lavish or extravagant”).

215. This hypothesis is based on the premise that only about 10% of taxpayers now itemize under the new TCJA rules. Jennifer Bird-Pollan, *Revising the Tax Law: The TCJA and Its Place in the History of Tax Reform*, 45 OHIO N.U. L. REV. 501, 514 (2019).

216. Note, however, that if a taxpayer uses their vehicle for both business and personal use, they must divide expenses based on actual mileage. Jean Murray, *What Car Expenses Can I Deduct for Business Driving?*, BALANCE SMALL BUS. (Dec. 7, 2019), <https://www.thebalancesmb.com/business-driving-expenses-you-can-and-can-t-deduct-398677>.

217. I.R.C. § 162(a)(2). *But see infra* Section III.A.2.c (discussing considerations surrounding the identification of a student-athlete’s tax home).

218. Davis, *supra* note 10.

219. Rubin, *supra* note 211.

220. *See* I.R.C. § 164(a), (b)(6) (capping the available SALT deduction, which includes state and local income, sales and property taxes, to \$10,000 for tax years 2018 through 2025).

221. *See* I.R.C. §§ 164(f)(1), 1401(a); *see also infra* Section III.A.3 for a discussion of the self-employment tax.

to keep detailed records and receipts of what may qualify as ordinary and necessary business expenses.

c) Identifying a Student-Athlete's Tax Home

To deduct ordinary and necessary travel expenses incurred while in pursuit of a “trade or business,” such costs must be expended “while away from home.”²²² However, the federal courts are split in their interpretation of where an individual’s “tax home” is located.²²³ The IRS has generally followed the majority interpretation that a person’s tax home is the location of their principal place of business.²²⁴ Thus, when one incurs ordinary and necessary expenses while traveling away from that home for business purposes, such expenses are deductible.²²⁵

Yet, when multiple residences exist, the applicable interpretations are not as clear-cut. For instance, the Ninth Circuit has held that the home located closest to the taxpayer’s principal place of business is their tax home.²²⁶ If a taxpayer claims two separate residences as their tax home, the First Circuit has held that they must demonstrate that both are maintained for business purposes.²²⁷ Both the Ninth and Second Circuits find that a tax home is not fixed to a person’s principal place of business, but is instead the location of their actual residence in the ordinary sense.²²⁸ The Supreme Court has never clarified the term’s meaning for business expense purposes.²²⁹

For professional athletes, their tax home is generally dependent on whether they play an individual or team sport. Athletes with no affiliation to any specific team—like professional golfers and tennis players—have significant flexibility in determining the location of their tax home.²³⁰ In

222. I.R.C. § 162(a)(2).

223. See Kisska-Schulze, *Analyzing, supra* note 7, at 194.

224. See, e.g., *Bixler v. Comm’r*, 5 B.T.A. 1181, 1184 (1927) (opining that a taxpayer cannot keep their residence at a place where they are not engaged in carrying on a trade or business); *Markey v. Comm’r*, 490 F.2d 1249, 1253 (6th Cir. 1974) (“[A] taxpayer’s home is his principal place of business . . .”).

225. Kisska-Schulze, *Analyzing, supra* note 7, at 194; see Rev. Rul. 93-86, 1993-2 C.B. 71 (providing that a taxpayer’s tax home is where their principal place of business is located, or if there is no principal place of business, then the taxpayer’s “regular place of abode in a real and substantial sense”).

226. *Coombs v. Comm’r*, 608 F.2d 1269, 1275–76 (9th Cir. 1979).

227. *Hantzis v. Comm’r*, 638 F.2d 248, 256 (1st Cir. 1981).

228. See *Wallace v. Comm’r*, 144 F.2d 407, 410 (9th Cir. 1944); *Coburn v. Comm’r*, 138 F.2d 763, 764 (2d Cir. 1943).

229. Kisska-Schulze, *Analyzing, supra* note 7, at 199–201.

230. *Id.* at 202.

contrast, those who play on teams often have multiple homes—one near the location of the team’s business office, and another where their family resides.²³¹ In these circumstances, numerous courts have maintained that a professional athlete’s tax home is where the team office is located.²³²

Applying these various holdings to student-athletes will require the IRS to determine whether the family residence (which student-athletes generally move away from during the academic year), or the location of their collegiate institution (where they reside during most of the year) is their tax home.²³³ If the university location is deemed to be a student-athlete’s tax home, out-of-pocket expenses he incurs when travelling away from that residence for purposes of capitalizing on his NIL may be deductible. If the student-athlete’s family residence is instead identified as his tax home, travel costs incurred from that home for the purpose of promoting his NIL may be deductible.

Because a student-athlete under the FPTPA or a similar model will be self-employed (rather than employed by a college or university with an established business office location), it may be unclear which of these residences is his actual tax home. However, it will be important to determine this issue in the event a student-athlete incurs costs while travelling for the purpose of profiting from his NIL.

Returning to the above hypothetical, assume that Player *X* has a rental apartment off-campus in Los Angeles where she lives for ten months a year, and a family home in New York where she lives for two months during the summer. Player *X* has a total of four endorsement contracts, and her overall expenses tied to her profiting from the use of her NIL allow her to itemize rather than take the standard deduction. One of Player *X*’s endorsement contracts includes the agreement she entered into with Company *A*. To meet the demands of this particular contract, Player *X*

231. *Id.*

232. *Id.* at 203 (first citing *Wills v. Comm’r*, 411 F.2d 537, 540 (9th Cir. 1969) (concluding that Los Angeles was the tax home of an L.A. Dodgers player); then citing *Bailey v. Comm’r*, 49 T.C.M. (CCH) 141 (1984) (holding that a professional hockey player’s tax home was the location of this team, not the location of his permanent house); then citing *Gardin v. Comm’r*, 64 T.C. 1079, 1083 (1975) (finding that the franchise location of teams for which a professional football player played for was his tax home); then citing *Stenkowski v. Comm’r*, 76 T.C. 252, 283 (1981) (finding professional hockey players’ tax homes to be the location of the hockey clubs that employed them); and then citing *Speck v. United States*, 28 Fed. Cl. 254, 308 (1993) (finding a professional hockey player’s tax home to be his team city)).

233. *Id.* at 209.

incurs minimal travel costs (e.g., mileage) while in Los Angeles, but she must also attend two promotional events in Los Angeles during the months she lives in New York. To do this, Player *X* must incur out-of-pocket airfare, hotel, meals, and Uber expenses in the amount of \$4,000. If Los Angeles is deemed to be her tax home, she will likely be unable to deduct any of these expenses. On the other hand, if New York is determined to be her tax home, such expenses would arguably be deductible. Certainly, Player *X* could attempt to claim both residences as her tax home if she can successfully demonstrate that both are maintained for business purposes.

Ultimately, determining a student-athlete's tax home will be based on the interpretation by the federal circuit in which their permanent family residence is located.²³⁴ However, without established guidance provided by the IRS on where a student-athlete's tax home actually is, this determination may vary from athlete to athlete, and will most likely require the professional assistance of a tax attorney or certified public accountant.

3. *The Self-Employment Tax*

In 1935, the Roosevelt Administration enacted the Federal Insurance Contributions Act (FICA) to fund social security programs.²³⁵ In particular, FICA established the payroll tax, which still serves as the main revenue source for social insurance plans, including Social Security and Medicare.²³⁶ The payroll tax is a split contribution plan shared by employees and employers.²³⁷ At the current rate of 15.3% imposed on most income earned, employees and their employers divide the burden evenly at 7.65% each.²³⁸

Self-employed persons, who have no employer to share the tax with, are required to pay the entire 15.3% self-employment tax out of their net

234. *Id.* at 210.

235. See Patricia E. Dilley, *Through the Doughnut Hole: Reimagining the Social Security Contribution and Benefit Base Limit*, 62 ADMIN. L. REV. 367, 380–91 (2010) (providing a history of U.S. social security programs).

236. Kathryn Kisska-Schulze & Karie Davis-Nozemack, *Humans vs. Robots: Rethinking Tax Policy for a More Sustainable Future*, 79 MD. L. REV. 1009, 1021 (2020).

237. *Id.* at 1023.

238. The 15.3% rate consists of a 12.4% tax for Social Security, see I.R.C. § 1401(a) (2018), and a 2.9% tax for Medicare, *id.* § 1401(b)(1). Effectively, this breaks down to a 6.2% tax on each for Social Security and a 1.45% tax on each for Medicare. I.R.C. § 3101(a), (b)(1).

earnings.²³⁹ The self-employment tax, which consists of a 12.4% tax for social security and a 2.9% tax for Medicare, is imposed on the first \$142,800 of net income earned and must be paid in addition to a person's income taxes.²⁴⁰

As previously noted, self-employed persons must file an IRS Form 1040 if they have net earnings of \$400 or more during a taxable year, regardless of whether their income falls below the standard deduction.²⁴¹ Because the tax is imposed on net earnings,²⁴² self-employed taxpayers can benefit by first reducing their gross income by available deductions. In addition, the IRS provides a tax break to self-employed individuals, which allows for a deduction equivalent to the employer-portion of the tax from their net income.²⁴³ Further, the self-employment tax is only imposed on 92.35% of the individual's net—not gross—income.²⁴⁴ However, such benefits also present drawbacks for student-athletes.

Self-employed student-athletes will have to become familiar with Schedule SE (Self-Employment Tax) of their Form 1040 and be prepared to file estimated quarterly payments, as self-employed taxpayers are generally required to do.²⁴⁵ Failure to pay quarterly could result in IRS penalties.²⁴⁶ In addition, they will have to file an annual Form 1040, calculate their total gross income for the taxable year, and determine which type of deduction—standard or itemized—would provide them with greater financial benefits.

239. See I.R.C. § 1401(a). Net earnings are generally calculated by determining your gross income from self-employment, minus business expenses.

240. *Self-Employment Tax (Social Security and Medicare Taxes)*, IRS, <https://www.irs.gov/businesses/small-businesses-self-employed/self-employment-tax-social-security-and-medicare-taxes> (last visited Jan. 12, 2020). The net earnings base amount is subject to inflation. In 2020 the maximum wage base amount established by the Social Security Administration was \$137,700. The rate increased to \$142,800 in 2021. For higher income taxpayers, there is an additional Medicare Tax imposed at a rate of 0.9% on earnings above specified thresholds. *Id.*; see I.R.C. § 1401(b)(2)(A) (establishing an additional tax of 0.9% of self-employment income).

241. See *supra* text accompanying notes 192–93.

242. See I.R.C. § 6017.

243. See I.R.C. § 164(f)(1).

244. See I.R.C. § 1402(a)(12) (allowing self-employment income to be reduced by 7.65%, which is equivalent to the sum of the 6.2% Social Security tax and 1.45% Medicare tax).

245. See *Self-Employed Individuals Tax Center*, IRS, <https://www.irs.gov/businesses/small-businesses-self-employed/self-employed-individuals-tax-center> (last visited Jan. 12, 2021).

246. See I.R.C. § 6654.

If itemizing is more beneficial in any given year, they will have to keep track of all expense records and discuss with a tax professional where the location of their tax home is to properly calculate business travel expenses for federal income tax purposes.

B. State Tax Considerations of the Fair Pay to Play Act

In conjunction with the federal income tax considerations discussed above, student-athletes who financially benefit from the use of their NIL under the FPTPA (or a similar legislative model) will also have to account for various state tax obligations. States have the authority to tax their own residents' earnings, as well as any out-of-state persons who earn revenue while having a physical presence, or "nexus," with the jurisdiction.²⁴⁷

States vary widely in how they impose income taxes—or whether they impose the taxes at all. Although the majority of U.S. states impose an income tax, Alaska, Florida, Nevada, South Dakota, Texas, Washington, and Wyoming do not.²⁴⁸ In addition, Tennessee and New Hampshire only impose an income tax on dividend and interest income.²⁴⁹ Of the states that levy some form of tax on personal earnings, the rates vary widely, from a low of 2.9% in North Dakota to a high of 13.3% in California.²⁵⁰ Each state also imposes its own set of income and other tax laws that differ from the remaining forty-nine. For instance, Colorado and Michigan are two of nine states that implement a flat-rate income tax structure on earnings, regardless of the amount,²⁵¹ while thirty-two states implement graduated income tax

247. Kisska-Schulze & Epstein, "Show Me the Money!", *supra* note 7, at 34.

248. *Id.* at 35.

249. *Id.* (first citing TENN. CODE ANN. § 67-2-102 (2019); and then citing N.H. REV. STAT. ANN. 77:4 (2015)).

250. See Katherine Loughead, *State Individual Income Tax Rates and Brackets for 2020*, TAX FOUND. (Feb. 4, 2020), <https://taxfoundation.org/state-individual-income-tax-rates-and-brackets-for-2020/>. Individual income tax rates in California range from 1% to 12.3%, with an additional 1% surcharge added to taxable income of at least \$1 million. CAL. REV. & TAX. CODE § 17041 (2020).

251. COLO. REV. STAT. 39-22-104(1.7) (2020) (imposing a flat rate of 4.63%); MICH. COMP. LAWS ANN. § 206.51(1)(b) (West 2020) (imposing a flat rate of 4.25%); see also Tonya Moreno, *States with Flat Income Tax Rates for Tax Year 2019*, BALANCE (Dec. 7, 2020), <https://www.thebalance.com/which-states-have-a-flat-income-tax-rate-3193306#citation-1> (listing the remaining states that impose a flat income tax rate: Illinois (4.95%), Indiana (3.23%), Kentucky (5.0%), Massachusetts (5.05%), North Carolina (5.25%), Pennsylvania (3.07%), and Utah (4.95%)).

brackets depending on the range of income earned.²⁵² Hawaii imposes the largest number of brackets at twelve.²⁵³

In addition, residency rules across state lines vary widely. For example, New Jersey's laws define a resident as a person domiciled in the state, unless that person does not have a permanent residence there, maintains a home in another state and spends thirty days per year or less in New Jersey, or is not domiciled in the state but maintains a permanent residence in New Jersey and spends more than 183 days there.²⁵⁴ South Carolina residents are identified as those who are "domiciled" in the state, which is generically defined as "a person's fixed home where he has an intention of returning when he is absent."²⁵⁵ In North Carolina, residency is based on either the actual domicile of the taxpayer or their presence in the state for more than 183 days; however, statutory language denotes that "absence of an individual from the state for more than 183 days raises no presumption that the individual is not a resident."²⁵⁶

Understanding differing tax rules across states lines is vital for student-athletes earning compensation from the use of their NIL, particularly if derived from multiple jurisdictional sources. Depending on how any given state defines "residency" for tax purposes, it is possible that student-athletes may find themselves having dual-residency status. For example, assume that Player *X* grew up in her family home in South Carolina and now plays college basketball at USC in California. California statutory law defines a resident as one who is present in the state "for other than a temporary or transitory purpose."²⁵⁷ California statutory law invokes a nine-month rebuttable presumption for residency purposes, whereby those spending more than nine months in California are presumed residents.²⁵⁸ As

252. See *Individual Income Tax Structures in Selected States*, INST. FOR ILLINOIS' FISCAL SUSTAINABILITY (Mar. 27, 2020), <https://www.civicfed.org/iifs/blog/individual-income-tax-structures-selected-states>.

253. Loughead, *supra* note 250.

254. Kisska-Schulze & Epstein, "*Show Me the Money!*", *supra* note 7, at 37 (citing to N.J. STAT. ANN. § 54A:1-2(m)(1)–(2) (West 2020)).

255. See S.C. CODE ANN. § 7-1-25(a) (2019); see also *Ravenel v. Dekle*, 218 S.E.2d 521, 528 (S.C. 1975) (identifying domicile as "the place where a person has his true, fixed and permanent home and principal establishment, to which he has, whenever he is absent, an intention of returning" (quoting *Gasque v. Gasque*, 143 S.E.2d 811, 812 (S.C. 1965))).

256. Kisska-Schulze & Epstein, "*Show Me the Money!*", *supra* note 7, at 37 (citing N.C. GEN. STAT. § 105-153.3(15) (2020)).

257. See CAL. REV. & TAX. CODE § 17014(a)(1) (2020).

258. See *id.* § 17016.

previously mentioned, South Carolina's statute also broadly defines a "resident" as anyone who is "domiciled" in the state.²⁵⁹ Because both South Carolina and California have more generalized laws regarding residency for tax purposes, student-athletes must be cognizant of possible issues regarding residency. For example, if Player *X* earns \$50,000 in 2024 from various California sources, she could potentially be identified as a resident in both South Carolina and California—an issue which she will have to contend with if both states assert taxing jurisdiction over her income.

Residency issues may become even more complicated if endorsement agreements are involved. For example, imagine Player *X* enters into an endorsement agreement that requires her to travel to Under Armour's headquarters in Baltimore, Maryland for a photo shoot in exchange for \$20,000. Because Player *X* entered the state for profit, Maryland will likely claim nexus over her for purposes of those earnings and require her to file a Maryland non-resident income tax return.²⁶⁰ As a resident of South Carolina and/or California, Player *X* would still have to file a return in her "home" state that would include the \$20,000 earned while in Maryland. In such case, multi-state income tax apportionment rules would factor in to determine how much of the \$20,000 each of the relevant states could tax.²⁶¹

Depending on where else Player *X* earns compensation for the use of her NIL, she may have to file multiple state income tax returns both as a resident in the state identified as her tax home, as well as a non-resident earning income within a different jurisdiction. Akin to federal tax rules, each state allows for specified deductions to help reduce a person's taxable income, though state tax laws need not directly match every provision of the federal Code.²⁶² Thus, Player *X* will need to familiarize herself with the benefits available to her on a state-by-state basis.

259. See S.C. CODE ANN. § 7-1-25(a) (2019).

260. Although this could amount to an issue of double taxation, most states offer credits to residents for taxes paid to another state. Such credits, however, do not necessarily eradicate the possibility that some of that income may still be double taxed. See Pogroszewski, *supra* note 140, at 408.

261. States are required to apply a formula to apportion income produced both within and outside the state. Established formulas must be fair under both the Due Process Clause and Commerce Clause. See *Exxon Corp. v. Wis. Dep't of Revenue*, 447 U.S. 207, 227–28 (1980).

262. Jared Walczak, *Toward a State of Conformity: State Tax Codes a Year After Federal Tax Reform*, TAX FOUND. (Jan. 28, 2019), <https://taxfoundation.org/state-conformity-one-year-after-tcja/>.

In addition, Player *X*—as a self-employed taxpayer—must verify whether the states in which she files a tax return also require her to file quarterly estimated payments akin to federal tax law. While most taxpayers who are required to make federal estimated tax payments must also make similar payments to relevant jurisdictions where they earn income, each state establishes its own specific requirements.²⁶³ Thus, Player *X* will have to determine in which jurisdiction(s) she must make estimated payments, the due dates of those payments, and any other relevant forms or materials that must accompany such payments. Failure to abide by each state's tax requirements could result in penalties and interest accrual.

Multistate tax filing obligations exacerbate the complexities inherent in the Code. Anticipating that the majority of compensated student-athletes will comprehend the vast array of federal and state tax obligations surrounding NIL endorsement agreements, or the inevitable consequences of failing to pay or file their taxes on time, is farcical.²⁶⁴ Taxes are obscure, which is why most taxpayers make significant mistakes when preparing returns.²⁶⁵ A 2017 survey conducted prior to the signing of the TCJA found that 57% of Americans had little confidence in their understanding of the Code.²⁶⁶ Post-TCJA, some argue that the Code has become even more complicated.²⁶⁷ Once the FPTPA goes into effect, the spillover effect on student-athletes resulting from tax complications could mask the positive, holistic movement in college sports. In lieu of assuming that student-athletes earning compensation for the use of their NIL can (or should) successfully navigate through the federal and state tax obligations tethered

263. See Katherine Loughhead, *In Some States, 2020 Estimated Tax Payments Are Due Before 2019 Tax Returns*, TAX FOUND. (May 22, 2020), <https://taxfoundation.org/2020-quarterly-estimated-tax-payments-2019-tax-returns/>.

264. See Davis, *supra* note 10 (noting that few student-athletes have experience in understanding tax matters).

265. *Schenk Tells NPR That the U.S. Tax Code Is So Complex That Most Filers Make Mistakes*, NYU L. NEWS, https://www.law.nyu.edu/news/SCHENK_NPR (last visited Jan. 13, 2021).

266. *Most Americans Don't Understand the Tax Code: Survey*, FOX BUS. (Jan. 31, 2018), <https://www.foxbusiness.com/markets/most-americans-dont-understand-the-tax-code-survey>.

267. See Christine A. Davis, *Is the Tax Cuts and Jobs Act GILTI of Anti-Simplification?*, 38 VA. TAX REV. 315, 389–91 (2019); see also Richard C. Byrd, Stephen J. Madden, Jeffrey M. Raney & John T.M. Whiteman, *State Responses to the Tax Cuts and Jobs Act: An Analysis from Indiana and Missouri*, 58 WASH. U.J. L. & POL'Y 231, 296 (2019).

to their NIL earnings on their own, Part IV offers recommendations to better educate and protect student-athletes' financial interests.

IV. Recommendations

The tax complexities that self-employed student-athletes will confront could be overwhelming for many of them. Indeed, these complexities may result in audits, penalties, and interest for those who are unaware of their federal and state tax filing obligations. Allowing student-athletes to profit from their NIL is a step towards greater equity within the profitable college sports industry. This change will be important to student-athletes embarking on their individualized trade or business ventures, as they must keep detailed records of where their compensation is earned (including compensation in mediums other than money) and all expenses that may be associated with their earnings.

Securing knowledgeable tax and accounting specialists to counsel them through various tax considerations and filings will be critical. However, marketable student-athletes—many of whom have likely never filed a tax return on their own²⁶⁸—may not comprehend the need for specialized accounting assistance until they receive a notice or letter from the IRS and/or state taxing authorities informing them of assessed penalties and interest. To best safeguard student-athletes' financial interests in the future, this Article offers select recommendations.

First, the Treasury should promulgate a revenue ruling stating that student-athletes earning compensation for the use of their NIL are doing so not for hobby, but with the clear objective of making a profit from their individualized trade or business. Such determination would provide uniformity for all student-athletes earning compensation for the use of their NIL and eliminate any question as to whether FPTPA activities might instead constitute a hobby. It would also align with both the California state legislature's policy objective that student-athletes financially benefit from the lucrative college sports industry, as well as the NCAA's recent backing that student-athletes should be able to "profit" from the use of their NIL.²⁶⁹

268. See Jessica Endlich, *Question of the Day: How Many Teenagers File Tax Returns?*, NGPF: BLOG (Apr. 13, 2015), <https://www.ngpf.org/blog/question-of-the-day/question-of-the-day-how-many-teenagers-file-tax-returns/> (citing to Tax Foundation data that found between 1997 and 2011 less than 5% of all taxpayers were under the age of eighteen).

269. See *supra* Section III.A.2.a.

In addition, the Treasury should issue a separate ruling designating a student-athlete's principal place of business for federal tax purposes as the location of his college or university, rather than the location of his family home.²⁷⁰ Student-athletes are unlike professional teams or individual athletes in that they do not reside at a university location for profit-making (as is the case for professional team players), and/or tax-saving purposes (as may be the case for a professional golfer or tennis player). Instead, student-athletes attend a college or university where they are both accepted for academic purposes and recruited for amateur athletic purposes.

Under the parameters of the FPTPA and the NCAA's stance on amateurism, student-athletes will not attend a collegiate institution in the future for the specific purpose of making a profit. Instead, their earnings will be secured to agreements with outside third parties willing to compensate them for the use of their NIL as self-employed individuals.²⁷¹ A Treasury determination that a student-athlete's federal tax home is the location of their academic institution would benefit student-athletes by providing a synchronous approach. Under this framework, student-athletes could deduct ordinary and necessary trade or business expenses incurred while traveling away from their college or university home for purposes of their trade or business. Rather than requiring a case-by-case analysis for those who have both a family home (which they move away from during the academic year) and a home located near their college or university (where they reside during the academic year), uniformly fixing a student-athlete's tax home as the location of their academic institution can prevent later tax complications. Student-athletes spend the majority of the year at or near the location of their collegiate institution. Because the compensation they receive for the use of their NIL is directly rooted in their recognition as a collegiate player, student-athletes would not be in a position to earn compensation for the use of their NIL without playing college sports at the location of their college or university. This Article's pronouncement, therefore, would preserve the IRS's approach that a federal tax home is where the taxpayer's principal place of business is located.

Next, the NCAA should establish a tax personnel position or department dedicated to providing tax, accounting, and financial counseling services to student-athletes. This position/department should offer multiple tax planning resources, including: free, user-friendly, and convenient tax filing

270. *See supra* Section III.A.2.c.

271. *See supra* Part II.

software; twenty-four-hour online and telephone tax guidance and preparation assistance; support in filing federal and state quarterly tax payments and extensions; and any additional related resources that may assist student-athletes in understanding their federal and state tax filing obligations. Implementing such a position and/or department would provide student-athletes with multiple resources dedicated to assisting those who have the opportunity to earn compensation for the use of their NIL. Because many of these student-athletes will have little or no understanding of their federal and state income tax obligations, such overhead resource at the NCAA level would provide a broad layer of support to student-athletes at member institutions.

The NCAA should also create and/or sponsor a tax literacy course specific to student-athletes that includes basic federal and state income tax considerations applicable to those earning compensation for the use of their NIL. The course should comprise of an overview of relevant federal income tax laws, including (1) who needs to file a federal income tax return, (2) various types of taxable income, (3) available tax benefits, and (4) the self-employment tax. In addition, the course should include general information regarding state income tax filing requirements. The course should be made available at no charge to student-athletes for the entirety of their academic career and be promoted by member institutions as a tool for those entering into endorsement contracts and/or other means of allowable NIL profiting. The course should be audited each calendar year to capture relevant tax law changes.

Further, NCAA member institutions should be required to provide student-athletes with state and local tax information applicable to their jurisdiction. Such provisions might include (1) inviting a certified public accountant (CPA) or tax attorney to speak to student-athletes annually about tax filing obligations and considerations, and (2) access to relevant, online materials specific to the jurisdiction, including state income tax returns, quarterly filing requirements, filing due dates, and contact information for local and state-wide CPAs and tax attorneys. Such institutional support would give student-athletes direct access to local professionals who can assist with their state and federal tax filing obligations.

Finally, to ensure that student-athletes are habitually reminded of the significance of adhering to income tax compliance requirements, visible placards or other notices should be posted in all NCAA member athletic department facilities. These placards should include all relevant federal and state tax compliance responsibilities, including (1) the value of filing timely

income tax returns, (2) advantages of securing professional tax services, and (3) contact information for the NCAA tax personnel position or department. In addition, NCAA member institutions should be encouraged to adjust athletic training schedules to allow for one designated day off prior to April 15 of each year to allow student-athletes dedicated time to address their income tax issues and seek appropriate guidance from the NCAA and/or licensed tax or accounting providers as necessary.²⁷²

V. Conclusion

The FPTPA serves as a beacon of reform in college sports. For decades, student-athletes have sought forms of intercollegiate athletic compensation; however, the NCAA's position on amateurism has remained steadfast.²⁷³ Indeed, California Governor Newsom's signing of the FPTPA in September 2019 now proves to be a game changer.²⁷⁴ In the near future, student-athletes will be permitted to hire agents, entertain endorsement deals, and benefit financially from the use of their NIL to promote products, services, and companies.²⁷⁵ Following California's lead, a number of other states have either passed or introduced similar legislation or expressed an intent to do so.²⁷⁶ While the NCAA was initially critical of California's action due to the Association's historic injunction on student-athletes receiving any form of compensation outside the purview of scholarship funds, it recently shifted its stance. The NCAA has now expressed support for allowing student-athletes to profit from the use of their NIL while still maintaining that student-athletes are not employees of their institutions.²⁷⁷

Although certainly a novel and lucrative opportunity for elite student-athletes moving forward, federal and state tax consequences could prove significant and complicated.²⁷⁸ While it is outside the scope of this Article to examine every feasible tax nuance that may apply to those earning

272. A similar and recent recommendation was issued by the NCAA to member institutions that would allow student-athletes to take Election Day off on Nov. 3, 2020 in order to go out and vote. See Adam Rittenberg, *NCAA Encourages Schools to Give Athletes Election Day Off*, ESPN (June 12, 2020), https://www.espn.com/college-sports/story/_/id/29303499/ncaa-encourages-schools-give-athletes-election-day-off.

273. See *supra* Part I.

274. See *supra* Part I.

275. See *supra* Part I.

276. See *supra* Part I.

277. See *supra* Part I.

278. See *supra* Part III.

compensation for the use of their NIL, this Article provides a glimpse of pertinent federal and state tax issues that could apply to student-athletes under the FPTPA or other similar legislation.²⁷⁹

This Article urges that tax considerations be included in the overall discussion surrounding student-athlete compensation under the FPTPA, and not be relegated solely to academic literary discourse. Taxes are complicated, and the majority of student-athletes will not be prepared to comprehend the tax obligations that coincide with their profit-making endeavors. Following the implementation of the FPTPA, this Article recommends that the IRS, NCAA, and member institutions collectively ensure that student-athletes receive the best possible education—not just in the classroom, but also in their financial endeavors amidst the changing face of college sports.

279. *See supra* Sections III.A–B.